AGRICULTURE CODE

CHAPTER 388

H. B. No. 1436

An Act relating to adoption of a nonsubstantive revision of the statutes relating to agriculture.

Be it enacted by the Legislature of the State of Texas:

Section 1. The Agriculture Code is adopted to read as follows:

AGRICULTURE CODE

TITLE 1. GENERAL PROVISIONS

Chapter

1. General Provisions

TITLE 2. DEPARTMENT OF AGRICULTURE

11. Administration
12. Powers and Duties
13. Weights and Measures
14. Warehouse Regulation
15. Family Farm and Ranch Security Program
16. Antifreeze Regulation

TITLE 3. AGRICULTURE RESEARCH AND PROMOTION

41. Commodity Producers Boards
42. Natural Fibers and Food Protein Commission
43. County and Railway Agricultural Experiment Farms and Stations and County Demonstration Work

TITLE 4. AGRICULTURAL ORGANIZATIONS

51. Farmers' Cooperative Societies
52. Cooperative Marketing Associations
53. Agriculture and Livestock Pools
54. Mutual Loan Corporations
55. Cooperative Credit Associations
56. Agricultural Finance Corporations

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
62. Seed and Plant Certification
63. Commercial Fertilizer

SUBTITLE B. HORTICULTURAL DISEASES AND PESTS

71. General Control
72. Mexican Fruit Fly Control
73. Citrus Diseases and Pests
74. Cotton Diseases and Pests
75. Herbicide Regulation
76. Pesticide Regulation
77. Fire Ant Control
78. Noxious Weed Control Districts

SUBTITLE C. GRADING, PACKING, AND INSPECTING FRUITS AND VEGETABLES

91. General Grades and Packs of Fruits and Vegetables
92. Tomato Standardization and Inspection
93. Citrus Fruit Standardization and Inspection
94. Citrus Fruit Maturity Standards
95. Citrus Fruit Coloring Matter

SUBTITLE D. HANDLING AND MARKETING OF HORTICULTURAL PRODUCTS

101. Handling and Marketing of Vegetables
102. Handling and Marketing of Citrus Fruit
103. Produce Recovery Fund
104. Marketing Orders

SUBTITLE E. PROCESSING AND SALE OF FIBER PRODUCTS

111. Ginning and Compressing Cotton
112. Cotton Classing
113. Cotton Buying

SUBTITLE F. PRODUCTION, PROCESSING, AND SALE OF NURSERY PRODUCTS

121. Grading of Roses

TITLE 6. PRODUCTION, PROCESSING, AND SALE OF ANIMAL PRODUCTS

SUBTITLE A. BEES AND NONLIVESTOCK ANIMAL INDUSTRY

Chapter
131. Bees and Honey
132. Eggs
133. Poultry Improvement Board

SUBTITLE B. LIVESTOCK

141. Commercial Feed
142. Estrays
143. Fences; Range Restrictions
144. Marks and Brands
145. Grading of Livestock
146. Sale and Shipment of Livestock
147. Livestock Commission Merchants
148. Slaughtering of Livestock

SUBTITLE C. CONTROL OF ANIMAL DISEASES AND PESTS

161. General Disease and Pest Control
162. Tuberculosis Control
163. Brucellosis Control
164. Scabies Control
165. Control of Diseases of Swine
166. Anthrax Control
167. Tick Eradication
168. Pullorum Disease and Fowl Typhoid Control

TITLE 7. SOIL AND WATER CONSERVATION

201. Soil and Water Conservation
202. Wind Erosion Districts

AGRICULTURE CODE

TITLE 1. GENERAL PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

Section

1.001. Purpose of Code
1.002. Construction of Code
1.003. Definitions

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. (New.)

Sec. 1.002. Construction of Code

The Code Construction Act (Article 5429b—2, Vernon's Texas Civil Statutes) applies to the construction of each provision in this code, except as otherwise expressly provided by this code. (New.)

Sec. 1.003. Definitions

In this code:

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

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

TITLE 2. DEPARTMENT OF AGRICULTURE

CHAPTER 11. ADMINISTRATION

Section

11.001. Department; Commissioner
11.002. Headquarters
11.003. Sunset Provision
11.004. Election and Term of Commissioner
11.005. Qualifications
11.006. Bond
11.007. Deputy Commissioner
11.008. Funds of the Department

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. (New.)

Sec. 11.002. Headquarters

The department headquarters are in Austin. (V.A.C.S. Art. 47 (part).)

Sec. 11.003. Sunset Provision

The department is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the department is abolished and this chapter expires effective September 1, 1987. (V.A.C.S. Art. 47a.)

Sec. 11.004. Election and Term of Commissioner

The commissioner is elected for a term of four years. (V.A.C.S. Art. 47 (part).)

Sec. 11.005. Qualifications

The commissioner must be an experienced and practical farmer and have knowledge of agriculture, manufacturing, and general industry. (V.A.C.S. Art. 47 (part).)

Sec. 11.006. Bond

Before assuming duties, the commissioner shall execute a bond in the amount of $5,000 payable to the state and conditioned on the faithful performance of the duties of the office. The bond is subject to approval by the governor (V.A.C.S. Art. 48.)

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 and shall execute a bond with two or more sureties in the amount of $3,000 payable to the state and conditioned on the faithful

performance of the duties of the office. The bond is subject to approval by the governor.

(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. (V.A.C.S. Arts. 49 (part), 50.)

Sec. 11.008. Funds of the Department

Except as otherwise provided by law, the department shall deposit all money collected or received by it in the state treasury to the credit of the general revenue fund. (V.A.C.S. Art. 4386c—1.)

CHAPTER 12. POWERS AND DUTIES

Section

12.001. Execution of Laws
12.002. Development of Agriculture
12.003. Agricultural Societies
12.004. Farmers' Institutes
12.005. Subsoiling, Drainage, and Irrigation
12.006. Development of Domestic and Foreign Markets
12.007. Plant Diseases and Pests
12.008. Grasses and Trees
12.009. Animals and Animal Products
12.010. Correspondence With Government Agencies and Others
12.011. Agricultural Resource Statistics
12.012. Irrigation Statistics
12.013. Employees
12.014. Annual Report
12.015. Cooperation With Texas A & M University and Experiment Stations
12.016. Rules
12.017. Use of Term "Texas Agricultural Product"
12.018. Aflatoxin Testing
12.019. Agencies for the Sale of Agricultural Products

CHAPTER 12. POWERS AND DUTIES

Sec. 12.001. Execution of Laws

The department shall execute all applicable laws relating to agriculture. (V.A.C.S. Art. 51 (part).)

Sec. 12.002. Development of Agriculture

The department shall encourage the proper development of agriculture, horticulture, and related industries. (V.A.C.S. Art. 51 (part).)

Sec. 12.003. Agricultural Societies

The department shall encourage the organization of agricultural societies. (V.A.C.S. Art. 51 (part).)

Sec. 12.004. Farmers' Institutes

For the benefit of agricultural communities, the department shall conduct farmers' institutes at times and places throughout the state as necessary to best promote the advancement of agricultural knowledge and the improvement of agricultural methods and practices. The department shall publish and distribute the papers and addresses read or delivered at the institutes that the department determines to be of value to farming interests. (V.A.C.S. Art. 51 (part).)

Sec. 12.005. Subsoiling, Drainage, and Irrigation

For the purpose of extending the areas in which subsoiling is conducted, the department shall investigate subsoiling, its relation to agriculture, and the best method of effecting it in the different portions of the state. The department shall also investigate the problems of drainage and irrigation in different portions of the state. (V.A.C.S. Art. 51 (part).)

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. (V.A.C.S. Art. 51 (part).)

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. (V.A.C.S. Art. 51 (part).)

Sec. 12.008. Grasses and Trees

The department shall investigate and report on grasses, their value, and the cultivation of the varieties best adapted to the different sections of the state. The department shall collect and publish information relating to forestry, tree planting, and the best means of preserving and replenishing forests; encourage the planting and culture of nut trees; and recommend legislation necessary for the protection, restoration, and preservation of the forests of the state. (V.A.C.S. Art. 51 (part).)

Sec. 12.009. Animals and Animal Products

(a) The department shall inquire into subjects relating to stock raising, dairying, and poultry, the obtaining and rearing of the most valuable domestic animals and fowls, and the breeding and improvement of those animals and fowls. The department shall encourage the raising of fish and the culture of bees.

(b) The department shall investigate and report on producing wool and the utility and profit of sheep raising. The department shall also in-

quire into the culture, preparation for market, and manufacture of silk. (V.A.C.S. Art. 51 (part).)

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. (V.A.C.S. Art. 51 (part).)

Sec. 12.011. Agricultural Resource Statistics

(a) 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.

(b) The department shall annually collect agricultural statistics. For that purpose, before January 1 of each year it shall furnish blank forms and instructions to the tax assessor of each county, including forms to be completed by the taxpayer relating to the taxpayer's acreage in cotton, grain, and other leading products of the state.

(c) The head of each state agency or institution shall furnish information for the purposes of this section at the request of the department.

(d) In performing duties under this section, the department may enter any manufacturing establishment chartered or authorized to do business in this state. Those establishments shall furnish appropriate information at the request of the department. (V.A.C.S. Art. 51 (part).)

Sec. 12.012. Irrigation Statistics

(a) The department shall collect and publish statistics and other information relating to the irrigation of rice and other crops that the department determines to be beneficial in developing a more efficient system of laws safeguarding and defining the rights of users and sellers of water for irrigation purposes.

(b) For the purposes of performing duties under this section, the department may employ an engineer and expert having practical knowledge of the application of irrigation to the raising of rice and other crops.

(c) The department shall file with the governor and the legislature an annual report on irrigation. The report shall contain recommendations that the department considers beneficial to the industry. (V.A.C.S. Art. 51 (part).)

Sec. 12.013. Employees

The department may employ personnel as the duties of the department require. (V.A.C.S. Art. 49 (part).)

Sec. 12.014. Annual Report

(a) On or before November 1 of each year, the department shall submit to the governor a full report on the work and expenditures of the department during the preceding fiscal year. The governor shall transmit the report to the legislature.

(b) Under the direction of the department, the State Purchasing and General Services Commission shall have printed not more than 10,000

copies of the annual report of the department. The department shall distribute the copies to farmers through the farmers' institutes or agricultural organizations or through other means as determined by the department. (V.A.C.S. Arts. 53, 54).

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. (V.A.C.S. Art. 55.)

Sec. 12.016. Rules

The department may adopt rules as necessary for the administration of Sections 12.001–12.015 of this code. (V.A.C.S. Art. 51 (part).)

Sec. 12.017. Use of Term "Texas Agricultural Product"

(a) The department, by rule, shall regulate the use of the term "Texas Agricultural Product" and any symbol connected with that term in the selling, advertising, marketing, or other commercial handling of food or fiber products.

(b) On request of the department, the attorney general shall sue in a court of competent jurisdiction to enjoin a violation or threatened violation of a rule adopted under this section.

(c) A person commits an offense if the person violates a rule adopted by the department under this section. An offense under this section is a misdemeanor punishable by a fine of not less than $25 nor more than $200. (V.A.C.S. Art. 55d.)

Sec. 12.018. Aflatoxin Testing

(a) On request of any person, the department may test an agricultural product for aflatoxins.

(b) The department may set and charge a fee of not less than $10 nor more than $20 for testing under this section. (V.A.C.S. Art. 135a—4.)

Sec. 12.019. Agencies for the Sale of Agricultural Products

The department may establish agencies for the sale of farm, orchard, or ranch products and may adopt rules for the operation of each agency. (V.A.C.S. Art. 5567.)

CHAPTER 13. WEIGHTS AND MEASURES

SUBCHAPTER A. GENERAL PROVISIONS

Section

13.001. Definitions
13.002. Enforcement of Chapter
13.003. Chief Deputy of Weights and Measures
13.004. Expenses
13.005. Annual Report
13.006. Records

[Sections 13.007–13.020 reserved for expansion]

SUBCHAPTER B. STANDARD WEIGHTS AND MEASURES

Section

13.021. Legal Standards
13.022. Standard for Length and Surface
13.023. Standard for Weight
13.024. Standard for Liquid Capacity
13.025. Standard for Solid Capacity
13.026. Cord
13.027. Standard Net Weight or Count Set by Rule
13.028. Standard Weight Per Bushel for Certain Commodities
13.029. Standard Net Weight and Labeling of Flour and Cornmeal
13.030. Sale of Commodities by Net Weight
13.031. Sale of Commodities by Proper Measure
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
13.037. Use of False Weight or Measure
13.038. Sale of Commodity in Violation of Subchapter
13.039. Testing of Package by Sealer
13.040. Stop-Sale Order
13.041. Penalties; Defense

[Sections 13.042–13.100 reserved for expansion]

SUBCHAPTER C. INSPECTION OF WEIGHTS AND MEASURES

13.101. Required Inspection
13.102. Inspection Seal Required Prior to Sale
13.103. Inspection of Water, Gas, and Electric Meters
13.104. State Sealers
13.105. County Sealers
13.106. Local Sealers
13.107. Sealer for More Than One Political Subdivision
13.108. Powers and Duties of Sealers
13.109. Rules Governing Sealers
13.110. Inspecting, Testing, and Sealing
13.111. Repair or Destruction of Incorrect Weights or Measures
13.112. Tests for State Institutions
13.113. Standards Used in Inspection
13.114. Tolerances
13.115. Fees for Department Inspection
13.116. Use or Sale of Unsealed Weight or Measure
13.117. Refusing to Permit Test of Weight or Measure
13.118. Hindering Sealer
13.119. Removal of Sealer's Tag
13.120. Sale or Use of False Weights or Measures
13.121. Disposing of Condemned Weight
13.122. Penalties

[Sections 13.123–13.200 reserved for expansion]

SUBCHAPTER D. MEASUREMENT OF BUTTERFAT CONTENT OF DAIRY PRODUCTS

Section
13.201. Definition
13.202. Dairy Advisory Board
13.203. Babcock Test
13.204. Other Tests
13.205. Test Requirements
13.206. Standards of Weight and Measure
13.207. Licensing of Testers
13.208. Department Supervision
13.209. Rules
13.210. Stop-Sale Order
13.211. Duties of District or County Attorney
13.212. Penalties

[Sections 13.213–13.250 reserved for expansion]

SUBCHAPTER E. PUBLIC WEIGHER

13.251. Public Weigher
13.252. Qualifications
13.253. Independent Public Weigher
13.254. Appointment of Weighers
13.255. Election of Weighers
13.256. Abolition of Elected Office
13.257. Deputy Weighers
13.258. Term of Elected or Appointed Weigher
13.259. Oath of Office
13.260. Bond
13.261. Supervision by Department; Certificate of Authority
13.262. Weight Certificate
13.263. Seal
13.264. Record
13.265. Identification of Lots
13.266. Reweighing
13.267. Suspension or Dismissal
13.268. Weighing for Factor or Commission Merchant
13.269. Penalty

CHAPTER 13. WEIGHTS AND MEASURES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 13.001. Definitions

(a) In this chapter:

(1) "Weight or measure" includes a weight, scale, beam, or measure of any kind; an instrument or mechanical device for weighing or measuring; and an appliance or accessory connected with an instrument or mechanical device for weighing or measuring.

(2) "Sell" includes barter or exchange.

(b) A reference to the weight of a commodity in this chapter is a reference to the net weight of the commodity. (V.A.C.S. Arts. 5726a (part), 5729.)

Sec. 13.002. Enforcement of Chapter

The department shall enforce the provisions of this chapter and shall supervise all weights and measures sold or offered for sale in this state. The department may purchase apparatus as necessary for the administration of this chapter. (V.A.C.S. Arts. 5705 (part), 5713 (part), 5717 (part).)

Sec. 13.003. Chief Deputy of Weights and Measures

The commissioner shall appoint a chief deputy of weights and measures who, in the absence or inability of the commissioner, may perform any duty required by this chapter. (V.A.C.S. Art. 5705 (part).)

Sec. 13.004. Expenses

The commissioner and chief deputy of weights and measures are entitled to reimbursement for actual expenses while traveling on state business. (V.A.C.S. Art. 5706 (part).)

Sec. 13.005. Annual Report

The department shall investigate conditions throughout the state, especially in cities and towns, with respect to weights and measures and the sale of goods by weight or measure, including foodstuffs, feed, fuel, and ice. Based on those investigations, the department shall annually report to the governor. Prior to each regular session of the legislature, the department shall file the annual reports and any recommendations with the legislature. (V.A.C.S. Art. 5707.)

Sec. 13.006. Records

(a) The department shall maintain a complete record of all acts performed under this chapter, including a record of inspections made and of prosecutions for violations of this chapter.

(b) The department shall maintain an accurate record of the reports of county and local sealers of weights and measures.

(c) Records maintained under this section are public information. (V.A.C.S. Art. 5711.)

[Sections 13.007–13.020 reserved for expansion]

SUBCHAPTER B. STANDARD WEIGHTS AND MEASURES

Sec. 13.021. Legal Standards

(a) The legal standard of weights and measures in this state is the standard of weights and measures adopted and used by the government of the United States. If the United States does not provide a standard of 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. A person who violates a rule adopted under this subsection commits an offense.

(c) Except as otherwise provided by an express contract, a contract for work or sales by weight or measure 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 weights or measures under the law of this state. (V.A.C.S. Arts. 5726a (part), 5730 (part), 5736.)

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 5½ yards. The mile contains 1,760 yards. The Spanish vara contains 33⅓ 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. (V.A.C.S. Art. 5730 (part).)

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. (V.A.C.S. Arts. 5731, 5734 (part).)

Sec. 13.024. Standard for Liquid Capacity

(a) The standard unit of measure of capacity for liquids is the gallon.

(b) The barrel consists of 31½ gallons. A hogshead consists of two barrels. Except as provided by Subsection (c) of this section, all other measures of capacity for liquids are derived from the gallon by continual division by two, making half gallons, quarts, pints, half pints, and gills.

(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. (V.A.C.S. Art. 5732.)

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 $1{,}075^{21}/_{100}$ 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. (V.A.C.S. Art. 5733.)

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. (V.A.C.S. Art. 5734 (part).)

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 commits an offense if the person fails or refuses to comply with the rules adopted under this section. (V.A.C.S. Art. 5714 (part).)

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	32 pounds

(V.A.C.S. Art. 5734 (part).)

Sec. 13.029. Standard Net Weight and Labeling of Flour and Cornmeal

(a) In this section:

(1) "Cereal flour" includes wheat, whole wheat, and graham flour.

(2) "Manufacturer" means the person who processes cereal into flour or corn into meal.

(3) "Package" includes a barrel, sack, bag, carton, or other container.

(b) The standard measures of cereal flour and cornmeal are packages containing net weights of 2, 5, 10, 25, 50, 100, 150, or 200 pounds avoirdupois. This subsection does not apply to cereals sold as grits.

(c) Each package of cereal flour or cornmeal shall be printed or marked in clearly readable figures and letters with the net weight of the package and:

(1) the name and address of the manufacturer;

(2) the name and address of the packer, if the flour or meal was not packed by the manufacturer; or

(3) the name and address of the distributor.

(d) If the name shown on the package is not the name of the manufacturer, the name must be preceded by "Manufactured for and Packed by" or "Distributed by" or a similar phrase, as applicable.

(e) The department may adopt rules as necessary for the administration of this section, including rules establishing reasonable variations and tolerances.

(f) This section does not apply to:

(1) the retailing of cereal flour or cornmeal directly to the consumer from bulk stock;

(2) the sale of flour to a bakery for its exclusive use;

(3) the exchange of flour or meal for wheat or corn between a gristmill and another mill grinding for compensation for producers; or

(4) the packing for sale, offering for sale, or sale of a prepared flour or meal designed for a special or limited use and packed and distributed in an identified original package of a net weight of five pounds or less.

(g) A person commits an offense if the person packs for sale, offers for sale, or sells in this state a cereal flour or cornmeal in a package that is not of the standard net weight prescribed by this section or is not labeled in accordance with this section. (V.A.C.S. Art. 5733a, Secs. 1–4.)

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. (V.A.C.S. Art. 5726a (part).)

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 another 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 commits an offense if in violation of this section the person sells a liquid commodity by other than liquid measure or a commodity that is not liquid by a measure other than length, weight, or numerical count. (V.A.C.S. Art. 5726a (part).)

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, including cheese, meat, or a meat food product as defined by Section 13.034 of this code, 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, or numerical count; 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. (V.A.C.S. Art. 5726a (part).)

Sec. 13.033. Sale of Milk or Cream in Nonstandard Container

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 of this code. (V.A.C.S. Art. 5726a (part).)

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 commits an offense if, in violation of this section, the person sells or keeps, offers, or exposes for sale cheese, meat, or a meat food product by a measure other than standard net weight.

(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. (V.A.C.S. Art. 5726a (part).)

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 commits an offense 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. (V.A.C.S. Art. 5726a (part).)

Sec. 13.036. False Representation of Commodity Quantity

A person commits an offense if the person or the person's servant or agent:

(1) sells or offers or exposes for sale a quantity of a commodity or service that is less than the quantity the person represents; or

(2) as a buyer furnishing the weight or measure by which the amount of a commodity or service is determined, takes or attempts to take more than the quantity the person represents. (V.A.C.S. Art. 5726a (part).)

Sec. 13.037. Use of False Weight or Measure

(a) A person commits an offense if the person or the person's servant or agent uses a false weight or measure 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 weight or measure is false 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 of this code. (V.A.C.S. Art. 5726a (part).)

Sec. 13.038. Sale of Commodity in Violation of Subchapter

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. (V.A.C.S. Art. 5726a (part).)

Sec. 13.039. Testing of Package by Sealer

(a) A sealer appointed under Subchapter C of this chapter 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 a sealer finds that a package or any lot of a commodity contains less of the commodity than the amount represented, the sealer 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 a sealer for testing and proving as to quantity. (V.A.C.S. Arts. 5726 (part), 5726d (part).)

Sec. 13.040. Stop-Sale Order

(a) If the department has reason to believe that a commodity is being sold or kept, offered, or exposed for sale in violation of Section 13.030, 13.031, 13.032, 13.033, 13.034, 13.035, 13.036, or 13.037 of this code, the department may issue and enforce a written or printed order to stop the sale of the commodity. The department shall present the order to the owner or custodian of the commodity. The person receiving the order may not sell 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) The owner or custodian of a commodity prohibited from sale by an order of the department is entitled to sue in a court of competent jurisdiction where the commodity is found for a judgment as to the justification of the order and for the discharge of the commodity 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 subchapter. (V.A.C.S. Art. 5726a (part).)

Sec. 13.041. Penalties; Defense

(a) An offense under Section 13.027 or 13.039 of this code is a misdemeanor punishable by a fine of not less than $10 nor more than $200.

(b) An offense under Section 13.029 of this code is a misdemeanor punishable by a fine of not less than $25 nor more than $100.

(c) An offense under Section 13.021 or each of Sections 13.030–13.038 of this code is a misdemeanor punishable by a fine of not less than $20 nor more than $100, unless the accused has been previously convicted of

the offense, in which case it is punishable by a fine of not less than $50 nor more than $200.

(d) It is a defense to prosecution under Sections 13.030–13.038 of this code that a discrepancy between the actual weight or volume at the time of sale to a consumer and the weight marked on the container or a discrepancy between the fill of a container and the capacity of the container is due to unavoidable leakage, shrinkage, evaporation, waste, or causes beyond the control of the seller acting in good faith. (V.A.C.S. Art. 5714 (part); Art. 5726a (part); Art. 5726d (part); Art. 5733a, Sec. 5.)

[Sections 13.042–13.100 reserved for expansion]

SUBCHAPTER C. INSPECTION OF WEIGHTS AND MEASURES

Sec. 13.101. Required Inspection

(a) At least once each year, or more often as required by the department, a weight or measure shall be inspected and tested for correctness by a sealer 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) A person who uses or keeps for use, or has or offers for sale, a weight or measure is responsible for having the weight or measure inspected and tested by a sealer.

(c) Unless the department requires an inspection more often than annually, a weight or measure that is inspected and found correct by a sealer may be kept for use, used, kept or offered for sale, or sold for one year without further testing. (V.A.C.S. Arts. 5724 (part), 5725 (part), 5726 (part).)

Sec. 13.102. Inspection Seal Required Prior to Sale

(a) Except as provided by Subsection (b) or (c) of this section, a person may not sell a weight or measure unless it bears a valid inspection seal as to its correctness.

(b) A weight or measure that has been tested, sealed, and certified correct by the National Bureau of Standards may be kept or offered for sale or sold without being sealed under this subchapter.

(c) A weight or measure that after sale must be assembled before use may be kept or offered for sale or sold without first being sealed under this subchapter but, unless otherwise approved by the department, must be tested and sealed under this subchapter before use for weighing or measuring. (V.A.C.S. Arts. 5724 (part), 5725 (part).)

Sec. 13.103. Inspection of Water, Gas, and Electric Meters

(a) A water, gas, or electric meter is subject to inspection by the department either on its own motion or on complaint of a user. If the department finds a meter to be incorrect, the department shall order use of the meter discontinued until it is corrected.

(b) A person commits an offense if the person fails or refuses to comply with an order of the department under Subsection (a) of this section. Each day of failure or refusal to comply is a separate offense. (V.A.C.S. Art. 5707a (part).)

Sec. 13.104. State Sealers

(a) The commissioner may appoint deputies, as provided for by appropriation, and inspectors, lecturers, and other employees of the department to serve as state sealers of weights and measures.

(b) The jurisdiction of a state sealer is coextensive with the limits of the state. A state sealer is entitled to inspect and test weights and measures in any district or locality designated by the department.

(c) A deputy appointed to serve as state sealer is entitled to reimbursement for actual traveling expenses while traveling on the business of the state. (V.A.C.S. Arts. 5705 (part), 5706 (part), 5709 (part).)

Sec. 13.105. County Sealers

(a) The commissioners court of any county may appoint a county sealer of weights and measures. The county sealer is entitled to a salary set by the commissioners court. Neither the county sealer nor the county may charge a fee for inspecting, testing, sealing, repairing, or adjusting a weight or measure.

(b) In the same manner in which the county sealer is appointed, a commissioners court may appoint one or more deputy county sealers. A deputy county sealer is entitled to a salary set by the commissioners court and has the same power and authority as a county sealer if acting at the direction and under the instructions of the county sealer.

(c) The jurisdiction of a county sealer is coextensive with the limits of the county. (V.A.C.S. Art. 5714a (part).)

Sec. 13.106. Local Sealers

(a) The governing body of a city may appoint a local sealer of weights and measures and one or more deputy local sealers. The jurisdiction of a local sealer is coextensive with the limits of the city for which the sealer is appointed.

(b) Each local sealer and deputy local sealer is under the supervision of the department. As required by the department, each local sealer shall report to the department regularly on the basis of records maintained under Section 13.108 of this code. Failure or refusal to report is grounds for dismissal.

(c) If the department finds that a local sealer or deputy local sealer is neglecting the duties of the office, has refused to follow the recommendations and instructions of the department, is guilty of malfeasance in office, or is incompetent, the department shall prepare written charges that clearly state the offense. The department shall file the written charges with the governing body that appointed the sealer or with the city officer who supervises the sealer. The governing body or officer shall conduct a hearing on the charges not less than 10 nor more than 20 days after receipt of the written charges. A copy of the charges and the order setting the hearing shall be served on the accused sealer at least seven days before the date of the hearing. At the hearing, the accused sealer is entitled to be represented by counsel and to present evidence in defense. If the accused sealer is found guilty of the charges, the governing body or officer conducting the hearing shall immediately remove the sealer from office.

(d) If the department, city governing body, or city supervising officer finds that a local sealer or deputy local sealer has accepted a bribe, a gift, or money from a person who is interested in procuring false weights and measures, the department, governing body, or officer shall immediately suspend the sealer from office.

(e) A local sealer or deputy local sealer commits an offense if the sealer fails or refuses to report to the department as required by this section or to carry out the instructions of the department. (V.A.C.S. Arts. 5709 (part), 5721, 5722, 5722a (part), 5723 (part).)

Sec. 13.107. Sealer for More Than One Political Subdivision

(a) Two or more counties or a county and one or more cities located in that county may combine the whole or any part of their political subdivisions for the purpose of maintaining one set of standards and one sealer. The agreement to combine districts must be approved by the governing body of each participating political subdivision.

(b) Except as limited by the agreement, a sealer appointed under Subsection (a) of this section has the same authority, jurisdiction, and duties as if the sealer had been appointed individually by each of the parties to the agreement. (V.A.C.S. Art. 5714a (part).)

Sec. 13.108. Powers and Duties of Sealers

(a) In addition to inspecting, testing, and sealing weights and measures, each sealer and deputy sealer shall:

(1) preserve all copies of the standards used in conducting tests and keep the standards in safe and good order when not in use;

(2) keep a record of all work performed, including inspections made, and the name and post office address of each party:

(A) for whom a measurement, test weight, or inspection is made;

(B) whose weight or measure is condemned; or

(C) who is prosecuted; and

(3) keep a record of all violations of this chapter and report those violations to the department.

(b) The commissioner, the chief deputy of weights and measures, and all sealers have the same powers as peace officers in the performance of official duties.

(c) In the performance of official duties, a sealer, without a warrant, may enter any premises or stop any vendor or vehicle containing commodities for sale or delivery. The sealer may direct the vendor or vehicle to an appropriate place for the purpose of conducting tests under this subchapter. (V.A.C.S. Arts. 5710, 5723 (part), 5726 (part).)

Sec. 13.109. Rules Governing Sealers

The department shall issue instructions and adopt rules governing state, county, and local sealers as necessary to carry out the purposes of this chapter. (V.A.C.S. Art. 5708.)

Sec. 13.110. Inspecting, Testing, and Sealing

(a) In accordance with this subchapter, each sealer shall inspect and test all weights and measures used in the locality to which the sealer is assigned or in the city or county in which the sealer is appointed.

(b) If a sealer determines that a weight or measure corresponds to official standards, the sealer shall place a seal or mark on the weight or measure under the sealer's name showing the date of inspection and that the weight or measure is correct. The sealer shall place the seal or mark so that it may be easily seen. (V.A.C.S. Arts. 5726 (part), 5727 (part).)

Sec. 13.111. Repair or Destruction of Incorrect Weights or Measures

(a) If, in the judgment of the sealer, a weight or measure found to be incorrect is not capable of being repaired, the sealer may condemn, seize, and destroy the weight or measure.

(b) If, in the judgment of the sealer, an incorrect weight or measure is capable of being repaired, the sealer shall place on the weight or measure a tag or other mark with the words "Out of Order." The owner or user of the weight or measure may have it repaired within 30 days, but may not use or dispose of it until it is reinspected and sealed. After repair, the owner or user shall notify the sealer and the sealer shall reinspect the weight or measure. If it is found to be correct, the sealer shall remove the out-of-order tag and seal the weight or measure as provided by Section 13.110 of this code. (V.A.C.S. Art. 5727 (part).)

Sec. 13.112. Tests for State Institutions

At least once each year, or more often as requested by the State Purchasing and General Services Commission or the governing body of a state institution, the department shall test each weight or measure used by a state institution for any purpose, including a weight or measure 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. (V.A.C.S. Art. 5720.)

Sec. 13.113. Standards Used in Inspection

(a) The standards of weights and measures received from the United States and certified by the National Bureau of Standards are the state's standards by which all state and local standards of weights and measures are tried, authenticated, proved, and sealed.

(b) The department shall maintain the official 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 Bureau of Standards 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 state sealers.

(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, sealed and certified by the commissioner, and stamped with the letter "C". 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 shall inspect and correct the standards used by a local sealer at least once every two years. The department shall keep a record of the inspection and character of weights and measures inspected under this subsection. The city shall pay all expenses incurred in inspections under this subsection. (V.A.C.S. Arts. 5712, 5713 (part), 5715, 5716, 5718, 5719.)

Sec. 13.114. Tolerances

(a) The department shall establish tolerances and specifications for commercial weighing and measuring apparatus used in this state. The tolerances and specifications shall be similar to those recommended by the National Bureau of Standards.

(b) A person commits an offense if the person fails or refuses to comply with the tolerances and specifications established under this section. (V.A.C.S. Art. 5714 (part).)

Sec. 13.115. Fees for Department Inspection

(a) The department shall collect a fee in accordance with this section for each test of a weight or measure required by this subchapter or performed on request of the owner.

(b) The fee for testing a gasoline, kerosene, or diesel fuel pump may not exceed $2.

(c) The fee for testing a scale may not exceed the following amounts:

SCALE CAPACITY	FEE
Less than 1,000	$ 2
1,000 pounds or more but less than 4,999 pounds	$ 5
4,999 pounds or more	$ 20

(d) The fee for testing a metering device other than a propane or butane metering device is:

DELIVERY CAPACITY A MINUTE	FEE
Less than 50 gallons	$ 2
50 gallons or more but less than 100 gallons	$ 5
100 gallons or more	$ 10

(e) The fee for testing a propane or butane metering device may not exceed $20.

(f) The fee for testing a measuring device on a raw milk storage tank that is situated on a farm may not exceed the following amounts:

TANK CAPACITY	FEE
Less than 401 gallons	$ 10
401 gallons or more but less than 601 gallons	$ 15
601 gallons or more	$ 20

(g) The fee for tolerance testing of a weight by the department's metrology laboratory is:

WEIGHT	FEE
Less than 1,000 pounds	$ 1
1,000 pounds or more but less than 2,500 pounds	$ 2.50
2,500 pounds or more but less than 5,000 pounds	$ 5
5,000 pounds or more	$ 10

(h) The fee for tolerance testing of a measure by the department's metrology laboratory is:

MEASURE CAPACITY	FEES
5 gallons or less	$ 1
More than 5 gallons	$ 1 plus 10 cents for each gallon over 5

(i) The department shall charge a fee of $15 an hour for all precision testing performed by the metrology laboratory, prorated for each quarter hour.

(j) The department may collect the fees prescribed by this section only once annually unless requested to perform additional tests by the owner of the weight or measure.

(k) This section does not prevent a city from operating an agency for the testing of weights and measures. (V.A.C.S. Art. 5728.)

Sec. 13.116. Use or Sale of Unsealed Weight or Measure

(a) A person commits an offense if the person or the person's servant or agent:

(1) offers or exposes for sale, hire, or award or sells an unsealed weight or measure;

(2) uses an unsealed weight or measure in:

(A) buying or selling a commodity or item;

(B) computing a charge for services rendered on the basis of weight or measure; or

(C) determining a weight or measure, if a charge is made for that determination; or

(3) possesses an unsealed weight or measure.

(b) In this section, a weight or measure is unsealed if it has not been sealed within the past year in accordance with this subchapter. (V.A.C.S. Art. 5726a (part).)

Sec. 13.117. Refusing to Permit Test of Weight or Measure

A person commits an offense if the person neglects or refuses to exhibit a weight or measure under the person's control or in the person's possession to the department or a sealer for inspection or examination as required by law. (V.A.C.S. Art. 5726c (part).)

Sec. 13.118. Hindering Sealer

A person commits an offense if the person hinders or obstructs in any way the department or a sealer in the performance of official duties. (V.A.C.S. Art. 5726b (part).)

Sec. 13.119. Removal of Sealer's Tag

A person commits an offense if the person removes or obliterates a tag or device placed on a weight or measure under Section 13.110 or 13.111 of this code. (V.A.C.S. Art. 5727a (part).)

Sec. 13.120. Sale or Use of False Weights or Measures

(a) The department may condemn and prohibit the sale or distribution of any false weight or measure 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:

(1) offers or exposes for sale, hire, or award or sells a false weight or measure;

(2) possesses a false weight or measure; 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.

(c) In this section, "false weight or measure" has the meaning assigned by Section 13.037 of this code. (V.A.C.S. Arts. 5717 (part), 5726a (part).)

Sec. 13.121. Disposing of Condemned Weight

A person commits an offense if the person or the person's servant or agent disposes of a weight or measure condemned under Section 13.111 or 13.120 of this code in a manner contrary to those sections. (V.A.C.S. Art. 5726a (part).)

Sec. 13.122. Penalties

(a) An offense under Section 13.103 of this code is a misdemeanor punishable by a fine of not less than $25 nor more than $100.

(b) An offense under Section 13.116, 13.120, or 13.121 of this code is a misdemeanor punishable by a fine of not less than $20 nor more than $100, unless the accused has been previously convicted of the offense, in which case it is punishable by a fine of not less than $50 nor more than $200.

(c) An offense under Section 13.106, 13.114, 13.117, 13.118, or 13.119 is a misdemeanor punishable by a fine of not less than $10 nor more than $200. (V.A.C.S. Arts. 5707a (part), 5714 (part), 5722a (part), 5726a (part), 5726b (part), 5726c (part), 5727a (part).)

[Sections 13.123–13.200 reserved for expansion]

SUBCHAPTER D. MEASUREMENT OF BUTTERFAT CONTENT OF DAIRY PRODUCTS

Sec. 13.201. Definition

In this subchapter, "board" means the Dairy Advisory Board. (New.)

Sec. 13.202. Dairy Advisory Board

(a) The Dairy Advisory Board serves in an advisory capacity to the department in public hearings conducted under Section 13.204 of this code.

(b) The board is composed of three members appointed by the governor with the advice and consent of the senate.

(c) In making appointments to the board, the governor shall appoint one member to represent the dairy processing industries, one member to represent the dairy production industry, and one member to represent consumers.

(d) Members of the board serve for terms of two years expiring on December 31 of even-numbered years. (V.A.C.S. Art. 5736g, Secs. 2(a), 2(b), 2(c), 4.)

Sec. 13.203. Babcock Test

The Babcock test is the official dairy test for use in this state by a person paying for milk or cream on the basis of butterfat content. A testing apparatus using another testing method may be used only if approved by the department under Section 13.204 of this code. (V.A.C.S. Art. 5736a (part).)

Sec. 13.204. Other Tests

(a) The department and the board shall conduct hearings on the approval, modification, or rejection of milk testing apparatus used to determine butterfat content or other components of milk. The department shall judge an apparatus on the basis of performance, accuracy, and testing specifications and may approve an apparatus for use in this state if:

(1) the apparatus meets specifications necessary to accurately determine the butterfat content or other components of milk;

(2) the testing method complies in every detail with the rules governing the Babcock and other tests; and

(3) the apparatus is approved by the Association of Official Analytical Chemists.

(b) The department may not approve a milk testing apparatus by brand, trade, or manufacturer's name.

(c) The department shall determine the frequency of hearings under this section with the approval of a majority of the board.

(d) Hearings under this section shall be conducted in accordance with the Administrative Procedure and Texas Register Act (Article 6252—13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 5736a (part); Art. 5736g, Secs. 2(d), 3.)

Sec. 13.205. Test Requirements

(a) A test used to determine the butterfat content of milk or cream shall be for clear butterfat, free from sediments, solids, and other foreign substances. The test shall be read at a temperature between 130° and 140°.

(b) Cream tests shall be weighed and may be taken only from milk or cream that has been thoroughly mixed by stirring with a suitable instrument. The scales used must be accurate and sensitive to a weight of 30 milligrams. The tester and the owner of the scales are jointly responsible for the accuracy of the scales.

(c) Each person licensed to conduct the test shall retain the sample of tested milk or cream in a cool, clean, sanitary place and in tightly stoppered bottles or tightly covered jars. The licensee shall properly label the sample and retain it until 6 p.m. of the next test day or longer as required by the department. (V.A.C.S. Art. 5736c, Sec. (a) (part).)

Sec. 13.206. Standards of Weight and Measure

(a) The standards of weights and measures provided by Subchapter B of this chapter apply to the purchase of milk, cream, or butterfat in this state.

(b) The unit or standard of measure of capacity for use in the Babcock test is the true cubic centimeter or the weight of one gram of distilled water at four degrees centigrade.

(c) The department shall from time to time test individual bottles and pipettes used by persons conducting butterfat content tests in order to determine compliance with this section. The department shall report any violation to the attorney general or the county or district attorney in the county where the alleged violation occurred. The department shall seize and destroy all glassware or measuring devices found not to be of standard capacity. (V.A.C.S. Arts. 5736d (part), 5736e.)

Sec. 13.207. Licensing of Testers

(a) Without holding a license issued under this section, a person may not operate a testing apparatus to determine the percentage of butterfat in milk or cream for the purpose of purchasing the milk or cream.

(b) A person is entitled to a license as a tester if the person is reliable, competent, and qualified to operate the apparatus in order to make an accurate test.

(c) Before issuing a license, the department may make necessary investigations of the qualifications of an applicant. The department may refuse to license an applicant that the department finds is not qualified under Subsection (b) of this section.

(d) The department shall collect a fee of $10 for each license issued.

(e) A license issued under this section is valid for one year.

(f) The department may revoke the license of a person who the department finds has failed to comply with a provision of this subchapter or a rule adopted under this subchapter. The department may suspend for six months the license of a tester who is finally convicted of a second offense under Section 13.212 of this code.

(g) A licensee or a licensee's employer for valid reason may appoint a substitute tester for a period of 15 days. The reason for the appointment must be reported to the department. With approval of the department, the appointment may be extended for an additional period not to exceed 10 days. (V.A.C.S. Art. 5736b (part); Art. 5736c, Sec. (b) (part).)

Sec. 13.208. Department Supervision

(a) The department may enforce the correct operation of butterfat tests performed in this state.

(b) At the time and place and to the extent the department considers necessary, the department shall sample, inspect, test, and analyze milk or milk products transported, sold, or offered or exposed for sale in this state in order to determine compliance with this subchapter.

(c) The department is entitled to enter any public or private premises, including a creamery, cheese factory, or other place where milk, cream, or dairy products are handled, during regular business hours, for the purpose of securing samples and checking tests performed.

(d) If the department discovers a violation of this subchapter, the department shall give prompt notice of the violation to the person who transported, sold, or offered or exposed for sale the milk or milk product. (V.A.C.S. Arts. 5736a (part), 5736d (part).)

Sec. 13.209. Rules

After a public hearing, the department may adopt rules necessary to the enforcement of this subchapter, including rules governing the method of sampling, inspecting, and analyzing milk or milk products and rules establishing tolerances to be allowed. (V.A.C.S. Arts. 5736a (part), 5736d (part).)

Sec. 13.210. Stop-Sale Order

(a) If the department has reason to believe that any lot of milk or milk products is in violation of a provision of this subchapter, the department may issue and enforce a written or printed order to stop the sale of the lot. The department shall present the order to the owner or custodian of the lot. The person receiving the order may not sell the lot until discharged by a court under Subsection (b) of this section or until the department finds that the lot is in compliance with this subchapter.

(b) The owner or custodian of any lot of milk or milk products prohibited from sale by an order of the department is entitled to sue in a court of competent jurisdiction where the lot is found for a judgment as to the justification of the order and for the discharge of the lot from the order in accordance with the findings of the court.

(c) This section does not limit the right of the department or a county or district attorney to proceed as authorized by other sections of this subchapter. (V.A.C.S. Art. 5736d (part).)

Sec. 13.211. Duties of District or County Attorney

The county or district attorney of a county in which a violation of this subchapter occurs shall investigate and prosecute the violation. If necessary, the county or district attorney may sue to enjoin further violations of this subchapter. (V.A.C.S. Art. 5736f.)

Sec. 13.212. Penalties

(a) A person commits an offense if, without a license issued under Section 13.207 of this code, the person operates a testing apparatus to determine the percentage of butterfat in milk or cream for the purpose of purchasing the milk or cream. A person commits a separate offense for each lot of milk or cream tested.

(b) A person commits an offense if, in determining the quantity of fat in milk or cream, the value of milk or cream that is sold or purchased, or the value of milk or cream that is delivered to a place where milk or cream is purchased, the person or the person's agent:

(1) falsely manipulates, overreads, or underreads a butterfat content test;

(2) makes a false determination by butterfat content test; or

(3) takes inaccurate samples.

(c) For the purpose of Subsection (b) of this section, a creamery, a cheese factory, a condensary, an ice cream plant, a milk plant, or a milk depot is included as a place where milk or cream is purchased.

(d) An offense under this section is a misdemeanor punishable by a fine not to exceed $1,000. (V.A.C.S. Art. 5736b (part); Art. 5736c, Secs. (a) (part), (b) (part).)

[Sections 13.213–13.250 reserved for expansion]

SUBCHAPTER E. PUBLIC WEIGHER

Sec. 13.251. Public Weigher

(a) A person may not engage in the business of weighing for the public for hire, or weigh or measure a commodity and issue a weight certificate that is accepted as the accurate weight on which the purchase or sale of the commodity is based, unless the person is an independent, appointed, or elected public weigher or deputy public weigher under this subchapter.

(b) This subchapter does not prohibit the owner, manager, agent, or employee of a compress or public warehouse from weighing a commodity tendered to and accepted by the compress or public warehouse while acting as a public warehouseman in accordance with Chapter 14 of this code.

(c) This subchapter does not prevent any person from weighing the person's own commodity, but in order to issue a weight certificate for that commodity the person must comply with this subchapter and be bonded as provided by this subchapter for independent public weighers. This subsection and Section 13.253 of this code do not apply to a merchant flour mill.

(d) This subchapter does not apply to a Texas port. (V.A.C.S. Arts. 5680, 5680a, 5693, 5704 (part).)

Sec. 13.252. Qualifications

(a) In order to qualify as a public weigher, a person must be an individual who:

(1) is a qualified voter of the political subdivision in which the person will serve as a public weigher;

(2) is of good moral character and unquestioned integrity; and

(3) has the education and ability necessary to maintain accurate records as required by this subchapter.

(b) A person may not serve as public weigher if, as a principal, as an agent, factor, or commission merchant, or as an employee of one of those

persons, the person has an interest in the buying or selling of a commodity to be weighed. (V.A.C.S. Art. 5684.)

Sec. 13.253. Independent Public Weigher

Any qualified person may act as an independent public weigher if the person files and has approved a bond under Section 13.260 of this code. (V.A.C.S. Art. 5704 (part).)

Sec. 13.254. Appointment of Weighers

(a) The secretary of state shall appoint public weighers in accordance with this section.

(b) The secretary of state shall appoint five persons as public weighers in each city that annually receives at least 100,000 bales of cotton.

(c) The secretary of state may appoint for any city a number of public weighers sufficient to carefully and accurately weigh all commodities tendered for the purpose of weighing for shipment, if the city annually receives at least 50,000 bales of cotton, 25,000 tons of cottonseed, 100,000 bushels of grain or rice, 100,000 pounds of wool, 5,000 barrels of sugar, or any other commodity in large quantities.

(d) The secretary of state may appoint for a county a number of public weighers sufficient to carefully and accurately weigh all commodities tendered for the purpose of weighing for shipment, sale, or purchase, if the county contains two or more cities that annually receive at least 50,000 bales of cotton, 25,000 tons of cottonseed, 100,000 bushels of grain, 200,000 bushels of rice, 100,000 pounds of wool, 5,000 barrels of sugar, or any other commodity in large quantities.

(e) If an exchange or board of trade had a public weigher appointed by the governor under prior law, the secretary of state shall continue to appoint a public weigher designated by the exchange or board of trade for as long as needed. (V.A.C.S. Arts. 5681, 5685 (part), 5692 (part).)

Sec. 13.255. Election of Weighers

(a) In a county other than Travis County in which there is no city for which the secretary of state is authorized to appoint a public weigher, a public weigher shall be elected for each justice precinct.

(b) Elected public weighers are elected in the same manner and form as other precinct officers.

(c) At the regular February term preceding an election, the commissioners court of a county may unite two or more justice precincts for the purpose of electing a single public weigher. (V.A.C.S. Art. 5683.)

Sec. 13.256. Abolition of Elected Office

(a) If the qualified voters of a precinct in a number equal to one-third of the total number of votes cast for governor in the precinct in the last preceding election sign and present to the commissioners court a petition calling for abolition of the office of public weigher in the precinct, the commissioners court shall order an election on that proposition.

(b) The election shall be held in the manner provided by law for other elections.

(c) Approval of the proposition is by majority vote. If approved, the office of public weigher is abolished effective on the date that the commissioners court declares the result of the election. The commissioners court shall declare the result within 30 days after the date of the election.

(d) If the proposition is not approved, another election on the proposition may not be held for two years. (V.A.C.S. Art. 5686.)

Sec. 13.257. Deputy Weighers

(a) Each elected or appointed public weigher is entitled to appoint a number of deputies sufficient to weigh all commodities that are tendered for weighing.

(b) A deputy public weigher serves at the will of the appointing public weigher. (V.A.C.S. Art. 5691 (part), 5692 (part).)

Sec. 13.258. Term of Elected or Appointed Weigher

An elected or appointed public weigher holds office for a term of two years. (V.A.C.S. Art. 5685 (part).)

Sec. 13.259. Oath of Office

Before assuming office, each elected or appointed public weigher shall take the official oath of office and file it with the county clerk of the county in which the weigher resides. (V.A.C.S. Art. 5689 (part).)

Sec. 13.260. Bond

(a) Before assuming duties as a public weigher, an independent, appointed, or elected public weigher shall execute and file a bond as required by this section.

(b) Each independent public weigher shall execute a bond in the amount of $2,500 conditioned on the faithful performance of the duties of the position and the return of all property weighed on demand of the owner. The bond shall be payable to the county judge and is subject to the approval of the commissioners court of the county in which the weigher resides.

(c) Each elected public weigher shall execute a bond conditioned on the faithful and impartial performance of the duties of the office. The bond shall be payable to the county judge and is subject to the approval of the commissioners court of the county in which the weigher resides. The bond shall be in the amount of $5,000 unless the precinct served by the weigher annually receives 5,000 or fewer bales of cotton, in which case the bond shall be in the amount of $2,500.

(d) Each appointed public weigher shall execute a bond in the amount of $5,000 conditioned on the accurate weight or measure of all commodities tendered for weighing or measuring, the issuance of certificates of weight that represent the true and accurate weight of the commodity weighed, compliance with the law governing public weighers, and prevention of any person from molesting, mutilating, or destroying any commodity in the possession of the weigher. The bond shall be payable to the state and is subject to the approval of the department.

(e) Each deputy public weigher shall execute a bond in the amount of $1,000 conditioned on the same terms as the bond of the appointing public weigher. Except as otherwise provided by this subsection, the bond shall be payable to the state, subject to approval by the applicable commissioners court, and certified to the department. The bond of a deputy of a public weigher appointed under Section 13.254(d) of this code is subject to the approval of the department.

(f) Except as otherwise provided by this subsection, the bond of a public weigher shall be filed with the county clerk of the county in which the weigher resides. The bond of a weigher appointed under Section 13.254(d) of this code, and the bond of that weigher's deputies, shall be filed with the department.

(g) The bond of an appointed public weigher is not void on first recovery but may be sued on by any person injured by the weigher. (V.A.C.S. Arts. 5687, 5688, 5689 (part), 5691 (part), 5692 (part), 5704 (part).)

Sec. 13.261. Supervision by Department; Certificate of Authority

(a) Each public weigher and deputy public weigher is under the supervision of the department and shall obtain from the department a certificate of authority to carry on the business of public weighing in the political subdivision served by the weigher.

(b) The department shall collect a fee of $5 from the weigher at the time a certificate of authority is issued and thereafter shall collect an annual fee of $5 from each person holding a certificate.

(c) At least once each year the department shall test all weights and measures used by a public weigher. (V.A.C.S. Arts. 5690, 5694 (part), 5695.)

Sec. 13.262. Weight Certificate

(a) The department shall prescribe an official certificate of weights and measures for use by public weighers. The certificate shall state the following information relating to the commodity weighed:

(1) kind;
(2) number;
(3) date of receipt;
(4) owner, agent, or consignee;
(5) total weight;
(6) means by which it was received;
(7) trademark or other mark; and
(8) other information necessary to identify the commodity from a like kind.

(b) A public weigher may not issue a weight certificate other than the certificate provided for by this section.

(c) A properly signed certificate issued under this section is prima facie evidence of the weight of the commodity. (V.A.C.S. Arts. 5696, 5696a.)

Sec. 13.263. Seal

(a) Each public weigher shall obtain a seal consisting of a five-pointed star and an inscription on the outer margin reading: "Public Weigher, _____ County, Texas" or "Public Weigher, _____(city)_____, Texas."

(b) The public weigher or deputy public weigher shall impress or print the seal on each weight certificate issued. If the seal is printed on the certificate, the weigher shall authenticate the seal by signature. (V.A.C.S. Art. 5697.)

Sec. 13.264. Record

(a) Each public weigher shall keep and preserve in a well-bound book a correct record of weights made. The record shall be of a uniform style prescribed by the department.

(b) The record kept under this section is public information and open to inspection by the department and the public at all times. (V.A.C.S. Arts. 5698, 5698a.)

Sec. 13.265. Identification of Lots

(a) After weighing any commodity, a public weigher shall tag or mark the commodity in a manner that distinguishes the commodity from others that have not been weighed.

(b) To the extent possible, a public weigher shall pile or store separately all lots of commodities so that each lot may be distinguished from other lots of a like kind. (V.A.C.S. Arts. 5699, 5700.)

Sec. 13.266. Reweighing

(a) All weights made by a public weigher are subject to the approval of the department.

(b) If there is a discrepancy between the weight or measure of a commodity made by public weighers in different sections of the state, the difference is subject to review by the department.

(c) A person who is dissatisfied with a weight or measure used by a public weigher or who questions the correctness of the weight of a commodity shown on a weight certificate may appeal to the department. The person appealing shall deposit with the department an amount of money sufficient to cover the cost of reweighing. The department or a pubic weigher designated by the department shall reweigh or remeasure the commodity. If, on reweighing, the department finds that fraud, carelessness, or a faulty weight or measure resulted in an incorrect weight, the public weigher issuing the weight certificate shall pay the cost of reweighing.

(d) A person may not institute or maintain an action concerning an incorrect weight before exhausting an appeal under this section.

(e) This section does not affect the selection of public weighers or the charges to the public made by a public weigher. (V.A.C.S. Arts. 5694 (part), 5701.)

Sec. 13.267. Suspension or Dismissal

(a) An elected or appointed public weigher or the weigher's deputy may be suspended or dismissed for malfeasance in office or gross incompetence in the performance of duties.

(b) If there are grounds for the suspension or dismissal, the department shall prepare specific charges alleging malfeasance, dishonesty, misfeasance, incompetence, or other cause. If the weigher was appointed by the secretary of state or serves as deputy under a public weigher appointed by the secretary of state, the department shall file the charges with the secretary of state. If the weigher was elected or serves as deputy under an elected public weigher, the department shall file the charges with the commissioners court of the county in which the weigher resides.

(c) The secretary of state or the commissioners court, as applicable, shall conduct a hearing on the charges not less than 10 nor more than 30 days after the day on which the charges are filed. The authority conducting the hearing shall furnish the accused weigher with a copy of the charges and shall notify the weigher of the date of the hearing.

(d) At a hearing under this section, the accused weigher is entitled to be represented by an attorney, to introduce evidence, and to have compulsory process for witnesses and the production of records.

(e) If the authority conducting the hearing finds that the weigher is guilty of malfeasance in office or gross incompetence in the performance of duties, the authority shall immediately suspend or dismiss the weigher.

(f) A public weigher or deputy public weigher suspended or dismissed under this section may appeal to a district court of the county in which the weigher resides or to a district court of Travis County. (V.A.C.S. Art. 5702.)

Sec. 13.268. Weighing for Factor or Commission Merchant

(a) In any political subdivision with a public weigher, a factor, commission merchant, or person engaged in a similar occupation may not employ any person other than a public weigher or deputy public weigher to weigh a commodity to be sold or offered for sale in the subdivision.

(b) A person who violates this section is liable to the public weigher for damages of not less than $5 for each bale of cotton, bale or sack of wool, ton of hay, or ton of grain weighed in violation of this section. (V.A.C.S. Art. 5703.)

Sec. 13.269. Penalty

(a) A person who violates Section 13.251 of this code commits an offense.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $100 nor more than $500.

(c) A person commits a separate offense for each certificate issued in violation of Section 13.251 of this code. (V.A.C.S. Art. 5693a.)

CHAPTER 14. WAREHOUSE REGULATION

SUBCHAPTER A. PUBLIC GRAIN WAREHOUSES

Section

14.001. Definitions
14.002. Limitation of Subchapter
14.003. Powers and Duties of Department
14.004. License Required.
14.005. Licensing Procedure
14.006. Multiple Warehouses Operated Under a Single License
14.007. Requirement for Increasing Capacity
14.008. Posting of License
14.009. Bond
14.010. Recovery on Bond
14.011. Casualty Insurance
14.012. Additional Bond or Insurance
14.013. Bond or Insurance Cancellation
14.014. Inspections; Fee
14.015. Suspension, Revocation, or Denial of License
14.016. Operation After Revocation or Suspension of a License
14.017. Issuance of Scale Weight Ticket or Receipt
14.018. Receipt for Grain Owned by Warehouse Owner
14.019. Duplicate Receipts
14.020. Receipt Forms
14.021. Obligation to Deliver
14.022. Records
14.023. Termination of Storage
14.024. Discovery of Shortage; Refusal of Inspection
14.025. Injunction
14.026. Court Enforcement of Department Subpoena
14.027. General Penalty
14.028. Penalty for Operating Without a License
14.029. Penalty for Fraud
14.030. Penalty for Unlawful Delivery
14.031. Penalty for Fraudulently Issuing a Scale Weight Ticket or Receipt
14.032. Penalty for Changing a Receipt or Scale Weight Ticket After Issuance
14.033. Penalty for Depositing Grain Without Title
14.034. Penalty for Stealing Grain or Receiving Stolen Grain
14.035. Venue

[Sections 14.036–14.100 reserved for expansion]

SUBCHAPTER B. AGRICULTURE WAREHOUSE CORPORATIONS

Section
14.101. Application for Charter
14.102. Application for Charter by Amendment of Existing Charter
14.103. Denial or Revocation of a Charter
14.104. Fees; Certificate of Authority
14.105. Bond
14.106. Breach and New Bond
14.107. Certificate of Qualification for Officer or Employee
14.108. Directors and Meetings
14.109. Powers of a Corporation
14.110. Authority to Contract Debts
14.111. Issuance of Sinking Fund Bonds
14.112. Investment for Payment of Sinking Fund Bonds
14.113. Acts Requiring Authorization by Corporation
14.114. Division of Profits
14.115. Voluntary Liquidation
14.116. Forced Liquidation
14.117. Statement of Affairs
14.118. Examination of a Corporation's Affairs
14.119. Unsafe Corporations
14.120. Fire Insurance
14.121. Forms
14.122. Failure to Submit to an Examination
14.123. Storage Charges
14.124. Standards of Classification
14.125. Liability of a Corporation
14.126. Receipts
14.127. Receipt for Cotton Grown on Rented or Leased Premises
14.128. Exchange of Receipts
14.129. Receipt on Delivery
14.130. Applicability of General Laws

[Sections 14.131–14.200 reserved for expansion]

SUBCHAPTER C. OTHER PUBLIC WAREHOUSEMEN

14.201. Definitions
14.202. Powers of the Department
14.203. Warehouse Examiners
14.204. Certificate to Transact Business
14.205. Application for Certificate
14.206. Bond
14.207. Receipts
14.208. Receipt for Cotton
14.209. Duplicate Receipts
14.210. Exchange of Cotton Receipts
14.211. Cotton Under Lien
14.212. Receipt to be Issued Only on Delivery
14.213. Delivery
14.214. Exceptions
14.215. Storage Charges
14.216. Revocation of a Certificate

CHAPTER 14. WAREHOUSE REGULATION

SUBCHAPTER A. PUBLIC GRAIN WAREHOUSES

Sec. 14.001. Definitions

In this subchapter:

(1) "Depositor" means a person who:

(A) deposits grain in a warehouse for storing, handling, or shipping;

(B) is the owner or legal holder of an outstanding receipt for grain; or

(C) is lawfully entitled to possession of the grain.

(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;

(B) is not covered by a negotiable warehouse receipt; and

(C) is not owned by the warehouse in which it is stored.

(4) "Public grain warehouse" means a building, bin, or similar structure used for:

(A) the receiving, storing, shipping, 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 warehouse receipt issued by a warehouseman licensed under this subchapter.

(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 by a warehouseman licensed under this subchapter on initial delivery of the grain to the warehouse.

(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) "Storage grain" means grain that:

(A) is received in a public grain warehouse located in this state; and

(B) is not purchased by the lessee, owner, or manager of the warehouse receiving the grain.

(10) "Warehouseman" means a person engaged in the business of operating a public grain warehouse. (V.A.C.S. Art. 5577b, Secs. 2(a), (b), (c) (part), (d) (part), (e)–(g), (h) (part), (i)–(*l*).)

Sec. 14.002. Limitation of Subchapter

This subchapter does not apply to:

(1) a warehouse covered by a license issued under the United States Warehouse Act;

(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 at retail, unless the person also satisfies the definition of a warehouseman; 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, unless the person requests in writing to the department to be licensed. (V.A.C.S. Art. 5577b, Secs. 2(d) (part), 26.)

Sec. 14.003. Powers and Duties of Department

(a) The department shall administer this subchapter 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 of this code;

(4) require reports it determines are necessary in the administration of this subchapter;

(5) require a warehouseman to terminate storing, shipping, and handling agreements on revocation of a license;

(6) prescribe forms, including the form of receipts, bonds, or applications for licenses; and

(7) adopt rules necessary to carry out the provisions of this subchapter.

(b) In any hearing held by the department under this subchapter, the department may:

(1) examine under oath any person and examine books and records of any licensee;

(2) hear testimony and gather evidence for the discharge of duties under this subchapter;

(3) administer oaths; and

(4) issue subpoenas, effective in any part of this state, and require attendance of witnesses and the production of books.

(c) The department may appoint and fix duties and compensation of inspectors and other personnel and provide equipment necessary to enforce the provisions of this subchapter. (V.A.C.S. Art. 5577b, Secs. 2(c) (part), 3(a), (b) (part), (c).)

Sec. 14.004. 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. (V.A.C.S. Art. 5577b, Sec. 4(a) (part).)

Sec. 14.005. Licensing Procedure

(a) The department may issue, renew, or amend a license following a determination that:

(1) the applicant has filed an acceptable bond and possesses sufficient insurance;

(2) the warehouse is suitable for storage of grain; and

(3) the applicant has complied with this subchapter and rules adopted under this subchapter.

(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 a $10 license fee. The department shall prescribe the in-

formation to be contained in the application. (V.A.C.S. Art. 5577b, Secs. 5(a), (b), 6.)

Sec. 14.006. Multiple Warehouses Operated Under a Single License

(a) For the purpose of granting a license, the department may consider as one unit all warehouses owned or controlled by the warehouseman that are located in close proximity on the same general location.

(b) All public grain warehouses operating under a single license shall be treated as a single warehouse for the purposes of this subchapter, including the issuance of receipts and the receipt and shipment of grain. However, the department may approve an application requesting that any part of a warehouse be reserved and designated "not for public use." (V.A.C.S. Art. 5577b, Secs. 4(b), (c).)

Sec. 14.007. Requirement for Increasing Capacity

A warehouseman may not use any increased warehouse capacity without first obtaining approval from the department. (V.A.C.S. Art. 5577b, Sec. 5(c).)

Sec. 14.008. Posting of License

Each warehouseman shall immediately on receipt of a license post it in a conspicuous place in the office of the public grain warehouse. (V. A.C.S. Art. 5577b, Sec. 21.)

Sec. 14.009. 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 warehouseman as to receipted grain and open storage grain under this subchapter and rules adopted under this subchapter, from the effective date of the bond until the license is revoked or the bond is canceled, whichever occurs first; and

(2) each obligation of a warehouseman 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 $15,000 nor more than $500,000, based on the following rate:

(1) 20 cents per bushel on the first million bushels of storage capacity;

(2) 15 cents per bushel on the second million bushels of storage capacity; and

(3) 10 cents per bushel on all bushels of storage capacity above two million bushels.

(e) If the actual net worth of an applicant equals less than 20 cents per bushel of storage capacity, the applicant shall file a deficiency bond in an amount equal to the difference between the actual net worth and an amount determined by multiplying 20 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, and the maximum amount of a bond provided by Subsection (d) of this section does not apply.

(f) In considering the reissuance of a license, the department may accept a certificate from a surety stating that a bond filed with the department has been renewed or continued.

(g) The applicant may give a single bond meeting the requirements of this section to cover all licensed facilities operated by him or her, except that each warehouse operated by the applicant must be covered by the bond in the amount of at least $15,000.

(h) The liability of the surety of a bond required by this subchapter 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. (V.A. C.S. Art. 5577b, Sec. 7.)

Sec. 14.010. Recovery on Bond

(a) If no action on the bond of a warehouseman 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 for recovery of damages suffered by the depositor as a result of the failure of the warehouseman to comply with any condition of the 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. (V.A.C.S. Art. 5577b, Sec. 8.)

Sec. 14.011. Casualty Insurance

(a) Except as provided by Subsection (c) of this section, 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; and

(2) the policy insures, in the name of the applicant, all grain that is or may be in the public grain warehouse for its full market value against loss by fire, internal explosion, lightning, windstorm, cyclone, or tornado.

(b) If a fire, an internal explosion, lightning, a windstorm, a cyclone, or a tornado destroys or damages grain in a public grain warehouse, the warehouseman 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 warehouseman'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 that all grain within the warehouse is owned by the applicant free of any lien. (V.A.C.S. Art. 5577b, Sec. 9.)

Sec. 14.012. Additional Bond or Insurance

(a) If the department determines that an approved bond or insurance policy is insufficient, the department shall require the warehouseman to give additional bond or insurance.

(b) If a license has been suspended or revoked or has expired, the department may require a bond from the warehouseman to protect deposi-

tors of grain for as long as any receipts remain outstanding. (V.A.C.S. Art. 5577b, Sec. 10).

Sec. 14.013. Bond or Insurance Cancellation

(a) A warehouseman may not cancel a bond or insurance policy approved by the department unless the department first gives written approval of a substitute bond or policy.

(b) The surety or insurer may cancel a bond or insurance policy 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. Cancellation of an insurance policy may not be effective before the 31st day following the day on which the insurer mails notice of intent to cancel. On receipt of notice of cancellation of a bond or insurance policy, the department shall promptly notify the warehouseman involved.

(c) The surety or insurer shall send a copy of the notice required by this section to any government agency requesting it.

(d) Notwithstanding any other provision of this subchapter, the department shall automatically suspend the license if the warehouseman fails:

(1) to file a new bond before the cancellation of a bond is effective; or

(2) to file a new certificate of insurance before the cancellation of an insurance policy is effective.

(e) The suspension of a license under this section continues as long as the warehouseman fails to maintain the bond or insurance required by this subchapter. (V.A.C.S. Art. 5577b, Sec. 11.)

Sec. 14.014. Inspections; Fee

(a) On request by the department, a warehouseman shall report to the department on the condition, conduct, operation, and business of each public grain warehouse that the warehouseman operates and all grain stored in those warehouses.

(b) A warehouseman shall permit the department to enter and inspect each public grain warehouse, its contents, and all records related to the grain stored in the warehouse. The warehouseman shall render to the department any assistance necessary for an inspection under this section.

(c) The department shall inspect each public grain warehouse at least once annually and may make additional inspections as the department considers necessary. A warehouseman may request that the department make additional inspections.

(d) The department shall collect from the warehouseman whose public grain warehouse is inspected an inspection fee for an annual inspection or an inspection requested by the warehouseman, but may not collect an inspection fee for other inspections. The inspection fee is $1 for each 10,000 bushels or fraction of 10,000 bushels of licensed storage capacity of the warehouse inspected or $15, whichever is greater. (V.A.C.S. Art. 5577b, Sec. 12.)

Sec. 14.015. Suspension, Revocation, or Denial of License

(a) The department may suspend, revoke, or deny a license if, after an opportunity for a hearing, the department determines that the warehouseman has violated or failed to comply with a requirement of this subchapter or a rule adopted under this subchapter.

(b) If the department considers it necessary, the department may suspend a license without hearing for a period not to exceed 30 days. (V.A. C.S. Art. 5577b, Sec. 13.)

Sec. 14.016. Operation After Revocation or Suspension of a License

(a) If a license is revoked, the warehouseman shall terminate, in a manner prescribed by the department, all arrangements concerning storing, shipping, or handling grain in the warehouse.

(b) During a suspension of a license the warehouseman may, under the direction and supervision of the department, operate the warehouse and deliver grain previously received, but may not receive grain for storing, shipping, or handling. (V.A.C.S. Art. 5577b, Secs. 4(a) (part), 14.)

Sec. 14.017. Issuance of Scale Weight Ticket or Receipt

(a) On receiving grain, a warehouseman 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 warehouseman 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 14.019 of this code for duplicate receipts, a warehouse may not issue two scale weight tickets or two receipts bearing the same number during any calendar year. (V.A.C.S. Art. 5577b, Secs. 2(h) (part), 15.)

Sec. 14.018. Receipt for Grain Owned by Warehouse Owner

A warehouseman may issue a receipt for grain that is owned by the warehouseman, in whole or part, and located in the warehouseman's warehouse. The negotiation, transfer, sale, or pledge of that receipt may not be defeated because of its ownership. (V.A.C.S. Art. 5577b, Sec. 16.)

Sec. 14.019. Duplicate Receipts

(a) Except as otherwise provided by this subsection, if a receipt issued under this subchapter is outstanding, another receipt covering all or part of the grain covered by the initial receipt may not be issued by the warehouseman 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 warehouseman shall require 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 warehouseman may not become a surety on a bond for a lost, stolen, or destroyed receipt. (V.A.C.S. Art. 5577b, Sec. 19.)

Sec. 14.020. Receipt Forms

(a) The department shall supply all receipt forms unless the department in writing approves a privately printed receipt form requested by

the warehouseman. The warehouseman shall request receipt forms on a form furnished by the department and shall accompany a request with payment to cover estimated costs of printing, packaging, and shipping, as determined by the department. If the receipts are privately printed, the printer shall provide the department with an affidavit showing the number of the receipts printed and their serial numbers. The department may require a warehouseman who uses privately printed receipts to provide a bond to cover any loss resulting from the 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.

(b) The department shall recover all receipts remaining unused after a license required by this subchapter is revoked or suspended. (V.A.C.S. Art. 5577b, Sec. 22.)

Sec. 14.021. Obligation to Deliver

The obligation of a warehouseman 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. (V.A.C.S. Art. 5577b, Sec. 17.)

Sec. 14.022. Records

(a) Every warehouseman 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 warehouseman's possession;

(3) receipts and scale weight tickets issued by the warehouseman; and

(4) receipts returned to and canceled by the warehouseman.

(b) The warehouseman shall retain the records required by this section for the period of time prescribed by the department. The warehouseman shall retain copies of receipts or other documents evidencing ownership of grain or liability of a warehouseman as long as the documents are outstanding. If the documents are canceled, the warehouseman shall retain the documents or receipts for a period of not less than two years from the date of cancellation.

(c) The warehouseman 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; and

(3) keep in numerical order copies of the scale weight tickets issued by the warehouse.

(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; or

(2) the ownership of the grain has been transferred to the warehouse under a written contract of purchase.

(e) The warehouseman shall report to the department on forms furnished by the department the following information on scale weight tickets used in the warehouseman'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 department may inspect any records required by this section at any reasonable time. (V.A.C.S. Art. 5577b, Secs. 2(m), 20.)

Sec. 14.023. Termination of Storage

A warehouseman desiring to terminate the storage of grain in the warehouseman's warehouse shall do so in accordance with Section 7.206, Business & Commerce Code. (V.A.C.S. Art. 5577b, Sec. 18.)

Sec. 14.024. Discovery of Shortage; Refusal of Inspection

(a) If the department determines that a warehouseman does not possess sufficient grain to cover outstanding receipts and outstanding scale weight tickets issued or assumed by the warehouseman, or if a warehouseman refuses to submit records or property for lawful inspection, the department may give notice to the warehouseman requiring the warehouseman to:

(1) cover a shortage;

(2) give additional bond;

(3) submit to an inspection considered necessary by the department; or

(4) comply with any combination of the requirements authorized by this subsection.

(b) A warehouseman shall comply with the requirements of a notice issued under Subsection (a) of this section within 24 hours of notification by the department or within a longer time allowed by the department. If the warehouseman fails to comply, the department may petition the district court for the county where the warehouseman'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 warehouseman.

(c) If the department takes possession of grain under Subsection (b) of this section, the department shall give written notice of its action to the surety on the bond of the warehouseman and may notify the holders of all receipts and scale weight tickets issued for grain, as shown by the warehouseman'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 warehouseman's records. The department shall notify the warehouseman and the surety on the warehouseman'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 warehouseman's records.

(d) The department shall retain possession of grain obtained under this section until:

(1) the warehouseman or surety on the bond satisfies the claims of all depositors; 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 warehouseman 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 warehouseman in accordance with law.

(f) At any time before the 11th day following the day on which the department takes possession of grain under this section, the warehouseman may serve notice on the department to appear in the district court of the county in which the public grain warehouse is located to show cause why possession should not be restored to the warehouseman. The court shall fix the time of the hearing not less than 5 nor more than 15 days from the date of service of the notice. (V.A.C.S. Art. 5577b, Sec. 23.)

Sec. 14.025. Injunction

If, after 15 days' notice, a warehouseman refuses to comply with this subchapter, the department shall apply for an injunction. 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 without a license; and

(2) interference by any person with the carrying out by the department, or by a receiver appointed under Section 14.024 of this code, of duties and powers granted by this subchapter. (V.A.C.S. Art. 5577b, Sec. 24.)

Sec. 14.026. Court Enforcement of Department Subpoena

A judge of a district or county court may order the attendance of witnesses or the production of relevant books and records subpoenaed by the department for the purpose of enforcing the provisions of this subchapter. The judge may enter the order whether the court is in term or on vacation. The judge may compel obedience to an order by proceedings for contempt. (V.A.C.S. Art. 5577b, Sec. 3(b) (part).)

Sec. 14.027. General Penalty

(a) A person commits an offense if the person violates a provision of this subchapter other than Section 14.022(d).

(b) An offense under this section is a Class B misdemeanor. (V.A.C.S. Art. 5577b, Sec. 25(a).)

Sec. 14.028. 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 subchapter; or

(2) continues to transact public grain warehouse business after a license has been revoked or suspended, except as permitted under Section 14.016 of this subchapter.

(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. (V.A.C.S. Art. 5577b, Sec. 25(b).)

Sec. 14.029. 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 public 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 14.019 of this code; or

(3) fraudulently and without proper authority represents, forges, alters, counterfeits, or simulates any license, scale weight ticket, or receipt provided for by this subchapter.

(b) An offense under this section is a felony of the second degree. (V.A.C.S. Art. 5577b, Sec. 25(c).)

Sec. 14.030. 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 a commodity 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 warehouseman.

(b) It is a 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 warehouseman's lien or on a warehouseman's lawful termination of a storing, shipping, or handling agreement; or

(2) permitted by a rule of the department necessary to carry out this subchapter.

(c) An offense under this section is a felony of the second degree. (V.A.C.S. Art. 5577b, Sec. 25(d).)

Sec. 14.031. 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. (V.A.C.S. Art. 5577b, Sec. 25(e).)

Sec. 14.032. 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 warehouseman for partial delivery.

(c) An offense under this section is a felony of the second degree. (V.A.C.S. Art. 5577b, Sec. 25(f) (part).)

Sec. 14.033. 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. (V.A.C.S. Art. 5577b, Sec. 25(f) (part).)

Sec. 14.034. 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. (V.A.C.S. Art. 5577b, Sec. 25(g).)

Sec. 14.035. Venue

Venue for a prosecution under this subchapter is in the county in which the alleged offense occurred. (V.A.C.S. Art. 5577b, Sec. 25(h).)

[Sections 14.036–14.100 reserved for expansion]

SUBCHAPTER B. AGRICULTURE WAREHOUSE CORPORATIONS

Sec. 14.101. Application for Charter

(a) Any 10 or more persons may apply to the department for a charter to permit them to organize and operate as a corporation under this subchapter. Sixty percent or more of the applicants must be engaged in agriculture, horticulture, or stock-raising as a business and three-fourths or more of the applicants must be resident citizens of Texas.

(b) An application for a charter must contain:

(1) all information required by the general corporation laws of this state;

(2) the number of the corporation's directors; and

(3) the names and addresses of all directors selected for the first year of the corporation's existence.

(c) An application for a charter shall be accompanied by the affidavit of three of the applicants showing:

(1) that the capital stock is at least $500, divided into shares of $5;

(2) that not less than 50 percent of the capital stock is paid in; and

(3) if the capital stock has not been paid in in cash, a detailed statement as to the kind, character, and value of the property that is paid.

(d) The department may not grant an application for a charter if the corporation's warehouse or warehouses are to be operated in a city with a population of 40,000 or more. (V.A.C.S. Art. 5578 (part).)

Sec. 14.102. Application for Charter by Amendment of Existing Charter

(a) A warehouse chartered for the storage of farm, ranch, or orchard products that is not incorporated under this subchapter may amend its charter to become subject to this subchapter by:

(1) approving the amendment by a majority vote of its stockholders; and

(2) making application to the secretary of state and paying a fee of $10.

(b) The department may require the warehouse to file a bond required by this subchapter, and the warehouse shall issue receipts authorized by the department. (V.A.C.S. Art. 5611 (part).)

Sec. 14.103. Denial or Revocation of a Charter

The department may revoke or deny a charter to do business under this chapter if it determines that sufficient warehouse facilities exist in a location where a new corporation seeks to do business. (V.A.C.S. Art. 5598.)

Sec. 14.104. Fees; Certificate of Authority

(a) The secretary of state shall issue a charter when:

(1) the applicants pay the filing fee to the secretary of state; and

(2) the department notifies the secretary of state that the applicants' application for a charter has been approved by the department.

(b) The filing fee for a charter is:

(1) $5 for a corporation with a capital stock of $5,000 or less;

(2) $10 for a corporation with a capital stock of $10,000 or less but more than $5,000; and

(3) $25 for a corporation with a capital stock of more than $10,000.

(c) When the secretary of state issues a charter, the department shall:

(1) record the charter and provide the corporation with a certified copy of the charter; and

(2) provide the corporation with a certificate of authority showing that it has complied with applicable laws and is authorized to do business until the last day of April of the following year. (V.A.C.S. Art. 5581.)

Sec. 14.105. Bond

(a) Before the charter and certificate authorized by Section 14.104 of this code are delivered to the corporation, the corporation shall execute a bond payable to the State of Texas and approved by the department.

(b) The department shall set the amount of the bond and may change the amount of the bond requirement to correspond with the volume of business done by the corporation.

(c) The bond shall be conditioned on:

(1) compliance by the corporation with this subchapter and the rules of the department that relate to the corporation;

(2) exercise of ordinary care by the corporation in the storage, preservation, and handling of all farm, ranch, and orchard products entrusted to it for storage or sale; and

(3) use of approximately correct classification, weights, grades, and measures by the corporation or under the corporation's authority. (V.A.C.S. Art. 5582.)

Sec. 14.106. Breach and New Bond

(a) A person may sue for indemnity on the corporation's bond if the person is damaged by:

(1) a statement made by the corporation or under its authority in a certificate it issues in return for products stored by the corporation; or

(2) a breach of a condition of the bond by fault or dereliction of duty of the corporation or of a person authorized to act for the corporation.

(b) If the corporation's bond is impaired, after providing the corporation with notice, the department may require the corporation to furnish a new bond. If the corporation fails to provide the new bond before the 31st day following the date of the notice, the department may:

(1) close the corporation;

(2) liquidate the affairs of the corporation; and

(3) discharge the debts of the corporation.

(c) If the department takes control of a corporation under this section, it may collect by suit or other means the amount of the bond that, with the assets of the corporation, is necessary to discharge the obligations of the corporation. (V.A.C.S. Art. 5583.)

Sec. 14.107. Certificate of Qualification for Officer or Employee

(a) In order to operate as a corporation under this subchapter, each employee or officer engaged in the management of the corporation must obtain a certificate of qualification from the department.

(b) The department shall require the person seeking the certificate to present satisfactory evidence that he or she is qualified to perform the management duties of the corporation.

(c) The department shall collect a filing fee of $1 for the certificate of qualification.

(d) A certificate of qualification may not be valid for more than two years and the applicant must obtain a new certificate after the expiration of the initial certificate in order to continue operation under this subchapter. (V.A.C.S. Art. 5592.)

Sec. 14.108. Directors and Meetings

(a) The board of directors of a corporation shall manage the business of the corporation.

(b) The board of directors shall be composed of not less than 3 nor more than 25 members of the corporation. Each member must be a Texas citizen and may not be on the board of directors of another corporation chartered under this subchapter.

(c) The members of the corporation shall elect the directors annually at a general meeting of the directors of the corporation. The bylaws of the corporation shall prescribe the time and place of the meeting, and notice of the meeting shall be sent to each member of the corporation at least two weeks prior to the meeting. Each member of the corporation, at all general and special meetings, shall have one vote.

(d) The directors may appoint or remove any officer or employee at their pleasure. (V.A.C.S. Arts. 5578 (part), 5584.)

Sec. 14.109. Powers of a Corporation

(a) A corporation has the same rights as a warehouseman and may perform all acts done generally by a warehouseman, including:

(1) selling any farm, ranch, or orchard product on a commission basis or on a basis agreed on by the corporation and its customers;

(2) purchasing, constructing, or leasing warehouses, landings, and buildings necessary for the corporation's business, including gins, storage tanks, silos, and other storage places necessary for storing, grading, weighing, and classifying cotton and farm products and preparing the products for market; and

(3) employing instrumentalities and agencies necessary for preserving, storing, and marketing farm, ranch, and orchard products to the best advantage of the corporation's members and customers.

(b) A corporation may loan money on:

(1) products placed in its warehouses, if the amount loaned does not exceed 75 percent of the market value of the products;

(2) chattel mortgages, if the amount loaned does not exceed 50 percent of the market value of the mortgaged property; and

(3) crop mortgages, if, with the exception of a landlord's lien, the crop has not already been mortgaged and the acreage securing the loan would ordinarily produce crops worth double the amount of the loan.

(c) A corporation may make loans only to its members and only for the purpose of enabling its members to produce or market a crop or a farm, ranch, or orchard product.

(d) A corporation may invest its capital stock and surplus in a home office building, and may invest capital stock, surplus, and undivided profits in bonds of the United States, this state, or a county, city, or district of this state. Any bond invested in must be authorized by law and have never been defaulted.

(e) A corporation may not receive deposits of discount commercial paper. (V.A.C.S. Art. 5579.)

Sec. 14.110. Authority to Contract Debts

A corporation chartered under this subchapter may contract debts. (V.A.C.S. Art. 5580 (part).)

Sec. 14.111. Issuance of Sinking Fund Bonds

(a) Following deposit of securities in the state treasury under Section 14.112 of this code, a corporation may issue sinking fund bonds. The bonds must:

(1) be double the amount of the original capital stock;

(2) bear no more than six percent interest; and

(3) run for not more than 30 years.

(b) The department shall register the bonds after they have been issued and signed by the proper officers of the corporation.

(c) The face of the bond must contain:

(1) a statement that the principal on the bond is secured by securities required by this subchapter to be deposited in the state treasury;

(2) a statement that the interest contracted to be paid on the bond is secured by the general assets of the corporation; and

(3) a written or printed title that contains the post office address of the corporation and states, "Sinking Fund Bonds of _____ State Bonded Warehouse," with the blank space to be filled in with the name of the corporation.

(d) After the bonds have been issued and registered, the department shall return the bonds to the proper officer of the corporation, and the corporation may then place on the market and sell the bonds. The corporation may not sell the bonds at less than 90 percent of face value. (V.A.C.S. Art. 5580 (part).)

Sec. 14.112. Investment for Payment of Sinking Fund Bonds

(a) In order to issue bonds, a corporation must invest all or part of its capital stock in securities designated for the payment or investment of

its capital. If the department approves the securities, they shall be deposited in the state treasury.

(b) The interest on the investments shall be paid annually into the state treasury and credited to the sinking fund for the liquidation of bonds issued by the corporation.

(c) The department may invest the interest in similar securities and shall deposit the securities in the state treasury to be used as a sinking fund to pay the principal sum of the bonds authorized by Section 14.111 of this code.

(d) The securities deposited in the state treasury under this section may be used only to liquidate the sinking fund bonds authorized by Section 14.111 of this code, but after the sinking fund bonds have been paid, the securities shall be returned to the corporation to become part of the general assets of the corporation. (V.A.C.S. Art. 5580 (part).)

Sec. 14.113. Acts Requiring Authorization by Corporation

(a) Unless authorized by the board of directors, an officer or employee of a corporation may not endorse, sell, pledge, or hypothecate any bond, note, or obligation of the corporation or any property deposited with the corporation in its capacity as warehouseman.

(b) The board of directors may authorize an officer or employee to endorse, sell, pledge, or hypothecate any bond, note, or obligation of the corporation or any property deposited with the corporation in its capacity as a warehouseman only at a regularly called and held meeting of the board. The proceedings of the meeting shall be recorded in the minutes of the corporation.

(c) Any action of an officer or employee in conflict with this section is void. (V.A.C.S. Art. 5589.)

Sec. 14.114. Division of Profits

A corporation may, in accordance with its bylaws, divide its profits among its members in proportion to the amount of business transacted by each member. Before dividing profits, the corporation shall:

(1) pay 20 percent of the net profits on each year's business into the reserve fund until the reserve fund equals twice the amount of the capital stock at the time the corporation was chartered; and

(2) pay the subscribers to the capital stock a 10 percent dividend, or less if required by the bylaws of the corporation. (V.A.C.S. Art. 5590.)

Sec. 14.115. Voluntary Liquidation

(a) A corporation may place itself under the control of the department by:

(1) notifying the department of its intent to come under its control; and

(2) placing a notice on its front door stating, "This institution is under the control of the Department of Agriculture."

(b) Notice by the department that it has taken control of the corporation or notice by the corporation under Subsection (a) of this section is sufficient to place the property and assets of the corporation under the department's control and bars all attachment proceedings on the property or assets. (V.A.C.S. Art. 5595.)

Sec. 14.116. Forced Liquidation

(a) If an examiner's investigation discloses that a corporation is insolvent or that its continuance in business will seriously jeopardize the

interest of its stockholders or creditors, the department shall immediately close the corporation and take charge of its property and effects.

(b) After taking charge of a corporation, the department shall investigate its financial condition as soon as practicable. If the department determines that the corporation cannot resume business or is insolvent, it shall report this information to the attorney general.

(c) On receipt of information under Subsection (b) of this section, the attorney general shall institute proceedings to have a receiver appointed for the corporation and to wind up the affairs and business of the corporation for the benefit of its creditors and members.

(d) After notice, hearing, and a determination that action is necessary, the judge may appoint a receiver to take possession of the property and effects of the corporation for the purpose of winding up the corporation's business or may issue any other order necessary to grant relief as the evidence and situation of the parties require. The judge may appoint a receiver or issue an order whether the court is in term or on vacation.

(e) The department may appoint a special agent to take charge of the affairs of an insolvent corporation until a receiver is appointed. The agent must meet all qualifications required of a warehouse examiner appointed under Subchapter C of this chapter, and the agent's compensation shall be paid out of the corporation's assets, if ordered by the court.

(f) A corporation may not be controlled by a special agent appointed under this section for more than 60 days. (V.A.C.S. Art. 5594.)

Sec. 14.117. Statement of Affairs

(a) Twice a year, or more often if required by the department, the department shall require a corporation to file with the department a statement of its affairs showing:

(1) the condition of its reserve fund;

(2) its assets and liabilities; and

(3) any other information the department requires.

(b) A managing officer of the corporation shall swear to the statement and a majority of the board of directors shall attest to it. (V.A.C.S. Art. 5585.)

Sec. 14.118. Examination of a Corporation's Affairs

(a) A corporation is under the supervision of the department.

(b) The department shall examine the affairs of each corporation at least once a year and at other times if the department considers it necessary.

(c) The corporation shall pay to the department a just and reasonable fee, as determined by the department, for an examination under this section. The fee may not exceed:

(1) $5 for a corporation with a capital stock of less than $2,500;

(2) $10 for a corporation with a capital stock of $2,500 or more but not more than $10,000;

(3) $20 for a corporation with a capital stock of more than $10,000 but not more than $25,000; and

(4) $200 for a corporation with a capital stock of $1,000,000 or more.

(d) The department shall report the condition of a corporation to the attorney general, who may bring necessary action against the corporation if the examination shows that the corporation:

(1) is insolvent;

(2) has exceeded its powers;

(3) is conducting its business in an unsafe manner; or

(4) has failed to comply with any provision of this subchapter within a reasonable time of notification of noncompliance, not to exceed 30 days. (V.A.C.S. Arts. 5586, 5587.)

Sec. 14.119. Unsafe Corporations

(a) If, during an examination of a corporation under Section 14.118 of this code, the department has reason to believe that the capital stock of the corporation is impaired or that the corporation is conducting business in an unsafe or unauthorized manner, the department shall issue a written notice requiring the corporation to make good any impairment of capital stock or issue an order directing the discontinuance of unsafe and unauthorized practices and requiring compliance with the law, as applicable.

(b) The department shall require that erroneous entries in the books of a corporation be corrected and sums unlawfully paid out be restored to the corporation by the person responsible for the unlawful payment.

(c) The department may report to the attorney general and the attorney general may take a; propriate action if:

(1) a corporation fails or neglects to file a report required by this subchapter;

(2) a corporation fails to comply with an order of the department under this subchapter;

(3) the department determines that it is unsafe or inexpedient for a corporation to continue in business because of neglect or mismanagement;

(4) the department determines that an officer has abused the trust of the office and harmed the corporation; or

(5) the department determines that the corporation has suffered a serious loss by fire, repudiation, or other cause.

(d) The department may prohibit the storage of cotton or other inflammable commodities in an unsafe building or require a warehouse to be remodeled within certain specified dates but shall do so in a manner that does not unduly hamper or interfere with public convenience or business. (V.A.C.S. Arts. 5593, 5599.)

Sec. 14.120. Fire Insurance

(a) The department shall require each corporation to carry fire insurance. The corporation shall obtain either a blanket policy or an individual policy from a solvent insurance company chartered under the laws of this state or having a permit to do business in this state.

(b) Except when the company is insuring grain or baled cotton, a fire, fire and marine, marine, or inland insurance company doing business in this state may not insure a building or its contents in an amount exceeding 10 percent of the aggregate of paid-up capital stock and surplus, unless the excess is reinsured by another solvent insurance company authorized to do business in this state.

(c) The department may also require any means and methods it considers necessary in each case to prevent loss by fire, weather, or depreciation of warehouse property. (V.A.C.S. Art. 5600.)

Sec. 14.121. Forms

(a) The department shall prescribe the form of all receipts, certificates, and records necessary to conduct the business of a corporation under this subchapter.

(b) All warehouse receipts shall be:

(1) uniform in character; and

(2) in the same class as prescribed by the department. (V.A.C.S. Art. 5608.)

Sec. 14.122. Failure to Submit to an Examination

(a) The department shall report to the attorney general if:

(1) a corporation refuses to submit its books, papers, and correspondence to the department or an examiner;

(2) a corporation is found to have violated its charter or the laws of this state; or

(3) an officer of a corporation refuses to be examined under oath on questions relating to the corporation.

(b) The attorney general may proceed against a corporation whose activities have been reported under this section in the same manner as he or she may proceed against an insolvent corporation. (V.A.C.S. Art. 5591.)

Sec. 14.123. Storage Charges

(a) The department may set minimum storage charges for a warehouse operating under this subchapter.

(b) The department is not required to set equal charges at all places or all times and may take into consideration the local conditions and volume of business of each warehouse.

(c) The department shall consider the size of bales in setting charges for gin-compressed cotton. (V.A.C.S. Art. 5601.)

Sec. 14.124. Standards of Classification

(a) The department shall establish and keep for public inspection at reasonable times a record of standards of classification for cotton, corn, and other farm and ranch products subject to classification.

(b) The department shall furnish at cost to any person making a request copies of the standards of classification and standards of weights and measures.

(c) Each corporation shall keep at its warehouse copies of the standards of classification of the United States or of this state and the standards of weights and measures. The corporation shall make the standards available for inspection to persons storing products in the warehouses. (V.A.C.S. Art. 5602.)

Sec. 14.125. Liability of a Corporation

A corporation operating as a warehouse has the same liabilities and rights as a public warehouseman, including a lien for storage, insurance, warehouse charges, or any other warehouse service performed by the corporation. (V.A.C.S. Art. 5603.)

Sec. 14.126. Receipts

(a) A corporation shall:

(1) number receipts consecutively in the order of issuance;

(2) keep a record of each receipt issued; and

(3) 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) of this section.

(b) If a receipt is lost or destroyed, the corporation shall issue a new receipt that:

(1) bears the same date and number as the original receipt; and

(2) is plainly marked "duplicate" on its face.

(c) Except as provided by Subsection (d) of this section, each receipt must have a blank form on its back, and the owner of the product for which the receipt is issued shall sign the form after indicating on it:

(1) whether a preexisting and unsatisfied lien of any kind exists against the product at the time of storage; and

(2) the amount of any existing lien.

(d) A warehouse manager may not issue a negotiable receipt unless the owner fills in and signs the form on the back of the receipt as required by Subsection (c) of this section, but may issue a nonnegotiable receipt without the information and signature required by Subsection (c) of this section. (V.A.C.S. Art. 5610 (part).)

Sec. 14.127. Receipt for Cotton Grown on Rented or Leased Premises

(a) Except as provided in Subsection (b) of this section, a corporation shall issue, in the names of both the owner and the landlord, a receipt for cotton grown on rented or leased premises. In addition to the information required by Section 14.126(c) of this code, the receipt must contain a statement of the respective interests of the owner and the landlord in the cotton.

(b) The corporation shall issue a receipt in one name for cotton grown on rented or leased premises if the tenant or person storing the cotton:

(1) receives written authorization from the landlord or the tenant to have the receipt issued in the name of either the tenant or the landlord; and

(2) presents the written authorization to the manager of the warehouse. (V.A.C.S. Art. 5610 (part).)

Sec. 14.128. Exchange of Receipts

(a) A person may exchange a nonnegotiable receipt for a negotiable receipt by:

(1) returning the nonnegotiable receipt to the warehouse issuing the receipt; and

(2) complying with the provisions of this subchapter relating to negotiable receipts.

(b) When the negotiable receipt is surrendered or canceled, the warehouseman shall mark or stamp "canceled" in ink on the face of the receipt. (V.A.C.S. Art. 5610 (part).)

Sec. 14.129. Receipt on Delivery

A corporation may not issue a receipt for goods until the goods are actually delivered to the warehouse or premises under control of the manager of the warehouse. (V.A.C.S. Art. 5610 (part).)

Sec. 14.130. Applicability of General Laws

Every corporation organized under this subchapter is subject to the general corporation laws of this state. (V.A.C.S. Art. 5588.)

[Sections 14.131–14.200 reserved for expansion]

SUBCHAPTER C. OTHER PUBLIC WAREHOUSEMEN

Sec. 14.201. Definitions

In this subchapter:

(1) "Public warehouseman" means a person who stores cotton, wheat, rye, oats, or rice, or any kind of produce, wares, merchandise, or personal property for hire.

(2) "Warehouse" means a house, building, or room in which the commodities listed in Subdivision (1) of this section are stored and protected from damage by the elements. (V.A.C.S. Art. 5568.)

Sec. 14.202. Powers of the Department

A warehouse operating under this subchapter is under the supervision of the department. (V.A.C.S. Art. 5611 (part).)

Sec. 14.203. Warehouse Examiners

(a) The department shall appoint warehouse examiners to examine warehouses, including corporations chartered under Subchapter B of this chapter. The department shall not appoint more than one examiner for every 50 warehouses and corporations.

(b) In order to be an examiner, a person must:

(1) be a cotton grader and classer and a competent bookkeeper; and

(2) not own an interest in or be an officer or employee of:

(A) a warehouse company or corporation; or

(B) a firm engaged in purchasing or selling farm, ranch, or orchard products.

(c) Each examiner shall post a $5,000 bond payable to the State of Texas, approved by the department, and conditioned on faithful performance of duties by the examiner.

(d) Each examiner shall file with the department an affidavit stating that the examiner will make fair and impartial examinations and will not:

(1) accept any gift or payment for an examination other than payment fixed by law; or

(2) reveal to anyone other than the department or a court of law the condition of or information about an examined corporation or warehouse.

(e) An examiner is not eligible to be appointed receiver of a corporation or warehouse that the examiner has examined.

(f) An examiner is entitled to reimbursement for actual and necessary expenses incurred in performing official duties. (V.A.C.S. Arts. 5596, 5597.)

Sec. 14.204. Certificate to Transact Business

No person may operate a warehouse without first obtaining a certificate to transact business as a public warehouseman from the county clerk of the county in which the warehouse is located. (V.A.C.S. Art. 5569 (part).)

Sec. 14.205. 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. (V.A.C.S. Art. 5569 (part).)

Sec. 14.206. 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 warehouseman; 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. (V.A.C.S. Art. 5569 (part).)

Sec. 14.207. Receipts

(a) The owner or depositor of property stored in a warehouse may request from the public warehouseman a receipt for the property stored in the warehouse.

(b) The receipt shall be signed by the public warehouseman or the warehouseman'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 warehouseman 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. (V.A.C.S. Arts. 5570 (part), 5573 (part).)

Sec. 14.208. Receipt for Cotton

(a) A public warehouseman shall issue a warehouse receipt to any person who deposits cotton in the warehouseman's warehouse and requests a receipt.

(b) The receipt shall contain:

(1) all information required to be included on a receipt by Section 14.207 of this code;

(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 warehouseman 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 warehouseman 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) of this section.

(d) Failure or neglect by a public warehouseman to comply with the provisions of this section is a ground for revocation of a certificate to transact business as a public warehouseman. (V.A.C.S. Arts. 5570 (part), 5570a.)

Sec. 14.209. Duplicate Receipts

(a) A public warehouseman 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) of this section.

(b) If a receipt is lost or destroyed, the public warehouseman 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 warehouseman to protect a person who may hold the original receipt in good faith and for valuable consideration. (V.A.C.S. Art. 5570 (part).)

Sec. 14.210. 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 subchapter relating to negotiable receipts.

(b) When the negotiable receipt is surrendered or canceled, the public warehouseman shall mark or stamp "canceled" in ink on the face of the receipt. (V.A.C.S. Art. 5572.)

Sec. 14.211. 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 warehouseman; and

(2) the person did not have actual knowledge of the lien or encumbrance at the time of the alleged conversion. (V.A.C.S. Art. 5571.)

Sec. 14.212. Receipt to be Issued Only on Delivery

A public warehouseman 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 warehouseman issuing the receipt. (V.A.C.S. Art. 5573 (part).)

Sec. 14.213. Delivery

(a) A public warehouseman shall deliver property held in the warehouse on:

(1) presentation of a properly endorsed receipt issued by the warehouseman 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 warehouseman 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 warehouseman shall cancel the receipt by writing "canceled" in ink on the receipt and placing the warehouseman's name on the face of the receipt. A canceled receipt is void and may not be circulated.

(d) A public warehouseman who fails to 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. (V.A.C.S. Art. 5574.)

Sec. 14.214. Exceptions

(a) This subchapter does not apply to private warehouses or the issuance of receipts by the owners or managers of private warehouses.

(b) This subchapter does not prohibit a public warehouseman 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." (V.A.C.S. Art. 5577.)

Sec. 14.215. Storage Charges

(a) The department may set minimum storage charges for a warehouse operating under this subchapter.

(b) The department is not required to set equal charges at all places or all times and may take into consideration the local conditions and volume of business of each warehouse.

(c) The department shall consider the size of bales in setting charges for gin compressed cotton. (V.A.C.S. Art. 5601.)

Sec. 14.216. 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. (V.A.C.S. Art. 5569 (part).)

CHAPTER 15. FAMILY FARM AND RANCH SECURITY PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Section

15.001. Definitions
15.002. Family Farm and Ranch Security Program

[Sections 15.003–15.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATION

15.011. Commissioner to Administer
15.012. Reports
15.013. Advisory Council
15.014. Administrative Expenses
15.015. Discrimination Prohibited

[Sections 15.016–15.020 reserved for expansion]

SUBCHAPTER C. GUARANTEED LOANS

Section
15.021. Eligibility for Loans
15.022. Eligible Lenders
15.023. Application for Loans
15.024. Terms of Loan
15.025. Payment Adjustment
15.026. Seller-Sponsored Loans
15.027. Sale or Conveyance
15.028. Default

[Sections 15.029–15.050 reserved for expansion]

SUBCHAPTER D. BONDS

15.051. Issuance of Farm and Ranch Loan Security Bonds
15.052. Notice of Bond Sales
15.053. Competitive Bidding
15.054. Approval by Attorney General
15.055. Validity of Bonds
15.056. Disposition of Bond Proceeds
15.057. Payment of Principal and Interest
15.058. Refunding Bonds
15.059. Negotiable Instruments; Taxation Exemption
15.060. Bonds as Authorized Investments or Deposit Security
15.061. Replacement of Bond
15.062. Mandamus

[Sections 15.063–15.080 reserved for expansion]

SUBCHAPTER E. SPECIAL FUNDS

15.081. Farm and Ranch Loan Security Fund
15.082. Interest and Sinking Fund
15.083. Investment of Funds

CHAPTER 15. FAMILY FARM AND RANCH SECURITY PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 15.001. Definitions

In this chapter:

(1) "Applicant" means an individual who applies for a family farm and ranch security loan.

(2) "Borrower" means an individual who borrows money under this chapter.

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

(4) "Family farm and ranch security loan" means a loan guaranteed by the state under this chapter.

(5) "Farmland or ranchland" means land in Texas that is capable of supporting the commercial production of agricultural crops, livestock or livestock products, poultry or poultry products, milk or dairy products, or horticultural products, including fruit. (V.A.C.S. Art. 55g, Secs. 1(1), (2), (3), (4).)

Sec. 15.002. Family Farm and Ranch Security Program

A family farm and ranch security program is established. Subject to the provisions of this chapter, the commissioner may guarantee to eligible lenders that, in the event of default on a family farm and ranch security loan, the state will pay the lender 90 percent of the sum due and payable under the first real estate mortgage or deed of trust. (V.A.C.S. Art. 55g, Sec. 2 (part).)

[Sections 15.003–15.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATION

Sec. 15.011. Commissioner to Administer

The commissioner shall administer this chapter and adopt rules necessary for the efficient administration of the program. (V.A.C.S. Art. 55g, Secs. 2 (part), 3.)

Sec. 15.012. Reports

Before January 1 of each year, the commissioner shall submit a report to the legislature concerning his or her actions under this chapter during the preceding year and the status of loans guaranteed. (V.A.C.S. Art. 55g, Sec. 4.)

Sec. 15.013. Advisory Council

(a) The family farm and ranch advisory council is composed of nine members appointed by the governor for staggered terms of six years.

(b) The advisory council shall be composed of two officers of commercial lending institutions, one officer of a farm credit association, one general farmer, one agricultural economist, one dairy farmer, one livestock farmer, one cash grain farmer, and one cotton farmer.

(c) The members of the advisory council serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in carrying out official duties.

(d) In making initial appointments to the advisory council, the governor shall designate the terms of three members to expire on January 31, 1981, three to expire on January 31, 1983, and three to expire on January 31, 1985.

(e) The members of the advisory council annually shall elect a presiding officer and other officers they consider necessary.

(f) The advisory council shall:

(1) review and appraise the family farm and ranch security program;

(2) give advice and counsel to the commissioner regarding the program;

(3) review all applications for family farm and ranch security loans, make recommendations to the commissioner as to their disposition, and approve applications for payment adjustments; and

(4) make recommendations to the legislature and to the commissioner regarding any state policy or legislative changes needed to foster and promote the economic health and continued existence of the family farm or ranch.

(g) The commissioner shall provide the advisory council with necessary staff, office space, and administrative services. (V.A.C.S. Art. 55g, Sec. 5.)

Sec. 15.014. Administrative Expenses

The legislature shall appropriate the funds required for the administration of this chapter. (V.A.C.S. Art. 55g, Sec. 15.)

Sec. 15.015. Discrimination Prohibited

In carrying out duties under this chapter, the commissioner and advisory council may not discriminate because of age, race, color, creed, religion, national origin, sex, marital status, disability, or political or ideological persuasion. (V.A.C.S. Art. 55g, Sec. 12.)

[Sections 15.016–15.020 reserved for expansion]

SUBCHAPTER C. GUARANTEED LOANS

Sec. 15.021. Eligibility for Loans

To be eligible for a family farm and ranch security loan, an applicant must:

(1) be a citizen of the United States;

(2) have been a resident of the State of Texas for five years;

(3) have education, training, or experience in the type of farming or ranching for which the applicant wishes the loan;

(4) together with the applicant's spouse and their dependents, have a total net worth of less than $100,000, not including the value of a residential homestead owned by the applicant, and demonstrate the need for the loan;

(5) intend to purchase farmland or ranchland to be used by the applicant and family for agricultural purposes as the applicant's primary occupation; and

(6) be worthy of credit according to standards established by the commissioner. (V.A.C.S. Art. 55g, Sec. 6.)

Sec. 15.022. Eligible Lenders

To qualify as an eligible lender under this chapter, a lender must be:

(1) a bank, savings bank, mutual savings bank, credit union, building and loan association, or savings and loan association organized under the law of this state or the United States;

(2) a financial institution, including a trust company, subject to the supervision of the banking commissioner; or

(3) a corporation engaged in the business of insurance that is subject to the supervision of the State Board of Insurance under the Insurance Code. (V.A.C.S. Art. 55g, Sec. 1(5).)

Sec. 15.023. Application for Loans

(a) An individual desiring to acquire farmland or ranchland may apply to an eligible lender for a family farm and ranch security loan. On completion of the appropriate forms by the applicant and the lender, the lender shall forward the application to the commissioner for approval. The commissioner shall determine eligibility, shall approve the application if the requirements of Sections 15.021 and 15.024 of this code are met, and shall notify the lender and the applicant of the decision.

(b) If the application is denied, the commissioner shall return the application to the lender with a written statement of the reasons for denial. The lender shall give a copy of those reasons to the applicant. If the circumstances of the applicant change so that he or she becomes eligible, the applicant may reapply.

(c) If the commissioner approves the loan application, the commissioner shall file a copy of the application and return the original to the

lender. The applicant and the lender may then complete the loan transaction.

(d) A person related within the second degree by affinity or the third degree by consanguinity to any member of the advisory council or to the commissioner, the deputy commissioner of agriculture, or the assistant commissioner of agriculture is not eligible for a family farm and ranch security loan. (V.A.C.S. Art. 55g, Sec. 7.)

Sec. 15.024. Terms of Loan

(a) A family farm and ranch security loan shall be transacted on forms approved by the commissioner with the advice of the attorney general. Before approving an application, the commissioner shall obtain an appraisal of the property in order to determine its value. Any appraiser representing the commissioner must be reasonably qualified to give competent appraisals of land. The appraiser shall make a written report to the commissioner in affidavit form, sworn to before a notary public or other official authorized to administer oaths, showing:

(1) the appraised value of the land;

(2) the name and address of each person communicated with relative to the valuation of the land;

(3) that the appraiser has examined the records of the county clerk's office relative to the land;

(4) that the appraiser has checked past sales of adjacent lands to aid in determining valuation; and

(5) that neither the appraiser nor a member of the appraiser's family has received a personal benefit from the transaction and does not expect to receive any future personal benefits.

(b) The applicant shall pay the cost of an appraisal made under Subsection (a) of this section before the date on which the application is reviewed by the advisory council.

(c) The commissioner shall establish by rule an appraisal procedure to determine the income potential of the property to be purchased under a family farm and ranch security loan and may not approve an application if the purchase price exceeds the appraisal value and income potential of the land. (V.A.C.S. Art. 55g, Sec. 8(a).)

Sec. 15.025. Payment Adjustment

(a) If a family farm and ranch security loan has a term of not more than 20 years and provides for payments at least annually so that the loan is amortized over its term with equal annual payments of principal and interest, an applicant or borrower may apply for a payment adjustment. If the application is approved by the advisory council, the commissioner may annually pay to the lender four percent of the outstanding balance due on the loan at the beginning of the year during the first 10 years of the loan. Beginning with the 11th year of the loan, the borrower shall reimburse the commissioner for the sums paid in his or her behalf plus six percent simple interest. A borrower may petition the commissioner for one 10-year renewal of the payment adjustment, in which case the borrower shall reimburse the commissioner beginning with the 21st year after the loan was granted for all the sums paid in his or her behalf plus six percent simple interest. A borrower is entitled to make reimbursements for payment adjustments in equal annual payments over a term not to exceed 10 years.

(b) The borrower, the borrower's spouse, and their dependents shall annually submit to the commissioner a sworn statement of their net

worth. If their net worth in any year exceeds $150,000, the borrower is ineligible for a payment adjustment in that year.

(c) The obligation to repay a payment adjustment is a lien against the property.

(d) A lender receiving a payment from the commissioner on behalf of a borrower under this section shall reduce the borrower's payments for the next year in accordance with the amount received from the commissioner. (V.A.C.S. Art. 55g, Secs. 8(b),(c), (d), (e).)

Sec. 15.026. Seller-Sponsored Loans

(a) If the seller is an individual, the commissioner may approve for guarantee a loan in which part or all of the purchase price of the farmland or ranchland is financed by a loan from the seller of the property with the remainder of the loan, if any, supplied by a lender.

(b) A seller-sponsored loan shall be secured by a purchase money first real estate mortgage or deed of trust evidenced by a negotiable note or notes. If a note is sold or exchanged, the holder of the note shall notify the commissioner of the sale or exchange in writing within 30 days after the day that the note is sold or exchanged. (V.A.C.S. Art. 55g, Secs. 1(6), 9.)

Sec. 15.027. Sale or Conveyance

A borrower who sells or conveys the property for which a family farm and ranch security loan was issued shall immediately retire the entire indebtedness owed to the lender and the state. A family farm and ranch security loan may not be assumed by a new owner. This section does not prohibit a borrower from granting a security interest in the property for the purposes of securing an additional loan. (V.A.C.S. Art. 55g, Sec. 10.)

Sec. 15.028. Default

(a) A borrower is in default if, for a period longer than one year, the borrower fails to devote and maintain land purchased under a family farm and ranch security loan to one or more of the following activities:

(1) cultivating the soil and producing crops for human food, animal feed, planting seed, or fiber;

(2) floriculture, viticulture, or horticulture;

(3) raising or keeping livestock; or

(4) planting cover crops or leaving land idle for the purpose of participation in a governmental program or normal crop or livestock rotation.

(b) Within 90 days of default on a family farm and ranch security loan, the lender shall notify the borrower that the lender must notify the commissioner if the default continues for another 90 days. The lender also shall inform the borrower of the consequences of that default. The lender and the borrower may agree to take any reasonable steps to ensure the fulfillment of the loan obligation.

(c) If the borrower has not made arrangements to meet the obligation by the end of the 180th day following the initial default, the lender shall file a claim with the commissioner identifying the loan and the nature of the default. The commissioner shall then conduct a hearing on the alleged default as a contested case under the Administrative Procedure and Texas Register Act (Article 6252—13a, Vernon's Texas Civil Statutes). Appeal of the commissioner's decision to the district court is under the substantial evidence rule. The commissioner may waive default in the event of extenuating circumstances, including the borrower's physical disability. If the commissioner finds that the borrower is in de-

fault and the commissioner does not waive default, the lender shall assign to the state all of the lender's security and interest in the loan in exchange for payment of 90 percent of all sums due and payable under the first real estate mortgage or deed of trust. If the loan is seller-sponsored, the seller may elect to pay the commissioner all sums owed the commissioner by the applicant and retain title to the property in lieu of payment by the commissioner under the terms of the loan guarantee. If the commissioner determines that the lender has met his or her obligations regarding the loan guarantee, the commissioner shall authorize payment to the lender and shall notify the defaulting party. The state shall then become holder of the mortgage or deed of trust.

(d) If the state acquires the mortgage or deed of trust on the property, the commissioner shall undertake to sell the property after all appeals are concluded. The commissioner shall publish notice of the impending sale at least once each week for four consecutive weeks in a newspaper of general circulation in the county in which the property is located and in a publication having general statewide circulation. The notice shall specify the time and place in the county at which the sale will be held and give a description of the lots or tracts to be offered and a general statement of the terms of sale. The commissioner shall sell the property to the highest bidder as determined by taking sealed bids or by public auction. In either case, the commissioner shall determine the successful bidder within 15 days of the date of the last published notice of sale. Each bidder shall submit bid security in the form of a certified check or bid bond in the amount of two percent of the bid price. The successful bidder shall remit the balance of the purchase price to the commissioner within 90 days of the date of sale. On remittance of the balance, the commissioner shall transfer all right, title, and interest of the state in the property to the purchaser. If the purchaser fails to remit any part of the balance within the 90 days, the purchaser forfeits all rights to the property and any money paid for it, and the commissioner shall restart the sale process.

(e) Proceeds from the sale of property obtained by the state under this section shall be paid into the farm and ranch loan security fund, except that if the payment made to a lender under this chapter is less than the amount due and payable to the lender, proceeds in excess of the amount of that payment shall be paid to the lender to the extent required in order to reimburse the lender in full. (V.A.C.S. Art. 55g, Secs. 1(7), 11, 14(h).)

[Sections 15.029–15.050 reserved for expansion]

SUBCHAPTER D. BONDS

Sec. 15.051. Issuance of Farm and Ranch Loan Security Bonds

(a) The commissioner by order may provide for the issuance of negotiable farm and ranch loan security bonds in one or more installments and in an aggregate amount not to exceed $10 million. The order entered shall describe the terms and conditions of the bonds.

(b) The commissioner may not sell an installment or series of bonds for an amount less than the face value of all of the bonds comprising the installment or series with the interest accrued from their date of issuance.

(c) The commissioner shall determine the rate of interest of an installment or series of bonds and shall determine whether interest is payable annually or semiannually.

(d) The commissioner shall determine:

(1) the form of the bonds, including the form of any interest coupons to be attached;

(2) the denominations of the bonds; and

(3) the places for payment of principal and interest.

(e) The bonds of each issue mature, serially or otherwise, not more than 40 years from their date. In issuing bonds, the commissioner may determine the price, terms, and conditions for redemption of bonds before maturity.

(f) The commissioner may provide for the registration of bonds as to ownership, successive conversion and reconversion from bearer to registered bonds, and successive conversion and reconversion from registered to bearer bonds.

(g) The bonds shall be executed on behalf of the commissioner as general obligations of the state. The commissioner shall sign the bonds and impress the seal of the commissioner on them. The governor shall sign and the secretary of state shall attest the bonds, and the state seal shall be impressed on them.

(h) The commissioner may prescribe the extent to which facsimile signatures and facsimile seals instead of manual signatures and manually impressed seals may be used in executing the bonds and appurtenant coupons. Interest coupons may be signed by the facsimile signature of the commissioner. If an officer whose signature or facsimile signature appears on a bond or whose facsimile signature appears on a coupon ceases to be an officer before delivery of the bond, the signature is valid and sufficient for all purposes as if that officer had remained in office until the delivery had been made. (V.A.C.S. Art. 55g, Secs. 13(a), (b), (c), (d), (e), (f), (j), (k).)

Sec. 15.052. Notice of Bond Sales

After determining to sell a series of bonds, the commissioner shall publish notice of the sale at least once not less than 10 days before the date of the sale in at least one financial publication of general circulation published in the state and in at least one financial publication of general circulation published outside the state. (V.A.C.S. Art. 55g, Sec. 13(g).)

Sec. 15.053. Competitive Bidding

The commissioner may sell bonds only after competitive bidding to the highest and best bidder. The commissioner may reject any or all bids. The commissioner shall require every bidder, except administrators of state funds, to include with the bid an exchange or cashier's check for an amount the commissioner considers adequate as a deposit guaranteeing acceptance of and payment for all bonds covered by the bid. (V.A.C.S. Art. 55g, Sec. 13(h).)

Sec. 15.054. Approval by Attorney General

Before delivering bonds to the purchasers, the commissioner shall submit the bonds and the records pertaining to them for approval by the attorney general. When approval is obtained, the bonds shall be registered in the office of the comptroller of public accounts. (V.A.C.S. Art. 55g, Sec. 13(i).)

Sec. 15.055. Validity of Bonds

After approval by the attorney general, registration by the comptroller, and delivery to the purchaser, the bonds are incontestable and constitute general obligations of the state and shall be held to be valid and

binding obligations of the state in any action, suit, or other proceeding in which their validity is questioned. In an action to enforce collection of the bonds or rights incident to the bonds, the certificate of approval by the attorney general and a certificate of registration by the comptroller, or certified copies of these certificates, are admissible evidence constituting proof of the validity of the bonds. (V.A.C.S. Art. 55g, Sec. 13(*l*).)

Sec. 15.056. Disposition of Bond Proceeds

(a) Except as provided by Subsection (b) of this section, proceeds derived from the sale of the bonds, less the administrative costs of issuing the bonds, shall be deposited with the state treasurer to the credit of the farm and ranch loan security fund.

(b) In authorizing a series of bonds, the commissioner may appropriate to the interest and sinking fund from the proceeds of the sale of bonds an amount that, together with the accrued interest received, is sufficient to pay interest coupons becoming due during the fiscal year in which the bonds are sold and to establish appropriate reserves. (V.A.C.S. Art. 55g, Secs. 14(a) (part), (d) (part).)

Sec. 15.057. Payment of Principal and Interest

The state treasurer shall pay or cause to be paid the principal on bonds as they mature and the interest as it becomes payable. (V.A.C.S. Art. 55g, Sec. 13(m).)

Sec. 15.058. Refunding Bonds

The commissioner may provide for the issuance of refunding bonds. The commissioner may sell these bonds and use the proceeds to retire the outstanding bonds issued under this subchapter, including interest accrued on outstanding bonds, or the commissioner may exchange refunding bonds for outstanding bonds, including accrued interest. The issuance of the refunding bonds, their maturity, the rights of the bondholders, and the duties of the commissioner's office regarding refunding bonds are governed by the provisions of this subchapter relating to the original bonds, to the extent they are applicable, and by refunding statutes of general application not in conflict with this subchapter. (V.A.C.S. Art. 55g, Sec. 13(*o*).)

Sec. 15.059. Negotiable Instruments; Taxation Exemption

The bonds issued under this subchapter are negotiable instruments. The bonds, income from the bonds, and profit made on their sale are exempt from taxation within this state. (V.A.C.S. Art. 55g, Sec. 13(p).)

Sec. 15.060. Bonds as Authorized Investments or Deposit Security

(a) Bonds issued under this subchapter are legal and authorized investments for:

(1) banks;
(2) savings banks;
(3) trust companies;
(4) building and loan and savings and loan associations;
(5) insurance companies;
(6) fiduciaries;
(7) trustees;
(8) guardians; and
(9) sinking funds of political subdivisions and public agencies of the state, including cities, towns, villages, counties, and school districts.

(b) Bonds issued under this subchapter, when accompanied by all appurtenant unmatured coupons, are lawful and sufficient security for all deposits of funds of the state, an agency of the state, or a political subdivision, including a city, town, village, county, or school district, at the par value of the bonds. (V.A.C.S. Art. 55g, Secs. 13(q), (r).)

Sec. 15.061. Replacement of Bond

The commissioner may provide for the replacement of a mutilated, lost, or destroyed bond. (V.A.C.S. Art. 55g, Sec. 13(s).)

Sec. 15.062. Mandamus

The performance of the official duties of the comptroller and the treasurer may be enforced by mandamus or other appropriate proceeding. (V.A.C.S. Art. 55g, Sec. 13(n).)

[Sections 15.063–15.080 reserved for expansion]

SUBCHAPTER E. SPECIAL FUNDS

Sec. 15.081. Farm and Ranch Loan Security Fund

The farm and ranch loan security fund is created as provided by Article III, Section 50c, of the Texas Constitution. The commissioner may use the farm and ranch loan security fund only for payment to a lender in order to acquire interest in property purchased under a guaranteed family farm and ranch security loan or for payment adjustments. (V.A.C.S. Art. 55g, Secs. 14(a) (part), (b).)

Sec. 15.082. Interest and Sinking Fund

(a) The interest and sinking fund for farm and ranch loan security bonds is created to be used exclusively for:

(1) paying the principal of farm and ranch loan security bonds as they mature;

(2) paying interest on the bonds as it comes due; and

(3) paying exchange and collection charges in connection with bonds.

(b) Except as otherwise provided by this subsection, the comptroller of public accounts shall credit accrued interest received in the sale of bonds and income from investments of the loan security fund and the interest and sinking fund to the interest and sinking fund. If the accrued interest and income in any year exceeds the cost of paying principal and interest on farm and ranch loan security bonds and any exchange and collection charges, the comptroller shall transfer the amount in excess of those payments to the credit of the farm and ranch security fund for the purpose of financing payment adjustments.

(c) After all bonds have been paid, the comptroller shall transfer the balance of the interest and sinking fund to the credit of the farm and ranch loan security fund. (V.A.C.S. Art. 55g, Secs. 14(c), (d) (part), (e), (f).)

Sec. 15.083. Investment of Funds

(a) The commissioner may invest the farm and ranch loan security fund as authorized by Chapter 401, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252—5a, Vernon's Texas Civil Statutes).

(b) The commissioner may invest the interest and sinking fund only in direct obligations of the United States, certificates of deposit in Texas banks, or in obligations the principal and interest of which are guaranteed by the United States. (V.A.C.S. Art. 55g, Sec. 14(g).)

CHAPTER 16. ANTIFREEZE REGULATION

Section
16.001. Definitions
16.002. Registration of Antifreeze
16.003. Adulterated Antifreeze
16.004. Misbranded Antifreeze
16.005. Labeling Requirements
16.006. Antifreeze Standards
16.007. Inspection and Seizure of Antifreeze
16.008. Administration
16.009. Exceptions
16.010. Penalties

CHAPTER 16. ANTIFREEZE REGULATION

Sec. 16.001. Definitions

In this chapter:

(1) "Antifreeze" means a substance or preparation intended to be used as a cooling medium, or to be added to the cooling liquid, in the cooling system of an internal combustion engine to prevent freezing of the cooling liquid or to lower its freezing point.

(2) "Label" means written, printed, or graphic matter on the immediate or outside container of antifreeze.

(3) "Person" means an individual, partnership, corporation, or association. (V.A.C.S. Art. 165—6, Secs. 1(a), (b), (c), (e).)

Sec. 16.002. Registration of Antifreeze

(a) Before antifreeze may be sold, exposed for sale, or held with intent to sell in this state, it must be registered with the Department of Agriculture. The department shall register any antifreeze that is not adulterated or misbranded, as determined under Section 16.003 or 16.004 of this code. The department may not register an antifreeze that does not meet all requirements of this chapter.

(b) If the antifreeze is originally made, canned, or packed in this state, the original maker, canner, or packer, as applicable, shall apply for the registration. If the antifreeze is made, canned, or packed outside this state, the first receiver of the antifreeze in this state whose function is to distribute, sell, or consign the antifreeze to wholesalers or consumers shall apply for the registration. Regardless of where it is made, if the antifreeze is made by one person for another who is the original marketer of the antifreeze and who markets it under his or her own name or brand name, the original marketer shall apply for the registration.

(c) Each December, the person responsible for registration shall apply for registration and pay a registration fee of $20 for each brand of antifreeze to be sold. Unless canceled, the registration is valid for the following calendar year.

(d) A change in the name, brand, label, trademark, or contents of a registered antifreeze invalidates the registration. (V.A.C.S. Art. 165—6, Secs. 1(d), 2 (part).)

Sec. 16.003. Adulterated Antifreeze

Antifreeze is adulterated if:

(1) it consists in whole or in part of any substance that will render it injurious to the cooling system of an internal combustion engine or will make the operation of the engine dangerous to the user; or

(2) its strength, quality, or purity falls below the standard of strength, quality, or purity under which it is advertised and sold. (V.A.C.S. Art. 165—6, Sec. 1(g).)

Sec. 16.004. Misbranded Antifreeze

Antifreeze is misbranded if:

(1) there is a false or misleading representation that is on the container or wrapper or in the literature accompanying the antifreeze and that makes reference to the antifreeze or relates or refers to it for the purpose of inducing its sale; or

(2) in package form it does not bear a label on the outside of the package showing:

(A) the name and place of business of the manufacturer, packer, canner, seller, or distributor; and

(B) an accurate statement of the quantity of the contents in terms of weight or measure. (V.A.C.S. Art. 165—6, Secs. 1(f), (h).)

Sec. 16.005. Labeling Requirements

The label of each container of antifreeze shall show:

(1) the name, brand, or trademark of the product;

(2) the name and address of the person who registered the antifreeze;

(3) the net weight or measure of the contents of the package or can; and

(4) the chemical base, contents, or formula of the antifreeze, unless a statement of that is prohibited by federal law, rule, or regulation. (V.A.C.S. Art. 165—6, Sec. 3 (part).)

Sec. 16.006. Antifreeze Standards

The department, by rule, may establish standards for antifreeze. (V.A.C.S. Art. 165—6, Sec. 5 (part).)

Sec. 16.007. Inspection and Seizure of Antifreeze

(a) For the purpose of investigating violations of this chapter, the department is entitled to access to all places where antifreeze is sold, stored, transported, or held for sale. The department may inspect and take samples of any antifreeze found during an investigation.

(b) The department, without a warrant, may seize antifreeze if:

(1) the manufacture, transportation, sale, or use of the antifreeze is prohibited by this chapter; or

(2) it is manufactured, sold, used, transported, kept, or offered for sale, use, or transportation, or possessed with intent to sell, use, or transport in violation of any provision of this chapter or a rule adopted by the department under this chapter. (V.A.C.S. Art. 165—6, Sec. 4.)

Sec. 16.008. Administration

The department shall administer this chapter and may adopt rules necessary to its implementation. (V.A.C.S. Art. 165—6, Sec. 5 (part).)

Sec. 16.009. Exceptions

This chapter does not apply to:

(1) finished antifreeze that is in transit through this state or in storage in this state and is intended for sale outside this state;

(2) an antifreeze ingredient in transit or in storage intended for manufacturing, processing, mixing, packing, or canning in this state;

(3) a common or private carrier or warehouseman, or its employees, engaged in the lawful transportation or storage of antifreeze; or

(4) a public officer engaged in the performance of official duties. (V.A.C.S. Art. 165—6, Sec. 8.)

Sec. 16.010. Penalties

(a) A person commits an offense if the person:

(1) sells antifreeze that does not meet all of the requirements of this chapter;

(2) fails to include on a label information required by Section 16.005 of this code;

(3) sells antifreeze that is not registered in accordance with Section 16.002 of this code; or

(4) alters, adulterates, or changes the composition of any brand of registered antifreeze without prior approval by the department.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $10 nor more than $500. (V.A.C.S. Art. 165—6, Secs. 2 (part), 3 (part), 6, 7, 9.)

TITLE 3. AGRICULTURAL RESEARCH AND PROMOTION

CHAPTER 41. COMMODITY PRODUCERS BOARDS

SUBCHAPTER A. GENERAL PROVISIONS

Section

41.001. Policy
41.002. Definitions

[Sections 41.003–41.010 reserved for expansion]

SUBCHAPTER B. CERTIFICATION OF ORGANIZATIONS TO CONDUCT REFERENDUM AND ELECTION

41.011. Petition for Certification
41.012. Certification by Commissioner

[Sections 41.013–41.020 reserved for expansion]

SUBCHAPTER C. REFERENDA AND ELECTIONS

41.021. Certified Organization to Conduct Referendum and Election
41.022. Rules of Commissioner
41.023. Notice of Referendum and Election
41.024. Basis of Referendum and Election; Eligible Voters
41.025. Candidates for Board; Write-In Votes
41.026. Preparation and Distribution of Ballot
41.027. Expenses of Election

SUBCHAPTER C. REFERENDA AND ELECTIONS—Continued

Section
41.028. Exemptions for Producers
41.029. Void Ballots
41.030. Findings of Commissioner
41.031. Certification of Results
41.032. Subsequent Board Elections
41.033. Election of Board From Districts
41.034. Elections to Add New Territory

[Sections 41.035–41.050 reserved for expansion]

SUBCHAPTER D. ORGANIZATION, POWERS, AND DUTIES OF BOARDS

41.051. Board Established
41.052. State Agency
41.053. Organizational Meeting; Terms of Office
41.054. Officers; Bond
41.055. Vacancy
41.056. Majority Vote Requirement
41.057. Compensation
41.058. Powers and Duties
41.059. Budget; Annual Report; Audits
41.060. Depository Bank; Expenditure of Funds

[Sections 41.061–41.080 reserved for expansion]

SUBCHAPTER E. ASSESSMENTS

41.081. Collection of Assessment
41.082. Producer Exemption
41.083. Producer Refunds
41.084. Increase of Assessment
41.085. Discontinuance of Assessment

[Sections 41.086–41.100 reserved for expansion]

SUBCHAPTER F. REMEDIES AND PENALTIES

41.101. Failure to Remit Assessment
41.102. Suspension or Revocation of License
41.103. General Penalty
41.104. Use of Funds for Political Activity

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, dis-

ease and insect control, predator control, education, 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. (V.A.C.S. Art. 55c, Sec. 1.)

Sec. 41.002. Definitions

In this chapter:

(1) "Agricultural commodity" means an agricultural, horticultural, viticultural, or vegetable product, bees and honey, planting seed, 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 rice, flax, or cattle.

(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. (V.A.C.S. Art. 55c, Secs. 2, 2A (part).)

[Sections 41.003–41.010 reserved for expansion]

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 either a 6-member, 9-member, 12-member, or 15-member board. (V.A.C.S. Art. 55c, Sec. 3.)

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. (V.A.C.S. Art. 55c, Sec. 4.)

[Sections 41.013–41.020 reserved for expansion]

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. (V.A.C.S. Art. 55c, Secs. 5(a) (part), (b).)

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. (V.A.C.S. Art. 55c, Sec. 9 (part).)

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; and

(3) a description of the manner in which the assessment is to be collected and the proceeds administered and used.

(b) The notice under Subsection (a) of this section shall be published in one or more newspapers published and distributed within the boundaries described in the petition. The notice shall be published for not less than once a week for three consecutive weeks, beginning at least 60 days before the date of the election. In addition, at least 60 days before the date of the election the certified organization shall give direct written notice to each county agent in any county within the boundaries described in the petition. (V.A.C.S. Art. 55c, Secs. 6(a), (b).)

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. (V.A.C.S. Art. 55c, Secs. 8(a), (b).)

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. (V.A.C.S. Art. 55c, Secs. 7(a), (b) (part).)

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. (V.A.C.S. Art. 55c, Secs. 5(a) (part), 6(c), 7(b) (part), 9 (part).)

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. (V.A.C.S. Art. 55c, Sec. 8(c).)

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. (V.A.C.S. Art. 55c, Sec. 2A (part).)

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. (V.A.C.S. Art. 55c, Sec. 9 (part).)

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. (V.A.C.S. Art. 55c, Sec. 10.)

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. (V.A.C.S. Art. 55c, Sec. 11.)

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. (V.A.C.S. Art. 55c, Sec. 13(c).)

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. (V.A.C.S. Art. 55c, Sec. 15C.)

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. (V.A.C.S. Art. 55c, Sec. 17B.)

[Sections 41.035–41.050 reserved for expansion]

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. (V.A.C.S. Art. 55c, Sec. 12 (part).)

Sec. 41.052. State Agency

Each board is a state agency for all purposes and is exempt from taxation in the same manner and to the same extent as are other agencies of the state. (V.A.C.S. Art. 55c, Sec. 12 (part).)

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 of the members shall hold office for two years, one-third for four years, and one-third 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. (V.A.C.S. Art. 55c, Sec. 13(a).)

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. (V.A.C.S. Art. 55c, Sec. 13(b).)

Sec. 41.055. Vacancy

The board shall fill any vacancy on the board by appointment for the unexpired term. (V.A.C.S. Art. 55c, Sec. 13(d).)

Sec. 41.056. Majority Vote Requirement

A majority vote of all members present is necessary for an action of the board to be valid. (V.A.C.S. Art. 55c, Sec. 13(e).)

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. (V.A.C.S. Art. 55c, Sec. 13(f).)

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, and promotion designed to encourage the production, marketing, and use of the commodity on which the assessment is levied. (V.A.C.S. Art. 55c, Sec. 14 (part).)

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.

(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. (V.A.C.S. Art. 55c, Secs. 14 (part), 15B.)

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. (V.A.C.S. Art. 55c, Secs. 14A (part), 15(e).)

[Sections 41.061–41.080 reserved for expansion]

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. (V.A.C.S. Art. 55c, Secs. 15(a), (b), (c), (d).)

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. The processor shall include copies of the exemption requests 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. (V.A.C.S. Art. 55c, Sec. 14B.)

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. (V.A.C.S. Art. 55c, Sec. 15(f).)

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. (V.A.C.S. Art. 55c, Sec. 15A.)

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. (V.A.C.S. Art. 55c, Sec. 16.)

[Sections 41.086–41.100 reserved for expansion]

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 determines that a person has failed to remit to the board the 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; or

(2) request the attorney general, or the county or district attorney having jurisdiction, or both, to institute proceedings in the board's behalf.

(b) Suit under this section may be brought in a court of competent jurisdiction in either Travis County or the county in which the transaction occurred.

(c) This remedy is cumulative of other remedies provided by law. (V.A.C.S. Art. 55c, Secs. 17A(a), (c).)

Sec. 41.102. Suspension or Revocation of License

In addition to other remedies provided by law, a violation of any provision of Subchapters B–E of this chapter is grounds for suspension or revocation of any license or permit issued by the commissioner. The suspension or revocation shall be conducted in accordance with the procedures provided by law for suspension or revocation on the basis of other grounds. (V.A.C.S. Art. 55c, Secs. 17A(b), (c).)

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 misdemeanor punishable by:

(1) a fine of not less than $50 nor more than $200;

(2) confinement in the county jail for not less than 10 days nor more than 6 months; or

(3) both fine and confinement under this subsection. (V.A.C.S. Art. 55c, Sec. 17.)

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. (V.A.C.S. Art. 55c, Sec. 14A (part).)

CHAPTER 42. NATURAL FIBERS AND FOOD PROTEIN COMMISSION

Section

42.001. Policy
42.002. Organization
42.003. Administration
42.004. Powers and Duties
42.005. Natural Fibers Committee
42.006. Food Protein Committee
42.007. Executive Committee

CHAPTER 42. NATURAL FIBERS AND FOOD PROTEIN COMMISSION

Sec. 42.001. Policy

The policy of each state agency and each state educational institution involved in agriculture shall give equal emphasis to the production of, the increased use of, and the establishment of outlets for, farm products,

especially cotton, oilseed products, wool, mohair, and other textile products. (V.A.C.S. Art. 165—4a, Sec. 1.)

Sec. 42.002. Organization

(a) The Natural Fibers and Food Protein Commission is composed of:

(1) the chancellor of The Texas A & M University System;

(2) the president of The University of Texas at Austin;

(3) the president of Texas Tech University; and

(4) the president of Texas Woman's University.

(b) The Natural Fibers and Food Protein Commission is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act the commission is abolished and this chapter expires effective September 1, 1987. (V.A.C.S. Art. 165—4a, Secs. 2 (part), 2b.)

Sec. 42.003. Administration

(a) The members of the commission shall elect a chairman to serve for a term of two years.

(b) The commission shall meet at least once each year at a time designated by the chairman.

(c) Each member of the commission shall designate a person on his or her staff as a liaison officer to work with commission committees, commission staff, and agencies contracting or consulting with the commission.

(d) The commission may employ an executive director and necessary employees. The executive director shall coordinate the operations of the committees and staff personnel and shall oversee the work done for the commission by contracting or consulting agencies.

(e) Funds appropriated for the purpose of this chapter shall be expended at the direction of the commission on claims approved by a majority of the commission. (V.A.C.S. Art. 165—4a, Sec. 4; Art. 165—4b.)

Sec. 42.004. Powers and Duties

(a) The commission shall conduct 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) In performing its functions, the commission may contract with any state educational institution, state agency, or federal agricultural agency to perform services for the commission or for the use of the facilities of the agency. The commission may compensate the contracting agency from money appropriated for the purposes of this chapter.

(c) The commission may accept gifts and grants from the United States and from private sources for the purposes of this chapter, subject only to limitations contained in the gift or grant. (V.A.C.S. Art. 165—4a, Sec. 2 (part).)

Sec. 42.005. Natural Fibers Committee

(a) The chairman of the commission, with the approval of the commission, shall appoint not more than 25 persons to a natural fibers committee. Persons appointed to the committee must be representative of the interests of persons in the natural fibers industry.

(b) Members of the committee serve for terms of two years expiring on the last day of the state fiscal year in odd-numbered calendar years.

(c) The committee shall elect a chairman annually.

(d) The committee shall meet in January and July of each year at a time specified by the committee chairman for the purpose of:

(1) reviewing the research done for the commission in areas involving natural fibers; and

(2) making annual recommendations to the commission for implementation of programs and further research. (V.A.C.S. Art. 165—4a, Sec. 5(a).)

Sec. 42.006. Food Protein Committee

(a) The chairman of the commission, with the approval of the commission, shall appoint not more than 25 persons to a food protein committee. Persons appointed to the committee must be representative of the interests of persons in the food protein industry.

(b) Members of the committee serve for terms of two years expiring on the last day of the state fiscal year in odd-numbered calendar years.

(c) The committee shall elect a chairman annually.

(d) The committee shall meet in January and July of each year at a time specified by the committee chairman for the purpose of:

(1) reviewing the research done for the commission in areas involving food protein; and

(2) making annual recommendations to the commission for implementation of programs and further research. (V.A.C.S. Art. 165—4a, Sec. 5(b).)

Sec. 42.007. Executive Committee

(a) The executive committee of the commission is composed of:

(1) the chairman of the natural fibers committee;

(2) the chairman of the food protein committee; and

(3) five persons appointed by the chairman of the commission with approval of the commission.

(b) In making appointments to the committee, the chairman of the commission shall appoint one representative of the wool industry, one representative of the mohair industry, two representatives of the cotton industry, and one representative of the food protein industry.

(c) Members of the committee appointed by the chairman of the commission serve for terms of two years expiring on the last day of the state fiscal year in odd-numbered calendar years.

(d) The committee shall elect a chairman annually.

(e) The committee shall meet semiannually at times specified by the committee chairman. The chairman of the commission may call or authorize special meetings of the committee.

(f) At its meetings, the committee shall review the work of the commission and advise the commission on matters relating to the programs and budgets of the commission. (V.A.C.S. Art. 165—4a, Sec. 6.)

CHAPTER 43. COUNTY AND RAILWAY AGRICULTURAL EXPERIMENT FARMS AND STATIONS AND COUNTY DEMONSTRATION WORK

SUBCHAPTER A. COUNTY EXPERIMENT STATIONS

Section
43.001. Definitions
43.002. Establishment
43.003. Petition and Election Order
43.004. Application of General Election Law
43.005. Election Ballot
43.006. Election Returns
43.007. Acquisition of Property
43.008. Location
43.009. Supervision
43.010. Supplies and Improvements
43.011. Labor
43.012. Records
43.013. Annual Report
43.014. Public Inspection and Information
43.015. Sale of Products
43.016. Expenses
43.017. Lease of Station
[Sections 43.018–43.030 reserved for expansion]

SUBCHAPTER B. COUNTY DEMONSTRATION WORK

43.031. Demonstration Work
43.032. Terms of Agreement With Texas A & M University
43.033. Expenses
[Sections 43.034–43.050 reserved for expansion]

SUBCHAPTER C. RAILWAY EXPERIMENT FARMS

43.051. Establishment
43.052. Method of Acquisition
43.053. Number and Acreage Limitations

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. (New.)

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. (V.A.C.S. Art. 150.)

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. (V.A.C.S. Art. 151 (part).)

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. (V.A.C.S. Art. 151 (part).)

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." (V.A.C.S. Art. 151 (part).)

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. (V.A.C.S. Art. 152.)

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 Chapters 1 and 2 of Title 22, Revised Civil Statutes of Texas, 1925, as amended, 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. (V.A.C.S. Art. 153; Art. 163a, Secs. 1, 2.)

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. (V.A.C.S. Art. 154.)

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. (V.A.C.S. Arts. 155, 156 (part), 162 (part).)

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. (V.A.C.S. Art. 157.)

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. (V.A.C.S. Art. 158.)

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. (V.A.C.S. Art. 159.)

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. (V.A.C.S. Art. 160.)

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. (V.A.C.S. Art. 161.)

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. (V.A.C.S. Art. 162 (part).)

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. (V.A.C.S. Art. 163.)

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. (V.A.C.S. Art. 156 (part); Art. 163a, Sec. 3.)

[Sections 43.018–43.030 reserved for expansion]

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. (V.A.C.S. Art. 164 (part).)

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. (V.A.C.S. Art. 164 (part).)

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. (V.A.C.S. Art. 164 (part).)

[Sections 43.034–43.050 reserved for expansion]

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. (V.A.C.S. Art. 165 (part).)

Sec. 43.052. Method of Acquisition

A railway corporation may acquire a farm, orchard, or garden by lease or purchase. (V.A.C.S. Art. 165 (part).)

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. (V.A.C.S. Art. 165 (part).)

TITLE 4. AGRICULTURAL ORGANIZATIONS

CHAPTER 51. FARMERS' COOPERATIVE SOCIETIES

Section

51.001. Definition
51.002. Application of General Corporation Laws
51.003. Purpose
51.004. Powers
51.005. Assets
51.006. Area of Operation
51.007. Nonprofit Corporation; Division of Profits
51.008. Incorporators
51.009. Articles of Incorporation
51.010. Bylaws and Amendments to Articles of Incorporation
51.011. Copies of Articles, Amendments, and Bylaws; Filing With County Clerk
51.012. Membership
51.013. Voting
51.014. Membership Certificates
51.015. Notes as Subscription Contracts
51.016. Liability of Members
51.017. Withdrawal
51.018. Suspension; Expulsion
51.019. Contributors
51.020. Forms
51.021. Restriction on Use of Public Money for Incorporation
51.022. Name
51.023. Fees
51.024. Report
51.025. Exemption From Franchise Tax

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. (New.)

Sec. 51.002. Application of General Corporation Laws

The general corporation laws of the state govern societies unless those laws conflict with this chapter. (V.A.C.S. Art. 2516 (part).)

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. (V.A.C.S. Art. 2514 (part).)

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; and

(5) exercise any of the powers granted to cooperative marketing associations under Section 52.013 of this code.

(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. (V.A.C.S. Arts. 2515 (part), 2520, 5742—A.)

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. (V.A.C.S. Art. 2519 (part).)

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. (V.A.C.S. Art. 2515 (part).)

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. (V.A.C.S. Art. 2518 (part).)

Sec. 51.008. Incorporators

To be eligible to incorporate under this chapter, a person must be engaged in agricultural pursuits. (V.A.C.S. Art. 2514 (part).)

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. (V.A.C.S. Arts. 2516 (part), 2517 (part).)

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. (V.A.C.S. Arts. 2517 (part), 2523 (part).)

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. (V.A.C.S. Art. 2517 (part).)

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. (V.A.C.S. Arts. 2514 (part), 2515 (part), 2521 (part).)

Sec. 51.013. Voting

Each member of a society has one vote in the management of the society. (V.A.C.S. Art. 2521 (part).)

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. (V.A.C.S. Arts. 2519 (part), 2522 (part).)

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. (V.A.C.S. Art. 2519 (part).)

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. (V.A.C.S. Art. 2523 (part).)

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. (V.A.C.S. Art. 2522 (part).)

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. (V.A.C.S. Art. 2521 (part).)

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. (V.A.C.S. Art. 2514 (part).)

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. (V.A.C.S. Art. 2524.)

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. (V.A.C.S. Art. 2515 (part).)

Sec. 51.022. Name

The name of a society must contain the words, "Farmers' Cooperative Society." (V.A.C.S. Art. 2514 (part).)

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 $10. (V.A.C.S. Art. 2517 (part).)

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. (V.A.C.S. Art. 2518 (part).)

Sec. 51.025. Exemption From Franchise Tax

A society is not required to pay any annual franchise tax. (V.A.C.S. Art. 2518 (part).)

CHAPTER 52. COOPERATIVE MARKETING ASSOCIATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Section
52.001. Policy
52.002. Definitions
52.003. Nonprofit Organization
52.004. Application of General Corporation Laws
52.005. Associations Not in Restraint of Trade
[Sections 52.006–52.010 reserved for expansion]

SUBCHAPTER B. PURPOSE AND POWERS

52.011. Purposes
52.012. Restrictions
52.013. General Powers
52.014. Interest in Other Corporations
52.015. Contracts and Agreements With Other Associations
52.016. Marketing Contract
[Sections 52.017–52.030 reserved for expansion]

SUBCHAPTER C. INCORPORATION

52.031. Incorporators
52.032. Preliminary Investigation
52.033. Execution of Articles of Incorporation
52.034. Contents of Articles of Incorporation
52.035. Filing of Articles of Incorporation
52.036. Effect of Filing Articles of Incorporation
52.037. Amendment of Articles of Incorporation
52.038. Existing Corporations and Associations
[Sections 52.039–52.050 reserved for expansion]

SUBCHAPTER D. BYLAWS

52.051. Adoption
52.052. Contents
[Sections 52.053–52.060 reserved for expansion]

SUBCHAPTER E. MEMBERSHIP CERTIFICATES AND STOCK

52.061. Stock
52.062. Issuance of Membership Certificates
52.063. Issuance of Shares

SUBCHAPTER D. BYLAWS—Continued

Section
52.064. Common Stock
52.065. Preferred Stock
52.066. Stock Issued on Purchase of Property
[Sections 52.067–52.080 reserved for expansion]

SUBCHAPTER F. MEMBERS

52.081. Membership
52.082. New Members
52.083. Meetings
52.084. Notice of Meetings
52.085. Voting
52.086. Termination or Suspension of Membership
52.087. Liability of Members
[Sections 52.088–52.100 reserved for expansion]

SUBCHAPTER G. ADMINISTRATION

52.101. Board of Directors
52.102. Officers
52.103. Removal of Officer or Director
52.104. Bond
52.105. Referendum
[Sections 52.106–52.120 reserved for expansion]

SUBCHAPTER H. FOREIGN COOPERATIVES

52.121. Foreign Cooperative Considered Marketing Association
52.122. Permits to Do Business
[Sections 52.123–52.130 reserved for expansion]

SUBCHAPTER I. REMEDIES

52.131. Breach or Threatened Breach of Marketing Contract
52.132. Induced Breach of Marketing Contract; False Reports
[Sections 52133–52.150 reserved for expansion]

SUBCHAPTER J. FEES AND REPORTS

52.151. Fees
52.152. Annual Report

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. (V.A.C.S. Art. 5737.)

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. (V.A.C.S. Art. 5738 (part).)

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. (V.A.C.S. Art. 5738 (part).)

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. (V.A.C.S. Art. 5763 (part).)

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. (V.A.C.S. Art. 5762.)

[Sections 52.006–52.010 reserved for expansion]

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. (V.A.C.S. Art. 5740.)

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 but is restricted to an amount that is not greater than the value of the products that it handles for its members. (V.A.C.S. Arts. 5738 (part), 5742 (part).)

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; and

(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. (V.A.C.S. Arts. 5742 (part), 5763 (part).)

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. (V.A.C.S. Art. 5758.)

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. (V.A.C.S. Art. 5759.)

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. (V.A.C.S. Art. 5753 (part).)

[Sections 52.017–52.030 reserved for expansion]

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. (V.A.C.S. Art. 5739 (part).)

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. (V.A.C.S. Art. 5741.)

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. (V.A.C.S. Art. 5744 (part).)

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, which may not exceed 50 years;

(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. (V.A.C.S. Art. 5744 (part).)

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) The incorporators shall file a certified copy of the articles with the department.

(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. (V.A. C.S. Art. 5744 (part).)

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. (V.A.C.S. Art. 5744 (part).)

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.

(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 a majority vote of all members.

(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 three-fourths of the members.

(d) After an amendment is adopted, the amendment shall be filed in accordance with the general corporation laws of the state. (V.A.C.S. Arts. 5744 (part), 5745.)

Sec. 52.038. Existing Corporations and Associations

(a) 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;

(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; and

(3) filing articles of incorporation in accordance with the requirements of Section 52.035 of this code except that the entity's directors shall sign the articles.

(b) The filing fee for the articles filed under Subsection (a) of this section is equal to the filing fee for an amendment to the articles of incorporation as provided by Section 52.151 of this code. (V.A.C.S. Art. 5760.)

[Sections 52.039–52.050 reserved for expansion]

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) A majority vote of the members is necessary to adopt bylaws. (V.A.C.S. Art. 5746 (part).)

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. (V.A.C.S. Art. 5746 (part).)

[Sections 52.053–52.060 reserved for expansion]

SUBCHAPTER E. MEMBERSHIP CERTIFICATES AND STOCK

Sec. 52.061. Stock

A marketing association may be organized with or without capital stock. (V.A.C.S. Art. 5739 (part).)

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. (V.A.C.S. Art. 5750 (part).)

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. (V.A.C.S. Arts. 5743 (part), 5744 (part), 5750 (part).)

Sec. 52.064. Common Stock

(a) A stockholder may not own more than one-twentieth of a marketing association's issued common stock. A marketing association, 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. (V.A.C.S. Art. 5750 (part).)

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. (V.A.C.S. Art. 5750 (part).)

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. (V.A.C.S. Art. 5754.)

[Sections 52.067–52.080 reserved for expansion]

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. (V.A.C.S. Art. 5743 (part).)

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. (V.A.C.S. Art. 5744 (part).)

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. (V.A.C.S. Art. 5747 (part).)

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. (V.A.C.S. Art. 5747 (part).)

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;

(2) has its principal office in a county that has at least 500 acres of land planted in citrus groves; and

(3) includes as members one or more associations or groups organized on a cooperative basis.

(c) 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. (V.A.C.S. Art. 5750 (part).)

Sec. 52.086. Termination or Suspension of Membership

(a) In accordance with 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.

(b) If a member withdraws or is expelled from a marketing association, the board of directors shall:

(1) equitably and conclusively appraise the member's property interests in the association;

(2) fix the monetary amount of the interests; and

(3) before the first anniversary of the withdrawal or expulsion, pay to the member that amount. (V.A.C.S. Art. 5746 (part).)

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. (V.A.C.S. Art. 5750 (part).)

[Sections 52.088–52.100 reserved for expansion]

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. (V.A.C.S. Arts. 5744 (part), 5748).

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. (V.A.C.S. Art. 5749.)

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. (V.A.C.S. Art. 5751.)

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. (V.A.C.S. Art. 5757.)

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. (V.A.C.S. Art. 5752.)

[Sections 52.106–52.120 reserved for expansion]

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. (V.A.C.S. Art. 5738 (part).)

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. (V.A.C.S. Art. 5763 (part).)

[Sections 52.123–52.130 reserved for expansion]

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. (V.A.C.S. Art. 5753 (part).)

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. (V.A.C.S. Art. 5761.)

[Sections 52.133–52.150 reserved for expansion]

SUBCHAPTER J. FEES AND REPORTS

Sec. 52.151. Fees

(a) The fee for filing articles of incorporation under this chapter is $10.

(b) The fee for filing an amendment to the articles of incorporation under this chapter is $2.50.

(c) Each marketing association shall pay to the department an annual license fee of $10 but is exempt from all franchise or license tax. (V.A. C.S. Art. 5764.)

Sec. 52.152. Annual Report

(a) Each marketing association shall file an annual report with the department. The association shall prepare the report on forms furnished by the department.

(b) The report must contain:

(1) the name of the association;

(2) its principal place of business;

(3) a general statement of its business operations during the fiscal year;

(4) the amount of paid-up capital stock;

(5) if it is a stock association, the number of shareholders;

(6) if it is a nonstock association, the number of members and the amount of membership fees received;

(7) the total of the operation expenses for the fiscal year;

(8) the amount of its indebtedness or liability; and

(9) its balance sheets. (V.A.C.S. Art. 5755.)

CHAPTER 53. AGRICULTURE AND LIVESTOCK POOLS

Section

53.001. Definitions
53.002. Purpose
53.003. Incorporation
53.004. Corporation With Privileges of a Financial Pool
53.005. Bond to Do Business
53.006. Certification
53.007. Board of Directors
53.008. Officers
53.009. Officer's Bond
53.010. Borrowing
53.011. Loans
53.012. Amount of Loans to a Person
53.013. Term of Loan
53.014. Interest
53.015. Additional Security
53.016. Renewal of Loan
53.017. Liquidation of Loan; Sale of Collateral
53.018. Disposal of Warehouse Receipt
53.019. Total Amount of Loans
53.020. Warehouses and Concentration Places
53.021. Agent
53.022. Charges
53.023. Statements
53.024. Penalty

CHAPTER 53. AGRICULTURE AND LIVESTOCK POOLS

Sec. 53.001. Definitions

In this chapter:

(1) "Agricultural products" means farm, orchard, or dairy products. The term does not include livestock.

(2) "Financial pool" means an agricultural or livestock financial pool incorporated under this chapter.

(3) "Livestock" means cattle, sheep, goats, or swine. (V.A.C.S. Arts. 2486 (part), 2486a (part).)

Sec. 53.002. Purpose

A financial pool may be organized to borrow and lend money for:

(1) agricultural purposes; or

(2) raising, breeding, fattening, or marketing livestock. (V.A.C.S. Arts. 2485 (part), 2485a (part).)

Sec. 53.003. Incorporation

(a) Two or more persons may organize a financial pool under this chapter.

(b) An incorporator may be:

(1) a corporation;

(2) a state or national bank;

(3) a state or national trust company; or

(4) a cooperative association composed of persons who produce, or produce and market, staple agricultural produc or livestock, or both. (V.A.C.S. Arts. 2485 (part), 2485a (part).)

Sec. 53.004. Corporation With Privileges of a Financial Pool

(a) Three or more persons may incorporate for one or both of the following purposes:

(1) to grow, store, prepare for market, and market agricultural products; or

(2) to grow, fatten for market, and market livestock.

(b) A corporation organized under Subsection (a) of this section:

(1) may use the agricultural products or livestock, or both, as security for financing its business; and

(2) has all privileges of a financial pool in borrowing money to promote its business. (V.A.C.S. Arts. 2485 (part), 2485a (part).)

Sec. 53.005. Bond to Do Business

(a) Before doing business in the state, a financial pool shall furnish a bond in an amount equal to at least 10 percent of the capital stock of the pool.

(b) The bond must be conditioned on the faithful performance of the financial pool's duties and responsibilities.

(c) The bond must be approved by the commissioners court of the county in which:

(1) the financial pool is organized; or

(2) the home office of the pool is located.

(d) The financial pool must certify the bond to the department. (V.A.C.S. Art. 2494 (part).)

Sec. 53.006. Certification

The department shall issue to a financial pool a certificate of authority to do business under this chapter after the department:

(1) receives the bond required by Section 53.005 of this code;

(2) receives payment of a fee of $10; and

(3) determines that the bond is genuine. (V.A.C.S. Art. 2494 (part).)

Sec. 53.007. Board of Directors

(a) A board of directors shall manage a financial pool.

(b) To be eligible to serve as a director, a person must be a member of the financial pool.

(c) The board may employ a manager and other persons to conduct the business of the financial pool. (V.A.C.S. Arts. 2495 (part), 2495a (part).)

Sec. 53.008. Officers

(a) The board of directors of a financial pool shall elect the following officers of the pool:

(1) a president;

(2) a vice-president;

(3) a secretary; and

(4) a treasurer.

(b) The offices of secretary and treasurer may be held by one person.

(c) To be eligible to serve as an officer, a person must be a director. (V.A.C.S. Art. 2495 (part), 2495a (part).)

Sec. 53.009. Officer's Bond

(a) The secretary-treasurer and each officer in charge of management of the financial pool shall furnish to the pool a bond conditioned on the bonded person's faithful performance of his or her duties.

(b) The amount of the bond must be equal to at least five percent of the total capital stock and surplus of the financial pool.

(c) Until a person satisfies the requirements of this section, the directors of the financial pool may not permit the person to conduct the business of the pool. (V.A.C.S. Arts. 2495 (part), 2495a (part).)

Sec. 53.010. Borrowing

(a) A financial pool may borrow money.

(b) As security for the money it borrows, the financial pool may use the security given by persons who borrow money from it.

(c) The financial pool may cooperate with the federal reserve banks and the federal farm loan banks under the federal laws affecting farm credits. (V.A.C.S. Arts. 2487, 2497 (part), 2497a (part).)

Sec. 53.011. Loans

(a) A financial pool may make a loan only if:

(1) the loan is made to a person who produces, or produces and markets, staple agricultural products or livestock; and

(2) those agricultural products or livestock are collateral for the loan.

(b) Agricultural products that are stored in bonded licensed warehouses and for which an existing negotiable bonded warehouse receipt was issued under Chapter 7, Business & Commerce Code, may be used as collateral for a loan under this chapter.

(c) Agricultural products used as collateral for a loan made under this chapter shall be insured by a stock insurance company authorized to do business in the state for an amount that is not less than the full amount of the loan.

(d) If a financial pool makes a loan secured by livestock, the livestock may remain in the possession of the owner or an agent or representative of the owner.

(e) A financial pool may make a loan of money secured by a mortgage on livestock or by shipping documents issued for livestock in transit. (V.A.C.S. Arts. 2488, 2489 (part), 2489a (part).)

Sec. 53.012. Amount of Loans to a Person

At any time the total amount of all loans to a person that are secured by agricultural products may not exceed an amount equal to 75 percent of the market value of those products. (V.A.C.S. Arts. 2489 (part), 2489a (part).)

Sec. 53.013. Term of Loan

The maximum term for which a loan may be made by a financial pool is:

(1) twelve months if the collateral is agricultural products; or

(2) three years if the collateral is livestock. (V.A.C.S. Arts. 2498 (part), 2498a (part).)

Sec. 53.014. Interest

On loans made by a financial pool, the pool may not charge interest at a rate that is greater than the rate of interest that farm loan banks are charging financial pools plus 1½ percent a year. (V.A.C.S. Arts. 2489 (part), 2489a (part).)

Sec. 53.015. Additional Security

(a) At any time during the existence of a loan made by a financial pool, the pool may demand, as additional security, money in an amount equal to 75 percent of the market value of the collateral for the loan as determined on the date on which the loan was made, less the current market value of the collateral.

(b) The financial pool may sell all or part of the collateral if the borrower fails to provide money in accordance with Subsection (a) of this section.

(c) The financial pool shall credit all money received under Subsection (a) of this section to the account of the borrower and shall take the money into account when the loan is liquidated. (V.A.C.S. Arts. 2486 (part), 2486a (part), 2492.)

Sec. 53.016. Renewal of Loan

A loan made by a financial pool may be renewed if the renewal is conditioned on one or both of the following:

(1) a new and agreed valuation of the collateral; or

(2) receipt by the pool of additional security. (V.A.C.S. Arts. 2498 (part), 2498a (part).)

Sec. 53.017. Liquidation of Loan; Sale of Collateral

(a) A borrower may liquidate a loan made under this chapter at any time during the contract period of the loan by settlement of all claims of the financial pool against the borrower.

(b) When a loan made by a financial pool is satisfied, the pool shall deliver to the borrower a final receipt of settlement.

(c) If collateral is sold, the financial pool shall deliver any negotiable warehouse receipt to its maker and the receipt shall be canceled as provided by the laws of this state. (V.A.C.S. Arts. 2493 (part), 2497 (part), 2497a (part).)

Sec. 53.018. Disposal of Warehouse Receipt

Except as provided by this chapter, a person may not dispose of a negotiable bonded warehouse receipt that is:

(1) given to a financial pool as security for a loan; or

(2) held by the pool pending the sale of the collateral represented by the receipt. (V.A.C.S. Arts. 2499, 2499a.)

Sec. 53.019. Total Amount of Loans

The total amount of loans made by a financial pool that are outstanding at any time may not exceed an amount equal to 10 times the total of the capital stock and surplus of the pool. (V.A.C.S. Art. 2493 (part).)

Sec. 53.020. Warehouses and Concentration Places

A financial pool may:

(1) own, maintain, and operate bonded and licensed warehouses if warehouses are necessary to conduct its business; and

(2) own or maintain concentration places, including railroad sidings. (V.A.C.S. Art. 2491.)

Sec. 53.021. Agent

A financial pool may be an agent for a borrower in the sale of collateral for a loan it has made. (V.A.C.S. Arts. 2490 (part), 2490a (part).)

Sec. 53.022. Charges

(a) A financial pool may charge a reasonable fee as commission for its service as an agent in the sale of collateral. The commission on cotton may not exceed 50 cents for each bale sold.

(b) If a financial pool operates a bonded and licensed warehouse, it may charge fees for:

(1) storage;

(2) taking and handling samples; and

(3) insurance. (V.A.C.S. Arts. 2490 (part), 2490a (part).)

Sec. 53.023. Statements

On January 1, April 1, July 1, and October 1 of each year, each financial pool shall file with the department a sworn statement stating:

(1) the amount of business done;

(2) the number of negotiable receipts on which loans have been made and the value of the products represented by the receipts;

(3) the total amount of the loans;

(4) the total amount of the pool's obligations;

(5) the persons to whom the pool's obligations are due;

(6) the amount of interest paid by the pool on its obligations;

(7) the number of sales made for its clients;

(8) the gross receipts for each sale;

(9) the amount of the commission charged on each sale; and

(10) the number and value of all livestock mortgages and other security. (V.A.C.S. Arts. 2496, 2496a.)

Sec. 53.024. Penalty

(a) A person commits an offense if the person violates any provision of this chapter.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not less than $25 nor more than $1,000;

(2) confinement in jail for not less than one year; or

(3) both fine and confinement under this subsection. (V.A.C.S. Art. 2499b.)

CHAPTER 54. MUTUAL LOAN CORPORATIONS

Section
54.001. Purpose
54.002. Powers
54.003. Incorporators
54.004. Capital Stock Requirement for Incorporation
54.005. Capital Stock
54.006. Investment by Other Corporations
54.007. Investment of Capital
54.008. Ratio of Capital to Loans
54.009. Loans and Discounts
54.010. Liability of Shareholder
54.011. Repurchase of Stock
54.012. Reports
54.013. Exemption From Franchise Tax

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. (V.A.C.S. Art. 2500 (part).)

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. (V.A.C.S. Art. 2501.)

Sec. 54.003. Incorporators

Ten or more persons, five of whom are citizens of this state, may form a corporation under this chapter. (V.A.C.S. Art. 2500 (part).)

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. (V.A.C.S. Art. 2502 (part).)

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. (V.A.C.S. Art. 2502 (part).)

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. (V.A.C.S. Art. 2502 (part).)

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. (V.A.C.S. Art. 2502 (part).)

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. (V.A.C.S. Art. 2503 (part).)

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. (V.A.C.S. Arts. 2503 (part), 2504 (part), 2507.)

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. (V.A.C.S. Art. 2506.)

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. (V.A.C.S. Art. 2504 (part).)

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. (V.A.C.S. Art. 2505 (part).)

Sec. 54.013. Exemption From Franchise Tax

Corporations formed under this chapter are not required to pay franchise taxes. (V.A.C.S. Art. 2505 (part).)

CHAPTER 55. COOPERATIVE CREDIT ASSOCIATIONS

Section

55.001. Powers
55.002. Incorporators
55.003. Articles of Incorporation
55.004. Capital Stock
55.005. Loans
55.006. Ratio of Capital to Loans
55.007. Repurchase of Stock
55.008. Reports
55.009. Fees
55.010. Exemption From Franchise Tax

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 discount-

ed 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. (V.A.C.S. Art. 2509.)

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. (V.A.C.S. Art. 2508.)

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. (V.A.C.S. Art. 2511 (part).)

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. (V.A.C.S. Art. 2510 (part).)

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. (V.A.C.S. Art. 2511 (part).)

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. (V.A.C.S. Art. 2510 (part).)

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. (V.A.C.S. Art. 2513.)

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. (V.A.C.S. Art. 2512 (part).)

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. (V.A.C.S. Arts. 2511 (part), 2512 (part).)

Sec. 55.010. Exemption From Franchise Tax

Except as provided by Section 55.009 of this code, associations formed under this chapter are exempt from all franchise or other license taxes. (V.A.C.S. Art. 2512 (part).)

CHAPTER 56. AGRICULTURAL FINANCE CORPORATIONS

Section

56.001. Definitions
56.002. Purpose
56.003. Assets Represented by Acceptances of Banking Corporations
56.004. Capital Stock
56.005. Investment of Capital
56.006. Limit of Indebtedness
56.007. Stock Ownership
56.008. Regulation by Banking Commissioner

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. (V.A.C.S. Art. 1515.)

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. (V.A.C.S. Art. 1514.)

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. (V.A.C.S. Art. 1516 (part).)

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. (V.A.C.S. Art. 1516 (part).)

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. (V.A.C.S. Art. 1516 (part).)

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. (V.A.C.S. Art. 1517.)

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. (V.A.C.S. Art. 1518.)

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. (V.A.C.S. Art. 1519.)

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

Section

61.001. Definitions
61.002. Administration; Rules
61.003. Classification of Seeds
61.004. Labeling of Agricultural Seed
61.005. Labeling of Vegetable Seed
61.006. Labeling of Treated Seed
61.007. Certified Seed
61.008. Noxious Weed Content
61.009. Germination and Purity Testing
61.010. Inspection of Seed
61.011. Agricultural Seed Inspection Fee and Permit
61.012. Cancellation or Revocation of Agricultural Seed Permit
61.013. Vegetable Seed License
61.014. Stop-Sale Order
61.015. Seizure of Seed Not in Compliance
61.016. Exceptions
61.017. Prosecutions
61.018. Penalties

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. (V.A.C.S. Art. 93b, Sec. 2(a) (part).)

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:

(1) publish a description of the proposed action or the text of the proposed rules or amendments in three newspapers of general circulation throughout the state for three consecutive weeks; and

(2) 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) Immediately after adopting a rule under Section 61.003, 61.006, or 61.008 of this code, the department shall give public notice of the rule in the manner provided by Subsection (b)(1) of this section. The department shall make available copies of the rule to any person who requests a copy.

(e) The department may cooperate with the United States Department of Agriculture in the enforcement of seed law. (V.A.C.S. Art. 93b, Secs. 2(a) (part), 2(b) (part), 3a (part), 6(a) (part), 6(b) (part), 7(g), 10 (part).)

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. (V.A.C.S. Art. 93b, Sec. 2(b) (part).)

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. (V.A.C.S. Art. 93b, Secs. 3 (part), 4(b) (part).)

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 percentage of purity;

(5) the germination and the date of the test to determine germination;

(6) the name and number of noxious weed seeds per pound; and

(7) 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. (V.A.C.S. Art. 93b, Sec. 3 (part).)

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. (V.A.C.S. Art. 93b, Secs. 2(a) (part), 3a (part).)

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. (V.A.C.S. Art. 93b, Sec. 4(a) (part).)

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. (V.A.C.S. Art. 93b, Sec. 2(b) (part).)

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. (V.A.C.S. Art. 93b, Secs. 4(a) (part), 6(b) (part).)

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. (V.A.C.S. Art. 93b, Secs. 6(a) (part), (b) (part).)

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 of $10 or an amount equal to 10 percent of the amount of fee due, whichever is greater.

(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. (V.A.C.S. Art. 93b, Secs. 7(a) (part), (b), (c), (d) (part), (e), (f).)

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. (V.A.C.S. Art. 93b, Sec. 7(d) (part).)

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 August 31 of each year.

(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. (V.A.C.S. Art. 93b, Sec. 7A.)

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. (V.A.C.S. Art. 93b, Sec. 6(b) (part).)

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 re-

lease of the seed or for permission to condition or relabel the seed to bring it into compliance with this chapter. (V.A.C.S. Art. 93b, Sec. 8.)

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. (V.A.C.S. Art. 93b, Secs. 5(a), (c); Art. 93c.)

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. (V.A.C.S. Art. 93b, Sec. 9 (part).)

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 misdemeanor punishable by a fine not exceeding $50, unless the accused has been previously convicted of a similar offense, in which case the fine may not exceed $200.

(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. (V.A.C.S. Art. 93b, Secs. 4, 5(b), 9 (part).)

CHAPTER 62. SEED AND PLANT CERTIFICATION

Section

62.001. Definitions
62.002. State Seed and Plant Board
62.003. Classes of Certified Seed
62.004. Eligibility for and Standards of Certification
62.005. Licensing of Producers of Foundation, Registered, or Certified Seed
62.006. Registration of Plant Breeders
62.007. Protection of Foundation, Registered, and Certified Cotton Varieties
62.008. Certification of Seed and Plants
62.009. Seed and Plants From Outside the State
62.010. Revocation of Registration, License, or Certification
62.011. Penalties

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. (V.A.C.S. Art. 67b, Sec. 2 (part).)

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 six members appointed by the governor with the advice and consent of the senate. Membership must include:

(1) one individual from the Soils and Crop Sciences Department, Texas Agricultural Experiment Station, Texas A & M University;

(2) one individual from the Department of Plant and Soil Sciences, Texas Tech University;

(3) one individual licensed as a Texas Foundation, Registered, or Certified seed or plant producer who is not employed by a public institution;

(4) one individual who sells Texas Foundation, Registered, or Certified seed or plants;

(5) one individual 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 board annually shall elect a chairman, vice-chairman, and secretary. The board shall meet at times and places determined by the chairman.

(e) The State Seed and Plant Board is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act the board is abolished, and this chapter expires effective September 1, 1987. (V.A.C.S. Art. 67b, Sec. 3.)

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. (V.A.C.S. Art. 67b, Sec. 2 (part).)

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. (V.A.C.S. Art. 67b, Sec. 4(a).)

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. (V.A.C.S. Art. 67b, Secs. 4(b), (c), (d).)

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 nonrefundable registration fee of not more than $100, 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. (V.A.C.S. Art. 67b, Sec. 5.)

Sec. 62.007. Protection of Foundation, Registered, and Certified Cotton Varieties

(a) The board shall adopt rules governing the registration for certification eligibility of newly developed varieties of cotton. A person desiring to register a new variety of cotton shall apply for registration to the board on forms prescribed by the board. To obtain registration for a new variety of cotton, a person must satisfy the board that the cotton to be registered is a distinct new variety and must meet board requirements regulating control of production, maintenance, and handling of the cotton for genetic purity and identity.

(b) On issuance of a certificate of registration for a new cotton variety, the board shall notify the department of the eligibility for certification of seed of the variety.

(c) After issuance of a certificate of registration for a new cotton variety, a person may not use the name given the new variety by the registrant in the sale of noncertified cottonseed for a period of 17 years from the date of issuance of the certificate of registration. This subsection does not apply to a variety for which an application is pending for United States plant variety protection, not specifying sale by variety name only as a class of certified seed, nor to a variety for which a certificate has been issued for United States plant variety protection, not specifying sale by variety name only as a class of certified seed.

(d) This section does not require registration of new varieties of cotton. On 10 days' notice to the board, a person may withdraw from the operation of this section a cotton variety previously registered to that person.

(e) This section does not prohibit contracts between a registrant and seedmen or farmers for the production or sale of certified seed of the new cotton variety.

(f) This section does not prohibit one farmer from selling to another farmer cottonseed of a new variety grown on his or her own farm in accordance with Section 61.016(c) of this code.

(g) If the board determines that a critical situation exists because rain, hail, drouth, insects, or other natural elements beyond producers' control have reduced the supply of planting seed of a registered cotton variety, the board may hold a public hearing to determine the extent of the emergency. The board shall publish notice of the time, place, and nature of the hearing in at least three newspapers of general circulation in the state at least seven days before the hearing. At the hearing and after presentation of evidence from interested parties, the board may allow noncertified seed grown from certified seed of the variety in which a shortage exists to be sold by variety name for that crop year only. This subsection does not apply to a variety for which an application is pending for United States plant variety protection, specifying sale by variety

name only as a class of certified seed, nor to a variety for which a certificate has been issued for United States plant variety protection, specifying sale by variety name only as a class of certified seed.

(h) This section does not apply to seeds marketed or approved for certification eligibility before September 1, 1969. (V.A.C.S. Art. 67b, Sec. 6.)

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 from persons nominated by the board 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, who is registered as a plant breeder, or who has a certificate of registration for a cotton variety is eligible to have seed or plants of an eligible class and variety certified by the department. On request by a licensed producer, registered plant breeder, or registrant of a cotton variety 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 board 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. (V.A.C.S. Art. 67b, Secs. 7, 8.)

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. (V.A.C.S. Art. 67b, Sec. 9.)

Sec. 62.010. Revocation of Registration, License, or Certification

(a) If an inspector reports to the department that a registered plant breeder or licensed producer of Foundation, Registered, or Certified seed or plants has made exaggerated claims for products or has failed 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, the department may give written notice to the breeder or producer of the time and place of a revocation hearing to be held by the department not later than the 10th day following the day on which notice is issued.

(b) If at the hearing, the department finds that the registered plant breeder or licensed producer has made exaggerated claims or has violated any rule for the production and maintenance of the certified class of seed or plants involved, the department may revoke the registration or license and order the cancellation and withdrawal of all appropriate certification labels previously issued for the seed or plants.

(c) A registered plant breeder or licensed producer whose registration or license has been revoked and whose certification labels have been canceled and withdrawn may appeal the action to the board by filing a notice of appeal with the department within 30 days of the revocation. The department shall report the notice of appeal to the board, which shall give written notice of the time and place for an appeal hearing to the appellant. The hearing on appeal may not be less than 10 nor more than 30 days after the day on which notice of appeal is filed with the department. If the department's action is reversed at the appeal hearing, the board shall direct the department to reinstate the registration or license and reissue certification labels for seed or plants for which labels were previously canceled and withdrawn. (V.A.C.S. Art. 67b, Sec. 11.)

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), or (a)(6) of this section is a misdemeanor punishable by:

(1) a fine of not less than $10 nor more than $100;

(2) confinement in county jail for not more than 30 days; or

(3) both fine and confinement under this subsection.

(c) An offense under Subsection (a)(3) or (a)(4) 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 more than 60 days; or

(3) both fine and confinement under this subsection.

(d) An offense under Subsection (a)(5) of this section is a misdemeanor punishable by a fine of not more than $1,000. (V.A.C.S. Art. 67b, Secs. 10, 13.)

CHAPTER 63. COMMERCIAL FERTILIZER

SUBCHAPTER A. GENERAL PROVISIONS

Section
63.001. Definitions
63.002. Commercial Fertilizer
63.003. Administration
63.004. Rules
63.005. Publications
63.006. Sales Among Manufacturers

[Sections 63.007–63.020 reserved for expansion]

SUBCHAPTER B. GRADES

63.021. Grade Statements
63.022. Grade Lists

[Sections 63.023–63.030 reserved for expansion]

SUBCHAPTER C. REGISTRATION

63.031. Registration Required
63.032. Application for Registration
63.033. Term
63.034. Fertilizers Ineligible for Registration
63.035. Refusai or Cancellation

[Sections 63.036–63.050 reserved for expansion]

SUBCHAPTER D. LABELING

Section
63.051. Required Label
63.052. Misleading Label
63.053. Label Restrictions

[Sections 63.054–63.070 reserved for expansion]

SUBCHAPTER E. FEES

63.071. Inspection Fee
63.072. Quarterly Tonnage Report and Inspection Fee Payment
63.073. Collection Fee for Late Payment
63.074. Records; Additional Reports; Audits
63.075. Disposition and Use of Fees

[Sections 63.076–63.090 reserved for expansion]

SUBCHAPTER F. INSPECTION, SAMPLING, AND ANALYSIS

63.091. Inspection and Sampling; Entry Power
63.092. Procedure for Sampling and Analysis
63.093. Identification of Sample
63.094. Independent Analysis of Sample
63.095. Testing of Samples on Request

[Sections 63.096–63.120 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT; REMEDIES

63.121. Detention of Fertilizer
63.122. Condemnation of Detained Fertilizer
63.123. Warnings
63.124. Suit to Recover Fees
63.125. Prosecutions
63.126. Appeal of Administrative Order or Ruling

[Sections 63.127–63.140 reserved for expansion]

SUBCHAPTER H. PENALTIES

63.141. General Penalty
63.142. Distribution of Misbranded Fertilizer
63.143. Distribution of Adulterated Fertilizer

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, barrel, tank, 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) "Director" means the director of the program appointed under Section 63.003 of this code.

(6) "Distribute" means sell, offer for sale, expose for sale, consign for sale, barter, exchange, transfer possession or title, or otherwise supply.

(7) "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 the excreta of an animal, plant remains, or a mixture of those substances, for which no grade claim is made other than to identify the product.

(8) "Grade" means the percentages by avoirdupois weight of total nitrogen, available phosphoric acid (P_2O_5), and soluble potash (K_2O) guaranteed in a fertilizer.

(9) "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 the excreta of an animal, plant remains, or a mixture of those substances, for which no grade claim is made other than to identify the product.

(10) "Manipulated manure" means a substance composed of the excreta of an animal, plant remains, or a mixture of those substances, for which a grade claim is made for a purpose in addition to identification of the product.

(11) "Official sample" means a sample taken by the director and designated as official by the director.

(12) "Registrant" means a person who registers a commercial fertilizer under this chapter.

(13) "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 the excreta of an animal, plant remains, or a mixture of those substances, for which no grade claim is made other than to identify the product. (V.A.C.S. Art. 108a, Secs. 2(1) (part), (2), (3), (5)–(8), (9) (part), (10), (12)–(18); new.)

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; or

(3) 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) The excreta of an animal, plant remains, or mixtures of those substances, are not commercial fertilizers subject to this chapter if no claim of grade is made for the substance or mixture.

(d) A plant food element or additive other than nitrogen, phosphorus, or potassium, determinable by an acceptable 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. (V.A.C.S. Art. 108a, Secs. 2(4), 4(c) (part).)

Sec. 63.003. Administration

(a) This chapter is administered by a director appointed by the board.

(b) The office of the director is in College Station.

(c) The board may appoint a state chemist to whom the director may delegate the responsibility to make chemical analyses and tests required by this chapter.

(d) The director may delegate responsibilities or powers under this chapter to representatives. (V.A.C.S. Art. 108a, Secs. 2(1) (part), 3, 6(a) (part).)

Sec. 63.004. Rules

Following a public hearing, the director may adopt rules relating to the distribution of commercial fertilizers that the director finds necessary to carry into full effect the intent and meaning of this chapter. (V.A.C.S. Art. 108a, Sec. 13.)

Sec. 63.005. Publications

(a) At least annually, the director shall publish:

(1) information concerning the sales of commercial fertilizers, together with data on those sales that the director 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; and

(3) a financial statement showing the receipt and expenditure of funds under this chapter.

(b) The director 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. (V.A.C.S. Art. 108a, Sec. 14.)

Sec. 63.006. Sales Among Manufacturers

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. (V.A.C.S. Art. 108a, Sec. 15.)

[Sections 63.007–63.020 reserved for expansion]

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. (V.A.C.S. Art. 108a, Sec. 2(9) (part).)

Sec. 63.022. Grade Lists

Following a hearing held before or as early as practicable after June 30 each year, the director shall adopt and publish a list of the ratio or minimum grades of mixed fertilizers that the director considers adequate to meet the agricultural needs of this state. (V.A.C.S. Art. 108a, Sec. 7.)

[Sections 63.023–63.030 reserved for expansion]

SUBCHAPTER C. REGISTRATION

Sec. 63.031. Registration Required

(a) Before distributing a brand or grade of commercial fertilizer in this state, a person shall register the fertilizer with the director.

(b) A person is not required to register a brand or grade of commercial fertilizer that has been registered by another person. (V.A.C.S. Art. 108a, Secs. 4(a) (part), (d).)

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 distribution;

(2) the brand and grade;

(3) the guaranteed analysis, listing the minimum percentage by avoirdupois weight of plant nutrients claimed, including a listing of the following elements in the following order and form:

Total Nitrogen ....._____percent
Available Phosphoric Acid (P_2O_5) ....._____percent
Soluble Potash (K_2O) ....._____percent

(4) the sources from which the nitrogen, phosphorus, and potassium are derived; and

(5) a copy of the label required under Subchapter D of this chapter, including any symbol, design, or trademark.

(b) The guaranteed analysis of unacidulated mineral phosphatic materials and basic slag shall guarantee both the total 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.

(c) The director may prescribe and furnish forms for registration of commercial fertilizers under this chapter. (V.A.C.S. Art. 108a, Secs. 2(11), 4(a) (part), (b) (part), (c) (part).)

Sec. 63.033. Term

A registration of a commercial fertilizer is permanent unless:

(1) the director or the registrant cancels the registration; or

(2) the director requires new registration. (V.A.C.S. Art. 108a, Sec. 4(a) (part).)

Sec. 63.034. Fertilizers Ineligible for Registration

(a) The director may not register a mixed fertilizer in which the sum of the guarantees for nitrogen, phosphorus as available phosphoric acid, and potassium as potash is less than 24 percent by avoirdupois weight unless the fertilizer is a manipulated manure, specialty fertilizer, or commercial fertilizer that is sold only for its content of secondary components.

(b) The director may not register a fertilizer that contains a pesticide as defined by Chapter 76 of this code unless the pesticide has first been registered in accordance with that chapter. (V.A.C.S. Art. 108a, Secs. 4(e), (f).)

Sec. 63.035. Refusal or Cancellation

(a) The director may refuse to register a commercial fertilizer that is not in compliance with this chapter or a rule adopted under this chapter.

(b) Following a hearing, the director may cancel the registration of a commercial fertilizer if the director finds that:

(1) the commercial fertilizer is in violation of a provision of this chapter;

(2) the registrant has failed to comply with a provision of this chapter or a rule adopted under this chapter; or

(3) the registrant has used fraudulent or deceptive practices in attempted evasion of this chapter or a rule adopted under this chapter.

(c) The director shall cancel all registrations of fertilizers of any person who fails to comply with Subchapter E of this chapter. (V.A.C.S. Art. 108a, Secs. 4(a) (part), 6(g), 11(e).)

[Sections 63.036–63.050 reserved for expansion]

SUBCHAPTER D. LABELING

Sec. 63.051. Required Label

(a) Each packaged or bulk commercial fertilizer distributed in this state must have a label with the following information:

(1) the net weight of the package or lot; and

(2) the information required under Sections 63.032(a)(1), (a)(2), (a)(3), (a)(5) if applicable, and (b) of this code.

(b) The label required by this section shall be affixed to the container or printed on the side of the container in which a packaged commercial fertilizer is distributed. If the commercial fertilizer is distributed in bulk, the label shall be on or attached to the invoice or delivery ticket of the lot. (V.A.C.S. Art. 108a, Sec. 5.)

Sec. 63.052. Misleading Label

The label of a commercial fertilizer may not be misleading in any particular. (V.A.C.S. Art. 108a, Sec. 4(b) (part).)

Sec. 63.053. Label Restrictions

Except as authorized by this chapter or a rule of the director, the label of a commercial fertilizer may not advertise, name, promote, emphasize, or otherwise direct attention to:

(1) 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) one or more components or ingredients in the product to the exclusion of other components or ingredients;

(3) a constituent or element of a component or ingredient; or

(4) another manufacturer or person or a product of another manufacturer or person. (V.A.C.S. Art. 108a, Sec. 4(b) (part).)

[Sections 63.054–63.070 reserved for expansion]

SUBCHAPTER E. FEES

Sec. 63.071. Inspection Fee

(a) For each state fiscal year, the registrant of a commercial fertilizer shall pay to the director an inspection fee of 25 cents per ton of commercial fertilizer distributed in this state or $25, whichever is greater. The registrant shall pay the fee at the director's office.

(b) 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. (V.A.C.S. Art. 108a, Sec. 6(a) (part).)

Sec. 63.072. Quarterly Tonnage Report and Inspection Fee Payment

(a) The person responsible for paying the inspection fee shall file with the director a quarterly sworn report setting forth the tonnage of each commercial fertilizer that the person 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) A quarterly tonnage report and inspection fee payment is due before the 31st day following the last day of November, February, May, and August.

(c) The quarterly tonnage report shall be made on forms prescribed and furnished by the director. (V.A.C.S. Art. 108a, Secs. 6(a) (part), (c).)

Sec. 63.073. Collection Fee for Late Payment

(a) If a person does not pay the inspection fee before the 31st day following the last day of a quarter, the registrant shall pay an additional collection fee equal to 10 percent of the inspection fee due or $10, whichever is greater.

(b) A collection fee, together with the inspection fee, is due before the 41st day following the last day of a quarter. The director shall cancel the registration of a registrant who fails to pay the collection and inspection fees within that time period. (V.A.C.S. Art. 108a, Sec. 6(a) (part).)

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 quarterly tonnage reports, the director may require each registrant to maintain records or file additional reports.

(b) The director 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 director may require a registrant to retain records for a period longer than two years if the director 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 director 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. (V.A.C.S. Art. 108a, Secs. 6(a) (part), (d), (e).)

Sec. 63.075. Disposition and Use of Fees

(a) The director shall deposit fees collected under this subchapter in the same manner as other local institutional funds of Texas A & M University. 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. (V.A.C.S. Art. 108a, Sec. 6(b).)

[Sections 63.076–63.090 reserved for expansion]

SUBCHAPTER F. INSPECTION, SAMPLING, AND ANALYSIS

Sec. 63.091. Inspection and Sampling; Entry Power

In order to determine if fertilizer is in compliance with this chapter, the director is entitled to:

(1) enter during regular business hours and inspect any place of business, 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. (V.A.C.S. Art. 108a, Sec. 8(a) (part).)

Sec. 63.092. Procedure for Sampling and Analysis

The director by rule shall prescribe the procedures for sampling and analysis of commercial fertilizers. The procedures must be in accordance with the official methods of the Association of Official Analytical Chemists or other methods that the director considers authentic by research and investigation. (V.A.C.S. Art. 108a, Secs. 8(a) (part), (c).)

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 director. In addition, a report shall be sent to the director stating:

(1) the name or brand of commercial fertilizer sampled;
(2) the serial number of the sample;

(3) the guarantor of the sample;
(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 director is entitled to examine and copy any invoice, transportation record, or other record pertaining to the lot. (V.A.C.S. Art. 108a, Secs. 8(b), (d).)

Sec. 63.094. Independent Analysis of Sample

(a) If the director finds through chemical analysis or other method that a commercial fertilizer is in violation of a provision of this chapter, the director shall notify the manufacturer or other person who caused the fertilizer to be distributed and the consignee. The notice must be in writing and give full details of the director's findings.

(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 director submit portions of the sample analyzed to other chemists for independent analysis. After receiving a request, the director shall submit two portions of the sample analyzed to two qualified chemists selected by the director. If requested, the director shall also submit one portion of the sample to the person requesting independent analysis. A request under this subsection must be filed with the director before the 16th day following the day on which notice is given.

(c) Each of the chemists selected by the director under Subsection (b) of this section shall analyze the portion of the sample and certify findings to the director under oath. The findings shall be prepared in duplicate and the director 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) The person requesting independent analysis under this section shall pay the costs of the analysis. (V.A.C.S. Art. 108a, Sec. 8(e).)

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. (V.A.C.S. Art. 108a, Sec. 8(f).)

[Sections 63.096–63.120 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT; REMEDIES

Sec. 63.121. Detention of Fertilizer

(a) If the director has reasonable cause to believe that a commercial fertilizer is being distributed in violation of a provision of this chapter, the director shall affix to the container of the fertilizer a written notice showing:

(1) a statement that the fertilizer has been detained; and

(2) a warning to all persons not to dispose of the fertilizer in any manner until the director or a court gives permission or until the detainer notice expires.

(b) If the director finds that a detained commercial fertilizer is not in violation of this chapter, the director shall immediately remove the detainer notice.

(c) A detainer notice expires at the end of the 10th day following the day on which it was affixed unless, prior to that time, the director has instituted proceedings under Section 63.122 of this code to condemn the fertilizer. (V.A.C.S. Art. 108a, Sec. 10(a).)

Sec. 63.122. Condemnation of Detained Fertilizer

(a) If, after examination and analysis, the director finds that a detained commercial fertilizer is in violation of a provision of this chapter, the director 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 director. 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 of the director's supervision of labeling or processing under Subsection (c) of this section. The court shall return the bond to the registrant when the director 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. (V.A.C.S. Art. 108a, Sec. 10(b).)

Sec. 63.123. Warnings

If the director 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 director may issue the warning instead of proceeding to detain the fertilizer. (V.A.C.S. Art. 108a, Sec. 10(c).)

Sec. 63.124. Suit to Recover Fees

The director may sue to recover an inspection or collection fee due under Subchapter E of this chapter. Venue for a suit under this section is in Brazos County. (V.A.C.S. Art. 108a, Sec. 6(f).)

Sec. 63.125. Prosecutions

(a) Each district attorney, criminal district attorney, or county attorney to whom the director 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.

(b) Before reporting a violation of this chapter for prosecution, the director shall give the violator an opportunity to present his or her views. (V.A.C.S. Art. 108a, Secs. 11(a) (part), (d).)

Sec. 63.126. Appeal of Administrative Order or Ruling

(a) A person at interest who is aggrieved by an order or ruling of the director may appeal the order or ruling in the manner provided for con-

tested cases under the Administrative Procedure and Texas Register Act (Article 6252—13a, Vernon's Texas Civil Statutes).

(b) Appeal under this section is by trial de novo as that term is known in appealing from the justice court and the burden of proof is not on the defendant. (V.A.C.S. Art. 108a, Sec. 12.)

[Sections 63.127–63.140 reserved for expansion]

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 misdemeanor punishable by a fine of not less than $50 nor more than $200. (V.A.C.S. Art. 108a, Sec. 11(b).)

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; or

(2) 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 misdemeanor punishable by a fine of not less than $50 nor more than $200. (V.A.C.S. Art. 108a, Secs. 9 (part), 11(a) (part).)

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; or

(3) has added to it a substance that reduces its quality to make it appear of greater value than it is.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $50 nor more than $200. (V.A.C.S. Art. 108a, Secs. 9 (part), 11(a) (part).)

SUBTITLE B. HORTICULTURAL DISEASES AND PESTS

CHAPTER 71. GENERAL CONTROL

SUBCHAPTER A. QUARANTINES; CONTROL AND ERADICATION ZONES

Section

71.001. Quarantines Against Out-of-State Diseases and Pests
71.002. Quarantines Against In-State Diseases and Pests
71.003. Quarantines Around Pest-Free Areas
71.004. Emergency Quarantines
71.005. Movement of Plants From Quarantined Area
71.006. Hearing
71.007. Rules
71.008. Control or Eradication Zone
71.009. Seizure and Destruction of Plants, Plant Products, and Other Substances
71.010. Appeals
71.011. Protection of Carrier From Damages
71.012. Civil Penalty
71.013. Criminal Penalties

[Sections 71.014–71.040 reserved for expansion]

SUBCHAPTER B. INSPECTION OF NURSERY PRODUCTS AND FLORIST ITEMS

71.041. Definitions
71.042. Duty of Department; Rules
71.043. Chief Inspector
71.044. Annual Inspection
71.045. Certificate of Inspection
71.046. Treatment or Destruction of Diseased or Infested Plants or Premises
71.047. Expense of Treatment
71.048. Appeal of Notice or Order
71.049. Enforcement of Notice or Order
71.050. Certificate to Accompany Shipment
71.051. Importation Certificates
71.052. Importation of Camellias
71.053. Inspection of Shipments
71.054. Protection of Carriers From Liability; Reporting of Unlawful Shipments
71.055. Revocation of Certificate
71.056. Inspection Fees
71.057. Nursery Dealers and Agents
71.058. Penalties

[Sections 71.059–71.100 reserved for expansion]

SUBCHAPTER C. INSPECTION OF VEGETABLE PLANTS

Section
71.101. Duty of Department; Rules
71.102. Field Inspection
71.103. Inspection Certificate
71.104. Tomato Diseases and Insects
71.105. Cruciferous Plant Diseases and Insects
71.106. Pepper Diseases
71.107. Onion Diseases and Insects
71.108. Eggplant Diseases
71.109. Sweet Potato Diseases and Insects
71.110. Treatment or Destruction of Plants
71.111. Certificate for Imported Plants
71.112. Protection of Carriers From Liability
71.113. Revocation of Certificate
71.114. Fees
71.115. Packaging and Labeling of Certified Plants
71.116. Penalties

SUBTITLE B. HORTICULTURAL DISEASES AND PESTS

CHAPTER 71. GENERAL CONTROL

SUBCHAPTER A. 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. (V.A.C.S. Art. 135a—1, Sec. 1 (part); Art. 135a—3, Sec. 1 (part).)

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. (V.A.C.S. Art. 135a—1, Sec. 2 (part).)

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. (V.A.C.S. Art. 135a—1, Sec. 3 (part).)

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 dis-

semination 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 expires 30 days following the date on which it was established unless reestablished following notice and hearing as provided by this subchapter. (V.A.C.S. Art. 135a—1, Sec. 6 (part).)

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. (V.A.C.S. Art. 135a—1, Secs. 1 (part), 2 (part), 3 (part), 6 (part); Art. 135a—3, Sec. 1 (part).)

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. (V.A.C.S. Art. 135a—1, Sec. 4.)

Sec. 71.007. Rules

In addition to other rules necessary for the protection of agricultural and horticultural interests, the department may adopt quarantine rules that:

(1) prevent the selling, moving, or transporting of any plant, plant product, or substance 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; or

(7) provide for specific treatment of a grove or orchard. (V.A.C.S. Art. 135a—1, Sec. 9 (part).)

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. (V.A.C.S. Art. 135a—1, Sec. 8.)

Sec. 71.009. Seizure 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 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 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.

(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. (V.A.C.S. Art. 135a—1, Secs. 10, 12.)

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 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. (V.A.C.S. Art. 135a—1, Sec. 5.)

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 a quarantine order or quarantine rule of the department. (V.A.C.S. Art. 135a—1, Sec. 7 (part).)

Sec. 71.012. Civil Penalty

(a) A private or common carrier, including a railway, steamship, motorboat, bus, or truck, that transports or delivers any fruit, plant, shrub, or other carrier of an insect pest or plant disease in violation of a quarantine order or quarantine rule of the department is liable to the state for a penalty in the amount of $500.

(b) The attorney general shall institute suit for the recovery of a penalty under this section.

(c) Venue for a suit under this section is in Travis County. (V.A.C.S. Art. 135a—1, Sec. 7 (part).)

Sec. 71.013. Criminal Penalties

(a) A person commits an offense if, in violation of a rule adopted under Section 71.007 of this code, the person:

(1) sells, carries, or transports a plant or plant product from a quarantined area or into a pest-free zone;

(2) maintains ripening fruit during the host-free period on any tree declared to be a nuisance in the quarantine order;

(3) 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

(4) fails to store products in the manner required.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed $100.

(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. (V.A.C.S. Art. 135a—1, Sec. 9 (part).)

[Sections 71.014–71.040 reserved for expansion]

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 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.

(4) "Nursery grower" means a person who grows more than 50 percent of the nursery products that the person sells, regardless of the variety sold or grown. (V.A.C.S. Art. 135 (part).)

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, and selling 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. (V.A.C.S. Art. 119 (part).)

Sec. 71.043. Chief Inspector

The commissioner shall appoint one person as chief inspector to inspect or supervise the inspection of nursery products, florist items, and premises in accordance with this subchapter. (V.A.C.S. Art. 132.)

Sec. 71.044. Annual Inspection

At least once each year, the department shall inspect each nursery, greenhouse, orchard, garden, florist, or other place growing for sale or offering for sale 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. (V.A.C.S. Arts. 119 (part), 126 (part).)

Sec. 71.045. Certificate of Inspection

(a) If on inspection the department determines that a nursery product, florist item, or other plant and the premises are free of disease or insect pests, the department shall issue a certificate of inspection to the owner, manager, or person in control of the product or item and the premises.

(b) A certificate of inspection shall show:

(1) the date of inspection;

(2) the name of the person making the inspection;

(3) the fee for the inspection; and

(4) an expiration date.

(c) A certificate of inspection is not negotiable or transferable and is void if sold or transferred.

(d) A person may not offer for sale a nursery product or florist item without a certificate of inspection issued under this section. (V.A.C.S. Arts. 119 (part), 126 (part).)

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. (V.A.C.S. Arts. 121, 122, 123 (part), 124 (part).)

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. (V.A.C.S. Art. 125.)

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 the 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. (V.A.C.S. Art. 124 (part).)

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. (V.A.C.S. Art. 124 (part).)

Sec. 71.050. Certificate to Accompany Shipment

(a) Each nursery product or florist item offered for sale, 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.

(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. (V.A.C.S. Art. 127.)

Sec. 71.051. Importation Certificates

(a) A person may not ship a nursery product or florist item into this state without first filing with the department 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) If the department approves a certificate of another state filed under this section, the department shall issue to the person filing the certificate a permit allowing the person to ship the nursery product or florist item into this state. The permit shall be known as a Texas Importation Certificate.

(d) Each car, box, bale, or package of a nursery product or florist item shall bear a tag printed with a copy of the Texas Importation Certificate and the certificate of inspection from the originating state. (V.A. C.S. Art. 128.)

Sec. 71.052. Importation of Camellias

(a) A balled or potted camellia plant with soil attached, a cut camellia flower, or a camellia plant with flower buds showing color may not be imported into this state unless the plant or flower is accompanied by a certificate of inspection from the appropriate official of the state of origin certifying that the plant or flower is free from camellia flower blight (Sclerotinia camelliae).

(b) A camellia plant or flower imported into this state without a certificate required by Subsection (a) of this section shall be destroyed or returned to the point of origin, as determined by the department.

(c) The department may adopt suitable rules governing the sale and shipment of camellias and other products as necessary for the control of camellia flower blight. (V.A.C.S. Art. 131a, Secs. 1, 1a, 2.)

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.

(b) 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. Money received from any sale of the shipment shall be deposited as other money collected by the department. (V.A.C.S. Art. 131.)

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. (V.A.C.S. Art. 130.)

Sec. 71.055. Revocation of Certificate

The department may revoke a certificate of inspection 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. (V.A.C.S. Art. 129.)

Sec. 71.056. Inspection Fees

(a) The department shall fix by rule and collect inspection fees in accordance with this section.

(b) The fee for each inspection of an installation, an area, or premises, growing, selling, displaying, or handling nursery products shall be not less than $10 nor more than $25.

(c) The fee for each inspection of an installation, an area, or premises, where florist items are bought and sold or offered for sale shall be not less than $5 nor more than $15.

(d) The department shall fix the fee for inspection of nursery products or florist items for the issuance of an importation certificate.

(e) The department shall account for fees collected under this section in the manner and method prescribed by the state auditor. (V.A.C.S. Art. 133.)

Sec. 71.057. Nursery Dealers and Agents

(a) A person who buys and sells or offers for sale 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 and shall register a permanent address with the department. Each copy of a certificate of inspection issued to a nursery dealer shall show the address registered with the department.

(b) A person is a nursery agent if the person sells, offers for sale, or takes mail orders for the sale 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 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. (V.A.C.S. Art. 135 (part).)

Sec. 71.058. Penalties

(a) A person commits an offense if the person wilfully or negligently:

(1) violates a provision of this subchapter other than Section 71.052 of this code; or

(2) fails or refuses to comply with a notice, order, or rule of the department under this subchapter.

(b) A person commits an offense if the person imports a camellia plant or flower in violation of Section 71.052 of this code.

(c) An offense under Subsection (a) of this section is a misdemeanor punishable by a fine of not less than $25 nor more than $200. 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) An offense under Subsection (b) of this section is a misdemeanor punishable by a fine of not more than $100.

(e) A person commits a separate offense for each camellia plant or flower imported. (V.A.C.S. Art. 123 (part); Art. 124 (part); Art. 131a, Sec. 3.)

[Sections 71.059–71.100 reserved for expansion]

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. (V.A.C.S. Art. 118e, Sec. 1 (part).)

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. (V.A.C.S. Art. 118e, Sec. 1 (part).)

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 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. (V.A.C.S. Art. 118e, Secs. 1 (part), 7 (part), 8 (part), 9 (part), 11 (part).)

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

DISEASES	SCIENTIFIC NAME OF ORGANISM
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

(V.A.C.S. Art. 118e, Sec. 2.)

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

(V.A.C.S. Art. 118e, Sec. 3.)

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

(V.A.C.S. Art. 118e, Sec. 4.)

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

(V.A.C.S. Art. 118e, Sec. 5.)

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

(V.A.C.S. Art. 118e, Sec. 6.)

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

(V.A.C.S. Art. 118e, Sec. 7 (part).)

Sec. 71.110. Treatment or Destruction of Plants

(a) If, at the time of field inspection, the department finds a 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. (V.A.C.S. Art. 118e, Sec. 8 (part).)

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. (V.A.C.S. Art. 118e, Sec. 9 (part).)

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. (V.A.C.S. Art. 118e, Sec. 9 (part).)

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. (V.A.C.S. Art. 118e, Sec. 9 (part).)

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 inspection fee is $5 plus not less than 25 cents nor more than $1, as set by rule of the department, for each acre over five acres to be inspected.

(c) In addition to the inspection fee, a person applying for certification of sweet potatoes shall pay a fee of not less than one cent nor more than three cents for each certificate tag or stamp issued. (V.A.C.S. Art. 118e, Secs. 10, 11 (part).)

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. (V.A.C.S. Art. 118e, Secs. 8 (part), 11 (part).)

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 misdemeanor punishable by a fine of not less than $25 nor more than $100.

(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. (V.A.C.S. Art. 118e, Sec. 12.)

CHAPTER 72. MEXICAN FRUIT FLY CONTROL

SUBCHAPTER A. GENERAL PROVISIONS

Section
72.001. Definitions
72.002. Administration; Rules
72.003. Peace Officer Power
72.004. Entry Power
72.005. Reports and Notices
72.006. Prosecutions

[Sections 72.007–72.010 reserved for expansion]

SUBCHAPTER B. QUARANTINES

72.011. Establishment
72.012. Persons and Premises Subject
72.013. Term
72.014. Designated Counties
72.015. Movement of Fruit in Violation of Quarantine; Certificate

[Sections 72.016–72.020 reserved for expansion]

SUBCHAPTER C. INFESTATION CONTROL

72.021. Determination of Infestation
72.022. Citrus Quarantine Advisory Committee
72.023. Method of Control
72.024. Host-Free Period
72.025. Unhusbandlike and Unsanitary Conditions; Orders of Department
72.026. Expenses of and Responsibility for Compliance with Order of Department

[Sections 72.027–72.040 reserved for expansion]

SUBCHAPTER D. REMEDIES

72.041. Appeal of Department Order
72.042. Enforcement of Department Order; Fees
72.043. Lien
72.044. Injunctions; Mandamus
72.045. Seizure of Ownerless Fruit

[Sections 72.046–72.060 reserved for expansion]

SUBCHAPTER E. PENALTIES

72.061. General Penalty
72.062. Failure to Comply with Department Order
72.063. Public Nuisance
72.064. Movement of Fruit in Violation of Quarantine

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. (V.A.C.S. Art. 135a—2, Sec. 1(2) (part).)

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, to be proclaimed by the governor, as necessary for the administration of this chapter. (V.A.C.S. Art. 135a—2, Secs. 2(9), 3(1).)

Sec. 72.003. Peace Officer Power

A person in whom enforcement of any provision of this chapter is invested has the power of a peace officer in that enforcement. (V.A.C.S. Art. 135a—2, Sec. 2(1).)

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. (V.A.C.S. Art. 135a—2, Sec. 2(8).)

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. (V.A.C.S. Art. 135a—2, Secs. 2(4), (5).)

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. (V.A.C.S. Art. 135a—2, Sec. 2(2).)

[Sections 72.007–72.010 reserved for expansion]

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 to the governor, and the governor shall 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 to be certified to the governor for proclamation.

(c) The governor's proclamation of a quarantine under this section shall name each county, part of a county, district, or territory quarantined. (V.A.C.S. Art. 135a—2, Secs. 3(2) (part), (3), (5) (part).)

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 proclamation are subject to the quarantine, even though not specifically named. (V. A.C.S. Art. 135a—2, Sec. 3(5) (part).)

Sec. 72.013. Term

A quarantine established under this subchapter is effective until modified or removed by the department. (V.A.C.S. Art. 135a—2, Sec. 3(5) (part).)

Sec. 72.014. Designated Counties

Cameron, Hidalgo, and Willacy counties are designated as quarantined for the purposes of this chapter. (V.A.C.S. Art. 135a—2, Sec. 3(2) (part).)

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, by order of the department, or by proclamation of the governor 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. (V.A.C.S. Art. 135a—2, Sec. 5(4) (part).)

[Sections 72.016–72.020 reserved for expansion]

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. (V.A.C.S. Art. 135a—2, Secs. 1(2) (part), 3(6) (part).)

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. (V.A.C.S. Art. 135a—2, Sec. 3(4).)

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. (V.A.C.S. Art. 135a—2, Sec. 3(6) (part).)

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. (V.A.C.S. Art. 135a—2, Sec. 1(2) (part).)

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. (V.A.C.S. Art. 135a—2, Secs. 3(7) (part), (8).)

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. (V.A.C.S. Art. 135a—2, Sec. 4(2).)

[Sections 72.027–72.040 reserved for expansion]

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. (V.A.C.S. Art. 135a—2, Sec. 4(1).)

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 25 cents 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 $25, not as a penalty but as reasonable compensation for the time involved in the execution of the order. (V.A.C.S. Art. 135a—2, Secs. 4(3), (4) (part).)

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. (V.A.C.S. Art. 135a—2, Secs. 4(4) (part), 4(5), 5(1).)

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. (V.A.C.S. Art. 135a—2, Secs. 5(2), (5).)

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. (V.A.C.S. Art. 135a—2, Sec. 5(3).)

[Sections 72.046–72.060 reserved for expansion]

SUBCHAPTER E. PENALTIES

Sec. 72.061. General Penalty

(a) A person who violates any provision of this chapter commits an offense.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed $200. (V.A.C.S. Art. 135a—2, Sec. 6.)

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 misdemeanor punishable by a fine not to exceed $200. (V.A.C.S. Art. 135a—2, Secs. 3(6) (part), (9) (part).)

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 misdemeanor punishable by a fine not to exceed $200. (V.A.C.S. Art. 135a—2, Sec. 3(7) (part), (9) (part).)

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 misdemeanor punishable by a fine not to exceed $200. (V.A.C.S. Art. 135a—2, Secs. 2(3), 5(4) (part).)

CHAPTER 73. CITRUS DISEASES AND PESTS

Section

73.001. Definition
73.002. Policy
73.003. Citrus Zone
73.004. Dangerous Diseases and Pests
73.005. Movement of Infected Nursery Products Into Citrus Zone
73.006. Certificate of Inspection; Permit
73.007. Protection of Carrier From Damages
73.008. Department Employees and Expenses Outside the State
73.009. Penalties

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. (V.A.C.S. Art. 135 (part).)

Sec. 73.002. Policy

The state recognizes that the citrus industry is a valuable asset and that the citrus crop is 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. (V.A.C.S. Art. 118b—3, Sec. 2.)

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. (V.A.C.S. Art. 118b—3, Sec. 1.)

Sec. 73.004. Dangerous Diseases and Pests

(a) In accordance with Subchapter A, Chapter 71, of this code, the department shall establish quarantines against the following pests and plant diseases, which are not widely distributed in this state and are public nuisances:

(1) Black scale (Saissetia oleae);
(2) Branch and twig borer (Melalgus confertus);
(3) Long-tailed mealy bug (Pseudococcus adonidum);
(4) Orange-peel miner (Marmara species);
(5) Withertip of lime (Glocosporium limetticolm); and
(6) False spider mite (Brevipalus sp.).

(b) For purposes of the citrus zone, the following pests and diseases are a public nuisance:

(1) False spider mite (Brevipalus sp.);
(2) Withertip of lime (Glocosporium limetticolm);
(3) Whitefly (Aleyrodes, nubifera);
(4) Woolly whitefly (Aleurothrixus howardi);
(5) Flocculent whitefly (Aleurothrixus floccosa);
(6) Guava whitefly (Trialeurodes floridensis);
(7) Bay whitefly (Paraleurodes perseae);
(8) Inconspicuous whitefly (Bemesia inconspicua);
(9) Florida spirea aphid (Aphis spirecola);
(10) Citrus root weevil (Pachnaeus litus Germar);
(11) Meleanose (Phomopsis citri);
(12) Rufous scale (Selenaspidus articulatus);
(13) Snow scale (Unaspis citri);
(14) Six-spotted mite (Tetranychus sexmaculatus);
(15) Purple mite (Panohychus citri);
(16) Orange sawyer (Elaphidion inerne);
(17) Spiny blackfly (Aleurocanthus woglumi);
(18) Citrus scab;
(19) Black scale (Saissetia oleae);
(20) Citrus mealy bug;
(21) Cottony cushion scale;
(22) Citrus thrips (scirtothrips citri, Moulton);
(23) Barnacle scale;
(24) California red scale;
(25) Oystershell scale;
(26) Citrus red spider; and
(27) Citrus fruit and storage rot. (V.A.C.S. Art. 118b—3, Sec. 3 (part); Art. 135a—3, Sec. 2.)

Sec. 73.005. Movement of Infected Nursery Products Into Citrus Zone

A person may not ship into the citrus zone a nursery product infected with a pest or disease listed in Section 73.004(b) of this code. (V.A.C.S. Art. 118b—3, Secs. 3 (part), 4 (part).)

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 cit-

rus fruit that is not accompanied by the certificate and permit required by Subsection (b) of this section. (V.A.C.S. Art. 135a—3, Secs. 3, 4, 5 (part).)

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. (V.A.C.S. Art. 135a—3, Sec. 5 (part).)

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. (V.A.C.S. Art. 135a—3, Sec. 1 (part).)

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 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 10 days nor more than one year; or

(3) both fine and confinement under this subsection.

(c) An offense under Section 73.006 of this code is a misdemeanor punishable by a fine of not less than $50 nor more than $200. (V.A.C.S. Art. 118b—3, Sec. 4 (part); Art. 135a—3, Sec. 6.)

CHAPTER 74. COTTON DISEASES AND PESTS

SUBCHAPTER A. BOLL WEEVIL CONTROL

Section

74.001. Public Nuisance
74.002. Approval and Enforcement of Cotton Producers Board Rules
74.003. Entry Power
74.004. Penalty

[Sections 74.005–74.050 reserved for expansion]

SUBCHAPTER B. PINK BOLLWORM CONTROL

74.051. Definitions
74.052. Policy
74.053. Host Plants
74.054. Regulation of Growing; Quarantines
74.055. Regulation of Ginning
74.056. Operation of Fumigation and Sterilization Plants
74.057. Destruction of Host Plants
74.058. Entry Power; Inspections
74.059. Inspectors
74.060. Cooperation With Federal Programs
74.061. Penalty

[Sections 74.062–74.080 reserved for expansion]

SUBCHAPTER C. COTTON ESCROW ACCOUNTS

74.081. Purpose
74.082. Districts
74.083. Election
74.084. Voting
74.085. Adoption of Subchapter
74.086. Escrow Account
74.087. Refund or Forfeiture of Escrow Funds
74.088. Use of Forfeited or Unclaimed Escrow Funds or Unused Escrow Fees
74.089. Eligible Depositories
74.090. Escrow Fee
74.091. Rules

CHAPTER 74. COTTON DISEASES AND PESTS

SUBCHAPTER A. BOLL WEEVIL CONTROL

Sec. 74.001. Public Nuisance

The Anthonomus grandis Boheman, known as the boll weevil, is a public nuisance and a menace to the cotton industry, and its eradication is a public necessity. (V.A.C.S. Art. 55c—1, Sec. 2.)

Sec. 74.002. Approval and Enforcement of Cotton Producers Board Rules

If a cotton producers board is established and certified under Chapter 41 of this code, the department shall enforce the rules relating to control and eradication of the boll weevil that are adopted by the board and are approved by the department. (V.A.C.S. Art. 55c—1, Secs. 3(a), 5.)

Sec. 74.003. Entry Power

For the purpose of investigating compliance with rules of a cotton producers board under Section 74.002 of this code, the department is entitled to enter any field of cotton or premises in which cotton or its products are stored or held. The department is entitled to examine any product, container of cotton, or other substance that is subject to boll weevil infestation. (V.A.C.S. Art. 55c—1, Sec. 3(b).)

Sec. 74.004. Penalty

(a) A person commits an offense if the person violates a rule relating to control and eradication of the boll weevil adopted by a cotton producers board under Chapter 41 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.

(c) A person commits a separate offense for each day that a violation continues. (V.A.C.S. Art. 55c—1, Sec. 4.)

[Sections 74.005–74.050 reserved for expansion]

SUBCHAPTER B. PINK BOLLWORM CONTROL

Sec. 74.051. Definitions

In this subchapter:

(1) "Cotton" includes the cotton plant, cotton in the boll, cotton stalk, and all cotton products, including seed cotton, ginned lint cot-

ton, cottonseed, and cotton hulls, but not including cotton oil or cotton meal.

(2) "Host plant" means a plant susceptible to infestation by pink bollworm.

(3) "Okra" includes okra stalks.

(4) "Pink bollworm" means the insect Pectinophora gossypiella, Saunders, in any stage of development, including the egg, larval, pupal, and adult stages. (V.A.C.S. Arts. 68 (part), 69; New.)

Sec. 74.052. Policy

The pink bollworm is a public nuisance and a menace to the cotton industry, and its eradication is a public necessity. The state shall employ all constitutional methods to control and eradicate the pink bollworm 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 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; and

(5) prevention of planting of host plants in areas where infestation has been found. (V.A.C.S. Arts. 68 (part), 70.)

Sec. 74.053. Host Plants

In addition to other plants determined by the department to be host plants, cotton and okra are host plants for the purpose of this subchapter. (New.)

Sec. 74.054. Regulation of Growing; Quarantines

(a) The department may adopt rules governing the growing of a host plant in an area in which, under prior law, the governor proclaimed it unlawful to grow the host plant except under rules of the department. In addition to other necessary rules, the rules may include provisions for:

(1) planting of seed from noninfested territory;

(2) ginning at designated mills; or

(3) milling or disinfecting of all seed products marketed within the area.

(b) If, under prior law, the governor proclaimed a quarantine against infested territory, no person may import into Texas from the quarantined territory a substance susceptible to pink bollworm infestation.

(c) The department shall maintain a rigid inspection of substances susceptible to pink bollworm contamination that are being carried from quarantined territory into this state. (V.A.C.S. Arts. 71, 72, 74 (part), 79 (part).)

Sec. 74.055. 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. (V.A.C.S. Art. 74 (part).)

Sec. 74.056. Operation of Fumigation and Sterilization Plants

The department shall own or lease fumigation and sterilization plants and operate those plants without cost to the host plant grower, or gin, compress, or mill owner. (V.A.C.S. Art. 74 (part).)

Sec. 74.057. Destruction of Host Plants

(a) If the department considers it necessary to the protection of the cotton industry of this state, the department may destroy any host plant, host plant product, or field of host plants in which pink bollworm is found or which is probably contaminated by being near an infestation of pink bollworm.

(b) Before exercising its power under Subsection (a) of this section, the department shall report the condition to the governor, setting out in detail the area or amount of host plants or host plant products to be destroyed. The governor shall declare the host plants or host plant products to be a public menace.

(c) The department may take any action necessary to complete destruction of host plants or host plant products to prevent the spread of pink bollworm from the infested area. (V.A.C.S. Art. 73.)

Sec. 74.058. Entry Power; Inspections

For the purpose of enforcing this chapter or issuing permits, 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 pink bollworm infestation; and

(3) examine the records of a purchaser, handler, or common carrier of host plant products. (V.A.C.S. Art. 78.)

Sec. 74.059. Inspectors

(a) The department may employ and prescribe the duties of inspectors and other employees necessary to the administration of this subchapter.

(b) In order to be employed as an inspector under this section, a person must have two years' actual experience as an entomologist or two years' training as an entomologist in the science department of a reputable college or university. (V.A.C.S. Art. 79 (part).)

Sec. 74.060. 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 pink bollworm in this state. (V.A.C.S. Art. 80.)

Sec. 74.061. Penalty

(a) A person commits an offense if the person:

(1) transports a host plant or host plant product by any means from any territory in this state that is quarantined and placed under restrictions by proclamation of the governor in accordance with prior law;

(2) violates a proclamation or a rule or restriction adopted under this subchapter;

(3) brings into this state any material contaminated with pink bollworm;

(4) plants, cultivates, grows, allows to grow, gathers, transports, or markets a host plant in or from any territory in this state that is quarantined or placed under restrictions by a proclamation issued under prior law;

(5) fails to comply with a rule adopted for the control and direction of host plant growing and marketing in a restricted or regulated zone;

(6) violates Section 74.055 of this code; or

(7) wilfully refuses or knowingly neglects to comply with a proclamation, rule, or restriction adopted and maintained for the protection of the cotton industry.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not less than $50 nor more than $500;

(2) confinement in jail for not less than 10 nor more than 30 days; or

(3) both fine and confinement under this subsection.

(c) It is a defense to prosecution under this section that the defendant's act or failure to act was in accordance with a rule adopted by the department. (V.A.C.S. Art. 74a.)

[Sections 74.062–74.080 reserved for expansion]

SUBCHAPTER C. COTTON ESCROW ACCOUNTS

Sec. 74.081. Purpose

The purpose of this subchapter is to grant additional powers to the department to aid the enforcement of the law relating to eradication of the pink bollworm. (V.A.C.S. Art. 82a, Sec. 1.)

Sec. 74.082. Districts

The department shall divide the state into districts of at least four cotton-growing counties each and shall designate a number for each district. (V.A.C.S. Art. 82a, Sec. 2 (part).)

Sec. 74.083. Election

(a) On petition of 100 or more eligible voters, the department shall conduct an election to determine if the cotton growers of a district are to be subject to this subchapter. If this subchapter is adopted at an election, the department shall thereafter conduct an election each year to determine if this subchapter shall apply for the following year.

(b) An election under this section shall be conducted between September 1 and September 30 on a date during the ginning season designated by the department.

(c) The department shall publish notice of an election under this section in one or more newspapers of general circulation in each county contained in the district once each week for three consecutive weeks.

(d) The department shall prescribe forms, designate polling places, and adopt other rules necessary for the conduct of a fair election. The department shall designate at least one polling place in each county in the district. (V.A.C.S. Art. 82a, Sec. 2 (part).)

Sec. 74.084. Voting

(a) In order to vote in an election under this subchapter, a person must be a cotton grower who:

(1) has applied for and received a permit to plant cotton, if a permit is required by the department under Subchapter B of this chapter; or

(2) is the owner and holder of an allotment card issued by the United States Department of Agriculture through the County Agricultural Services and Conservation Committee.

(b) Each voter is entitled to one vote regardless of the number of bales ginned or the volume of cotton grown. (V.A.C.S. Art. 82a, Sec. 2 (part).)

Sec. 74.085. Adoption of Subchapter

If adoption of this subchapter is approved by majority vote of the eligible voters, the cotton farmers within the adopting district are subject to Sections 74.086–74.089 of this code, and the department may adopt rules necessary to implement those sections. (V.A.C.S. Art. 82a, Sec. 3 (part).)

Sec. 74.086. Escrow Account

(a) At the time of ginning, each cotton grower shall pay to an agent of the department the sum of $7.50 for each bale of cotton ginned. The agent shall collect the money at the gin where the cotton is ginned.

(b) At least once each week, the agent collecting the money shall deposit the receipts in a depository selected by the grower. If the grower has not selected a depository, the department shall make the selection.

(c) The depository shall hold the money collected from each grower in escrow for the purpose of assuring compliance by the grower with the rules of the department and the conditions of the grower's permit, if any, relating to planting and the destruction of cotton stalks.

(d) If the department requires a grower to obtain a permit to grow cotton during periods designated by the department, the application for the permit must provide that if the growers of a district have adopted this subchapter, the department is authorized to deduct an escrow fee from funds received and hold the balance in escrow until satisfactory destruction of stalks has been completed. (V.A.C.S. Art. 82a, Secs. 3 (part), 4 (part).)

Sec. 74.087. Refund or Forfeiture of Escrow Funds

(a) If a grower completes satisfactory destruction of cotton stalks within a reasonable time designated by the department, the grower is entitled to a refund of all money deposited into escrow, less the escrow fee.

(b) If a grower wilfully fails or refuses to plow up cotton stalks or does not comply with rules adopted by the department for the eradication of pink bollworm, the grower forfeits the balance on deposit in the escrow account.

(c) Forfeiture under this section is not a penalty but is to assure plow up and conditioning by the grower and, if the grower fails or refuses to do so, to provide a method for the department to accomplish plow up and conditioning out of the deposited funds. (V.A.C.S. Art. 82a, Sec. 3 (part).)

Sec. 74.088. Use of Forfeited or Unclaimed Escrow Funds or Unused Escrow Fees

(a) If the funds in an escrow account are forfeited, the department shall supervise the plow up or conditioning of the property of the defaulting grower and defray the costs by using the forfeited funds.

(b) Any balance remaining in an escrow account after subtracting the cost of plow up or conditioning and the escrow fee shall be paid to the depositor.

(c) The department may expend unclaimed escrow funds and unused escrow fees for research and improvement of present pink bollworm controls.

(d) The department shall account for all funds received and disposed of under this subchapter at the end of each calendar year. (V.A.C.S. Art. 82a, Sec. 3 (part).)

Sec. 74.089. Eligible Depositories

An institution is eligible to be a depository for escrow accounts under this subchapter if it is:

(1) organized under the laws of this state or the United States to conduct a depository or fiduciary business; and

(2) domiciled in the district where the cotton growers adopted this subchapter. (V.A.C.S. Art. 82a, Sec. 4 (part).)

Sec. 74.090. Escrow Fee

From each escrow account, the department is entitled to deduct an escrow fee not to exceed an amount equal to one percent of the total deposit. Fees collected under this section shall be used for the purpose of compensating inspectors and defraying other necessary costs in the administration of this subchapter. (V.A.C.S. Art. 82a, Sec. 3 (part).)

Sec. 74.091. Rules

The department may adopt rules necessary to the administration of this subchapter. (V.A.C.S. Art. 82a, Sec. 4 (part).)

CHAPTER 75. HERBICIDE REGULATION

Section

75.001. Purpose
75.002. Definitions
75.003. Herbicides
75.004. Dealer's License
75.005. Record of Sale
75.006. Permit; Fee
75.007. Inspection Before Issuing Permit
75.008. Types of Permits
75.009. Powder or Dry Herbicides
75.010. Term of Permit
75.011. Refusal, Amendment, or Revocation of Permit
75.012. Application of Herbicide
75.013. Applier's Records
75.014. Custom Applier's Bond; Crop Damage Insurance
75.015. Notice of Effects of Herbicide; Inspection
75.016. Equipment License; Fee
75.017. Regulation of Equipment
75.018. Rules
75.019. Enforcement
75.020. Employees
75.021. County Herbicide Inspector
75.022. Application of Chapter
75.023. Revocation and Reinstatement of Exemption
75.024. Penalties

CHAPTER 75. HERBICIDE REGULATION

Sec. 75.001. Purpose

The purpose of this chapter is to regulate the sale, use, and transportation of herbicides. (V.A.C.S. Art. 135b—4, Sec. 1.)

Sec. 75.002. Definitions

In this chapter:

(1) "Application of a herbicide" means the spreading of a herbicide on real property having a continuous boundary line.

(2) "Custom applier" means a person who applies a herbicide to land or plants for hire.

(3) "Equipment" means a device used to apply a herbicide. (V. A.C.S. Art. 135b—4, Secs. 2(c), (d), (g), (h), (i), (j).)

Sec. 75.003. Herbicides

(a) This chapter applies to the following herbicides:

(1) 2, 4-Dichlorophenoxyacetic Acid (2, 4-D);

(2) 2, 4, 5-Trichlorophenoxyacetic Acid (2, 4, 5-T);

(3) 2-Methyl-4-Chlorophenoxyacetic Acid (MCPA);

(4) 2-(2, 4, 5-Trichlorophenoxy) propionic Acid (silvex);

(5) Polychlorinated benzoic acids; and

(6) derivatives and formulations of substances listed by Subdivisions (1)-(5) of this subsection.

(b) To prevent a hazard to desirable vegetation through drift or other uncontrolled application, the department may, after a public hearing, determine that this chapter applies to a substance, in addition to those listed by Subsection (a) of this section, that is used to control plants growing where they are not wanted. (V.A.C.S. Art. 135b—4, Secs. 2(a), (b).)

Sec. 75.004. Dealer's License

(a) Except as provided by Subsection (b) of this section, a person may not sell, wholesale, distribute, offer or expose for sale, exchange, barter, or give away in this state, a herbicide in a container having a net capacity of more than 16 fluid ounces unless the person first obtains a dealer's license from the department.

(b) A person is not required to be licensed if the container described by Subsection (a) of this section:

(1) has a net capacity that does not exceed one gallon;

(2) contains a substance with a concentration of herbicide not exceeding 10 percent by volume; and

(3) bears a label stating that its contents are for lawn use only.

(c) Except as provided by this subsection, an application for a dealer's license must be accompanied by a dealer's license fee for each warehouse or branch of the applicant's business. If the applicant's principal office keeps and reports satisfactory records for all subsidiary branches, the applicant shall pay one license fee.

(d) The department by rule shall set the fee for a dealer's license in an amount not to exceed $100.

(e) A dealer's license expires January 1 of each year. (V.A.C.S. Art. 135b—4, Secs. 2(f), 3(a), 3(b), 7(a) (part).)

Sec. 75.005. Record of Sale

(a) A person required to obtain a dealer's license by Section 75.004 of this code shall record each sale of a herbicide that is sold in a container having a net capacity of more than 16 fluid ounces and shall keep a copy of the record for at least two years after the date of the sale.

(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. The copies submitted to the department are public information.

(d) The department shall revoke the dealer's license if the licensee fails to submit a copy of the records as required by the rules adopted under Subsection (c) of this section. This penalty does not affect other penalties provided by this chapter. (V.A.C.S. Art. 135b—4, Sec. 3(c).)

Sec. 75.006. Permit; Fee

(a) Except as provided by this section, a person may not apply a herbicide to any land or plants unless the person first obtains a permit to apply a herbicide from the department.

(b) An application for a permit to apply a herbicide must be accompanied by a permit fee set by the department in an amount not to exceed 10 cents an acre for the area to which the herbicide is to be applied.

(c) A permit is not required if during any one year the person applies a herbicide to a total acreage of 10 acres or less.

(d) The department by rule may exempt from the permit and fee requirement of this section:

(1) a particular type of application of a herbicide; or

(2) a governmental body.

(e) If the department finds that a type of application of a herbicide does not create a hazard in a particular area, the department by rule shall exempt that area from the permit and fee requirement of this section.

(f) A permit to apply a herbicide and payment of the permit fee is not required for experimental work with a herbicide by the department, a recognized college or university, the United States Department of Agriculture, a governmental body, or a public organization if the entity gives written notice of the work to the department and does the work in accordance with rules adopted by the department. The department may exempt those entities from any other requirement of this chapter or rule adopted under this chapter. (V.A.C.S. Art. 135b—4, Secs. 4(a) (part), 5(a), (b) (part), (c), and 11.)

Sec. 75.007. Inspection Before Issuing Permit

Before issuing a permit to spray a herbicide, the department is entitled to enter and inspect the area to be sprayed and the area surrounding it. (V.A.C.S. Art. 135b—4, Sec. 10 (part).)

Sec. 75.008. Types of Permits

The department may issue:

(1) an individual permit to apply a herbicide; or

(2) a blanket permit. (V.A.C.S. Art. 135b—4, Sec. 5(b) (part).)

Sec. 75.009. Powder or Dry Herbicides

(a) The department may not issue a permit to apply a powder or dry-type herbicide unless:

(1) all particles of the herbicide can pass through a U.S. standard 10-mesh sieve; and

(2) not more than one percent of the particles can pass through a U.S. standard 60-mesh sieve.

(b) The holder of a permit to apply a powder or dry-type herbicide may not apply a powder or dry-type herbicide that does not meet the requirements of Subsection (a) of this section. (V.A.C.S. Art. 135b—4, Sec. 5(d).)

Sec. 75.010. Term of Permit

(a) A permit to apply a herbicide expires:

(1) when the herbicide has been applied to the area described by the permit;

(2) when all acreage for which the permit was granted has been treated; or

(3) if the acreage is not treated, on the 180th day after the day on which the permit was issued.

(b) If a herbicide is not applied to acreage for which a permit was issued, the person to whom the permit was issued, after filing a request for a refund, shall receive a refund equal to the amount of fees paid for acreage not treated. (V.A.C.S. Art. 135b—4, Sec. 7(b).)

Sec. 75.011. Refusal, Amendment, or Revocation of Permit

The department may amend, revoke, or refuse to grant a permit to apply herbicide. (V.A.C.S. Art. 135b—4, Sec. 5(b) (part).)

Sec. 75.012. Application of Herbicide

(a) If a person applies a herbicide, the person shall act in accordance with rules adopted by the department.

(b) If a herbicide is applied by a custom applier, the person for whom the application of a herbicide is made and the custom applier shall jointly supervise the application in compliance with the rules adopted under Subsection (a) of this section.

(c) Regardless of whether a permit for the application of a herbicide is required under this chapter, each person before spraying a herbicide on land or plants, other than a lawn, shall:

(1) give notice of intent to spray; and

(2) submit a record of the spraying in accordance with rules of the department.

(d) If the department finds that an application of a herbicide is hazardous to crops or valuable plants in an area, the department may prohibit the application of a herbicide in that area for the period during which the hazard exists. (V.A.C.S. Art. 135b—4, Secs. 4(a) (part), 5(b) (part), and 9.)

Sec. 75.013. Applier's Records

(a) Except as provided by Subsection (d) of this section, each person who applies a herbicide shall record each application of a herbicide that he or she makes and shall keep a copy of the records for at least two years after the date the application was made.

(b) The department shall adopt rules that prescribe the information to be stated in the records required by this section.

(c) To be eligible to hold a valid permit to apply a herbicide, a person must submit to the department, within a period prescribed by rule of the department, the record of each application of a herbicide made by the person. The department may require all persons who apply a herbicide to submit periodically to the department a copy of the records required by this section.

(d) A person, other than a custom applier, who applies a herbicide to a lawn is not required to make and keep the records required by Subsection (a) of this section for that application of a herbicide. (V.A.C.S. Art. 135b—4, Secs. 4(b), 5(b) (part).)

Sec. 75.014. Custom Applier's Bond; Crop Damage Insurance

(a) Each custom applier shall:

(1) deposit with the department a surety bond approved by the department in the amount of $20,000 plus $2,000 for each piece of spraying equipment licensed for use by the custom applier; or

(2) subscribe for and hold a policy of crop damage insurance approved by the department with coverage in the amount described by Subdivision (1) of this subsection.

(b) A custom applier shall increase the amount of a bond or the amount of coverage of crop damage insurance by $2,000 for each piece of spraying equipment used by the custom applier.

(c) A surety bond must be conditioned on compliance with this chapter and rules adopted under this chapter.

(d) Failure to perform the conditions of a bond resulting in injury to any crop or valuable plants is grounds for forfeiture of the bond to the person owning the crop or plants in a suit brought by the department or an interested party.

(e) The department shall prescribe requirements of crop damage insurance policies.

(f) The furnishing of a surety bond or crop damage insurance does not limit any civil or criminal liability incurred because of the negligent or unlawful use of a herbicide. (V.A.C.S. Art. 135b—4, Sec. 4(c).)

Sec. 75.015. Notice of Effects of Herbicide; Inspection

(a) The department shall:

(1) inspect all crops reported to it as being affected by a herbicide;

(2) inspect the area surrounding the crops to find possible sources of drift; and

(3) report all findings concerning the affected crops.

(b) If a person's crops or plants are affected by drift of a hormone-type herbicide, the person shall notify the department of the effect. The person shall give notice before the crop is harvested or the plants are destroyed, whichever occurs first.

(c) If notice is not given in accordance with Subsection (b) of this section, it is presumed that there was no effect of a hormone-type herbicide. This presumption is rebuttable. (V.A.C.S. Art. 135b—4, Sec. 10 (part).)

Sec. 75.016. Equipment License; Fee

(a) A custom applier may not use equipment to apply a herbicide unless the equipment first is inspected and licensed by the department.

(b) The department shall inspect a piece of equipment before renewing an equipment license. If the equipment is used on an aircraft, the department shall inspect the equipment:

(1) during each 30-day period while the equipment is installed on the aircraft and is in use; or

(2) before the equipment is used, if removed from the aircraft and reinstalled after the 30th day after the day on which the equipment was last inspected.

(c) At the time of inspection, a custom applier shall pay an inspection fee of $10 for each piece of equipment inspected.

(d) An equipment license expires on January 1 of each year. (V.A.C.S. Art. 135b—4, Secs. 6(a), 6(b), 7(a) (part).)

Sec. 75.017. Regulation of Equipment

The department by rule may:

(1) provide requirements for all equipment regardless of whether the equipment is required to be licensed;

(2) Regulate or prohibit the use of equipment that may be hazardous in an area of the state; and

(3) define what constitutes an installation of equipment on an aircraft. (V.A.C.S. Art. 135b—4, Sec. 6(c).)

Sec. 75.018. Rules

(a) Before the 21st day after the day on which the department receives, from an interested person, 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 herbicide in an area, the department shall hold a public hearing to consider the request.

(b) Before the 10th day before the day on which a hearing required by this section is held, the department shall deliver notice of the hearing to each holder of a permit or license in the area affected by the hearing.

(c) The department may not hold more than one hearing to consider the condition of a particular area during a 90-day period unless the department determines that more frequent hearings are necessary.

(d) The department shall distribute in printed form all rules of the department adopted under this chapter and shall deliver a copy of those rules to each applicant for a permit or license. (V.A.C.S. Art. 135b—4, Sec. 8(a).)

Sec. 75.019. Enforcement

(a) The department shall enforce this chapter and rules adopted under this chapter.

(b) If a county or district attorney refuses to act on behalf of the department in its enforcement of this chapter or a rule adopted under this chapter, the attorney general shall act on the department's behalf. (V.A.C.S. Art. 135b—4, Sec. 8(b).)

Sec. 75.020. Employees

The department may employ inspectors and other employees necessary for the proper enforcement of this chapter and rules adopted under this chapter. (V.A.C.S. Art. 135b—4, Sec. 12 (part).)

Sec. 75.021. County Herbicide Inspector

(a) The commissioners court of each county may appoint and compensate persons to be herbicide inspectors for the area designated by the appointment.

(b) A county herbicide inspector shall cooperate with and work under the supervision of the department in enforcing this chapter and rules adopted under it.

(c) A county herbicide inspector has the powers of an employee of the department. (V.A.C.S. Art. 135b—4, Secs. 2(e), 13.)

Sec. 75.022. Application of Chapter

(a) Because there is no crop or vegetation of value susceptible to damage in the area, Sections 75.006–75.017 of this code do not apply to a county of this state, except Dawson County, that lies north or west of:

(1) the southern boundaries of Andrews, Martin, Howard, Mitchell, Nolan, Taylor, Callahan, and Eastland counties;

(2) the eastern boundaries of Eastland, Stephens, and Young counties; and

(3) the southern and eastern boundaries of Clay County.

(b) Sections 75.006–75.017 of this code do not apply to: Bandera, Brewster, Brooks, Burnet, Cameron, Coleman, Coke, Concho, Crane, Crockett, Dimmit, Duval, Edwards, Frio, Gillespie, Glasscock, Hidalgo, Irion, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kerr, Kimble, Kinney, Kleberg, LaSalle, Lampasas, Llano, McCulloch, McMullen, Mason, Maverick, Menard, Mills, Montague, Nueces, Panola, Pecos, Presidio, Reagan, Real, Runnels, San Saba, Schleicher, Starr, Sterling, Sutton, Terrell, Tom Green, Upton, Uvalde, Val Verde, Webb, Willacy, Zapata, and Zavala counties.

(c) Sections 75.004–75.017 of this code do not apply to Caldwell and Gonzales counties. (V.A.C.S. Art. 135b—4, Sec. 17(a).)

Sec. 75.023. Revocation and Reinstatement of Exemption

(a) If the commissioners court of a county exempted by Section 75.022 of this code determines that a crop or vegetation of value that is susceptible to damage exists in the county or a portion of the county and evidences its determination by an appropriate order entered in the minutes of the court, Sections 75.006–75.017 of this code become effective in that county or portion of the county immediately on entry of the order.

(b) If the commissioners court of a county, all or a part of which has been removed from the exemption of Section 75.022 of this code under Subsection (a) of this section, determines that there is no longer a crop or vegetation susceptible to damage in that county or portion of the county, the court may order the exemption reinstated.

(c) If the commissioners court of a county that is subject to this chapter determines that there is no crop or vegetation of value susceptible to damage in the county or a portion of the county, the court by order may exempt the county or that portion of the county from the application of Sections 75.006–75.017 of this code.

(d) If a county or a portion of a county has been exempted under Subsection (c) of this section, the commissioners court may hold a hearing and enter an order revoking that exemption.

(e) Before an order may be entered under this section, the commissioners court shall hold a hearing to determine whether the order should be issued. The hearing may be held only once each year and only in the month of October, November, or December. Before the 10th day before the day on which the hearing is to be held, the commissioners court shall give notice of the hearing in at least one newspaper in the county.

(f) Before the 21st day after the day on which an order is entered, an interested person may appeal an order of a commissioners court issued under this section to district court to test the reasonableness of the commissioners court's fact-finding. On appeal, the district court shall follow the rules governing judicial review of contested cases under Section 19, Administrative Procedure and Texas Register Act (Article 6252—13a, Vernon's Texas Civil Statutes), and shall apply the substantial evidence rule. Appeals may be taken from the district court as in other civil cases.

(g) An order issued by the commissioners court under this section becomes effective January 1 of the year following the date of the hearing.

(h) The commissioners court shall notify the department of a change in the status of the exemption of a county or a portion of a county under this section. (V.A.C.S. Art. 135b—4, Secs. 17(b), (c).)

Sec. 75.024. Penalties

(a) A person commits an offense if the person:

(1) applies a herbicide without a permit in violation of Section 75.006 of this code;

(2) acts in violation of Section 75.004(a) of this code;

(3) has a permit to apply a powder or dry-type herbicide and applies a herbicide that does not meet the requirements of Section 75.009 of this code;

(4) operates unlicensed equipment in violation of Section 75.016 of this code;

(5) fails to keep or submit records in violation of Sections 75.005 and 75.013 of this code; or

(6) violates or fails to comply with a rule adopted under this chapter.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not less than $100 nor more than $2,000;

(2) confinement in jail for not more than 30 days; or

(3) both fine and confinement under this subsection.

(c) The penalty provided by this section does not affect the civil liability of a person convicted under this section. (V.A.C.S. Art. 135b—4, Sec. 14.)

CHAPTER 76. PESTICIDE REGULATION

SUBCHAPTER A. GENERAL PROVISIONS

Section

76.001. Definitions
76.002. Pests
76.003. State-Limited-Use Pesticides
76.004. Department Rules
76.005. Notice of Hearing
76.006. Pesticide Examination and Testing
76.007. Cooperative Agreements; Grants-in-Aid
76.008. Exemption

[Sections 76.009–76.020 reserved for expansion]

SUBCHAPTER B. LABELING

76.021. Labeling Information
76.022. Conspicuous Lettering
76.023. Misbranded Pesticide or Device

[Sections 76.024–76.040 reserved for expansion]

SUBCHAPTER C. REGISTRATION

76.041. Registration Required
76.042. Content of Registration Application
76.043. Expiration and Renewal
76.044. Fees
76.045. Department Approval
76.046. Registration for Special Local Need
76.047. Denial or Cancellation of Registration
76.048. Experimental Use Permit

[Sections 76.049–76.070 reserved for expansion]

SUBCHAPTER D. LICENSING OF DEALERS

Section
76.071. License Required
76.072. Expiration
76.073. Fees
76.074. Display of Dealer License
76.075. Records
76.076. Denial or Revocation of License
76.077. Exceptions

[Sections 76.078–76.100 reserved for expansion]

SUBCHAPTER E. USE AND APPLICATION

76.101. Coordination
76.102. Agencies Responsible for Certifying Pesticide Applicators
76.103. Program Contingent on Federal Funds
76.104. Agency Rules for Application of a Pesticide
76.105. License Required
76.106. Classification of Commercial and Noncommercial Licenses
76.107. Certification by More Than One Agency
76.108. Commercial Applicator License
76.109. Noncommercial Applicator License
76.110. Certified Applicator Examination; Reciprocal Agreements
76.111. Commercial Applicator Proof of Financial Responsibility
76.112. Private Applicator
76.113. Expiration and Renewal of Licenses
76.114. Records
76.115. Registration and Inspection of Equipment
76.116. Suspension, Modification, or Revocation of License
76.117. Property Owner Use

[Sections 76.118–76.130 reserved for expansion]

SUBCHAPTER F. STORAGE AND DISPOSAL

76.131. Rules

[Sections 76.132–76.150 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT

76.151. Entry Power
76.152. Sampling
76.153. Stop-Sale Order
76.154. Injunction
76.155. Prosecutions

[Sections 76.156–76.180 reserved for expansion]

SUBCHAPTER H. REMEDIES

76.181. Appeal of Denial or Cancellation of Pesticide Registration
76.182. Appeal of Permit or License Denial, Suspension, Modification, or Revocation
76.183. Appeal of Stop-Sale Order
76.184. Reports of Pesticide Damage Claims

[Sections 76.185–76.200 reserved for expansion]

SUBCHAPTER I. PENALTIES

Section
76.201. Offenses
76.202. Penalty
76.203. Defenses

CHAPTER 76. PESTICIDE 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) "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.

(5) "Desiccant" means a substance or mixture of substances intended to artificially accelerate the drying of plant tissue.

(6) "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.

(7) "Distribute" means offer for sale, hold for sale, sell, barter, or supply.

(8) "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.

(9) "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.

(10) "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.

(11) "Inert ingredient" means an ingredient that is not an active ingredient.

(12) "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.

(13) "Label" means the written, printed, or graphic matter on or attached to a pesticide or device or any of its containers or wrappers.

(14) "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.

(15) "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.

(16) "License use category" means a classification of pesticide use based on the subject, method, or place of pesticide application.

(17) "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.

(18) "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.

(19) "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.

(20) "Regulatory agency" means a state agency with responsibility for certifying applicators under Subchapter E of this chapter.

(21) "Restricted-use pesticide" means a pesticide classified as a restricted-use pesticide by the Environmental Protection Agency.

(22) "Thallophyte" means a non-chlorophyll-bearing plant of a lower order than mosses and liverworts.

(23) "Weed" means any plant that grows where not wanted. (V. A.C.S. Art. 135b—5a, Secs. 2(1), (3), (4), (7), (9)–(11), (13), (15)–(18), (20)–(25), (27), (29), (31), (33), (34), (35), (38).)

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 microorganism in living man or other living animals. (V.A.C.S. Art. 135b—5a, Sec. 2(28).)

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.

(c) 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.

(d) 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. (V.A.C.S. Art. 135b—5a, Secs. 2(36), 2(37), 8(b).)

Sec. 76.004. Department Rules

After notice and hearing, 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; and

(3) labeling requirements for pesticides and devices required to be registered under this chapter. (V.A.C.S. Art. 135b—5a, Sec. 8(a).)

Sec. 76.005. Notice of Hearing

(a) Before adopting a rule under this chapter, the department or a regulatory agency shall publish notice of a public hearing in three newspapers of general circulation throughout the state. The notice must include the following information relating to the hearing:

(1) the time;

(2) the place;

(3) the subject matter;

(4) a general statement of the proposed action; and

(5) the class or group of persons to be directly affected.

(b) Notice must be published under this section before the 10th day preceding the day of the hearing. (V.A.C.S. Art. 135b—5a, Sec. 2(14).)

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 shall 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. (V.A.C.S. Art. 135b—5a, Sec. 12.)

Sec. 76.007. Cooperative Agreements; Grants-in-Aid

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. (V.A.C.S. Art. 135b—5a, Sec. 31.)

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 the Texas Structural Pest Control Act, as amended (Article 135b—6, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 135b—5a, Sec. 33.)

[Sections 76.009–76.020 reserved for expansion]

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 name, brand, or trademark under which the pesticide is distributed;

(2) the name and percentage of each active ingredient and the total percentage of inert ingredients;

(3) 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;

(4) if the pesticide contains any form of arsenic, the percentage of total water-soluble arsenic, calculated as elementary arsenic;

(5) the name and address of the manufacturer, registrant, or person for whom the pesticide was manufactured;

(6) numbers or other symbols to identify the lot or batch of the manufacturer of the contents of the package; and

(7) a clear display of appropriate warnings, symbols, and cautionary statements commensurate with the toxicity or use classification of the pesticide.

(b) The labeling of each pesticide distributed in this state shall state the use classification for which the product is registered.

(c) The label bearing the ingredient statement under Subsection (a)(2) 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. (V.A.C.S. Art. 135b—5a, Secs. 2(19), 3 (part).)

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 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. (V.A.C.S. Art. 135b—5a, Sec. 3 (part).)

Sec. 76.023. Misbranded Pesticide or Device

(a) A pesticide or device is misbranded if:

(1) 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;

(2) it is an imitation of or is distributed under the name of another pesticide or device; or

(3) 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. (V.A.C.S. Art. 135b—5a, Sec. 3 (part).)

[Sections 76.024–76.040 reserved for expansion]

SUBCHAPTER C. REGISTRATION

Sec. 76.041. Registration Required

(a) Except as provided by Subsection (b) or (c) 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 chemical compound being used only to develop plot data as to the possible pesticidal action of the chemical. (V.A.C.S. Art. 135b—5a, Secs. 5(a), 14(b).)

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;

(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. (V.A. C.S. Art. 135b—5a, Secs. 5(b), (c), (d).)

Sec. 76.043. Expiration and Renewal

(a) Registration of a pesticide expires annually on December 31.

(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 December 31 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. (V.A.C.S. Art. 135b—5a, Secs. 5(e), (g).)

Sec. 76.044. Fees

(a) As a condition to registration or renewal of registration, an applicant shall pay to the department a fee of $30 for each pesticide to be registered.

(b) If a person fails to apply for renewal of registration before March 1 of any year, the person, as a condition to renewal, shall pay a late registration fee of $5 for each brand to be renewed, in addition to the renewal fee. (V.A.C.S. Art. 135b—5a, Secs. 5(f), (h).)

Sec. 76.045. Department Approval

The department may not approve an application for registration unless the department finds that:

(1) the composition of the pesticide warrants the proposed claims made for it; and

(2) the pesticide, its labeling, and other materials required to be submitted under this chapter comply with the requirements of this chapter. (V.A.C.S. Art. 135b—5a, Sec. 5(i).)

Sec. 76.046. Registration for Special Local Need

(a) The department may register a pesticide for additional uses and methods of application not covered by federal regulation 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. (V.A.C.S. Art. 135b—5a, Sec. 5(j).)

Sec. 76.047. 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 may conduct a hearing 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. (V.A.C.S. Art. 135b—5a, Sec. 6.)

Sec. 76.048. 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 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. (V.A.C.S. Art. 135b—5a, Sec. 7.)

[Sections 76.049–76.070 reserved for expansion]

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 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 distri-

bution. 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. (V.A.C.S. Art. 135b—5a, Secs. 9(a) (part), (b) (part), (c).)

Sec. 76.072. Expiration

A pesticide dealer license expires on December 31 of each year. (V.A.C.S. Art. 135b—5a, Sec. 9(b) (part).)

Sec. 76.073. Fees

(a) An application for a pesticide dealer license must be accompanied by a nonrefundable annual registration fee of not more than $100, as fixed by the department.

(b) If a person fails to apply for renewal of a pesticide dealer license before March 1 of any year, the person, as a condition to renewal, shall pay a late license fee of $5 in addition to the renewal fee.

(c) A person licensed as a dealer under Chapter 75 of this code may not be required to pay an additional fee for the license prescribed in this subchapter. (V.A.C.S. Art. 135b—5a, Secs. 9(a) (part), (b) (part), (e).)

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. (V.A.C.S. Art. 135b—5a, Sec. 9(d).)

Sec. 76.075. Records

(a) A licensed pesticide dealer shall maintain for a period of two years records of each restricted-use and state-limited-use pesticide sold. The department shall prescribe the information to be included in the records.

(b) The department may require a licensed pesticide dealer to submit records to the department. Failure to submit a record requested by the department is a ground for revocation of a license. (V.A.C.S. Art. 135b—5a, Sec. 9(f).)

Sec. 76.076. Denial or Revocation of License

(a) If the department has reason to believe that an applicant has failed to comply with the requirements of this subchapter, or that a licensee has failed to comply with this subchapter or with a rule adopted under this subchapter, the department may conduct a hearing on denial or revocation of the person's license.

(b) The department shall issue written notice of a hearing under this section to the applicant or licensee. 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 the applicant or licensee, the department may refuse to issue a pesticide dealer license or may revoke a license, as applicable, if the department finds that the applicant or licensee has failed to comply with the applicable requirements of this subchapter or a rule adopted under this subchapter. (V.A.C.S. Art. 135b—5a, Sec. 10.)

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 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. (V.A.C.S. Art. 135b—5a, Secs. 2(30), 9(g).)

[Sections 76.078–76.100 reserved for expansion]

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. The department shall submit a state plan for the certification 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 experiment station.

(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. (V.A.C.S. Art. 135b—5a, Sec. 15(a).)

Sec. 76.102. Agencies Responsible for Certifying Pesticide Applicators

(a) The department shall certify pesticide applicators involved in the following license use categories:

(1) agricultural pest control, except animal pest control;

(2) forest pest control;

(3) ornamental and turf pest control, except as provided by the Texas Structural Pest Control Act, as amended (Article 135b—6, Vernon's Texas Civil Statutes);

(4) seed treatments;

(5) right-of-way pest control;

(6) regulatory pest control; and

(7) demonstration pest control.

(b) The Texas Animal Health Commission shall certify pesticide applicators involved in the license use category of animal pest control.

(c) The Texas Department of Water Resources shall certify pesticide applicators involved in the license use category of aquatic pest control.

(d) The Texas Department of Health shall certify pesticide applicators involved in the license use category of health-related pest control.

(e) The license use categories described in this section have the meaning assigned by federal law. (V.A.C.S. Art. 135b—5a, Secs. 15(b)–(f).)

Sec. 76.103. Program Contingent on Federal Funds

(a) The licensing of certified commercial and noncommercial applicators is contingent on the availability of federal funds to pay 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 certified commercial and noncommercial applicators. The department shall publish notice of the discontinuance of the program in the Texas Register.

(c) If sufficient federal 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 certified commercial and noncommercial 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. (V.A.C.S. Art. 135b—5a, Sec. 15(h).)

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;

(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 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. (V.A.C.S. Art. 135b—5a, Sec. 16.)

Sec. 76.105. License Required

(a) Except as otherwise provided by this section, a person may not use or supervise the use of a restricted-use or state-limited-use pesticide unless the person is:

(1) licensed as a certified commercial or noncommercial applicator; and

(2) authorized by the license to use the restricted-use or state-limited-use pesticide in the license use categories covering the proposed pesticide use.

(b) Subsection (a) of this section does not apply to:

(1) an individual acting under the direct supervision of a certified applicator; or

(2) a private applicator.

(c) For purposes of this section, an individual is under the direct supervision of a certified applicator if the individual is acting under the instructions and control of a certified applicator who is responsible for the actions of that individual and who is available if and when needed. The certified applicator is not required to be physically present at the time and place of the pesticide application. (V.A.C.S. Art. 135b—5a, Secs. 2(12), 17 (part).)

Sec. 76.106. Classification of Commercial and Noncommercial Licenses

(a) The head of each regulatory agency may classify commercial and noncommercial 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 nonrefundable testing fee of not more than $10 for testing in each license use category. (V.A.C.S. Art. 135b—5a, Sec. 18.)

Sec. 76.107. Certification by More Than One Agency

(a) A person who wants to be certified 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 certification requirements for each category for which the person desires certification.

(b) A person certified under this section must pay testing fees required by each regulatory agency. (V.A.C.S. Art. 135b—5a, Sec. 15(g).)

Sec. 76.108. Commercial Applicator License

(a) A person who owns or operates a business that applies state-limited-use or restricted-use pesticides 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 of no more than $100, 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:

(1) filed with the agency evidence of financial responsibility as required by Section 76.111 of this code; and

(2) 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, or the applicant's representative if the applicant is a business, has been unable to satisfactorily fulfill certification 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 a certified applicator authorized to use and supervise the use of restricted-use and state-limited-use pesticides in the license use categories and subcategories in which the individual is licensed.

(f) If a license is issued in the name of a business, the business must have a certified applicator employed at all times. Failure to have a certified applicator employed is a ground for revocation of a business commercial applicator license. (V.A.C.S. Art. 135b—5a, Secs. 2(6), 19(a), 19(b), 19(c) (part), 19(d) (part), 19(f).)

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. A nongovernmental applicant shall include with the application an annual license fee of not more than $50, as fixed by the head of the regulatory agency. A regulatory agency may not charge a governmental entity applicant a license fee.

(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 is a certified applicator authorized to use and supervise the use of restricted-use and state-limited-use pesticides 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 certified applicator employed at all times. Failure to have a certified applicator employed is a ground for revocation of a governmental entity noncommercial applicator license. (V.A.C.S. Art. 135b—5a, Secs. 2(26), 20(a), 20(b), 20(c) (part).)

Sec. 76.110. Certified Applicator Examination; Reciprocal Agreements

(a) Each person applying for a license as a certified 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 in the license use categories and subcategories in which the person is to be licensed.

(b) The head of a regulatory agency may waive part or all of any license examination requirements on a reciprocal basis with any other state or federal agency that has substantially the same examination stan-

dards. (V.A.C.S. Art. 135b—5a, Secs. 2(5), 2(8), 19(c) (part), 20(c) (part), 22.)

Sec. 76.111. Commercial Applicator Proof of Financial Responsibility

(a) Each applicant for a commercial applicator license shall file with the regulatory agency issuing the license:

(1) a bond executed by the applicant as principal and by a corporate surety licensed to do business in Texas as surety; or

(2) a liability insurance policy, or certification of a policy, protecting persons who may suffer damages as a result of the operations of the applicant.

(b) The bond or liability insurance policy is not required to apply to damages or injury to agricultural crops, plants, or land being worked on by the applicant.

(c) The bond or liability insurance policy must be approved by the regulatory agency and conditioned on compliance with the requirements of this chapter and rules adopted under this chapter.

(d) The amount of the bond or liability insurance required by a regulatory agency may not be less than $5,000 nor more than $100,000 for property damage insurance and may not be less than $5,000 for bodily injury insurance. The head of a regulatory agency by rule may require different amounts of bond or insurance coverage for different classifications of operations under this chapter. At all times during the license period, the bond or liability insurance must be maintained at not less than the amount set by the agency head.

(e) At least 10 days before a reduction requested by a licensee or a cancellation of a bond or liability insurance policy, the party taking the action shall notify the head of the appropriate regulatory agency. If the party does not give that notice, the liability of the surety or insurer is limited to the bond or liability insurance policy.

(f) The head of a regulatory agency may accept a bond or 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 bond or liability insurance policy required by this section. If the applicant has not satisfied the requirement of the deductible amount in any prior legal claim, an agency head may not accept a bond or policy with a deductible clause unless the applicant 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 applicant's operation.

(g) Should the surety furnished under this section become insufficient or otherwise unsatisfactory, a licensee shall, on notice of the insufficiency or other defect, immediately file a new bond or liability insurance policy. Failure to file a bond or liability insurance policy or failure to maintain the surety in the required amount is a ground for suspension or revocation of a commercial applicator license. (V.A.C.S. Art. 135b—5a, Secs. 19(d) (part), (e).)

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 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 between producers of agricultural commodities.

(b) A private applicator is not required to be licensed or certified to use restricted-use or state-limited-use pesticides.

(c) The department may establish a voluntary program to certify private applicators who wish to apply restricted-use pesticides in compliance with federal law. (V.A.C.S. Art. 135b—5a, Secs. 2(32), 21.)

Sec. 76.113. Expiration and Renewal of Licenses

(a) Each commercial or noncommercial applicator license expires on December 31 of the year in which it was issued.

(b) Except as provided by Subsection (c) or (d) or this section, a person having a valid current commercial or noncommercial applicator license may renew the license for another year without retesting by paying to the regulatory agency the annual license fee required by this subchapter.

(c) A licensee must pass a new examination before renewal of a license if the head of the agency determines that additional knowledge is required in the license use categories or subcategories in which the licensee applies for renewal.

(d) If a certified applicator does not file with the regulatory agency by March 1 of any year an application for license renewal and the annual license fee, the applicator must pass another examination before the applicator may be recertified. (V.A.C.S. Art. 135b—5a, Sec. 23.)

Sec. 76.114. Records

(a) A regulatory agency shall require each licensee to maintain records of the licensee's use of pesticides. The regulatory agency by rule shall prescribe the information to be included in the records.

(b) A regulatory agency may require a licensee to keep records of the licensee's application of a specific restricted-use or state-limited-use pesticide and may require those records to be kept separate from other business records.

(c) A licensee shall keep records required under this section for a period of two years from the date of the pesticide application.

(d) On written request of the regulatory agency, a licensee shall furnish the agency a copy of any requested record pertaining to the application of pesticides. (V.A.C.S. Art. 135b—5a, Sec. 24.)

Sec. 76.115. Registration and Inspection of Equipment

(a) Each regulatory agency shall provide for the registration and inspection of equipment used in the commercial application of a restricted-use or state-limited-use pesticide.

(b) A regulatory agency may require repairs or alterations of equipment before further use.

(c) The head of a regulatory agency by rule shall adopt standards that must be met before equipment may be registered.

(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. (V.A.C.S. Art. 135b—5a, Sec. 25.)

Sec. 76.116. Suspension, Modification, or Revocation of License

(a) The head of a regulatory agency that licensed a certified applicator may suspend, modify, or revoke any provision in the license of the certified applicator if the head of the agency finds that the licensee 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;

(5) failed to maintain a bond or policy of insurance 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 licensed or an unlicensed person to evade the provisions of this chapter, conspired with a licensed or an unlicensed person to evade the provisions of this chapter, or allowed the licensee's license to be used by another person.

(b) A regulatory agency may temporarily suspend a license under this section for not more than 10 days after giving the licensee written notice of noncompliance. In order to suspend a license for more than 10 days or to modify or revoke a license, the regulatory agency shall conduct a hearing on the action. The hearing must be held before the 11th day following the day on which the agency issues written notice to the licensee of the time, place, and nature of the hearing. (V.A.C.S. Art. 135b—5a, Sec. 26(a) (part).)

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 and classified for use only by certified applicators. (V.A.C.S. Art. 135b—5a, Sec. 17 (part).)

[Sections 76.118–76.130 reserved for expansion]

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 waterway pollution that is harmful to man or wildlife.

(b) A person may not store or dispose of a pesticide in violation of a rule adopted by the department under this section. (V.A.C.S. Art. 135b—5a, Sec. 29.)

[Sections 76.132–76.150 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT

Sec. 76.151. Entry Power

(a) For the purpose of inspection, examination, or sampling, the department is entitled to enter at reasonable hours any building or place owned, controlled, or operated by a registrant or dealer if from probable cause it appears that the building or place contains a pesticide.

(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.

(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. (V.A.C.S. Art. 135b—5a, Secs. 11(a) (part), 30(a), 30(b).)

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. (V.A.C.S. Art. 135b—5a, Sec. 11(a) (part).)

Sec. 76.153. Stop-Sale 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 sale of the pesticide. The department shall present the order to the owner or custodian of the pesticide. The person who receives the order may not sell the pesticide until the department determines that the pesticide is in compliance with this chapter.

(b) This section does not limit the right of the department to proceed as authorized by another section of this chapter. (V.A.C.S. Art. 135b—5a, Secs. 11(b), (c) (part).)

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 sue to enjoin a violation or threatened violation of a provision of this chapter that is within the agency's responsibility. (V.A.C.S. Art. 135b—5a, Secs. 11(d), 30(c) (part).)

Sec. 76.155. Prosecutions

A regulatory agency may request the appropriate prosecuting attorney to prosecute a violation of a penal provision of this chapter. (V.A.C.S. Art. 135b—5a, Sec. 30(c) (part).)

[Sections 76.156–76.180 reserved for expansion]

SUBCHAPTER H. REMEDIES

Sec. 76.181. Appeal of Denial or Cancellation of Pesticide Registration

(a) 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 the Administrative Procedure and Texas Register Act (Article 6252—13a, Vernon's Texas Civil Statutes).

(b) Appeal under this section is governed by the substantial evidence rule. (V.A.C.S. Art. 135b—5a, Secs. 27(a), (c).)

Sec. 76.182. Appeal of Permit or License Denial, Suspension, Modification, or Revocation

(a) A person whose application for an experimental use permit, pesticide dealer license, commercial applicator license, or noncommercial applicator license has been denied or whose experimental use permit, pesticide dealer license, commercial applicator license, or noncommercial applicator license 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 the Administrative Procedure and Texas Register Act (Article 6252—13a, Vernon's Texas Civil Statutes).

(b) Appeal under this section is governed by the substantial evidence rule. (V.A.C.S. Art. 135b—5a, Secs. 27(b), (c).)

Sec. 76.183. Appeal of Stop-Sale Order

(a) The owner or custodian of a pesticide to which a stop-sale order applies 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. (V.A.C.S. Art. 135b—5a, Sec. 11(c) (part).)

Sec. 76.184. Reports of Pesticide Damage Claims

(a) A person claiming damages from a pesticide application may file with the regulatory agency that licensed the certified applicator whose action allegedly caused the damage a written statement claiming that the person has been damaged. To be eligible for consideration by the agency, the report must be filed before the 31st day following the day of the alleged occurrence or, if a growing crop is alleged to have been damaged, before the time that 25 percent of the crop has been harvested or before the 31st day, whichever is less. The report must contain the name of the person allegedly responsible for the application of the pesticide and the name of the owner or lessee of the land on which the crop is grown and to which damage is alleged to have occurred. The regulatory agency shall prepare a form to be furnished to persons for use in filing damage reports. The form may contain other information that is required by the head of the regulatory agency.

(b) On receipt of a report, the regulatory agency shall notify the licensee, the owner or lessee of the land on which the alleged act occurred, and any other person who may be charged with responsibility for the damages claimed. The regulatory agency shall furnish copies of the report to those people on request.

(c) The regulatory agency shall inspect damages whenever possible and shall report its findings to the person claiming damage and to the person alleged to have caused the damage. In order that damage may be

assessed, the claimant shall permit the regulatory agency and the licensee to observe, within reasonable hours, the land or nontarget organism alleged to have been damaged.

(d) Failure to file a report does not bar maintenance of a civil or criminal action. If a person fails to file a report and is the only person claiming injury from the particular use or application of a pesticide, the regulatory agency may, if in the public interest, refuse to hold a hearing for the denial, suspension, or revocation of a license issued under this chapter to the person alleged to have caused the damage. (V.A.C.S. Art. 135b—5a, Sec. 28.)

[Sections 76.185–76.200 reserved for expansion]

SUBCHAPTER I. 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;

(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;

(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 is calculated to:

(A) cause injury to man, vegetation, crops, livestock, wildlife, or pollinating insects; or

(B) pollute a water supply or waterway.

(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, or revoked under Section 76.116 of this code; or

(2) violates any other provision of this chapter (V.A.C.S. Art. 135b—5a, Secs. 2(2), 13(a) (part), 13(b), 13(c), 26(a) (part), 26(b), 32 (part).)

Sec. 76.202. Penalty

An offense under Section 76.201 of this code is a Class C misdemeanor. (V.A.C.S. Art. 135b—5a, Sec. 32 (part).)

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. (V.A.C.S. Art. 135b—5a, Sec. 13(a) (part), 14(a).)

CHAPTER 77. FIRE ANT CONTROL

Section

77.001. Commissioners Court May Establish Program
77.002. Coordination With Other Programs
77.003. Cost of Program
77.004. Approval of Program by Department
77.005. Federally Funded and Approved Programs

CHAPTER 77. FIRE ANT CONTROL

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. (V.A.C.S. Art. 135b—7, Sec. 1 (part).)

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. (V.A.C.S. Art. 135b—7, Sec. 1 (part).)

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. (V.A.C.S. Art. 135b—7, Sec. 1 (part).)

Sec. 77.004. Approval of Program by Department

(a) Except as provided by Subsection (b) of this section or by Section 77.005 of this code, the commissioners court shall obtain written approval by the department of the method of eradication to be used in any program established under this chapter. This approval must be obtained before the program is implemented.

(b) If the department does not grant approval of a method of eradication or propose an alternative method before the 61st day following the day on which the proposed method is submitted to the department, the commissioners court may proceed to expend county funds for implementation of the program using the method submitted to the department. (V. A.C.S. Art. 135b—7, Sec. 2.)

Sec. 77.005. Federally Funded and Approved Programs

Approval by the department under Section 77.004 of this code is not required in connection with any program that is financed totally or partially by federal funds and that is approved by the appropriate federal agencies. (V.A.C.S. Art. 135b—7, Sec. 3.)

CHAPTER 78. NOXIOUS WEED CONTROL DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Section
78.001. Definitions
78.002. Legislative Determination
78.003. Noxious Weeds
78.004. Eligibility to Sign Petition
78.005. Eligibility for Voting

[Sections 78.006–78.010 reserved for expansion]

SUBCHAPTER B. CREATION OF DISTRICT

78.011. Petition for Creation of District
78.012. Filing Petititon
78.013. District Boundaries; Name
78.014. Hearing Required
78.015. Notice of Hearing
78.016. Hearing
78.017. Action After Hearing
78.018. Notice of Election; Election Orders
78.019. Election
78.020. Returns; Effect of Election
78.021. Expense of Creating District

[Sections 78.022–78.030 reserved for expansion]

SUBCHAPTER C. ADMINISTRATION

78.031. Board of Directors
78.032. Initial Board of Directors
78.033. Annual Meeting
78.034. Compensation of Directors
78.035. Officers
78.036. Inspectors and Clerical Employees

[Sections 78.037–78.040 reserved for expansion]

SUBCHAPTER D. ENFORCEMENT

78.041. General Enforcement Powers of Board
78.042. Compliance Required
78.043. Notice of Control Measures
78.044. Inspection; Failure to Comply
78.045. Equipment Cleaning Procedure

[Sections 78.046–78.050 reserved for expansion]

SUBCHAPTER E. ASSESSMENTS AND APPROPRIATIONS

78.051. Assessment
78.052. Special Election on Increased Assessment
78.053. Collection of Assessment
78.054. Deposit of Assessment
78.055. Report to County Clerk
78.056. Report to Department
78.057. Appropriated Funds

[Sections 78.058–78.060 reserved for expansion]

SUBCHAPTER F. DISSOLUTION OF DISTRICT

Section
78.061. Petition for Dissolution
78.062. Election Order
78.063. Dissolution Election
78.064. Returns; Effect of Election
78.065. Dissolution

[Sections 78.066–78.070 reserved for expansion]

SUBCHAPTER G. ANNUAL REVIEW TO EXCLUDE LAND IN CROSBY COUNTY

78.071. Annual Review

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. (V.A.C.S. Art. 135c, Sec. 3 (part).)

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. (V.A.C.S. Art. 135c, Sec. 2 (part).)

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. (V.A.C.S. Art. 135c, Sec. 3 (part).)

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. (V.A.C.S. Art. 135c, Sec. 3 (part).)

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. (V.A.C.S. Art. 135c, Sec. 3 (part).)

[Sections 78.006–78.010 reserved for expansion]

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. (V.A.C.S. Art. 135c, Secs. 2 (part), 5, 6 (part).)

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. (V.A.C.S. Art. 135c, Sec. 6 (part).)

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." (V.A.C.S. Art. 135c, Sec. 4.)

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. (V.A.C.S. Art. 135c, Sec. 7 (part).)

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 no-

tice 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. (V.A.C.S. Art. 135c, Sec. 7 (part).)

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. (V.A.C.S. Art. 135c, Sec. 8.)

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. (V.A.C.S. Art. 135c, Sec. 9.)

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. (V.A.C.S. Art. 135c, Sec. 10.)

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." (V.A.C.S. Art. 135c, Secs. 11, 12.)

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. (V.A.C.S. Art. 135c, Sec. 13.)

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. (V.A.C.S. Art. 135c, Sec. 6 (part).)

[Sections 78.022–78.030 reserved for expansion]

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. (V.A.C.S. Art. 135c, Sec. 14 (part).)

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. (V.A.C.S. Art. 135c, Sec. 14 (part).)

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. (V.A.C.S. Art. 135c, Sec. 15.)

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. (V.A.C.S. Art. 135c, Sec. 20 (part).)

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. (V.A.C.S. Art. 135c, Sec. 14 (part).)

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. (V.A.C.S. Art. 135c, Sec. 20 (part).)

[Sections 78.037–78.040 reserved for expansion]

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. (V.A.C.S. Art. 135c, Secs. 16, 20 (part).)

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. (V.A.C.S. Art. 135c, Secs. 3 (part), 18 (part).)

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. (V.A.C.S. Art. 135c, Sec. 18 (part).)

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. (V. A.C.S. Art. 135c, Sec. 18 (part).)

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 misdemeanor punishable by a fine of not less than $25 nor more than $250. (V.A.C.S. Art. 135c, Sec. 17.)

[Sections 78.046–78.050 reserved for expansion]

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. (V.A.C.S. Art. 135c, Sec. 19 (part).)

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. (V.A.C.S. Art. 135c, Sec. 13a.)

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 2½ percent of the assessments collected and the contracting county tax assessor-collector may retain 2½ percent of the assessments collected. (V.A.C.S. Art. 135c, Sec. 19 (part).)

Sec. 78.054. Deposit of Assessment

The person collecting assessments shall deposit the money collected into a district depository selected by the board. (V.A.C.S. Art. 135c, Sec. 19 (part).)

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. (V.A.C.S. Art. 135c, Sec. 19 (part).)

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. (V.A.C.S. Art. 135c, Sec. 19a(a).)

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. (V.A.C.S. Art. 135c, Sec. 19a(b).)

[Sections 78.058–78.060 reserved for expansion]

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. (V.A.C.S. Art. 135c, Sec. 21 (part).)

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. (V.A.C.S. Art. 135c, Sec. 21 (part).)

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. (V.A.C.S. Art. 135c, Sec. 21 (part).)

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. (V.A.C.S. Art. 135c, Sec. 22 (part).)

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. (V.A.C.S. Art. 135c, Sec. 22 (part).)

[Sections 78.066–78.070 reserved for expansion]

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. (V.A.C.S. Art. 135c, Sec. 19A.)

SUBTITLE C. GRADING, PACKING, AND INSPECTING FRUITS AND VEGETABLES

CHAPTER 91. GENERAL GRADES AND PACKS OF FRUITS AND VEGETABLES

SUBCHAPTER A. GENERAL PROVISIONS

Section
91.001. Department to Administer
91.002. Compliance with Standards
91.003. Inspections
91.004. Certificate of Inspection
91.005. Cooperative Agreements
91.006. Culls
91.007. Package Markings
91.008. Penalty

[Sections 91.009–91.020 reserved for expansion]

SUBCHAPTER B. CONTAINER STANDARDS

91.021. Compliance With Standards
91.022. Bushel Basket
91.023. Four-Basket Crate
91.024. Six-Basket Crate
91.025. Folding Onion Crate
91.026. Berry Box or Crate

[Sections 91.027–91.040 reserved for expansion]

SUBCHAPTER C. PEACH GRADES AND PACKS

91.041. Grades
91.042. Fancy Grade
91.043. Choice or No. 1 Grade
91.044. No. 2 Grade
91.045. Peach Packs

[Sections 91.046–91.060 reserved for expansion]

SUBCHAPTER D. BERMUDA ONION GRADES

91.061. Grading Characteristics
91.062. Grade No. 1
91.063. Grade No. 1, Large
91.064. Boiler Grade
91.065. Grade No. 2
91.066. Grade No. 2, Large
91.067. Grade No. 3
91.068. Permissible Variations

[Sections 91.069–91.080 reserved for expansion]

SUBCHAPTER E. CABBAGE GRADES

Section
91.081. Grade No. 1
91.082. Grade No. 2
91.083. Permissible Variations

[Sections 91.084–91.090 reserved for expansion]

SUBCHAPTER F. SNAP BEAN GRADES AND PACKS

91.091. Grading Characteristics
91.092. Grade No. 1
91.093. Grade No. 2
91.094. Permissible Variation
91.095. Snap Bean Packs

[Sections 91.096–91.110 reserved for expansion]

SUBCHAPTER G. BARTLETT PEAR GRADES AND PACKS

91.111. Extra Fancy Grade
91.112. Fancy Grade
91.113. Choice Grade
91.114. Packages and Markings
91.115. Pear Packs

[Sections 91.116–91.120 reserved for expansion]

SUBCHAPTER H. IRISH POTATO GRADES

91.121. Grading Characteristics
91.122. Grade No. 1
91.123. Grade No. 2
91.124. Permissible Variations
91.125. Container Markings

[Sections 91.126–91.140 reserved for expansion]

SUBCHAPTER I. SWEET POTATO INSPECTION AND CLASSIFICATION

91.141. Availability of Department Services
91.142. Rules
91.143. Inspection Fees

SUBTITLE C. GRADING, PACKING, AND INSPECTING FRUITS AND VEGETABLES

CHAPTER 91. GENERAL GRADES AND PACKS OF FRUITS AND VEGETABLES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 91.001. Department to Administer

The department shall administer this chapter and adopt rules necessary for its enforcement. The department shall publish the rules and other information that will aid fruit growers, vegetable growers, and con-

tainer manufacturers in complying with this chapter. (V.A.C.S. Art. 118.)

Sec. 91.002. Compliance With Standards

Grades and packs of fruits and vegetables must meet the standards established by this chapter. (V.A.C.S. Art. 110 (part).)

Sec. 91.003. Inspections

(a) The department shall appoint inspectors to inspect fruits and vegetables, other than potatoes, under this chapter.

(b) Inspections shall be performed at the various shipping or loading stations in this state when requested by the growers or the shippers of fruits or vegetables, or by the shippers' agents, or by a person with a financial interest in the fruits or vegetables.

(c) Each person who requests an inspection shall pay a pro rata share of the expense of inspection. (V.A.C.S. Art. 117, Sec. 1.)

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.

(b) After an applicant has paid a pro rata share of the cost of an inspection performed under this chapter, an inspector shall issue to the applicant a form to evidence that an official inspection has been made or a certificate of inspection that shows the grade, classification, pack, or other standard requirements of the fruits or vegetables.

(c) A certificate of inspection issued under this section is prima facie evidence of the grade, classification, pack, or other standard requirements of the fruits or vegetables as of the time of inspection. (V.A.C.S. Art. 117, Secs. 2, 4.)

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 that is organized for that purpose, or both. An agreement may provide for the certification of grades of fruits and vegetables, other than potatoes, under this chapter.

(b) Department inspectors and a firm, corporation, or association that has executed a cooperative agreement shall obtain a license from the department, which shall be issued under department rules.

(c) In addition to the grades established by this chapter, the department may adopt the United States standards for the fruits and vegetables grown in this state, or the department may adopt rules concerning the grades, grading, or regulation of fruits and vegetables, other than potatoes, under this chapter. (V.A.C.S. Art. 117, Sec. 3.)

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. (V.A.C.S. Arts. 110 (part), 111, 112 (part), 115 (part), 116 (part).)

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. (V.A.C.S. Art. 110 (part).)

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 misdemeanor punishable by a fine of not more than $100. (V.A.C.S. Art. 110a.)

[Sections 91.009–91.020 reserved for expansion]

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. (V.A.C.S. Art. 109 (part).)

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. (V.A.C.S. Art. 109 (part).)

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 4½ 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 4½, 4, and 5½ inches wide, respectively, at least ⅛ 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. (V.A.C.S. Art. 109 (part).)

Sec. 91.024. Six-Basket Crate

Each basket in a six-basket crate must contain at least 268.8 cubic inches. (V.A.C.S. Art. 109 (part).)

Sec. 91.025. Folding Onion Crate

A folding onion crate must be at least 19⅝ 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. (V.A.C.S. Art. 109 (part).)

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. (V.A.C.S. Art. 109 (part).)

[Sections 91.027–91.040 reserved for expansion]

SUBCHAPTER C. PEACH GRADES AND PACKS

Sec. 91.041. Grades

The standard peach grades are fancy, choice or No. 1, and No. 2. (V.A.C.S. Art. 110 (part).)

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. (V.A.C.S. Art. 110 (part).)

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. (V.A.C.S. Art. 110 (part).)

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. (V.A.C.S. Art. 110 (part).)

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. (V.A.C.S. Art. 110 (part).)

[Sections 91.046–91.060 reserved for expansion]

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. (V.A.C.S. Art. 112 (part).)

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. (V.A.C.S. Art. 112 (part).)

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 3½ inches, the onions shall be designated Grade No. 1, Large. (V.A.C.S. Art. 112 (part).)

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. (V.A.C.S. Art. 112 (part).)

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. (V.A.C.S. Art. 112 (part).)

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 3½ inches, the onions shall be designated Grade No. 2, Large. (V.A.C.S. Art. 112 (part).)

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. (V.A.C.S. Art. 112 (part).)

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. (V.A.C.S. Art. 112 (part).)

[Sections 91.069–91.080 reserved for expansion]

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 1½ pounds but not more than 8 pounds in weight. (V.A.C.S. Art. 113 (part).)

Sec. 91.082. Grade No. 2

Grade No. 2 cabbage is sound cabbage that does not meet the requirements of Grade No. 1. (V.A.C.S. Art. 113 (part).)

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. (V.A.C.S. Art. 113 (part).)

[Sections 91.084–91.090 reserved for expansion]

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. (V.A.C.S. Art. 114 (part).)

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. (V.A.C.S. Art. 114 (part).)

Sec. 91.093. Grade No. 2

Grade No. 2 snap beans are snap beans that do not meet the requirements for Grade No. 1. (V.A.C.S. Art. 114 (part).)

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. (V.A.C.S. Art. 114 (part).)

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. (V.A.C.S. Art. 114 (part).)

[Sections 91.096–91.110 reserved for expansion]

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. (V.A.C.S. Art. 115 (part).)

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. (V.A.C.S. Art. 115 (part).)

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. (V.A.C.S. Art. 115 (part).)

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. (V.A.C.S. Art. 115 (part).)

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. (V.A.C.S. Art. 115 (part).)

[Sections 91.116–91.120 reserved for expansion]

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. (V.A.C.S. Art. 116 (part).)

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 1¾ inches in diameter; and

(4) have similar varietal characteristics. (V.A.C.S. Art. 116 (part).)

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 1½ inches in diameter; and

(4) have similar varietal characteristics. (V.A.C.S. Art. 116 (part).)

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. (V.A.C.S. Art. 116 (part).)

Sec. 91.125. Container Markings

Potato containers shall be marked with the name and post office address of the grower or shipper. (V.A.C.S. Art. 116 (part).)

[Sections 91.126–91.140 reserved for expansion]

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. (V.A.C.S. Art. 118c—3, Secs. 2, 3.)

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. (V.A.C.S. Art. 118c—3, Sec. 1 (part).)

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. (V.A.C.S. Art. 118c—3, Sec. 1 (part).)

CHAPTER 92. TOMATO STANDARDIZATION AND INSPECTION

SUBCHAPTER A. GENERAL

Section

92.001. Policy
92.002. Definitions
92.003. Seasonal Application
92.004. Exceptions
92.005. Department to Administer
92.006. Notice

[Sections 92.007–92.010 reserved for expansion]

SUBCHAPTER B. INSPECTION AND CERTIFICATION

Section
92.011. Inspection
92.012. Notice
92.013. Certificate of Inspection

[Sections 92.014–92.020 reserved for expansion]

SUBCHAPTER C. CONTAINERS, GRADES, AND PACKS

92.021. Standard Containers
92.022. Fancy and Choice Grades
92.023. Fancy Tomato Packs
92.024. Choice Tomato Packs
92.025. Uniformity Within a Pack
92.026. Deceptive Container Designations

[Sections 92.027–92.030 reserved for expansion]

SUBCHAPTER D. COOPERATIVE AGREEMENTS

92.031. Execution of Agreements
92.032. Licenses
92.033. Contributions
92.034. Payment of Contributions
92.035. Audit

[Sections 92.036–92.040 reserved for expansion]

SUBCHAPTER E. PENALTIES

92.041. Offenses
92.042. Penalty

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. (V.A.C.S. Art. 118c—1 (part).)

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. (V.A.C.S. Art. 118c—1, Sec. 2 (part).)

Sec. 92.003. Seasonal Application

This chapter is effective after March 31 and before July 16 each year. (V.A.C.S. Art. 118c—1 (part).)

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. (V.A.C.S. Art. 118c—1, Sec. 3.)

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. (V.A.C.S. Art. 118c—1, Secs. 1, 2 (part), 4 (part), 7, 9 (part), 10 (part).)

Sec. 92.006. Notice

All notices provided for by this chapter shall be in writing unless this chapter specifically provides otherwise. (V.A.C.S. Art. 118c—1, Sec. 2 (part).)

[Sections 92.007–92.010 reserved for expansion]

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. (V.A.C.S. Art. 118c—1, Sec. 4 (part).)

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. (V.A.C.S. Art. 118c—1, Sec. 4 (part).)

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. (V.A.C.S. Art. 118c—1, Sec. 4 (part).)

[Sections 92.014–92.020 reserved for expansion]

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. (V.A.C.S. Art. 118c—1, Sec. 9 (part).)

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. (V.A.C.S. Art. 110 (part).)

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. (V.A.C.S. Art. 110 (part).)

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. (V.A.C.S. Art. 110 (part).)

Sec. 92.025. Uniformity Within a Pack

As nearly as possible, tomatoes in a crate or package shall be uniformly ripe. (V.A.C.S. Art. 110 (part).)

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. (V.A.C.S. Art. 118c—1, Sec. 9 (part).)

[Sections 92.027–92.030 reserved for expansion]

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. (V.A.C.S. Art. 118c—1, Sec. 10 (part).)

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. (V.A.C.S. Art. 118c—1, Secs. 2 (part), 10 (part).)

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. (V.A.C.S. Art. 118c—1, Sec. 10 (part).)

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. (V.A.C.S. Art. 118c—1, Sec. 10 (part).)

Sec. 92.035. Audit

(a) The accounts and records of the chief inspector of the department are subject to audit by the state auditor from time to time or on the written request of the commissioner.

(b) The state auditor shall make a written report of the results of an audit to the commissioner. (V.A.C.S. Art. 118c—1, Sec. 10 (part).)

[Sections 92.036–92.040 reserved for expansion]

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. (V.A.C.S. Art. 118c—1, Secs. 2 (part), 5, 6, 9 (part), and 11 (part).)

Sec. 92.042. Penalty

An offense under Section 92.041 of this subchapter is a misdemeanor punishable by a fine of not more than $200. (V.A.C.S. Art. 118c—1, Sec. 11 (part).)

CHAPTER 93. CITRUS FRUIT STANDARDIZATION AND INSPECTION

SUBCHAPTER A. GENERAL

Section

93.001. Policy
93.002. Application
93.003. Exceptions
93.004. Department to Administer
93.005. Registered Brands and Trademarks

[Sections 93.006–93.010 reserved for expansion]

SUBCHAPTER B. INSPECTION AND CERTIFICATION

Section
93.011. Inspection
93.012. Certificate of Inspection
93.013. Rights of a Shipper Regarding Nonconforming Citrus Fruit

[Sections 93.014–93.020 reserved for expansion]

SUBCHAPTER C. CONTAINERS, GRADES, PACKS, AND MARKS

93.021. Container Standards
93.022. Fancy Bright Grade
93.023. Bright Grade
93.024. Fancy Russet Grade
93.025. Russet Grade
93.026. Orange Packs
93.027. Satsuma and Tangerine Packs
93.028. Grapefruit Packs
93.029. Packing Standards
93.030. Labeling
93.031. Imported Citrus Fruit
93.032. Permissible Variations

[Sections 93.033–93.040 reserved for expansion]

SUBCHAPTER D. COOPERATIVE AGREEMENTS

93.041. Execution of Agreements
93.042. Licenses
93.043. Standards
93.044. Contributions

[Sections 93.045–93.050 reserved for expansion]

SUBCHAPTER E. PURCHASE OF CITRUS FRUIT BY WEIGHT

93.051. Requirement to Weigh; Public Weigher
93.052. Certificate of Weight
93.053. Fees

[Sections 93.054–93.060 reserved for expansion]

SUBCHAPTER F. PENAL PROVISIONS

93.061. Offenses
93.062. Penalty

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. (V.A.C.S. Art. 118a, Sec. 1.)

Sec. 93.002. Application

This chapter applies only in the citrus zone established under Section 73.003 of this code. (V.A.C.S. Art. 118a, Sec. 18 (part).)

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. (V.A.C.S. Art. 118a, Secs. 9 (part), 15.)

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. (V.A.C.S. Art. 118a, Secs. 2, 3 (part), 4, 5, 12 (part).)

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. (V.A.C.S. Art. 118a, Sec. 16 (part).)

[Sections 93.006–93.010 reserved for expansion]

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. (V.A.C.S. Art. 118a, Secs. 8, 9 (part).)

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. (V.A.C.S. Art. 118a, Secs. 9 (part), 10.)

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. (V.A.C.S. Art. 118a, Sec. 17 (part).)

[Sections 93.014–93.020 reserved for expansion]

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. (V.A.C.S. Art. 118a, Sec. 9 (part); Art. 109 (part).)

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. (V.A.C.S. Art. 110 (part).)

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. (V.A.C.S. Art. 110 (part).)

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. (V.A.C.S. Art. 110 (part).)

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. (V.A.C.S. Art. 110 (part).)

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. (V.A.C.S. Art. 110 (part).)

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. (V.A.C.S. Art. 110 (part).)

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. (V.A.C.S. Art. 110 (part).)

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. (V.A.C.S. Art. 118a, Sec. 9 (part); Art. 110 (part).)

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. (V.A.C.S. Art. 118a, Secs. 11 (part), 16 (part); Art. 118b, Secs. 24, 24A.)

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. (V.A.C.S. Art. 118a, Sec. 18 (part).)

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. (V.A.C.S. Art. 110 (part).)

[Sections 93.033–93.040 reserved for expansion]

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. (V.A.C.S. Art. 118a, Secs. 3 (part), 12 (part).)

Sec. 93.042. Licenses

Inspectors and a firm, corporation, or association that has executed a cooperative agreement shall obtain a license from the department. (V.A.C.S. Art. 118a, Secs. 3 (part), 12 (part).)

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. (V.A.C.S. Art. 118a, Sec. 3 (part).)

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. (V.A.C.S. Art. 118a, Sec. 12 (part).)

[Sections 93.045–93.050 reserved for expansion]

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. (V.A.C.S. Art. 118a, Sec. 19 (part).)

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. (V.A.C.S. Art. 118a, Sec. 19 (part).)

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. (V.A.C.S. Art. 118a, Sec. 19 (part).)

[Sections 93.054–93.060 reserved for expansion]

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 ar 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. (V.A.C.S. Art. 118a, Secs. 6, 7, 9 (part), 11 (part), 14, 17 (part), 18 (part), 20 (part).)

Sec. 93.062. Penalty

An offense under Section 93.061 of this code is a misdemeanor punishable by:

(1) a fine of not more than $500;

(2) confinement in county jail for not more than 90 days; or

(3) both fine and confinement under this section. (V.A.C.S. Art. 118a, Sec. 20 (part).)

CHAPTER 94. CITRUS FRUIT MATURITY STANDARDS

SUBCHAPTER A. GENERAL

Section
94.001. Definitions
94.002. Exceptions
94.003. Department to Administer
94.004. Appointment of Inspectors
94.005. Staff and Expenses

[Sections 94.006–94.010 reserved for expansion]

SUBCHAPTER B. PACKING HOUSES

94.011. Registration
94.012. Notice of Operation

[Sections 94.013–94.020 reserved for expansion]

SUBCHAPTER C. MATURITY STANDARDS

94.021. Grapefruit
94.022. Oranges
94.023. Determination of Soluble Solids
94.024. Determination of Anhydrous Citric Acid
94.025. Unfit Citrus Fruit

[Sections 94.026–94.030 reserved for expansion]

SUBCHAPTER D. CITRUS FRUIT INSPECTION

94.031. Inspection
94.032. Maturity Stamps
94.033. Inspection Sites
94.034. Inspection at a Grove
94.035. Inspection Fees
94.036. Denial of Certificate

SUBCHAPTER D. CRITUS FRUIT INSPECTION—Continued

Section
94.037. Imported Citrus Fruit
94.038. Inspection for Substitution and Condemnation of Unfit Citrus Fruit

[Sections 94.039–94.050 reserved for expansion]

SUBCHAPTER E. PENALTIES

94.051. Offenses
94.052. Penalty

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. (V.A.C.S. Art. 118c, Sec. 1 (part).)

Sec. 94.002. Exceptions

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) citrus fruit that is accepted for transportation or is being transported by a common carrier after December 15 and before September 1 of a year; or

(4) transportation of citrus fruit from a grove to a packing house located in this state. (V.A.C.S. Art. 118c, Secs. 1 (part), 2 (part), 5 (part).)

Sec. 94.003. Department to Administer

The department shall direct and supervise the inspection and certification of maturity of citrus fruit under this chapter and 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. (V.A.C.S. Art. 118c, Secs. 2 (part), 3a, 10 (part).)

Sec. 94.004. Appointment of Inspectors

(a) On the recommendation of the commissioner, the governor may annually appoint as many citrus fruit inspectors to the department as are necessary to enforce this chapter.

(b) An inspector appointed under this section shall:

(1) serve for a period of one year or less;

(2) make the oath required by the constitution and file it with the secretary of state; and

(3) provide a $1.000 bond payable to the governor and conditioned on the faithful performance of the duties of inspector.

(c) In an emergency or if there is no inspector available to inspect citrus fruit in a particular locality, the department may appoint a special citrus fruit inspector who shall perform the duties of an inspector. A special inspector is not required to provide the bond otherwise required of an inspector by this section.

(d) The department shall reimburse citrus fruit inspectors for expenses necessarily incurred during the performance of their duties. (V. A.C.S. Art. 118c, Secs. 10 (part), 11 (part).)

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. (V.A.C.S. Art. 118c, Sec. 11 (part).)

[Sections 94.006–94.010 reserved for expansion]

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. (V.A.C.S. Art. 118c, Sec. 4 (part).)

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. (V.A.C.S. Art. 118c, Sec. 4 (part).)

[Sections 94.013–94.020 reserved for expansion]

SUBCHAPTER C. MATURITY STANDARDS

Sec. 94.021. Grapefruit

Grapefruit are mature if:

(1) the juice consists of 9 percent or more of soluble solids, when the ratio of soluble solids to anhydrous citric acid is at least 7.2 to 1;

(2) the juice consists of 10 percent or more of soluble solids, when the ratio of soluble solids to anhydrous citric acid is at least 7 to 1;

(3) the juice consists of 11 percent or more of soluble solids, when the ratio of soluble solids to anhydrous citric acid is at least 6.-8 to 1; or

(4) the juice consists of 11.5 percent or more of soluble solids, when the ratio of soluble solids to anhydrous citric acid is at least 6.-5 to 1. (V.A.C.S. Art. 118c, Sec. 3 (part).)

Sec. 94.022. Oranges

Oranges are mature when the ratio of soluble solids to the anhydrous citric acid of the juice is at least 12.5 to 1. (V.A.C.S. Art. 118c, Sec. 3 (part).)

Sec. 94.023. Determination of Soluble Solids

The percentage of soluble solids in citrus juice shall be determined by using a Brix hydrometer. The reading of the hydrometer corrected for temperature is the percent of soluble solids. (V.A.C.S. Art. 118c, Sec. 3 (part).)

Sec. 94.024. Determination of Anhydrous Citric Acid

Anhydrous citric acid in citrus juice is equal to the total acidity of the juice, which is determined by titration using standard alkali and phenolphthalein as the indicator. (V.A.C.S. Art. 118c, Sec. 3 (part).)

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) Citrus fruit 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 16 to August 31 each year. (V.A.C.S. Art. 118c, Sec. 2 (part).)

[Sections 94.026–94.030 reserved for expansion]

SUBCHAPTER D. CITRUS FRUIT INSPECTION

Sec. 94.031. Inspection

(a) Citrus fruit may not be transported, or prepared, received, or delivered for transportation or market, after August 31 and before December 16 each year unless it has been inspected for maturity and approved by a department citrus fruit inspector or by a United States Department of Agriculture citrus fruit inspector and is accompanied by a maturity stamp.

(b) A certificate of inspection and maturity issued under this section must identify the citrus fruit to which it relates.

(c) An inspector appointed under Section 94.004(c) of this code shall sign certificates of inspection and maturity as "Special Citrus Fruit Inspector." (V.A.C.S. Art. 118c, Secs. 2 (part), 11 (part).)

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. (V.A.C.S. Art. 118c, Secs. 2 (part), 5 (part), 6, 7.)

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. (V.A.C.S. Art. 118c, Secs. 2 (part), 13.)

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. (V.A.C.S. Art. 118c, Secs. 2 (part), 12 (part).)

Sec. 94.035. Inspection Fees

(a) A person who sells or ships citrus fruit after August 31 and before December 16 shall pay to the department a maximum fee of:

(1) 2.5 cents per standard box that is sold, transported, or delivered for transportation;

(2) 1.5 cents per one-half standard box, or other container that is one-half the size of a standard container, that is sold, transported, or delivered for transportation; or

(3) 2.5 cents per 80-pound lot, or portion of an 80-pound lot, that is sold or transported in bulk.

(b) The commissioner shall set the fees authorized by this section at amounts that are as nearly as possible equal to the cost of administering this chapter, and will reduce fees as necessary to prevent the accumulation of a surplus.

(c) The fees under this section are due when citrus fruit is prepared for market or transportation. (V.A.C.S. Art. 118c, Sec. 5 (part).)

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. (V.A.C.S. Art. 118c, Sec. 4 (part).)

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. (V.A.C.S. Art. 118c, Sec. 4(b) (part).)

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. (V.A.C.S. Art. 118c, Secs. 9, 12 (part).)

[Sections 94.039–94.050 reserved for expansion]

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. (V.A.C.S. Art. 118c, Secs. 4 (part), 5 (part), 8, 12 (part), 14, 15 (part).)

Sec. 94.052. Penalty

An offense under Section 94.051 of this code is a misdemeanor punishable by:

(1) a fine of not less than $25 nor more than $500;

(2) confinement for not more than six months; or

(3) both fine and confinement under this section. (V.A.C.S. Art. 118c, Sec. 15 (part).)

CHAPTER 95. CITRUS FRUIT COLORING MATTER

SUBCHAPTER A. GENERAL PROVISIONS

Section

95.001. Definition
95.002. Application
95.003. Department to Administer

[Sections 95.004–95.010 reserved for expansion]

SUBCHAPTER B. MANUFACTURE, SALE, OR USE OF COLORING MATTER

95.011. Certification of Safety
95.012. License Required
95.013. Analysis by Department
95.014. Bond
95.015. Notice of Use
95.016. Standards for Use of Coloring Matter

SUBCHAPTER B. MANUFACTURE, SALE, OR USE OF COLORING MATTER—Continued

Section
95.017. Labeling
95.018. Variation From Licensed Coloring Matter

[Sections 95.019–95.030 reserved for expansion]

SUBCHAPTER C. INSPECTION

95.031. Periodic Inspection
95.032. Certificate of Inspection
95.033. Noncomplying Citrus Fruit
95.034. Inspection Fees
95.035. Condemnation of Unfit Citrus Fruit

[Sections 95.036–95.040 reserved for expansion]

SUBCHAPTER D. PENALTIES

95.041. Offenses
95.042. Penalty

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. (V.A.C.S. Art. 118b—1, Sec. 1 (part).)

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. (V.A.C.S. Art. 118b—1, Sec. 1 (part).)

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 enforcement of this chapter and the rules adopted under this chapter shall be under the direction of the chief of the maturity division. (V.A.C.S. Art. 118b—1, Secs. 2 (part), 7, 8.)

[Sections 95.004–95.010 reserved for expansion]

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. (V.A.C.S. Art. 118b—1, Sec. 2 (part).)

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. (V.A.C.S. Art. 118b—1, Secs. 4 (part), 5.)

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. (V.A.C.S. Art. 118b—1, Sec. 3 (part).)

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. (V.A.C.S. Art. 118b—1, Sec. 4 (part).)

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. (V.A.C.S. Art. 118b—1, Sec. 9 (part).)

Sec. 95.016. Standards for Use of Coloring Matter

(a) A person may not apply coloring matter to citrus fruits unless the citrus fruit passes the state maturity tests and the tests required by this section.

(b) A person may not apply coloring matter to oranges unless:

(1) the juice of the oranges, extracted by hand without mechanical pressure, is at least 4.5 gallons per 1.4 bushels; and

(2) if the total of soluble solids of the juice is 9 percent or more, the ratio of total of soluble solids to anhydrous citric acid is at least 9 to 1; or

(3) if the total of soluble solids of the juice is at least 8.5 percent but less than 9 percent, the ratio of total soluble solids to anhydrous citric acid is at least 10 to 1.

(c) The Brix hydrometer shall be used to determine total soluble solids of citrus fruit under this section, and the reading of the hydrometer corrected for temperature is the percentage of total soluble solids.

(d) Anhydrous citric acid in citrus juice is equal to the total acidity of the juice as determined by titration, using standard alkali and phenolphthalein as the indicator. (V.A.C.S. Art. 118b—1, Sec. 6.)

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. (V.A.C.S. Art. 118b—1, Sec. 11.)

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. (V.A.C.S. Art. 118b—1, Sec. 3 (part).)

[Sections 95.019–95.030 reserved for expansion]

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. (V.A.C.S. Art. 118b—1, Secs. 3 (part), 9 (part).)

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. (V.A.C.S. Art. 118b—1, Secs. 9 (part), 13 (part).)

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. (V.A.C.S. Art. 118b—1, Sec. 9 (part).)

Sec. 95.034. Inspection fees

(a) The department shall collect a fee in the following amount from each person who applies coloring matter to citrus fruit:

(1) no more than one cent per container for each container with a capacity greater than one-half bushel;

(2) no more than one-half cent per container for each container with a capacity that is one-half bushel or less; or

(3) no more than one cent per 80-pound lot, or portion of 80-pound lot, for each lot that is sold or transported in bulk.

(b) The department shall set the fees authorized by this section at amounts that are as nearly as possible equal to the cost of administering this chapter. (V.A.C.S. Art. 118b—1, Sec. 10.)

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. (V.A.C.S. Art. 118b—1, Sec. 12.)

[Sections 95.036–95.040 reserved for expansion]

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. (V.A.C.S. Art. 118b—1, Secs. 13 (part), 14 (part).)

Sec. 95.042. Penalty

An offense under Section 95.041 of this code is a misdemeanor punishable by:

(1) a fine of not less than $25 nor more than $500;

(2) confinement for not more than six months; or

(3) both fine and confinement under this section. (V.A.C.S. Art. 118b—1, Sec. 14 (part).)

SUBTITLE D. HANDLING AND MARKETING OF HORTICULTURAL PRODUCTS

CHAPTER 101. HANDLING AND MARKETING OF VEGETABLES

Section

101.001. Definitions
101.002. Vegetables
101.003. License Required
101.004. License Categories
101.005. Application for License
101.006. License Fee
101.007. Issuance or Refusal of License
101.008. Term and Renewal of License
101.009. Licensee List
101.010. Transporting Agent or Buying Agent Identification Card
101.011. License or Identification Card Not Assignable
101.012. Cancellation of License or Identification Card
101.013. Payment of Purchase Price on Demand
101.014. Commission or Service Charge in Contract
101.015. Settlement on Grade and Quality
101.016. Records of Purchase
101.017. Record of Sale
101.018. Department Enforcement
101.019. Venue of Civil or Criminal Action
101.020. Penalties
101.021. Conflict With Antitrust Laws

SUBTITLE D. HANDLING AND MARKETING OF HORTICULTURAL PRODUCTS

CHAPTER 101. HANDLING AND MARKETING OF VEGETABLES

Sec. 101.001. Definitions

In this chapter:

(1) "Handle" means buy, sell, offer to sell, or ship for the purpose of selling.

(2) "Packer" means a person who prepares or packs vegetables for barter, sale, exchange, or shipment.

(3) "Person" means an individual, partnership, group of persons, corporation, or business unit.

(4) "Producer" means a person who is engaged in the business of growing or producing any vegetable.

(5) "Vegetable" means fresh produce generally considered a perishable vegetable, nut, or fruit, but does not include a citrus fruit.

(6) "Warehouseman" means a person who receives and stores vegetables for compensation. (V.A.C.S. Art. 1287—3, Secs. 1(a), (b) (part), (c), (d) (part), (h), (i), (k).)

Sec. 101.002. Vegetables

(a) This chapter applies to vegetables whether or not packed in ice or held in cold storage, but does not apply to vegetables 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 vegetable into an article of food of a different kind or character: 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 vegetables for packaging in any type of container; or any comparable method of preparation. (V.A.C.S. Art. 1287—3, Sec. 1(b) (part).)

Sec. 101.003. License Required

(a) Except as otherwise provided by this section, a person may not handle vegetables grown in this state, as owner, agent, or otherwise, without a license or an identification card issued by the department.

(b) This section does not apply to a retailer, unless the retailer:

(1) has annual sales of vegetables and citrus fruit that comprise 75 percent or more of the retailer's total sales; or

(2) employs a buying agent who buys directly from a producer. (V.A.C.S. Art. 1287—3, Secs. 1(d) (part), 1(e), 2, 21a.)

Sec. 101.004. License Categories

(a) A person who is required by Section 101.003 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) Unless the person's actions are described by another subsection of this section, a person shall apply for licensing as a dealer.

(c) A person shall apply for licensing as a handler if the person buys or ships vegetables for canning, handling, or processing.

(d) A person shall apply for licensing as a commission merchant if the person:

(1) purchases vegetables on credit;

(2) takes possession of vegetables for consignment or handling on behalf of the producer or owner of the vegetables; or

(3) takes possession of vegetables for consignment or handling in a manner that does not require or result in payment to the producer, seller, or consignor of the full amount of the purchase price in Unit-

ed States currency at the time of delivery or at the time that the vegetables pass from the producer, seller, or consignor to the person.

(e) A person shall apply for licensing as a cash vegetable dealer if the person:

(1) purchases vegetables only from a licensee; and

(2) pays for the vegetables in United States currency before or at the time of delivery or taking possession. (V.A.C.S. Art. 1287—3, Secs. 1(d) (part), 1(j), 20 (part).)

Sec. 101.005. Application for License

(a) A person required under Section 101.003 of this code to be licensed shall apply for a license to the department on a form furnished by the department. The application must be made under oath and contain the following information:

(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 an 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 in this state to handle vegetables?"

(2) "If you answered that you have been previously licensed, has any license issued to you in this state ever been suspended or revoked?"

(3) "If you have answered that a license issued to you in this state has been suspended or revoked, when, where, and for what reason was the license suspended or revoked?"

(c) A person applying for a license as a cash dealer must indicate in the application that a cash dealer license is applied for. (V.A.C.S. Art. 1287—3, Secs. 3, 20 (part).)

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 license fee of $25.

(b) A producer is not required to pay a license fee in order to be licensed as a dealer or handler if the producer handles or deals exclusively in the producer's own product.

(c) A person who applies for a license as a dealer under both this chapter and Chapter 102 of this code is entitled to pay a single license fee of $25. The person's license shall reflect that the person is licensed to handle both citrus fruit and vegetables. (V.A.C.S. Art. 1287—3, Secs. 4 (part), 5 (part), 20 (part), 21 (part).)

Sec. 101.007. Issuance or Refusal of License

(a) Except as otherwise provided by this section, the department shall immediately 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 an applicant for a license indicates on the application that a previous license of the applicant has been or is suspended or has been revoked, the department may not issue 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.

(c) The issuance of a license to a person who has suffered a previous suspension or revocation is discretionary with the department. In exercising that discretion, the department may consider:

(1) the facts and circumstances pertaining to the 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 grower or producer of vegetables; and

(4) any certified claim against the applicant by a grower or producer of vegetables that is under consideration by the department.

(d) Before refusing an application for a license under this section, the department shall conduct a hearing on the license application, and the applicant may appeal the decision of the department, in the manner provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252—13a, Vernon's Texas Civil Statutes).

(e) If the department refuses an application for a license, the department shall deduct from the license fee tendered with the application the sum of $5 for the purpose of defraying the costs incident to the filing and examination of the application. The department shall refund the balance of the license fee to the applicant. (V.A.C.S. Art. 1287—3, Secs. 4 (part), 9 (part).)

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. (V.A.C.S. Art. 1287—3, Secs. 7 (part), 12(a) (part).)

Sec. 101.009. Licensee List

The department may publish as often as it considers necessary a list in pamphlet form of all persons licensed under this chapter. (V.A.C.S. Art. 1287—3, Sec. 9a.)

Sec. 101.010. Transporting Agent or Buying Agent Identification Card

(a) In accordance with the rules of the department, a licensee may apply to the department for a reasonable number of identification cards for:

(1) transporting agents to act for the licensee in the transporting of vegetables; and

(2) buying agents to act for the licensee in any act requiring licensing under Section 101.003 of this code.

(b) The department may collect a fee not to exceed $1 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. (V.A.C.S. Art. 1287—3, Secs. 1(f), 1(g), 5 (part), 12(a) (part), 12(b), 12(c) (part).)

Sec. 101.011. License or Identification Card Not Assignable

A license or identification card is not assignable, and any attempt to assign voids the license or card. (V.A.C.S. Art. 1287—3, Sec. 12(a) (part).)

Sec. 101.012. Cancellation of License or Identification Card

(a) On complaint of any person aggrieved, injured, or damaged as a result of a violation of this chapter by a licensee or the transporting agent or buying agent of a licensee, the department shall conduct a hearing on the cancellation of the licensee's license or the agent's identification card. The complaint must be filed within 12 months after the date of the act that aggrieved, injured, or damaged the complaining party.

(b) If, following the hearing, the department finds that the evidence warrants cancellation of the license or identification card, the department shall issue an order canceling the license or card.

(c) The department shall conduct the hearing under this section, and the person whose license or identification card is canceled may appeal the decision of the department, in the manner provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252—13a, Vernon's Texas Civil Statutes). The department may recess the hearing from day to day as justice requires. (V.A.C.S. Art. 1287—3, Secs. 7 (part), 8 (part), 9 (part), 14(a) (part).)

Sec. 101.013. Payment of Purchase Price on Demand

(a) If a licensee 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 vegetables and agrees by contract of purchase to pay the purchase price on demand following delivery, the dealer 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 at the licensee's 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 vegetables must be in writing. The parties shall prepare the contract in duplicate and set out in the contract the full de-

tails 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 vegetables into the licensee's control. (V.A.C.S. Art. 1287—3, Secs. 10, 11.)

Sec. 101.014 Commission or Service Charge in Contract

If a licensee handles vegetables by guaranteeing a producer or owner a minimum price and handles the vegetables on the account of the producer or owner, the licensee shall include in the contract with the producer or owner the maximum amount that the licensee will charge for commission, service, or both, in connection with the vegetables handled. (V.A.C.S. Art. 1287—3, Sec. 16.)

Sec. 101.015. Settlement on Grade and Quality

(a) Except as otherwise provided by this section, a licensee shall settle with the producer or seller of vegetables on the basis of the grade and quality that is referred to in the contract under which the licensee obtained possession or control of the vegetables.

(b) If the vegetables 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 shall settle with the producer or seller of the vegetables 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 vegetables 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.

(e) This section does not apply to vegetables that are obtained and handled by a licensee solely on a consignment basis without a price guarantee. (V.A.C.S. Art. 1287—3, Sec. 17 (part).)

Sec. 101.016. Records of Purchase

(a) A licensee or a packer, processor, or warehouseman may not receive or handle vegetables without requiring the person from whom the vegetables are purchased or received to furnish a statement in writing showing:

(1) the owner of the vegetables;

(2) the grower of the vegetables;

(3) the approximate location of the land on which the vegetables were grown;

(4) the date the vegetables were gathered; and

(5) by whose authority the vegetables were gathered.

(b) The licensee, packer, processor, or warehouseman shall keep records of statements furnished under Subsection (a) of this section in a permanent book or folder and shall make the records available to inspection by any interested party. (V.A.C.S. Art. 1287—3, Sec. 13.)

Sec. 101.017. Record of Sale

(a) Unless otherwise agreed to in writing by a licensee and the owner of the vegetables, a licensee who handles vegetables on a consignment or commission basis shall, on demand of the owner, seller, or agent of the owner or seller, furnish a complete and accurate record showing:

(1) the date of sale of the vegetables;

(2) the person to whom the vegetables were sold;

(3) the grade and selling price of the vegetables; and

(4) an itemized statement of expenses of any kind or character incurred in the sale or handling of the vegetables, including the amount of the commission to the licensee.

(b) The licensee shall furnish information demanded under this section before the 11th day following the date of demand by the owner, seller, or agent. (V.A.C.S. Art. 1287—3, Sec. 15 (part).)

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 vegetables 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) Following an investigation, the department shall conduct hearings and take actions as it considers necessary, including issuance of an order for the suspension or cancellation of the license of a licensee who violated this chapter. The department shall conduct hearings under this subsection in the county in which a violation is alleged to have occurred.

(e) If a person who has received at least 15 days' notice of an order of the department refuses to comply with that order, the department may seek temporary or permanent relief to require compliance. The district court has jurisdiction to grant that relief. (V.A.C.S. Art. 1287—3, Sec. 14(a) (part), (b).)

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 or in which the vegetables were received by the licensee, packer, or warehouseman. (V.A.C.S. Art. 1287—3, Sec. 18.)

Sec. 101.020. Penalties

(a) A person commits an offense if the person:

(1) acts in violation of Section 101.003 of this code without first obtaining a license or after receiving notice of cancellation of a license;

(2) acts or assumes to act as a commission merchant without first obtaining a license as a commission merchant;

(3) acts or assumes to act as a transporting agent or buying agent without first obtaining an identification card;

(4) 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) of this code;

(5) as a licensee, fails to furnish information under Section 101.017 of this code before the 11th day following the date of demand;

(6) as a licensee, fails to settle with a producer or seller on the grade and quality of vegetables in the manner provided by Section 101.015 of this code;

(7) as a cash vegetable dealer, pays for vegetables by a means other than United States currency; or

(8) as a licensee, transporting agent, or buying agent, violates a provision of this chapter.

(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. (V.A.C.S. Art. 1287—3, Secs. 8 (part), 12(c) (part), 15 (part), 17 (part), 19 (part), 20 (part).)

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. (V.A.C.S. Art. 1287—3, Sec. 23.)

CHAPTER 102. HANDLING AND MARKETING OF CITRUS FRUIT

SUBCHAPTER A. REGULATION OF CITRUS FRUIT DEALERS

Section
102.001. Definitions
102.002. Citrus Fruit
102.003. License Required
102.004. License Categories
102.005. Application for License
102.006. License Fee
102.007. Issuance or Refusal of License
102.008. Term and Renewal of License
102.009. Licensee List
102.010. Transporting Agent or Buying Agent Identification Card
102.011. License or Identification Card Not Assignable
102.012. Cancellation of License or Identification Card
102.013. Payment of Purchase Price on Demand
102.014. Commission or Service Charge in Contract
102.015. Settlement on Grade and Quality
102.016. Buying by Weight
102.017. Records of Purchase
102.018. Record of Sale
102.019. Department Enforcement
102.020. Venue of Civil or Criminal Action
102.021. Penalties
102.022 Conflict With Antitrust Laws

[Sections 102.023–102.100 reserved for expansion]

SUBCHAPTER B. TRANSPORTATION OF CITRUS FRUIT

102.101. Identification Signs
102.102. Certificate
102.103. Exception
102.104. Penalty

[Sections 102.105–102.150 reserved for expansion]

SUBCHAPTER C. CITRUS MARKETING AGREEMENTS AND LICENSES

Section
102.151. Policy
102.152. Definitions
102.153. Limited Application of Subchapter
102.154. Marketing Agreements and Licenses
102.155. Hearing
102.156. Findings
102.157. Terms of Agreement or License
102.158. Administrative Committee
102.159. Assessment
102.160. Approval by Producers and Handlers
102.161. Uniform Licenses
102.162. Fees
102.163. Amendment of Marketing Agreement or License
102.164. Suspension or Termination of Marketing Agreement or License
102.165. Suspension or Revocation of Individual License
102.166. Records
102.167. Powers and Duties of the Department
102.168. Enforcement by Civil Suit
102.169. Injunction
102.170. Attorney's Fees; Venue; Cumulative Remedies
102.171. Penalty
102.172. Conflict With Antitrust Law

CHAPTER 102. HANDLING AND MARKETING OF CITRUS FRUITS

SUBCHAPTER A. REGULATION OF CITRUS FRUIT DEALERS

Sec. 102.001. Definitions

In this subchapter:

(1) "Handle" means buy, offer to buy, sell, offer to sell, or ship for the purpose of selling.

(2) "Packer" means a person who prepares or packs citrus fruit or a citrus fruit product for barter, sale, exchange, or shipment.

(3) "Person" means an individual, partnership, group of persons, corporation, or business unit.

(4) "Warehouseman" means a person who receives and stores citrus fruit for compensation. (V.A.C.S. Art. 118b, Secs. 1(a), (c), (d) (part), (h), (i).)

Sec. 102.002. Citrus Fruit

This subchapter applies to fresh, natural, canned, or processed citrus fruit, but only if grown in this state. (V.A.C.S. Art. 118b, Sec. 1(b).)

Sec. 102.003. License Required

(a) Except as otherwise provided by this section, a person may not handle citrus fruit in this state, as owner, agent, or otherwise, without a license or identification card issued by the department.

(b) This section does not apply to:

(1) a retailer, unless the retailer:

(A) has annual sales of citrus fruit and vegetables that comprise 75 percent or more of the retailer's total sales; or

(B) employs a buying agent who buys directly from a producer;

(2) a person shipping less than six standard boxes of citrus fruit in any one separate shipment; or

(3) a person who ships a noncommercial shipment of citrus fruit. (V.A.C.S. Art. 118b, Secs. 1(d) (part), (e), 2, 22.)

Sec. 102.004. License Categories

(a) A person who is required by Section 102.003 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) Unless the person's actions are described by another subsection of this section, a person shall apply for licensing as a dealer.

(c) A person shall apply for licensing as a handler if the person buys or ships citrus fruit for canning or processing.

(d) A person shall apply for licensing as a commission merchant if the person:

(1) purchases citrus fruit on credit;

(2) takes possession of citrus fruit for consignment or handling on behalf of the producer or owner of the fruit; or

(3) takes possession of citrus fruit 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 the citrus fruit passes from the producer or seller to the person.

(e) A person shall apply for licensing as a cash citrus dealer if the person:

(1) purchases citrus fruit only from a licensee;

(2) receives the citrus fruit at the licensee's place of business; and

(3) pays for the citrus fruit in United States currency before or at the time of delivery or taking possession. (V.A.C.S. Art. 118b, Secs. 1(d) (part), 1(j), 25 (part).)

Sec. 102.005. Application for License

(a) A person required under Section 102.003 of this code to be licensed shall apply for a license to the department on a form furnished by the department. The application must be made under oath and contain the following information:

(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 an agent in this state for service of legal process;

(5) the category of license for which the applicant is applying; and

(6) 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 in this state to handle citrus fruits or perishable agricultural commodities?"

(2) "If you answered that you have been previously licensed, has any license issued to you in this state ever been suspended or revoked?"

(3) "If you have answered that a license issued to you in this state has been suspended or revoked, when, where, and for what reason was the license suspended or revoked?" (V.A.C.S. Art. 118b, Secs. 3, 25 (part).)

Sec. 102.006. License Fee

(a) Except as otherwise provided by this section, a person applying for a license shall include with the license application a license fee of $25.

(b) A person applying for a license to sell citrus fruit from door to door or from temporary locations shall include with the license application a license fee of $1.

(c) A citrus grower is not required to pay a license fee in order to be licensed to handle the grower's citrus fruit if the grower:

(1) handles and markets only citrus fruit grown by that grower; and

(2) handles 1,000 or fewer standard boxes, or the equivalent, during a 12-month period.

(d) A person who applies for a license under both this chapter and Chapter 101 of this code is entitled to pay a single license fee of $25. The person's license shall reflect that the person is licensed to handle both citrus fruit and vegetables. (V.A.C.S. Art. 118b, Secs. 4(a) (part), 4(b) (part), 23; Art. 1287—3, Sec. 21 (part).)

Sec. 102.007. Issuance or Refusal of License

(a) Except as otherwise provided by this section, the department shall immediately 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 an applicant for a license indicates on the application that a previous license of the applicant has been or is suspended or has been revoked, the department may not issue 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.

(c) The issuance of a license to a person who has suffered a previous suspension or revocation is discretionary with the department. In exercising that discretion, the department may consider:

(1) the facts and circumstances pertaining to the 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 grower or producer of citrus fruit or of a perishable agricultural commodity; and

(4) any certified claim against the applicant by a grower or producer of citrus fruit or a perishable agricultural commodity that is under consideration by the department.

(d) Before refusing an application for a license under this section, the department shall conduct a hearing on the license application, and the applicant may appeal the decision of the department, in the manner provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252—13a, Vernon's Texas Civil Statutes).

(e) If the department refuses an application for a license, the department shall deduct from the license fee tendered with the application the sum of $5 for the purpose of defraying the costs incident to the filing and examination of the application. The department shall refund the balance of the license fee to the applicant. (V.A.C.S. Art. 118b, Secs. 4(a) (part), 8 (part).)

Sec. 102.008. Term and Renewal of License

(a) A license expires one year from the date of issuance.

(b) A license may be renewed by filing with the department a renewal application form and paying the license fee provided for issuance of the original license. (V.A.C.S. Art. 118b, Secs. 6 (part), 12 (part).)

Sec. 102.009. Licensee List

The department may publish as often as it considers necessary a list in pamphlet form of all persons licensed under this subchapter. (V.A.C.S. Art. 118b, Sec. 8a.)

Sec. 102.010. Transporting Agent or Buying Agent Identification Card

(a) In accordance with the rules of the department, a licensee may apply to the department for a reasonable number of identification cards for:

(1) transporting agents to act for the licensee in the transporting of citrus fruits; and

(2) buying agents to act for the licensee in any act requiring licensing under Section 102.003 of this code.

(b) The department may collect a fee not to exceed $1 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. (V.A.C.S. Art. 118b, Secs. 1(f), 1(g), 4(b) (part), 12 (part).)

Sec. 102.011. License or Identification Card Not Assignable

A license or identification card is not assignable and any attempt to assign voids the license or card. (V.A.C.S. Art. 118b, Sec. 12 (part).)

Sec. 102.012. Cancellation of License or Identification Card

(a) On complaint of any person aggrieved, injured, or damaged as a result of a violation of this subchapter by a licensee or the transporting

agent or buying agent of a licensee, the department shall conduct a hearing on the cancellation of the licensee's license or the agent's identification card. The complaint must be filed within 12 months after the date of the act that aggrieved, injured, or damaged the complaining party.

(b) If, following the hearing, the department finds that the evidence warrants cancellation of the license or identification card, the department shall issue an order canceling the license or card.

(c) The department shall conduct the hearing under this section, and the person whose license or identification card is canceled may appeal the decision of the department, in the manner provided for contested cases under the Administrative Procedure and Texas Register Act (Article 6252—13a, Vernon's Texas Civil Statutes). The department may recess the hearing from day to day as justice requires. (V.A.C.S. Art. 118b, Secs. 6 (part), 8 (part), 14(a) (part).)

Sec. 102.013. Payment of Purchase Price on Demand

(a) If a licensee 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 citrus fruit and agrees by contract of purchase to pay the purchase price on demand following delivery, the licensee 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 at the licensee's 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 the purchase price on demand, the contract for the handling, purchase, or sale of the citrus fruit 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 citrus fruit into the licensee's control. (V.A.C.S. Art. 118b, Secs. 9, 10.)

Sec. 102.014. Commission or Service Charge in Contract

If a licensee handles citrus fruit by guaranteeing a producer or owner a minimum price and handles the citrus fruit on the account of the producer or owner, the licensee shall include in the contract with the producer or owner the maximum amount that the licensee will charge for commission, service, or both, in connection with the citrus fruit handled. (V.A.C.S. Art. 118b, Sec. 16.)

Sec. 102.015. Settlement on Grade and Quality

(a) Except as otherwise provided by this section, a licensee shall settle with the producer or seller of citrus fruit on the basis of the grade and quality that is referred to in the contract under which the licensee obtained possession or control of the fruit.

(b) If the citrus fruit has 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 shall settle with the producer or seller of the citrus fruit 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 citrus fruit was 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.

(e) This section does not apply to a licensee who obtains and handles citrus fruit solely on a consignment basis without a price guarantee. (V.A.C.S. Art. 118b, Sec. 17 (part).)

Sec. 102.016. Buying by Weight

A licensee who buys citrus fruit by weight shall weigh the fruit on state-tested scales. (V.A.C.S. Art. 118b, Sec. 11 (part).)

Sec. 102.017. Records of Purchase

(a) A licensee or a packer, processor, or warehouseman may not receive or handle citrus fruit without requiring the person from whom the citrus fruit is purchased or received to furnish a statement in writing showing:

(1) the owner of the citrus fruit;

(2) the grower of the citrus fruit;

(3) the approximate location of the orchard where the citrus fruit was grown;

(4) the date the citrus fruit was gathered; and

(5) the person by whose authority the citrus fruit was gathered.

(b) The licensee, packer, processor, or warehouseman shall keep records of statements furnished under Subsection (a) of this section in a permanent book or folder and shall make the records available to inspection by any interested party.

(c) The department may periodically investigate licensees or persons alleged to be selling citrus fruit in violation of this subchapter and, without notice, may require evidence of purchase of any citrus fruit in a person's possession. (V.A.C.S. Art. 118b, Sec. 13.)

Sec. 102.018. Record of Sale

(a) Unless otherwise agreed in writing by a licensee and the owner of citrus fruit, a licensee who handles citrus fruit on a consignment or commission basis shall, on demand of the owner, seller, or agent of the owner or seller, furnish a complete and accurate record showing:

(1) the date of sale of the citrus fruit;

(2) the person to whom the citrus fruit was sold;

(3) the grade and selling price of the citrus fruit; and

(4) an itemized statement of expenses of any kind or character incurred in the sale or handling of the citrus fruit, including the amount of the commission to the licensee.

(b) The licensee shall furnish information demanded under this section before the 11th day following the date of demand by the owner, seller, or agent. (V.A.C.S. Art. 118b, Sec. 15 (part).)

Sec. 102.019. Department Enforcement

(a) For the purpose of enforcing this subchapter, the department shall, on its own initiative or on receipt of a verified complaint, investigate all alleged violations of this subchapter.

(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 citrus fruit is 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 mat-

ters, objects, or persons relating to an alleged violation under investigation.

(d) Following an investigation, the department shall conduct hearings and take actions as it considers necessary, including issuance of an order for the suspension or cancellation of the license of a licensee who violated this subchapter. The department shall conduct hearings under this subsection in the nearest city or town in the county in which a violation is alleged to have occurred.

(e) If a person who has received at least 15 days' notice of an order of the department refuses to comply with that order, the department may seek temporary or permanent relief to require compliance. The district court has jurisdiction to grant that relief. (V.A.C.S. Art. 118b, Secs. 14(a) (part), (b).)

Sec. 102.020. Venue of Civil or Criminal Action

The venue of a civil action or criminal prosecution instituted under this subchapter is in the county in which the violation occurred or in which the citrus fruit was received by the licensee, packer, or warehouseman. (V.A.C.S. Art. 118b, Sec. 20.)

Sec. 102.021. Penalties

(a) A person commits an offense if the person:

(1) acts in violation of Section 102.003 of this code without a license or after receiving notice of cancellation of a license;

(2) acts or assumes to act as a commission merchant without a license as a commission merchant;

(3) acts or assumes to act as a transporting agent or buying agent without an identification card or after receiving notice of cancellation of an identification card;

(4) as a transporting agent or buying agent, fails and refuses to turn over to the department an identification card in accordance with Section 102.010(e) of this code;

(5) as a licensee, fails to furnish information under Section 102.018 of this code before the 11th day following the date of demand;

(6) as a licensee, buys citrus fruit by weight and does not have the fruit weighed on state-tested scales;

(7) as a licensee, fails to settle with a producer or seller on the grade and quality of citrus fruit in the manner provided by Section 102.015 of this code;

(8) as a cash citrus dealer, pays for citrus fruit by a means other than United States currency; or

(9) as a licensee, transporting agent, or buying agent, violates a provision of this subchapter.

(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 under Subsection (a)(1), (a)(2), or (a)(3) of this section. (V.A.C.S. Art. 118b, Secs. 6 (part), 11 (part), 12 (part), 15 (part), 17 (part), 21(part), 25 (part).)

Sec. 102.022. Conflict With Antitrust Laws

This subchapter does not affect the application of Chapter 15, Business & Commerce Code. If any provision of this subchapter is held to conflict with that chapter, the entire subchapter is void. (Acts 43th Legis., Gen. Laws, Ch. 5, p. 41, Sec. 13.)

[Sections 102.023–102.100 reserved for expansion]

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. (V.A.C.S. Art. 118b—2, Sec. 1 (part).)

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. (V.A.C.S. Art. 118b—2, Sec. 2 (part).)

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. (V.A.C.S. Art. 118b—2, Secs. 1 (part), 2 (part).)

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 misdemeanor punishable by:

(1) a fine of not less than $100 nor more than $500;

(2) confinement in jail for not less than 30 days nor more than 6 months; or

(3) both fine and confinement under this subsection. (V.A.C.S. Art. 118b—2, Sec. 3.)

[Sections 102.105–102.150 reserved for expansion]

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. (V.A.C.S. Art. 5764a, Sec. 1.)

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.

(V.A.C.S. Art. 5764a, Secs. 2(a)–(f), (g) (part), (h)–(j).)

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. (V.A.C.S. Art. 5764a, Secs. 2(g) (part), 21.)

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. (V.A.C.S. Art. 5764a, Sec. 3.)

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. (V.A.C.S. Art. 5764a, Secs. 4, 17 (part).)

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. (V.A.C.S. Art. 5764a, Secs. 5, 6.)

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. (V.A.C.S. Art. 5764a, Secs. 7, 8 (part).)

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. (V.A.C.S. Art. 5764a, Secs. 8 (part), 15(2) (part).)

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. (V.A.C.S. Art. 5764a, Secs. 8 (part), 15(1), 15(2) (part), 17 (part), 18(2) (part).)

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) 66⅔ 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 66⅔ 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. (V.A.C.S. Art. 5764a, Sec. 9.)

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. (V.A.C.S. Art. 5764a, Sec. 10.)

Sec. 102.162. Fees

Each person applying for a marketing agreement or license shall submit to the department a filing fee of $10 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. (V.A.C.S. Art. 5764a, Sec. 17 (part).)

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. (V.A.C.S. Art. 5764a, Sec. 12.)

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 66⅔ 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. (V.A.C.S. Art. 5764a, Sec. 11.)

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. (V.A.C.S. Art. 5764a, Sec. 14(1).)

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. (V.A.C.S. Art. 5764a, Secs. 16(1), (2).)

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.

(e) Not later than the 30th day 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) At the end of each month, the department shall report to the comptroller of public accounts, and the comptroller shall deposit in the state treasury, all money received under this subchapter. (V.A.C.S. Art. 5764a, Secs. 13, 16(3), 16(4), 18(1), 18(2) (part), 18(3), 20.)

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. (V.A.C.S. Art. 5764a, Secs. 14(3), (5).)

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. (V.A.C.S. Art. 5764a, Sec. 14(4).)

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. (V.A.C.S. Art. 5764a, Secs. 14(6), (7).)

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 misdemeanor punishable by:

(1) a fine of not less than $50 nor more than $500;

(2) confinement for not less than 10 days nor more than 6 months; or

(3) both fine and confinement under this subsection.

(c) A person commits a separate offense for each day during which the person acts under Subsection (a) of this section. (V.A.C.S. Art. 5764a, Sec. 14(2).)

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. (V.A.C.S. Art. 5764a, Sec. 19.)

CHAPTER 103. PRODUCE RECOVERY FUND

Section

103.001. Definitions
103.002. Fund
103.003. Board
103.004. Duties of the Board
103.005. Initiation of Claim
103.006. Investigation; Hearing on Claim
103.007. Payment of Claim; Refund of Filing Fee
103.008. Limits on Claim Payments
103.009. Reimbursement of Fund and Payment to Complaining Party by Commission Merchant
103.010. Subrogation of Rights
103.011. Fee
103.012. Rules
103.013. Penalty

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. (New.)

Sec. 103.002. Fund

(a) The produce recovery fund is a special fund with the state treasurer administered by the department, without appropriation, for the payment of claims against commission merchants licensed under Chapter 101 or 102 of this code.

(b) Fees collected under Section 103.011 of this code and 50 percent of the fines collected under Section 101.020, 102.021, or 103.013 of this code 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, 102.021, or 103.013 of this code. 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. (V.A.C.S. Art. 118b, Sec. 21 (part); Art. 1287—3, Secs. 6(a), 6(d) (part), 19 (part).)

Sec. 103.003. Board

(a) The Produce Recovery Fund Board is composed of three members appointed by the governor with the advice and consent of the senate. One member must be a producer, one must be a commission merchant licensed under Chapter 101 or 102 of this code, and one must be a member of the general public.

(b) Each member of the board must reside in a different state senatorial district.

(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. (V.A.C.S. Art. 1287—3, Sec. 6(b).)

Sec. 103.004. Duties of the Board

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. (V.A.C.S. Art. 1287—3, Sec. 6(c) (part).)

Sec. 103.005. Initiation of Claim

A person who deals with a commission merchant licensed under Chapter 101 or 102 of this code in the purchasing, handling, selling, and accounting for sales of vegetables or citrus fruit and who is aggrieved by an action of the commission merchant as a result of a violation of terms or conditions of a contract made by the commission merchant may initiate a claim against the fund by filing with the department:

(1) a sworn complaint against the commission merchant; and

(2) a filing fee of $15. (V.A.C.S. Art. 118b, Sec. 4(d) (part); Art. 1287—3, Sec. 6(e) (part).)

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 commission merchant 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 the Administrative Procedure and Texas Register Act (Article 6252—13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 118b, Sec. 4(d) (part); Art. 1287—3, Secs. 6(c) (part), (e) (part).)

Sec. 103.007. Payment of Claim; Refund of Filing Fee

(a) If the amount determined by the department's investigation to be due the aggrieved party is not disputed by the commission merchant 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.

(c) The department shall refund the filing fee to an aggrieved party who is awarded recovery from the fund. (V.A.C.S. Art. 118b, Sec. 4(d) (part); Art. 1287—3, Sec. 6(e) (part).)

Sec. 103.008. Limits on Claim Payments

(a) In making payments from the fund the department may not pay the aggrieved party more than 60 percent of any claim for more than $100.

(b) The total payment of all claims arising from the same transaction may not exceed $10,000.

(c) The total payment of claims against a single commission merchant may not exceed $25,000 in any one year.

(d) The department may not pay a claim against:

(1) a commission merchant who was not licensed at the time of the transaction on which the claim is based; or

(2) a cash dealer licensed under Chapter 101 or 102 of this code.

(e) Payments from the fund during a fiscal year may not exceed the amount of money deposited into the fund during that fiscal year, except that surplus funds remaining at the end of each fiscal year are available for the payment of claims during any succeeding year. (V.A.C.S. Art. 118b, Secs. 4(e), (h); Art. 1287—3, Secs. 6(f), (i), (j).)

Sec. 103.009. Reimbursement of Fund and Payment to Complaining Party by Commission Merchant

(a) If the department pays a claim against a commission merchant, the commission merchant 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 commission merchant 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 commission merchant's license and may not issue a new license to that person for four years from the date of cancellation. If the commission merchant 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 as a commission merchant under Chapter 101 or 102 of this code during the four-year period in which the corporation is ineligible for licensing. (V.A.C.S. Art. 118b, Sec. 4(g); Art. 1287—3, Sec. 6(h).)

Sec. 103.010. Subrogation of Rights

If the department pays a claim against a commission merchant, the department is subrogated to all rights of the aggrieved party against the commission merchant to the extent of the amount paid to the aggrieved party. (V.A.C.S. Art. 118b, Sec. 4(f); Art. 1287—3, Sec. 6(g).)

Sec. 103.011. Fee

(a) Except as otherwise provided by this section, a commission merchant or retailer licensed under Chapter 101 or 102 of this code shall pay an annual fee to the fund of $200.

(b) A retailer who is licensed under Chapter 101 or 102 of this code and whose annual purchases of vegetables and citrus fruit are less than $15,000 a year shall pay an annual fee of $50.

(c) A person who is required by Subsection (a) of this section to pay a fee of $200 and who is licensed in one of those classifications under both Chapters 101 and 102 of this code may pay a single fee of $250. A person who is required by Subsection (b) of this section to pay a $50 fee and who is licensed in that classification under both Chapters 101 and 102 of this code may pay a single fee of $75.

(d) A person licensed as a cash dealer or a marketing association organized under Chapter 52 of this code that handles citrus fruit only for its members is exempt from payment of the fee under this section.

(e) The fee 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. (V.A.C.S. Art. 118b, Secs. 4(c), 25 (part); Art. 1287—3, Secs. 6(d) (part), 20 (part), 21 (part).)

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. (V.A.C.S. Art. 1287—3, Sec. 6(k).)

Sec. 103.013. Penalty

(a) A person commits an offense if the person acts or assumes to act as a commission merchant under Chapter 101 or 102 of this code without first paying the fee required by this chapter.

(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 this section. (V.A.C.S. Art. 118b, Sec. 21 (part); Art. 1287—3, Sec. 19 (part).)

CHAPTER 104. MARKETING ORDERS

SUBCHAPTER A. GENERAL PROVISIONS

Section
104.001. Policy
104.002. Definitions
104.003. Application of Chapter

[Sections 104.004–104.020 reserved for expansion]

SUBCHAPTER B. LISTS OF PRODUCERS AND HANDLERS

104.021. Compilation
104.022. Confidential or Public Information
104.023. Petition for Inclusion on List
104.024. Effects of Omission on Validity of Marketing Order

[Sections 104.025–104.040 reserved for expansion]

SUBCHAPTER C. REQUEST FOR MARKETING ORDER; HEARING

104.041. Petition
104.042. Notice of Public Hearing
104.043. Date and Location of Hearing
104.044. Public Hearing on Proposed Marketing Order

[Sections 104.045–104.060 reserved for expansion]

SUBCHAPTER D. VOTING ON MARKETING ORDER

104.061. Method of Voting
104.062. Number of Votes
104.063. Notice of Election; Ballots
104.064. Election Results
104.065. Disclosure of Particular Person's Vote
104.066. Adoption of Marketing Order

[Sections 104.067–104.080 reserved for expansion]

SUBCHAPTER E. MARKETING ORDER

104.081. Deposit for Expenses
104.082. Effective Date
104.083. Uniform Application
104.084. Territory Affected
104.085. Amendments
104.086. Term
104.087. Reapproval
104.088. Voluntary Termination
104.089. Public Hearing on Voluntary Termination
104.090. Voting on Voluntary Termination
104.091. Results of Election on Voluntary Termination

[Sections 104.092–104.100 reserved for expansion]

SUBCHAPTER F. MARKETING REGULATION

Section
104.101. Marketing and Handling Limitations
104.102. Allocation of Commodity Handled
104.103. Grading of Commodity
104.104. Application of Marketing Standards

[Sections 104.105–104.120 reserved for expansion]

SUBCHAPTER G. MARKETING COMMITTEE

104.121. Appointment
104.122. Eligibility
104.123. Term; Compensation
104.124. Control and Duties
104.125. Powers
104.126. Liability of Member or Employee

[Sections 104.127–104.140 reserved for expansion]

SUBCHAPTER H. SURPLUS COMMODITIES

104.141. Identifying Surplus; Disposal
104.142. Stabilization Fund; Assessments
104.143. By-Product Pool
104.144. Facilities for Surplus Commodities
104.145. Pledging Commodity for Loan
104.146. Equalization Fund; Assessments

[Sections 104.147–104.160 reserved for expansion]

SUBCHAPTER I. ASSESSMENTS AND BUDGET APPROVAL

104.161. Levy
104.162. Assessment Rate
104.163. Recommendation and Approval of Budget and Assessment Rate
104.164. Personal Debt
104.165. Collection of Assessment
104.166. Disposition of Money at End of Fiscal Period
104.167. Disposition of Money After Termination of Order

[Sections 104.168–104.180 reserved for expansion]

SUBCHAPTER J. INSPECTION FOR VIOLATION OF MARKETING ORDER

104.181. Lot
104.182. Inspection of Commodity
104.183. Warning Marking
104.184. Notice of Noncompliance
104.185. Reconditioning; Correcting Deficiency
104.186. Petition for Court Order
104.187. Court Order
104.188. Proceeds of Sale

[Sections 104.189–104.200 reserved for expansion]

SUBCHAPTER K. COURT ACTION

Section
104.201. Judicial Review
104.202. Injunction

[Sections 104.203–104.220 reserved for expansion]

SUBCHAPTER L. RULES, RECORDS, AND REPORTS

104.221. Rules
104.222. Records
104.223. Inspection of Records
104.224. False Reports

CHAPTER 104. MARKETING ORDERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 104.001. Policy

It is the policy of this state to:

(1) foster, encourage, and assist agricultural producers and handlers to:

(A) prevent or correct adverse marketing conditions;

(B) prevent economic waste;

(C) develop more efficient and equitable methods of marketing agricultural commodities; and

(D) expand markets for agricultural commodities grown in the state; and

(2) ensure the availability of high quality agricultural commodities marketed to satisfy the needs of the consumers of those commodities in this state. (V.A.C.S. Art. 55e, Sec. 2.)

Sec. 104.002. Definitions

In this chapter:

(1) "Agricultural commodity" means a fruit or vegetable that is produced in this state for commercial purposes, whether it is in its natural condition or has been processed. The term does not include cotton or a by-product of cotton.

(2) "Handler" means a person who is engaged in the business of distributing an agricultural commodity in intrastate commerce or in the business of processing, receiving, grading, packing, canning, preserving, grinding, crushing, or changing the form of an agricultural commodity to market the commodity in intrastate commerce. The term includes a commission merchant and a wholesaler but does not include a person who is engaged in manufacturing a product from an agricultural commodity that has been changed in form.

(3) "Marketing committee" means an administrative body organized to administer a marketing program in conjunction with the department.

(4) "Marketing order" means an order issued by the department that prescribes rules governing the distribution, handling, or processing, in any manner, of an agricultural commodity in this state during a specified period.

(5) "Marketing program" means a plan for administering a marketing order.

(6) "Person" means an individual, corporation, association other than a cooperative marketing association, partnership, or other business unit.

(7) "Producer" means a person who is engaged in the business of growing, cultivating, or raising an agricultural commodity or who causes an agricultural commodity to be grown, cultivated, or raised. (V.A.C.S. Art. 55e, Sec. 3 (part).)

Sec. 104.003. Application of Chapter

(a) This chapter does not apply to:

(1) an order or rule issued by the Public Utility Commission of Texas; or

(2) an order or rule concerning the operation of common carriers issued by the Interstate Commerce Commission.

(b) This chapter does not apply to a person:

(1) who is a retailer of an agricultural commodity, except to the extent that the person is a producer or handler of an agricultural commodity;

(2) who makes only casual sales of an agricultural commodity; or

(3) whose sales of an agricultural commodity are:

(A) incidental to urban home ownership; or

(B) the result of activity other than a commercial farm or business venture. (V.A.C.S. Art. 55e, Sec. 4.)

[Sections 104.004–104.020 reserved for expansion]

SUBCHAPTER B. LISTS OF PRODUCERS AND HANDLERS

Sec. 104.021. Compilation

(a) The department shall compile a list of producers and a list of handlers. Each list must state:

(1) the name and address of each producer or handler; and

(2) the volume of each agricultural commodity that each person produced or handled during the preceding marketing season.

(b) If the department requests assistance, a trade association, cooperative marketing association, or handler shall assist the department in compiling the lists of producers and handlers. (V.A.C.S. Art. 55e, Sec. 5 (part).)

Sec. 104.022. Confidential or Public Information

(a) Information compiled in accordance with Section 104.021 of this code that concerns the volume of agricultural commodities produced or handled by a person is confidential. The information may be used only in the administration of this chapter by the department, a marketing committee, or a person named by a court order to receive the information.

(b) The names and addresses of producers and handlers compiled in accordance with Section 104.021 of this code are public information. The department shall make the names and addresses available for public inspection in the commissioner's office during normal working hours. (V.A.C.S. Art. 55e, Sec. 5 (part).)

Sec. 104.023. Petition for Inclusion on List

(a) If information concerning a producer or handler has been omitted from a list compiled in accordance with Section 104.021 of this code, the producer or handler, at any time, may petition the department to be included on the list.

(b) After the department receives substantiation that the petitioner is a producer and that the volume figures reported by the petitioner are correct, the department shall add the name and other information of the petitioner to the list of producers. (V.A.C.S. Art. 55e, Sec. 5 (part).)

Sec. 104.024. Effects of Omission on Validity of Marketing Order

A marketing order may not be voided or altered and the execution of a marketing order may not be delayed because information relating to a producer or handler was omitted from a list compiled in accordance with Section 104.021 of this code. (V.A.C.S. Art. 55e, Sec. 5 (part).)

[Sections 104.025–104.040 reserved for expansion]

SUBCHAPTER C. REQUEST FOR MARKETING ORDER; HEARING

Sec. 104.041. Petition

(a) Producers and handlers may file a petition to adopt a marketing order with the department.

(b) The petition must state:

(1) the name of the agricultural commodity to be affected by the proposed marketing order;

(2) a description of the territory to be affected by the proposed order;

(3) a general statement of facts that states the necessity for the proposed order;

(4) a proposed date and place for the public hearing on the proposed order; and

(5) a draft of the proposed order or a statement of the principal features to be included in the proposed marketing program.

(c) The petition must be signed by 25 percent or more of the persons whom the department lists as producers of the agricultural commodity and 25 percent or more of the persons whom the department lists as handlers of the agricultural commodity, and:

(1) the producers who sign the petition must have collectively produced during the preceding marketing season 25 percent or more of the state's total production of the agricultural commodity; and

(2) the handlers who sign the petition must have collectively handled 25 percent or more of the state's total production of the agricultural commodity handled during the preceding marketing season. (V.A.C.S. Art. 55e, Secs. 6(b), 6(c), 6(d), 7(b) (part).)

Sec. 104.042. Notice of Public Hearing

(a) After a valid petition for adoption of a marketing order is filed, the department shall:

(1) cause notice of a public hearing on the proposed marketing order to be published in a newspaper of general circulation in Austin and in at least one other newspaper of general circulation elsewhere in the state on five consecutive days beginning before the 10th day before the day of the hearing; and

(2) before the 10th day before the day of the hearing, mail to each listed producer or handler that would be regulated by the proposed marketing order a copy of the notice and a statement of the proposed marketing order or the principal features of the proposed marketing order.

(b) The notice must state:

(1) the time and place of the hearing;

(2) the agricultural commodity and the territory to be affected by the proposed order; and

(3) that at the hearing the department will receive testimony and evidence concerning the accuracy of the department's lists of producers and handlers in addition to testimony concerning the appropriateness of the proposed marketing order. (V.A.C.S. Art. 55e, Secs. 6(a), 7(a), 7(b) (part).)

Sec. 104.043. Date and Location of Hearing

The department shall hold the public hearing on the proposed marketing order at the location stated by the petition for the order and on the date stated by the petition unless that date conflicts with the time requirements for notice prescribed by Section 104.042 of this code. If a conflict exists, the department shall set the date of the hearing. (V.A.C.S. Art. 55e, Sec. 7(b) (part).)

Sec. 104.044. Public Hearing on Proposed Marketing Order

(a) At a public hearing on a proposed marketing order, the department shall:

(1) receive all testimony under oath; and

(2) record the proceedings of the hearing.

(b) The department shall maintain on file in the office of the commissioner a copy of the record of the proceedings required by Subsection (a) of this section.

(c) At the public hearing the department shall receive evidence concerning:

(1) the accuracy of the department's lists of producers and handlers;

(2) the appropriateness of the proposed marketing order and the resulting marketing program;

(3) the method of voting on the proposed marketing order; and

(4) other necessary and relevant matters.

(d) The department may determine the validity of challenges to the accuracy of the department's lists of producers and handlers. The department's decision may be appealed to a court of competent jurisdiction.

(e) By a majority vote of those present, persons attending a public hearing on a proposed marketing order shall determine which provisions of the proposed marketing order, if any, are to be submitted to a vote of the producers and handlers who would be regulated by the proposed marketing order.

(f) The department may approve or disapprove, but may not modify, the proposed marketing order that the persons attending the public hearing determine to submit to a vote of the producers and handlers.

(g) If the department approves the submission of the proposed marketing order to a vote of the producers and handlers, the department shall:

(1) make a finding that the proposed marketing order is consistent with the protection of the health, safety, and general welfare of the people of this state; and

(2) before submitting the order to the vote, certify that the costs of administering the marketing program, including the cost of labor supplied by the department, are met by the proposed assessments, or proposed maximum rate of assessments, provided by the marketing order to be levied against the producers and handlers regulated by the order. (V.A.C.S. Art. 55e, Secs. 8(a), (b), (c) (part).)

[Sections 104.045–104.060 reserved for expansion]

SUBCHAPTER D. VOTING ON MARKETING ORDER

Sec. 104.061. Method of Voting

(a) Persons attending a public hearing on a proposed marketing order shall determine, from the methods prescribed by Subsection (b) of this section, the method of submitting the proposed order to a vote of the producers and handlers who would be regulated by the proposed order.

(b) Producers and handlers shall vote on adoption of a marketing order by:

(1) filing written assents to the order as proposed; or

(2) voting in a referendum on the order as proposed.

(c) The department shall conduct the election in accordance with the method chosen under this section. (V.A.C.S. Art. 55e, Secs. 8(c) (part), 9(a), 9(b) (part).)

Sec. 104.062. Number of Votes

(a) Except as provided by Subsection (b) of this section, each producer or handler who would be regulated by a proposed marketing order is entitled to one vote.

(b) A person who is both a producer and a handler and who is subject to regulation by a proposed marketing order as both is entitled to two votes. A person is not entitled to more than two votes. (V.A.C.S. Art. 55e, Sec. 9(b) (part).)

Sec. 104.063. Notice of Election; Ballots

(a) After a method of voting on a proposed marketing order is adopted, the department shall send to each person who is listed by the department as a producer or handler and who would be regulated by the proposed marketing order:

(1) notice of the election on the proposed marketing order; and

(2) a ballot for the election.

(b) The notice required by Subsection (a) of this section must state or be accompanied by a statement of:

(1) the text of the proposed marketing order;

(2) the method of voting on the proposed order;

(3) the requirements for approval of the proposed order at the election;

(4) the address of the department where the ballot is to be received; and

(5) the date, determined in accordance with Subsection (c) of this section, by which the ballots must be postmarked or received by the department.

(c) The department shall set the date by which a ballot must be received by the department or postmarked for delivery to the department. The date set by the department must be:

(1) after the 20th day after the day on which the ballot is sent to the voter by the department; and

(2) before the 61st day after the day on which the ballot is sent to the voter by the department. (V.A.C.S. Art. 55e, Secs. 9(b) (part), 10.)

Sec. 104.064. Election Results

(a) The department shall certify the accuracy of the results of an election on a proposed marketing order.

(b) After the department certifies the results of an election, the department shall:

(1) cause notice of the results to be published, on five consecutive days, in a newspaper of general circulation in Austin and in at least one other newspaper of general circulation elsewhere in the state; and

(2) maintain in the office of the commissioner a copy of the notice of the results for public inspection during normal working hours. (V.A.C.S. Art. 55e, Secs. 9(b) (part), 11 (part).)

Sec. 104.065. Disclosure of Particular Person's Vote

The department may not disclose information concerning the manner in which a particular person voted to anyone other than the person, the person's attorney, or another person to whom a court order directs disclosure of that information. (V.A.C.S. Art. 55e, Sec. 11 (part).)

Sec. 104.066. Adoption of Marketing Order

(a) If an election on a proposed marketing order is conducted by the filing of written assents, the order is adopted if:

(1) a majority of the producers entitled to vote and a majority of the handlers entitled to vote assent;

(2) the producers who assent collectively produced, during the preceding marketing season, 65 percent or more of the state's total production of the agricultural commodity to be affected by the proposed marketing order; and

(3) the handlers who assent collectively handled, during the preceding marketing season, 65 percent or more of the state's total production of the agricultural commodity to be affected by the proposed marketing order.

(b) If an election on a proposed marketing order is conducted by a referendum, the order is adopted if:

(1) 40 percent or more of the producers entitled to vote and 40 percent or more of the handlers entitled to vote cast ballots;

(2) a majority of producers voting and a majority of the handlers voting adopt the proposed marketing order;

(3) the producers voting to adopt the order collectively produced 65 percent or more of the total amount of the agricultural commodity to be affected by the proposed order produced during the preceding marketing season by all producers voting in the election; and

(4) the handlers voting to adopt the proposed order collectively handled 65 percent or more of the total volume of the agricultural commodity to be affected by the proposed order handled during the preceding marketing season by all handlers voting in the election. (V.A.C.S. Art. 55e, Sec. 9(c).)

[Sections 104.067–104.080 reserved for expansion]

SUBCHAPTER E. MARKETING ORDER

Sec. 104.081. Deposit for Expenses

Before issuing a marketing order, the department may require the petitioners for the order to deposit with the department an amount that the department determines to be necessary to pay the expenses of preparing, adopting, and effecting the marketing order. (V.A.C.S. Art. 55e, Sec. 17 (part).)

Sec. 104.082. Effective Date

If a marketing order is approved in accordance with this chapter, the order takes effect on the 15th day after the day on which notice of the results of the election on the order was published or on the date specified in the marketing order, whichever is later. (V.A.C.S. Art. 55e, Sec. 12 (part).)

Sec. 104.083. Uniform Application

A marketing order must state that the order is to be applied uniformly to all persons of the same class. (V.A.C.S. Art. 55e, Sec. 13(b) (part).)

Sec. 104.084. Territory Affected

(a) A marketing order may affect the entire state or a designated part of the state.

(b) A marketing order must define the territory to be affected by it. If the territory affected is not the entire state, the order must describe the territory by county boundaries. (V.A.C.S. Art. 55e, Sec. 13(b) (part).)

Sec. 104.085. Amendments

(a) To amend a marketing order, the person petitioning for the amendment and the department shall follow the procedures for instituting a marketing order as prescribed by this chapter.

(b) If authority to institute a provision of a marketing order is delegated to a marketing committee in accordance with Section 104.124 of this code, the committee may alter the terms of the provision without regard to the procedures for instituting a marketing order. (V.A.C.S. Art. 55e, Sec. 19.)

Sec. 104.086. Term

A marketing order expires on the fifth anniversary of its effective date unless:

(1) the order specifies an expiration date before its fifth anniversary;

(2) the order is formally terminated in accordance with this subchapter; or

(3) the order is reapproved in accordance with Section 104.087 of this code. (V.A.C.S. Art. 55e, Secs. 12 (part), 20(a).)

Sec. 104.087. Reapproval

(a) During the last year that a marketing order is effective, the department shall hold a public hearing on the reapproval of the marketing order.

(b) The department shall give notice of the hearing and conduct the hearing in accordance with the notice and hearing requirements prescribed by Subchapter C of this chapter for a hearing on a proposed marketing order.

(c) If the participants at the hearing approve, the department shall submit the issue of reapproval of the marketing order to a vote of the producers and handlers regulated by the order. The department shall hold the election in accordance with the requirements for holding an election on a proposed marketing order as prescribed by Subchapter D of this chapter.

(d) If the producers and handlers reapprove the marketing order, a new term equal to the existing term of the order begins on the day that the existing term expires. (V.A.C.S. Art. 55e, Sec. 21.)

Sec. 104.088. Voluntary Termination

The department shall conduct a hearing on the termination of a marketing order if presented with a petition to terminate a marketing order that is signed by 35 percent or more of the producers regulated by the order and 35 percent or more of the handlers regulated by the order and if:

(1) the producers who sign the petition, collectively, produced 35 percent or more of the volume of the agricultural commodity affected by the order produced during the preceding marketing season; and

(2) the handlers who sign the petition, collectively, handled 35 percent or more of the volume of the agricultural commodity affected by the order handled in the preceding marketing season. (V.A.C.S. Art. 55e, Sec. 20(b) (part).)

Sec. 104.089. Public Hearing on Voluntary Termination

(a) After the department receives a valid petition for termination of a marketing order, the department shall give notice of a public hearing on the proposed termination of the order, and conduct the hearing, in accordance with the notice and hearing requirements prescribed by Subchapter C of this chapter for a hearing on a proposed marketing order.

(b) If the persons attending a public hearing on the proposed termination of a marketing order approve termination, the department shall submit the issue of termination to a vote of the producers and handlers regulated by the marketing order in accordance with the procedures for conducting elections on instituting a marketing order as prescribed by Subchapter D of this chapter. (V.A.C.S. Art. 55e, Secs. 20(b) (part), (c) (part).)

Sec. 104.090. Voting on Voluntary Termination

(a) If the election on the proposed termination of a marketing order is conducted by the filing of written assents, the order is terminated if:

(1) a majority of the producers regulated by the order and listed by the department as producers and a majority of the handlers regulated by the order and listed by the department as handlers assent;

(2) the producers who assent, collectively, produced during the preceding marketing season 50 percent or more of the volume of the total production of the agricultural commodity affected by the marketing order and produced by producers regulated by the order; and

(3) the handlers who assent, collectively, handled during the preceding marketing season 50 percent or more of the volume of the total production of the agricultural commodity affected by the marketing order and handled by the handlers regulated by the order.

(b) If the election on the proposed termination of the marketing order is conducted by a referendum, the order is terminated if:

(1) a majority of the producers regulated by the marketing order and voting on the proposal and a majority of the handlers regulated by the order and voting on the proposal vote to terminate the order;

(2) the producers voting to terminate the order, collectively, produced during the preceding marketing season 50 percent or more of the volume of the total production of the agricultural commodity affected by the order and produced by the producers regulated by the marketing order; and

(3) the handlers voting to terminate the order, collectively, produced during the preceding marketing season 50 percent or more of the volume of the total production of the agricultural commodity affected by the order and handled by the handlers regulated by the order. (V.A.C.S. Art. 55e, Sec. 20(c) (part).)

Sec. 104.091. Results of Election on Voluntary Termination

(a) The department shall cause notice of the results of an election on the proposed termination of a marketing order to be published in accordance with the requirements prescribed by Section 104.064 of this code for publication of the results of a vote on approval of a proposed marketing order.

(b) If the producers and handlers vote to terminate the marketing order, the order terminates 15 days after the last day the notice required by Subsection (a) of this section is published. (V.A.C.S. Art. 55e, Sec. 20(d).)

[Sections 104.092–104.100 reserved for expansion]

SUBCHAPTER F. MARKETING REGULATION

Sec. 104.101. Marketing and Handling Limitations

A marketing order may provide for limiting the total amount of an agricultural commodity, or the total amount of a grade, size, or quality of the commodity, that may be:

(1) marketed by producers; or

(2) processed, distributed, or otherwise handled in this state by a producer or handler engaged in marketing, processing, distributing, or handling. (V.A.C.S. Art. 55e, Sec. 13(a) (part).)

Sec. 104.102. Allocation of Commodity Handled

A marketing order may provide for the allocation of the amount of an agricultural commodity, or the amount of a grade, size, or quality of the agricultural commodity that:

(1) a handler may acquire from, or handle on behalf of, a producer of the commodity in this state, if the allocation is based on the amounts of the commodity produced or sold by producers in a marketing period that the department determines to be a representative period and if the order apportions equitably among the producers of the commodity the total amount of the agricultural commodity, or the total amount of a grade, size, or quality of the commodity, that is purchased or handled in the state; or

(2) a handler may process, distribute, or handle in this state, if the allocation is based on the amount of the commodity, or the amount of a grade, size, or quality of the commodity of the current season that each handler has available for processing, distribution, or handling or based on the amount of the commodity, or the amount of a grade, size, or quality of the commodity, that was processed, distributed, or handled by each handler in a period that the department finds is representative and if the order apportions equitably among all handlers regulated by the order the total amount of the commodity, or the total amount of a grade, size, or quality of the commodity, that is handled in this state. (V.A.C.S. Art. 55e, Sec. 13(a) (part).)

Sec. 104.103. Grading of Commodity

(a) A marketing order may provide for:

(1) the establishment of grading standards for the quality, condition, size, maturity, or pack of an agricultural commodity that is delivered by producers to handlers, handled or prepared for market, or marketed by producers or handlers; and

(2) uniform grading of the commodity in accordance with standards established as provided by the marketing order.

(b) A minimum standard established in accordance with Subsection (a)(1) of this section may not be below a minimum standard provided by law for the commodity. (V.A.C.S. Art. 55e, Sec. 13(a) (part).)

Sec. 104.104. Application of Marketing Standards

(a) If a marketing order or agreement requires the producers or handlers of an agricultural commodity that is affected by the marketing order to comply with minimum quality, condition, size, or maturity regulations, a person may not process, distribute, or otherwise handle a commodity produced in or outside this state that does not meet those minimum requirements except as provided by the order or agreement.

(b) The minimum quality, condition, size, or maturity regulations described by Subsection (a) of this section do not apply to an agricultural commodity that is produced outside this state and that is in transit on the effective date of the regulations. (V.A.C.S. Art. 55e, Sec. 25.)

[Sections 104.105–104.120 reserved for expansion]

SUBCHAPTER G. MARKETING COMMITTEE

Sec. 104.121. Appointment

(a) The commissioner shall appoint a marketing committee to assist the department in administering a marketing program.

(b) A marketing order may:

(1) provide for the appointment of members of the marketing committee from nominations made by the producers and handlers who are regulated by the marketing order; and

(2) prescribe the method of nomination. (V.A.C.S. Art. 55e, Sec. 15(a) (part).)

Sec. 104.122. Eligibility

To be eligible to serve as a marketing committee member, a person must be a producer or handler who is regulated by the marketing order. (V.A.C.S. Art. 55e, Sec. 15(a) (part).)

Sec. 104.123. Term; Compensation

(a) A member of a marketing committee serves until removed by the commissioner.

(b) A member of a marketing committee serves without compensation but is entitled to reimbursement for actual expenses incurred in the performance of official committee duties. (V.A.C.S. Art. 55e, Secs. 15(a) (part), (b).)

Sec. 104.124. Control and Duties

(a) The marketing committee is under the control of the department.

(b) The department may prescribe the duties of the committee in administering the marketing program. The duties may include:

(1) gathering information necessary to administer the marketing program;

(2) assisting in collection of assessments from producers and handlers; and

(3) receiving complaints of violations of the marketing order and reporting the complaints to the department. (V.A.C.S. Art. 55e, Sec. 15(c) (part).)

Sec. 104.125. Powers

(a) The marketing committee may exercise powers prescribed by the marketing order in accordance with this chapter.

(b) The department may authorize a marketing committee to:

(1) employ necessary personnel, including attorneys in the private practice of law, and set the employees' compensation and terms of employment; and

(2) incur expenses that the department determines to be necessary for the committee to perform its duties in accordance with this chapter.

(c) The department shall pay for the expenses incurred by a marketing committee in accordance with Subsection (b)(2) of this section from money collected in accordance with this chapter.

(d) A marketing order may specifically delegate to a marketing committee the authority to institute any provision permitted by Sections 104.101–104.103 and 104.141 of this code. (V.A.C.S. Art. 55e, Secs. 13(c), 15(c) (part), 15(d) (part).)

Sec. 104.126. Liability of Member or Employee

A member or employee of a marketing committee is not personally responsible in any way to a person for an act performed in the course of official committee duties. (V.A.C.S. Art. 55e, Sec. 15(e).)

[Sections 104.127–104.140 reserved for expansion]

SUBCHAPTER H. SURPLUS COMMODITIES

Sec. 104.141. Identifying Surplus; Disposal

(a) A marketing order may prescribe a plan:

(1) for determining the existence and extent of the surplus of an agricultural commodity, or a grade, size, or quality of the commodity;

(2) for controlling and disposing of a surplus of a commodity; and

(3) for equalizing the cost of, or proceeds from, the elimination or control of the surplus among the producers or handlers regulated by the order.

(b) A marketing order that provides for the disposition of the surplus of an agricultural commodity, or the surplus of a grade, size, or quality of the agricultural commodity, or that delegates to a marketing committee the power to initiate a disposal program must provide for the disposal of the surplus to be accomplished in accordance with this subchapter by a stabilization fund, by a by-product pool, or by both. (V.A.C.S. Art. 55e, Secs. 13(a) (part), 14(a) (part).)

Sec. 104.142. Stabilization Fund; Assessments

(a) A marketing order may provide for the creation of a stabilization fund to:

(1) acquire any portion of the surplus of an agricultural commodity in fresh or processed form other than that processed in airtight containers; and

(2) direct the surplus acquired by money from the fund to noncompetitive uses or dispose of the surplus noncommercially.

(b) An assessment shall be levied on producers and handlers to provide money for the stabilization fund. The department shall establish an assessment rate based on the units in which the commodity is handled or marketed or on another uniform basis that the department determines to be reasonable and equitable.

(c) For convenience of collection, the department may collect an assessment owed by a producer from handlers of the commodity. A han-

dler who pays an assessment owed by a producer may deduct an amount equal to the amount paid from an amount that the handler owes to the producer. (V.A.C.S. Art. 55e, Sec. 14(a) (part).)

Sec. 104.143. By-Product Pool

(a) A marketing order may provide for:

(1) the establishment of a by-product pool for an agricultural commodity, or for a grade, size, or quality of an agricultural commodity;

(2) the sale of the commodity in the pool; and

(3) the equitable distribution of the proceeds of the sale among persons participating in the pool.

(b) If a by-product pool is established, the marketing committee may:

(1) receive the commodity from each producer or handler participating in the pool;

(2) handle the commodity according to the grade, size, quality, or condition of the commodity; and

(3) account to each participating producer or handler on a pro rata basis for net proceeds of the sale of the commodity.

(c) The marketing committee may not market the products of the by-product pool in a form that would compete directly with the portion of the commodity marketed in regular channels of trade.

(d) The marketing committee may transfer any of the contents of the by-product pool without charge to charitable organizations or similar agencies under proper safeguards to ensure that none of the commodity competes directly with the unrestricted portion of the commodity.

(e) The marketing committee may dispose of the products of the by-product pool in regular marketing channels in a manner and at times that the committee determines advisable if the manner and times are consistent with the maintenance of stabilized marketing conditions for the commodity. (V.A.C.S. Art. 55e, Sec. 14(a) (part).)

Sec. 104.144. Facilities for Surplus Commodities

If a marketing order authorizes the establishment of a stabilization fund or a by-product pool, the marketing committee may establish and operate facilities to store, finance, grade, pack, service, process, prepare for market, sell, and dispose of the acquired agricultural commodity but may not engage in commercial warehousing. (V.A.C.S. Art. 55e, Sec. 14(b) (part).)

Sec. 104.145. Pledging Commodity for Loan

A marketing committee has title to all of the commodity in a by-product pool established in accordance with this chapter to finance the operation of the pool and to handle the commodity. The committee may pledge all of the commodity in the pool to obtain a loan from a lending agency. (V.A.C.S. Art. 55e, Sec. 14(b) (part).)

Sec. 104.146. Equalization Fund; Assessments

If a marketing order authorizes the establishment of a stabilization fund or a by-product pool, the marketing committee may create an equalization fund and may maintain the fund by a uniform assessment on producers or some other uniform and equitable method. The committee may use the money in the fund:

(1) to remove inequalities between producers or handlers participating in the pool that result from errors in estimating production or surplus;

(2) to indemnify producers whose production, in whole or in part, is diverted from normal marketing outlets or diverted to by-products;

(3) for relief; or

(4) for other noncompetitive purposes permitted by the marketing order. (V.A.C.S. Art. 55e, Sec. 14(b) (part).)

[Sections 104.147–104.160 reserved for expansion]

SUBCHAPTER I. ASSESSMENTS AND BUDGET APPROVAL

Sec. 104.161. Levy

Each marketing order must provide for levying assessments in amounts sufficient to pay the necessary expenses incurred by the department in the formulation, issuance, administration, and enforcement of the marketing order. (V.A.C.S. Art. 55e, Sec. 16(a) (part).)

Sec. 104.162. Assessment Rate

(a) Each marketing order must state the assessment to be collected or the maximum rate of assessment.

(b) The rate of assessment for producers may not exceed 2½ percent of the gross dollar volume of sales of the agricultural commodity made by all producers regulated by the order.

(c) The rate of assessment for handlers may not exceed 2½ percent of the gross dollar volume of purchases of the agricultural commodity from producers or 2½ percent of the gross dollar volume of sales of the agricultural commodity handled by all handlers regulated by the order during the marketing season for which the order is effective. (V.A.C.S. Art. 55e, Secs. 13(b) (part), 16(b).)

Sec. 104.163. Recommendation and Approval of Budget and Assessment Rate

(a) The marketing committee shall recommend to the department:

(1) a budget to cover the necessary expenses; and

(2) the rate of assessment under this subchapter.

(b) If the department determines that the budget and assessment rate are proper and equitable and that they will provide sufficient money to pay incurred expenses, the department may:

(1) approve the budget and assessment rate; and

(2) order each producer and handler assessed to pay to the department, at the rate and in the installments prescribed by the department, an assessment based on the units in which the agricultural commodity is marketed, or on any other uniform basis that the department determines is reasonable and equitable. (V.A.C.S. Art. 55e, Sec. 16(c).)

Sec. 104.164. Personal Debt

An assessment imposed in accordance with this subchapter is a personal debt of the person assessed. If the person fails to pay the assessment on or before the due date determined by the department, the department may:

(1) file in a court of competent jurisdiction a complaint against the person for collection of the assessment; and

(2) to pay the cost of enforcing the collection of the unpaid assessment, add to the amount due an amount that does not exceed 10 percent of the unpaid amount. (V.A.C.S. Art. 55e, Sec. 16(d).)

Sec. 104.165. Collection of Assessment

(a) Each marketing order must provide for the collection of assessments imposed in accordance with this subchapter.

(b) To conveniently collect producer assessments, the department may collect those assessments from the handlers of the commodity affected by the marketing order.

(c) If a handler pays to the department the assessment of a producer, the handler may deduct an amount equal to the amount paid from money that the handler owes to the producer.

(d) The department may require an assessed person to deposit in advance with the department an amount necessary for expenses. The department shall base the amount of the advance deposit on the estimated number of units to be marketed or handled by the person assessed or on any other uniform basis that the department determines is reasonable and equitable. The basis for determining the amount of the advance deposit is applicable to the marketing season for which the marketing order is effective.

(e) After the amount of money credited to the administrative account of the marketing order is sufficient to warrant an adjustment or at the end of the marketing season, the department shall adjust, to the proper amount assessed, the amount that the department requires a person to deposit in accordance with Subsection (d) of this section. (V.A.C.S. Art. 55e, Secs. 16(a) (part), (e), (f).)

Sec. 104.166. Disposition of Money at End of Fiscal Period

(a) After each fiscal period used by a marketing committee for budgeting, the department may:

(1) refund, in accordance with Subsection (b) of this section, money in an amount equal to the amount of the assessments collected but not spent for expenses of the marketing order; or

(2) carry over all or part of the unspent money to the next succeeding fiscal period if the department finds that the money is required to pay expenses of the marketing order.

(b) The department shall pay refunds made under this section on a pro rata basis to persons from whom, or on whose behalf, the assessments were collected. (V.A.C.S. Art. 55e, Sec. 16(g) (part).)

Sec. 104.167. Disposition of Money After Termination of Order

(a) Except as provided by this section, the department, after the termination of a marketing order, shall refund an amount equal to the amount of the assessments collected for expenses of the marketing order but not spent. The department shall pay the refunds on a pro rata basis to all persons from whom, or on whose behalf, the assessments were collected.

(b) If the department finds that the amounts to be refunded are so small that computation and remittance of the refunds are impractical, the department is not required to return the money. (V.A.C.S. Art. 55e, Sec. 16(g) (part).)

[Sections 104.168–104.180 reserved for expansion]

SUBCHAPTER J. INSPECTION FOR VIOLATION OF MARKETING ORDER

Sec. 104.181. Lot

(a) As used in this subchapter, a lot is:

(1) a unit in which identical or similar items that are produced by one person are grouped or consolidated, in one or more containers or parcels, for packaging or transporting; or

(2) a cluster of identical or similar items that are produced by one person and that are included in the same shipping order, bill of lading, order of consignment, or other itemized transport order.

(b) This subchapter applies to any lot of an agricultural commodity affected by a marketing order regardless of where the lot is in the marketing channels in this state or who has possession of the lot. (V.A.C.S. Art. 55e, Secs. 3 (part), 23(a).)

Sec. 104.182. Inspection of Commodity

(a) If the department or an authorized inspector receives a complaint alleging that a provision of a marketing order concerning the quality, condition, size, maturity, or pack of the agricultural commodity affected by the order or an enforcement rule concerning those factors has been violated, an authorized inspector who is discharging his or her duties in checking compliance with a marketing order may request a magistrate to issue an administrative inspection permit.

(b) If the magistrate finds that there is reason to believe that a violation described by Subsection (a) of this section has occurred, the magistrate shall issue an administrative inspection permit to allow the inspector access to specified agricultural commodities in specified locations.

(c) An inspector may hold any lot of an agricultural commodity that is subject to a permit for a reasonable period, not to exceed 24 hours for a perishable agricultural commodity or 72 hours for a nonperishable commodity, to enable the inspector to ascertain whether the lot complies with the marketing requirements of the order. (V.A.C.S. Art. 55e, Sec. 23(b).)

Sec. 104.183. Warning Marking

(a) If after inspection an inspector determines that any lot of an agricultural commodity affected by a marketing order does not comply with the order, the inspector or another authorized person may affix to the lot an official notice, warning tag, or other appropriate marking that warns that the lot is being held and states the reasons for which it is being held.

(b) A person other than an authorized inspector or enforcing officer may not:

(1) detach, alter, deface, or destroy an official notice, warning tag, or marking affixed to a lot that is being held; or

(2) except on written permission of an authorized enforcing officer or by order of a court of competent jurisdiction, remove or dispose of the lot in a manner or under conditions other than as prescribed by the notice of noncompliance. (V.A.C.S. Art. 55e, Sec. 23(c).)

Sec. 104.184. Notice of Noncompliance

(a) The department or an authorized person who is holding any lot of an agricultural commodity under this subchapter shall, by mail or in person, give to the person in possession of the lot, a notice stating:

(1) a description of the lot being held;

(2) the place where the lot is being held;

(3) the reason for which the lot is being held;

(4) the specific marketing order, marketing rule, or other rule and the section of the order or rule on which noncompliance is alleged; and

(5) the time allowed for reconditioning the lot or correcting the deficiencies as prescribed by Section 104.185 of this code.

(b) If given by mail, notice required by Subsection (a) of this section shall be mailed to the last known address of the person in possession of the lot.

(c) The person in possession of the lot shall notify the owner of the lot and every other person that has an interest in the lot that the person in possession of the lot has received notice of noncompliance. (V.A.C.S. Art. 55e, Secs. 23(d), (e), (g) (part).)

Sec. 104.185. Reconditioning; Correcting Deficiency

(a) The owner of any lot of an agricultural commodity that is being held shall recondition the agricultural commodity or correct the deficiency before:

(1) the expiration of 48 hours after the time at which notice of noncompliance is given, if the commodity is perishable; or

(2) the expiration of 72 hours after the time at which notice of noncompliance is given, if the commodity is nonperishable.

(b) If the lot is reconditioned or the deficiencies are corrected within the period prescribed by Subsection (a) of this section, the enforcing officer shall remove the warning tags or markings and shall release the lot for marketing.

(c) If the owner does not recondition the commodity or correct the deficiency, the enforcing officer, after receiving the consent of the owner of the lot, may:

(1) divert the lot to other lawful uses; or

(2) destroy the lot. (V.A.C.S. Art. 55e, Sec. 23(f).)

Sec. 104.186. Petition for Court Order

(a) If the owner of any lot of an agricultural commodity being held does not recondition the agricultural commodity or correct the deficiencies within the period prescribed by Section 104.185 of this code, and if the owner fails or refuses to give the consent to divert or destroy the lot, the enforcing officer shall file in a court of competent jurisdiction in this state a verified petition requesting permission to divert the lot to any other available lawful use or to destroy the lot. The petition must state:

(1) that the lot is being held;

(2) the condition of the lot;

(3) that the lot is located in the territorial jurisdiction of the court in which the petition is being filed;

(4) that notice of noncompliance has been served in compliance with this chapter;

(5) that the lot has not been reconditioned and the deficiencies have not been corrected as required by this chapter;

(6) the names and addresses of the owner and the person in possession of the lot; and

(7) that the owner has refused permission to divert the lot to other lawful uses or to destroy the lot.

(b) After the enforcing officer has filed the petition, the court may issue an order returnable in five days after service on the owner of the lot directing the owner to show cause:

(1) why the lot should not be reconditioned or the deficiencies corrected; or

(2) why the lot should not be diverted to other lawful uses or destroyed.

(c) The owner of the lot may:

(1) recondition the lot or correct the deficiencies so that the lot complies with the marketing order and rules before the date on which the order to show cause is returnable; or

(2) file with the court, at or before the hearing on the order to show cause, an answer stating why the lot should not be reconditioned or the deficiencies corrected or stating why the lot should not be diverted to other lawful uses or destroyed. (V.A.C.S. Art. 55e, Secs. 23(g) (part), (h), (i).)

Sec. 104.187. Court Order

If the owner of any lot of an agricultural commodity that is being held has not reconditioned the lot or corrected the deficiencies before the order to show cause is returned, the court may enter judgment ordering the lot to be:

(1) reconditioned;

(2) diverted to another lawful use;

(3) destroyed in the manner specified by the court;

(4) relabeled;

(5) denatured or otherwise processed;

(6) sold, as long as the lot is not sold in regular channels of trade; or

(7) released on conditions imposed by the court, as long as the lot is not released in regular channels of trade. (V.A.C.S. Art. 55e, Sec. 23(j).)

Sec. 104.188. Proceeds of Sale

If the court orders the sale of any lot of an agricultural commodity that is being held, the costs of storage, handling, and reconditioning or disposal shall be deducted from the proceeds of the sale and the balance, if any, shall be paid to the court for the account of the owner of the lot. (V.A.C.S. Art. 55e, Sec. 23(k).)

[Sections 104.189–104.200 reserved for expansion]

SUBCHAPTER K. COURT ACTION

Sec. 104.201. Judicial Review

(a) A court of competent jurisdiction may review a marketing order or an order of the department that regulates the administration of a marketing program and substantially affects the rights of an interested party.

(b) Proceedings for review must be begun within 30 days after:

(1) the first day of publication of the notice of the election results on the marketing order; or

(2) the effective date of the regulatory order. (V.A.C.S. Art. 55e, Sec. 24.)

Sec. 104.202. Injunction

(a) The department may apply to a court of competent jurisdiction for appropriate injunctive relief after the department receives notice of a violation of:

(1) a marketing order; or

(2) a substantive rule adopted under a marketing order and this chapter.

(b) If it appears to the court on an application for a temporary restraining order, on a hearing of an order to show cause why a preliminary injunction should not be issued, or on a hearing of a motion for a preliminary injunction, or if the court finds in such an action that a defendant is violating or has violated this chapter, a marketing order, or a rule adopted under this chapter, the court:

(1) shall enjoin the defendant from committing further violations; and

(2) may order the defendant to pay costs of the prosecution of the action by the department.

(c) An action under this section may be brought in the county in which:

(1) the defendant resides; or

(2) an act or omission, or a part of an act or omission, complained of occurred. (V.A.C.S. Art. 55e, Secs. 27 (part), 28.)

[Sections 104.203–104.220 reserved for expansion]

SUBCHAPTER L. RULES, RECORDS, AND REPORTS

Sec. 104.221. Rules

The department may adopt rules to facilitate the uniform administration and enforcement of marketing orders and marketing programs, including rules concerning:

(1) procedures for receiving, depositing, and spending money collected as assessments under this chapter;

(2) the preparation, handling, and payment of bills, salaries, and other obligations;

(3) the establishment of maximum rates to be allowed for travel expenses of marketing committee members and employees; and

(4) the preparation, verification, and filing of evidence relating to violations of marketing orders and marketing rules adopted in accordance with this chapter and to other fiscal and administrative activities that the department determines are necessary to obtain reasonable uniformity, efficiency, and economy in the administration enforcement of marketing orders and marketing programs. (V.A.C.S. Art. 55e, Sec. 18.)

Sec. 104.222. Records

The department may require each handler subject to a marketing order to maintain books and records showing the handler's operations under the order. (V.A.C.S. Art. 55e, Sec. 22(a) (part).)

Sec. 104.223. Inspection of Records

(a) If the department receives from a marketing committee or an individual a complaint that a handler has violated a marketing order, the department may request a magistrate to issue an order granting the department access to all or part of the handler's books and records that the department requires to be maintained under Section 104.222 of this code.

(b) If the magistrate finds that there is reason to believe that a violation has occurred, the magistrate shall issue the order requested under Subsection (a) of this section.

(c) If a handler who is served with an order of a magistrate and a demand by the department to furnish the books and records to the department fails to produce the requested books and records, the department may require the handler to present under oath before the commissioner testimony concerning the handler's operations under the marketing order. The handler is subject to the remedies available to the court to enforce its orders.

(d) Information obtained under this section is confidential and may not be disclosed except to:

(1) a person with a right to obtain the information;

(2) an attorney employed to give legal advice concerning the information; or

(3) a person to whom a court order requires the information be given. (V.A.C.S. Art. 55e, Secs. 22(a) (part), (b).)

Sec. 104.224. False Reports

A person may not knowingly furnish a fraudulent or materially false report, statement, or record when this chapter requires the person to provide a report, statement, or record. (V.A.C.S. Art. 55e, Sec. 26.)

SUBTITLE E. PROCESSING AND SALE OF FIBER PRODUCTS

CHAPTER 111. GINNING AND COMPRESSING COTTON

Section

111.001. Ginners; Public Use
111.002. Ginner's Record
111.003. Identification of Bales
111.004. Baling
111.005. Liability for Improper Baling
111.006. Commissioner of Labor and Standards to Enforce
111.007. Penalties

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. (V.A.C.S. Art. 5666.)

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. (V.A.C.S. Art. 5679h (part).)

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. (V.A.C.S. Arts. 5675, 5679h (part).)

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. (V.A.C.S. Arts. 5676, 5677 (part).)

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. (V.A.C.S. Arts. 5677, (part), 5678.)

Sec. 11.006. Commissioner of Labor and Standards to Enforce

The commissioner of labor and standards shall enforce this chapter and shall obtain and collect evidence of violations of this chapter by persons engaged in the business of compressing cotton. The commissioner of labor and standards shall file an annual statement with the governor showing in detail all expenses incurred in connection with the commissioner's duties under this chapter. (V.A.C.S. Art. 5679.)

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 Subsection (a) of this section is a misdemeanor punishable by a fine of not less than $25 nor more than $200. An offense under Subsection (b) of this section is a misdemeanor punishable by a fine of not more than $25. (V.A.C.S. Arts. 5679f, 5679h (part).)

CHAPTER 112. COTTON CLASSING

Section

112.001. Registered Public Cotton Classer
112.002. Qualifications
112.003. Bond
112.004. Fee
112.005. Certificate of Classification
112.006. Records and Standards
112.007. Owner's Right to Class
112.008. Department Powers and Duties
112.009. Penalties

CHAPTER 112. COTTON CLASSING

Sec. 112.001. Registered Public Cotton Classer

(a) Unless a person is a registered public cotton classer under this chapter, the person may not:

(1) grade or staple cotton for the public; or

(2) issue or cause to be issued a receipt or ticket for cotton that is placed on the cotton for use by the public in the buying or selling of the cotton.

(b) A registered public cotton classer is entitled to grade and staple cotton generally and to charge for services rendered. (V.A.C.S. Art. 5679a, Secs. 1, 7 (part).)

Sec. 112.002. Qualifications

In order to qualify as a registered public cotton classer, a person must:

(1) furnish evidence of the person's good moral character;

(2) obtain from the United States Department of Agriculture a license to grade or staple cotton and to certify the grade or staple of the cotton in accordance with the official cotton standards of the United States Cotton Standards Act (7 U.S.C. Sec. 51 et seq.); and

(3) file with the department a copy of the license obtained under Subdivision (2) of this section. (V.A.C.S. Art. 5679a, Sec. 2.)

Sec. 112.003. Bond

(a) Except as provided by the United States Cotton Standards Act (7 U.S.C. Sec. 51 et seq.), a registered public cotton classer may not issue a certificate of classification in this state unless the classer files a bond with the department and renews it annually.

(b) The bond is subject to the approval of the department and shall:

(1) be in the amount of $1,000;

(2) be payable to the state for the use and benefit of any person who is damaged by a breach of a condition of the bond;

(3) bind the classer and surety to guarantee as approximately correct the classer's work in classing and stapling cotton; and

(4) bind the classer and surety to promptly indemnify any person who sustains financial loss by reason of a false class or staple made by the classer with intent to defraud or by reason of an untrue or

misleading certificate issued by the classer or under the classer's authority with intent to defraud.

(c) In a suit on a bond, a person is not required to join the state as a party. Venue for the suit shall be as provided by general law.

(d) If a bond is impaired by suit or otherwise, the department may, by written notice, require the classer to make good the impairment. If the classer does not make good the impairment to the satisfaction of the department within a reasonable time following notice, not to exceed 30 days, the bond is void. (V.A.C.S. Art. 5679a, Sec. 3.)

Sec. 112.004. Fee

At the time of registration and annually thereafter at the time the bond is renewed, the department shall collect a fee of $5 from each person who is to be registered as a public cotton classer. (V.A.C.S. Art. 5679a, Sec. 6.)

Sec. 112.005. Certificate of Classification

(a) To each person for whom a registered public cotton classer classes cotton, the classer shall issue a certificate showing the class and other grade of the cotton classed.

(b) The courts of this state shall accept a certificate of classification issued by a registered public cotton classer as prima facie evidence of the facts stated in the certificate. (V.A.C.S. Art. 5679a, Secs. 4 (part), 7 (part).)

Sec. 112.006. Records and Standards

(a) Each registered public cotton classer shall keep in a well-bound book a complete record of all cotton classed and the persons for whom the cotton was classed. In addition, each registered public cotton classer shall keep on hand a set of the United States standards of grades and staples.

(b) Each registered public cotton classer shall keep his or her records, books, and standards open to public inspection at all reasonable times. (V.A.C.S. Art. 5679a, Sec. 4 (part).)

Sec. 112.007. Owner's Right to Class

This chapter does not affect the right of a person to class the person's own cotton or the right of a person, including a cotton buyer, to class cotton purchased for the person or for another. (V.A.C.S. Art. 5679a, Sec. 8.)

Sec. 112.008. Department Powers and Duties

The department shall enforce this chapter and adopt rules consistent with this chapter that the department considers necessary, including rules prescribing the form of receipts, records, and certificates. (V.A.C.S. Art. 5679a, Sec. 5.)

Sec. 112.009. Penalties

(a) A person commits an offense if the person:

(1) classes and staples cotton for the public or issues receipts and tickets bearing the grade of the cotton for use by the public without complying with this chapter; or

(2) with intent to deceive or defraud, issues or causes to be issued a certificate of sample, weight, grade, or staple of cotton for commercial purposes.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $25 nor more than $200. (V.A.C.S. Art. 5679a, Secs. 9, 10.)

CHAPTER 113. COTTON BUYING

Section
113.001. Definition
113.002. Registration of Cotton Buyers Required
113.003. Application for Registration
113.004. Fee
113.005. Registration
113.006. Term of Registration
113.007. List of Registered Cotton Buyers
113.008. Deduction Because of Bale Weight
113.009. Penalty

CHAPTER 113. COTTON BUYING

Sec. 113.001. Definition

In this chapter "person" means an individual, association, partnership, corporation, or other private entity. (V.A.C.S. Art. 165—4c, Secs. 1(1), (4).)

Sec. 113.002. Registration of Cotton Buyers Required

A person may not purchase cotton on a forward contract from a person who grows cotton without first having registered with the department as a cotton buyer. (V.A.C.S. Art. 165—4c, Secs. 1(2), 1(3), 2(a).)

Sec. 113.003. Application for Registration

In order to register with the department as a cotton buyer, a person must file with the department an application that includes:

(1) the name and address of the applicant; and

(2) the name of each trade association relating to cotton producing and marketing of which the applicant is a member. (V.A.C.S. Art. 165—4c, Secs. 3(a), (b).)

Sec. 113.004. Fee

An applicant shall submit a fee of $25 with an application for registration as a cotton buyer. (V.A.C.S. Art. 165—4c, Sec. 3(c).)

Sec. 113.005. Registration

The department shall register each applicant for registration as a cotton buyer before the 31st day following the day of application. (V.A.C.S. Art. 165—4c, Sec. 4.)

Sec. 113.006. Term of Registration

Registration as a cotton buyer is valid for a period of one year after the date of registration. (V.A.C.S. Art. 165—4c, Sec. 2(b).)

Sec. 113.007. List of Registered Cotton Buyers

The department shall publish a list of all registered cotton buyers and shall provide a copy of the list to interested persons without charge. The list may include the number of years that the person has been registered in this state as a cotton buyer. (V.A.C.S. Art. 165—4c, Sec. 5.)

Sec. 113.008. Deduction Because of Bale Weight

(a) If a buyer of spot cotton has made a bona fide bid for cotton from a sample or bale and the sale price is agreed to between the buyer and seller, the buyer may not make any deduction from the total value of the cotton as agreed between the parties because of the weight of the bale, unless the bale weighs less than 400 pounds. If the bale weighs less than 400 pounds, the buyer may deduct not more than $1.

(b) This section does not prevent a buyer from refusing to accept a bale of cotton weighing less than 350 pounds.

(c) If a buyer makes a deduction in violation of this section, the seller or grower of the cotton may recover from the buyer or ginner twice the amount of the deduction in the same manner as allowed by law for recovery for usury. (V.A.C.S. Arts. 5679b, 5679c.)

Sec. 113.009. Penalty

(a) A person commits an offense if the person violates Section 113.002 of this code.

(b) An offense under this section is a Class C misdemeanor. (V.A.C.S. Art. 165—4c, Sec. 6.)

SUBTITLE F. PRODUCTION, PROCESSING, AND SALE OF NURSERY PRODUCTS

CHAPTER 121. GRADING OF ROSES

Section

121.001. Purpose
121.002. Definition
121.003. Rose Grades
121.004. Certificate of Authority
121.005. Labeling
121.006. Inspection
121.007. Rules
121.008. Entry Power
121.009. Stop-Sale Order
121.010. Penalty

SUBTITLE F. PRODUCTION, PROCESSING, AND SALE OF NURSERY PRODUCTS

CHAPTER 121. GRADING OF ROSES

Sec. 121.001. Purpose

The purpose of this chapter is to provide the department with the authority necessary to adopt rules and prescribe procedures for the inspection, grading, and labeling of all rose plants sold or offered for sale within this state. (V.A.C.S. Art. 128a, Sec. 1.)

Sec. 121.002. Definition

In this chapter, "rose plant" includes a rose plant, cutting, or bush. (New.)

Sec. 121.003. Rose Grades

(a) The department shall adopt grade classifications for rose plants, including a classification for ungraded rose plants.

(b) A person may not sell or offer for sale in commercial quantities or as a part of the regular operation of business a rose plant that is not graded in accordance with the grades adopted by the department under this chapter. (V.A.C.S. Art. 128a, Sec. 3 (part).)

Sec. 121.004. Certificate of Authority

(a) The department shall issue a numbered certificate of authority to each person who grades, sells, or offers for sale rose plants.

(b) A certificate of authority expires on December 31 of the year in which it is issued.

(c) Each grower, dealer, wholesaler, and processor shall pay an annual fee for a certificate of authority based on the actual amount of work done by or under the direction of the department in administering this chapter. The department shall fix the fee in an amount not less than the following, according to the number of rose plants handled, sold, or offered for sale during the calendar year:

NUMBER OF PLANTS	FEE
Less than 100,000	$15
100,000 or more but less than 500,000	$25
500,000 or more but less than 1,000,000	$50
1,000,000 or more	$100

(d) A person who purchases graded stock but does not determine or influence the grade is exempt from payment of the fee required for a certificate of authority. (V.A.C.S. Art. 128a, Secs. 4 (part), 6.)

Sec. 121.005. Labeling

(a) Each rose plant or shipment of rose plants shall be labeled with:

(1) the proper grade; and

(2) the number of the certificate of authority of the person selling or offering for sale the plant or shipment.

(b) A person may not sell or offer for sale in commercial quantities or as a part of the regular operation of business any rose plant or shipment of rose plants that is not labeled in accordance with the grades adopted by the department. (V.A.C.S. Art. 128a, Secs. 3 (part), 4 (part).)

Sec. 121.006. Inspection

(a) The department shall inspect and grade or verify the grade of rose plants that are offered for sale in this state.

(b) The department may accept the inspection, grading, and labeling of a rose plant or a shipment of rose plants performed by the authority of another state if:

(1) the plant or shipment is plainly labeled with the grade or is plainly marked that the plant or plants are ungraded; and

(2) the grade of the plant or plants is at least equal to the grade adopted by the department. (V.A.C.S. Art. 128a, Secs. 4 (part), 5.)

Sec. 121.007. Rules

(a) Following notice and public hearing, the department may adopt rules necessary to carry out this chapter. Rules adopted under this chapter are effective only if approved in writing by the attorney general.

(b) The department shall publish rules adopted under this chapter in pamphlet form. (V.A.C.S. Art. 128a, Sec. 2.)

Sec. 121.008. Entry Power

The department shall enforce this chapter and is entitled to enter during normal business hours any place of business, farm, shed, or other location in this state where rose plants are grown, sold, offered for sale, or displayed. (V.A.C.S. Art. 128a, Sec. 4 (part).)

Sec. 121.009. Stop-Sale Order

In enforcing this chapter, the department may issue and enforce a written or printed order to stop the sale of a rose plant or a shipment of

rose plants that is not labeled with the proper grade. If an order is issued, a person may not sell the plant or shipment until it has been properly graded and labeled. (V.A.C.S. Art. 128a, Sec. 4a.)

Sec. 121.010. Penalty

(a) A person commits an offense if the person advertises, sells, or offers for sale a rose plant or a shipment of rose plants that is not clearly and distinctly marked with a grade in accordance with the rules of the department.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $50 nor more than $100. (V.A.C.S. Art. 128a, Sec. 7.)

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

Section

131.001. State Entomologist
131.002. Annual Report
131.003. Publications
131.004. Experimental Apiaries

[Sections 131.005–131.020 reserved for expansion]

SUBCHAPTER B. DISEASE CONTROL

131.021. General Powers and Duties of State Entomologist
131.022. Certificate of Inspection
131.023. Protective Quarantine
131.024. Restrictive Quarantine
131.025. Common Carrier Shipment
131.026. Sale of Queen Bee and Attendants
131.027. Duty to Report Diseased Bees
131.028. Entry Power
131.029. Seizure of Diseased Bees in Transit
131.030. Transfer of Bees to Moveable Frames
131.031. Enforcement
131.032. Bond in Legal Proceedings
131.033. Failure to Treat or Destroy; Cost

[Sections 131.034–131.050 reserved for expansion]

SUBCHAPTER C. BRANDING OF APIARY EQUIPMENT

131.051. Brand; Registration
131.052. Registration of Brand; Fee
131.053. Affixing Brand to Equipment
131.054. Transfer of Brand

[Sections 131.055–131.100 reserved for expansion]

SUBCHAPTER D. LABELING AND SALE OF HONEY

Section
131.101. Definitions
131.102. Use of "Honey" on Label
131.103. Use of Bee, Hive, or Comb Design
131.104. Sale of Imitation Honey
131.105. Sale of Honey Mixtures

[Sections 131.106–131.150 reserved for expansion]

SUBCHAPTER E. PENALTIES

131.151. Disease Control
131.152. Apiary Equipment Brands
131.153. Labeling or Sale of Honey

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. State Entomologist

(a) The entomologist of the Texas Agricultural Experiment Station is the state entomologist of this state.

(b) The state entomologist serves in that position without fees or remuneration in addition to the salary as entomologist of the experiment station, but is entitled to reimbursement for actual and necessary expenses incurred in the discharge of duties as state entomologist.

(c) The state entomologist may employ assistants and inspectors as necessary, subject to the approval of the director and governing board of the experiment station.

(d) The office of the state entomologist is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the office is abolished effective September 1, 1985. (V.A.C.S. Arts. 549 (part), 549a.)

Sec. 131.002. Annual Report

The state entomologist shall make an annual report to the director and governing board of the experiment station giving a detailed account of the funds received and disbursed, the purpose for which the funds were disbursed, and prosecutions or legal proceedings brought under Subchapter B of this chapter or under Section 131.151 of this code. (V.A.C.S. Art. 549 (part).)

Sec. 131.003. Publications

The state entomologist shall publish information on methods and directions for treating, eradicating, or suppressing contagious or infectious diseases of honeybees, the rules adopted for those purposes, and

other information that the state entomologist considers of value or necessity to the beekeeping interests of this state. (V.A.C.S. Art. 559.)

Sec. 131.004. Experimental Apiaries

(a) The director of the Texas Agricultural Experiment Station may establish and maintain experimental apiaries for the purpose of experimenting with the culture of honey and studying honey yield and other beekeeping problems confronting the beekeepers of this state.

(b) Experimental apiaries established under this section are under the care, control, management, and direction of the director of the experiment station and may be operated in places in Texas chosen by the director. In locating the experimental apiaries, the director may take into consideration any donation of money or property to be used in the operation and management of the apiaries and may accept any lease of land on which to locate an apiary.

(c) The director may employ assistants and purchase equipment, supplies, and bees as necessary to the operation and management of the experimental apiaries.

(d) The director shall deposit receipts from the sale of any products of the apiaries or old equipment in the experiment station treasury to the credit of a fund known as the experimental apiaries sales fund. That fund may be expended by the director for any purpose connected with the experimental apiaries. (V.A.C.S. Art. 565.)

[Sections 131.005–131.020 reserved for expansion]

SUBCHAPTER B. DISEASE CONTROL

Sec. 131.021. General Powers and Duties of State Entomologist

(a) In accordance with this subchapter, the state entomologist may adopt rules and act as necessary to control, eradicate, or prevent the introduction, spread, or dissemination of contagious or infectious diseases of bees.

(b) The state entomologist may prohibit shipment or entry into this state of any bees, honey, combs, or articles capable of transmitting diseases of bees from any state, territory, or foreign country except under rules adopted by the state entomologist.

(c) If the state entomologist finds or has reason to believe that the owner or keeper of any bees or the owner of an apiary has refused or is refusing to comply with a rule adopted under this subchapter, the entomologist may inspect the bees and, if necessary:

(1) burn any diseased colonies, appliances, or honey; and

(2) take other actions to eradicate the disease. (V.A.C.S. Arts. 550, 562.)

Sec. 131.022. Certificate of Inspection

(a) Except as otherwise provided by this section, all bees shipped into this state must be accompanied by a certificate of inspection signed by the official apiary inspector or entomologist of the state, territory, or country from which the bees are shipped.

(b) A certificate of inspection shall certify that the bees, combs, and hives are apparently free from diseases and must be based on an actual inspection of the bees performed not more than 60 days before the date of shipment.

(c) Before the 10th day preceding the date of shipment, a person shipping bees into this state shall file the following with the state entomologist:

(1) a certified copy of the certificate of inspection; and

(2) the names and addresses of the consignor and the consignee of the shipment.

(d) If bees are to be shipped into this state from a state, territory, or country that does not have an available official apiary inspector or entomologist, the state entomologist may issue a permit for shipment of the bees on presentation of suitable evidence that the bees are free from diseases.

(e) The state entomologist or an assistant or inspector of the state entomologist may confiscate and destroy any shipment of bees arriving at a point in this state not accompanied by a certificate of inspection.

(f) This section does not apply to a shipment of live bees in wire cages without combs or honey. (V.A.C.S. Art. 551.)

Sec. 131.023. Protective Quarantine

(a) The state entomologist may declare a protective quarantine of any district, county, precinct, or other defined area in which foulbrood or another disease of bees is not known to exist or in which a disease is being eradicated in accordance with this chapter.

(b) A person may not move or ship into an area quarantined under this section any bees, honey, appliances, or other articles capable of transmitting the disease quarantined against, except in accordance with the rules of the state entomologist. (V.A.C.S. Arts. 555, 564a (part).)

Sec. 131.024. Restrictive Quarantine

(a) If the state entomologist determines that the public welfare and necessity require establishment of a quarantine, the entomologist may declare a restrictive quarantine of any district, county, precinct, or other defined area in which diseased bees are located.

(b) A person may not move or ship from an area quarantined under this section any bees, honey, appliances, or other articles capable of transmitting the disease quarantined against except in accordance with the rules of the state entomologist. (V.A.C.S. Arts. 556, 564a (part).)

Sec. 131.025. Common Carrier Shipment

A common carrier, including a railroad or express company, may not accept for intrastate shipment any bees, used combs, or used hives or fixtures except in accordance with the rules of the state entomologist. (V. A.C.S. Arts. 552, 564a (part).)

Sec. 131.026. Sale of Queen Bee and Attendants

A person may not sell or offer for sale a queen bee and attendant bees in this state unless the bees are accompanied by:

(1) a copy of a certificate from an official apiary inspector or entomologist certifying that the apiary from which the queen bee was shipped had been inspected not more than 12 months before the day of shipment and found apparently free from any disease; or

(2) a copy of an affidavit made by the beekeeper that:

(A) the bees are not diseased to the best belief of the affiant; 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. (V.A.C.S. Arts. 557, 564a (part).)

Sec. 131.027. Duty to Report Diseased Bees

If the owner or the person with control or possession of bees in this state knows that the bees are infected with American foulbrood or another disease, or knows of any other diseased bees, the owner or person shall immediately report to the state entomologist all facts known about the diseased bees. (V.A.C.S. Arts. 560, 564a (part).)

Sec. 131.028. Entry Power

For the purpose of examining bees to determine if the bees are diseased or for the purpose of determining if diseased bees are being transported, have been transported, or are about to be transported in violation of this chapter, the state entomologist or an assistant or inspector of the state entomologist is entitled to enter during regular business hours any public or private premises, including a depot, express office, storeroom, car, or warehouse, in which bees are or may be located. (V.A.C.S. Arts. 553 (part), 554.)

Sec. 131.029. Seizure of Diseased Bees in Transit

The state entomologist or an assistant or inspector of the state entomologist may confiscate a shipment of diseased bees found in transit or in any depot, express office, storeroom, car, warehouse, or other premises awaiting transportation or delivery. (V.A.C.S. Art. 553 (part).)

Sec. 131.030. Transfer of Bees to Moveable Frames

(a) The state entomologist may order an owner or possessor of bees dwelling in hives that do not have moveable frames or do not permit ready examination to transfer the bees to a moveable frame hive within a specified period of time.

(b) If the owner or possessor of the bees fails to comply with an order under this section, the state entomologist may destroy or order destroyed the hives, including the honey, frames, combs, and bees. A person is not entitled to compensation for hives destroyed under this section. (V.A.C.S. Art. 561.)

Sec. 131.031. Enforcement

(a) The state entomologist may enjoin any threatened or attempted violation of an order, quarantine, or rule and maintain other civil proceedings necessary to enforce this subchapter.

(b) The attorney general or a county or district attorney shall represent the state entomologist in actions under this section if requested to do so by the entomologist.

(c) Proceedings under this section shall be brought in a county affected by the violation of the order, quarantine, or rule.

(d) In enforcing this subchapter, the state entomologist may:

(1) compel the production of books, papers, and documents for examination by the state entomologist or another person;

(2) take testimony and compel the attendance of witnesses; and

(3) examine witnesses under oath.

(e) A sheriff or constable shall serve a paper, order, summons, or writ delivered to the sheriff or constable by the state entomologist and, if requested, shall protect the state entomologist and assistants and inspectors of the state entomologist in the discharge of duties under this subchapter. (V.A.C.S. Art. 558.)

Sec. 131.032. Bond in Legal Proceedings

The state entomologist or an assistant or inspector of the state entomologist may not be required to give bond or other security in any legal

proceeding that the entomologist, assistant, or inspector institutes or defends under this chapter in a court of this state. (V.A.C.S. Art. 564.)

Sec. 131.033. Failure to Treat or Destroy; Cost

(a) If an owner or possessor of bees fails to carry out instructions of the state entomologist to treat or destroy bees or equipment, the entomologist or an assistant or inspector of the state entomologist shall carry out the treatment or destruction and present to the owner or possessor, or to a tenant or agent of the owner or possessor, a bill for the actual costs of the treatment or destruction necessary to properly treat the disease.

(b) The owner or possessor of the bees shall pay a bill under this section not later than the 30th day after the day of the delivery of the bill or the mailing of the bill to the usual post office address of the owner or possessor.

(c) If a person fails to pay a bill under this section within the required time, the state entomologist shall certify the amount and items of the bill to the county attorney of the county in which the bees were located and the county attorney shall sue for recovery of the account. Money recovered by the county attorney shall be paid into the state treasury. (V.A.C.S. Art. 563.)

[Sections 131.034–131.050 reserved for expansion]

SUBCHAPTER C. BRANDING OF APIARY EQUIPMENT

Sec. 131.051. Brand; Registration

(a) The department 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. (V.A.C.S. Art. 565a, Secs. 1(a), (b).)

Sec. 131.052 Registration of Brand; Fee

The department shall register a brand for each person who applies for a brand and pays a recording fee of 50 cents. (V.A.C.S. Art. 565a, Sec. 1(c).)

Sec. 131.053. 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 one inch high, into the wood or other material in a manner that shows the identification of the equipment. On a hive, the registrant shall affix the brand on one or both ends at a level even with the handhold. On other equipment, including a frame, intercover, top, bottom, or plank, the registrant may affix the brand in any place. (V.A.C.S. Art. 565a, Sec. 2.)

Sec. 131.054. Transfer of Brand

(a) A brand may be transferred only if:

(1) the department 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. (V.A.C.S. Art. 565a, Sec. 3.)

[Sections 131.055–131.100 reserved for expansion]

SUBCHAPTER D. LABELING AND SALE OF HONEY

Sec. 131.101. Definitions

In this subchapter:

(1) "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.

(2) "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, material attached to packaging that contains a product in its immediate container, and material inserted in an immediate container or other packaging of a product.

(3) "Label," as a verb, means to attach or insert a label.

(4) "Person" means an individual, corporation, or association. (V.A.C.S. Art. 565b, Sec. 1.)

Sec. 131.102. 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. (V.A.C.S. Art. 565b, Sec. 2(a).)

Sec. 131.103. 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. (V.A.C.S. Art. 565b, Sec. 2(b).)

Sec. 131.104. 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." (V.A.C.S. Art. 565b, Sec. 2(c).)

Sec. 131.105. 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 or print as the other ingredients.

(b) A person may not label, sell, or keep, expose, or offer for sale a product that consists of 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. (V.A.C.S. Art. 565b, Secs. 2(d), (e).)

[Sections 131.106–131.150 reserved for expansion]

SUBCHAPTER E. PENALTIES

Sec. 131.151. Disease Control

(a) A person commits an offense if the person:

(1) violates a provision of Section 131.023, 131.024, 131.025, 131.026, or 131.027 of this code;

(2) violates a rule or order of the state entomologist adopted under Subchapter B of this chapter;

(3) attempts to prevent an inspection of bees, honey, or appliances under the direction of the state entomologist under Subchapter B of this chapter;

(4) attempts to prevent the discovery or treatment of diseased bees;

(5) attempts to intimidate or interfere with the state entomologist or an assistant or inspector of the state entomologist in the discharge of official duties;

(6) as the owner or keeper of a diseased colony of bees, barters, gives away, sells, ships, or moves any diseased bees, honey, or appliances or exposes other bees to the disease;

(7) exposes, on the person's premises or elsewhere, any honey, hives, frames, combs, bees, or appliances known to be infected with disease in a manner that provides access to honeybees; or

(8) sells, offers for sale, barters, gives away, ships, or distributes honey taken from a colony of diseased bees.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $25 nor more than $200.

(c) All fines collected under this section shall be deposited in the state treasury. (V.A.C.S. Art. 564a (part).)

Sec. 131.152. Apiary Equipment Brands

(a) A person commits an offense if the person, without authorization, tampers with a registered apiary equipment brand.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not more than $200;

(2) confinement in county jail for not more than 30 days; or

(3) both fine and confinement under this subsection.

(c) Each of the following is prima facie evidence of a violation of this section:

(1) unauthorized possession of equipment on which the brand has been tampered with;

(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. (V.A.C.S. Art. 565a, Sec. 4.)

Sec. 131.153. Labeling or Sale of Honey

(a) A person commits an offense if the person violates Section 131.102, 131.103, 131.104, or 131.105 of this code.

(b) An offense under this section is a Class B misdemeanor. (V.A.C.S. Art. 565b, Sec. 3.)

CHAPTER 132. EGGS

SUBCHAPTER A. GENERAL PROVISIONS

Section
132.001. Definitions
132.002. Limitation of Chapter
132.003. Powers and Duties of Department
132.004. Adoption of Standards
132.005. Samples
132.006. Out-of-State Inspection of Records and Expenses
132.007. Egg Marketing Advisory Board

[Sections 132.008–132.020 reserved for expansion]

SUBCHAPTER B. LICENSING

132.021. License Required
132.022. License Categories
132.023. Resident Agent for Service
132.024. License Year
132.025. Time for Payment of License Fee
132.026. Fee for Dealer-Wholesaler License
132.027. Fee for Processor's License
132.028. Fee for Broker's License
132.029. No Fee Required for Retailer's License

[Sections 132.030–132.040 reserved for expansion]

SUBCHAPTER C. INSPECTION AND LABELING

132.041. Inspections
132.042. Grading and Classification Required
132.043. Inspection Fees
132.044. Labeling Requirements for Egg Containers
132.045. Sanitation Required
132.046. Special Requirements for Shipped Eggs
132.047. Uncartoned Eggs

[Sections 132.048–132.060 reserved for expansion]

SUBCHAPTER D. RECORDS

132.061. Records
132.062. Invoice

[Sections 132.063–132.070 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT

132.071. Stop-Sale Order
132.072. Suspension of License

[Sections 132.073–132.080 reserved for expansion]

SUBCHAPTER F. PENALTIES

132.081. General Penalty
132.082. Selling Inedible Eggs
132.083. Improper Use of the Prefix "U.S."
132.084. Misleading Advertising

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. (V.A.C.S. Art. 165—8, Secs. 1 (part), 2, 4 (part).)

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. (V.A.C.S. Art. 165—8, Sec. 11.)

Sec. 132.003. Powers and Duties of Department

(a) The department shall administer this chapter and adopt and enforce necessary rules. Rules adopted and enforced by the department must be approved by the attorney general. The attorney general shall retain written approval of the rules for public inspection.

(b) The department shall annually publish information on the movement and sale of eggs and a report of the results of official inspections of eggs sold, offered for sale, or distributed within this state. Published information on the movement and sale of eggs may not disclose the scope of operations of any person.

(c) 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. (V.A.C.S. Art. 165—8, Secs. 1 (part), 8 (part), 9 (part), 12(a), 12(e), 17(a) (part), 17a.)

Sec. 132.004. Adoption of Standards

Standards of shell egg quality, grade, and size shall be equal to those adopted by the United States Department of Agriculture. (V.A.C.S. Art. 165—8, Sec. 3(a).)

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 place of business where eggs are held 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. (V.A.C.S. Art. 165—8, Secs. 12(b), (d).)

Sec. 132.006. Out-of-State Inspection of Records and Expenses

(a) If an inspection required by Section 132.041 of this code is performed at a location outside of this state, that location and the records relating to eggs inspected by 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) $50 per day 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. (V.A.C.S. Art. 165—8, Sec. 8 (part).)

Sec. 132.007. Egg Marketing Advisory Board

(a) The Egg Marketing Advisory Board is composed of:

(1) the commissioner;

(2) an extension service representative appointed by the head of the Poultry Science Department at Texas A & M University; and

(3) nine persons appointed by the governor, including:

(A) three persons who are producers;

(B) three persons who are retailers; and

(C) three persons who are dealers, wholesalers, brokers, or processors.

(b) The commissioner and the appointed extension service representative serve as ex officio members of the board.

(c) The commissioner shall serve as chairman of the board.

(d) The board shall meet twice annually, but the chairman may call additional meetings.

(e) A member of the board must be a Texas resident.

(f) Members serve for staggered terms of six years and the governor shall fill any vacancy by appointment for the unexpired term.

(g) Members shall serve without pay, but are entitled to reimbursement for actual expenses incurred in attending to the work of the board, subject to the approval of the chairman. (V.A.C.S. Art. 165—8, Sec. 13.)

[Sections 132.008–132.020 reserved for expansion]

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; or

(4) an agent employed and paid a salary by a person licensed under this chapter. (V.A.C.S. Art. 165—8, Sec. 14 (part).)

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) A person shall apply for licensing as a retailer if the person sells or offers to sell eggs to consumers in this state. (V.A.C.S. Art. 165—8, Sec. 15 (part).)

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. (V.A.C.S. Art. 165—8, Sec. 14 (part).)

Sec. 132.024. License Year

(a) Except as provided by Subsection (b) of this section, a license required by this chapter is valid from September 1 of each year through August 31 of the following year.

(b) A license issued to a new business under this chapter is valid from the date of issuance through the following August 31, unless the new license is issued in August, in which event the license is valid through August 31 of the following year. (V.A.C.S. Art. 165—8, Sec. 16 (part).)

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 shall pay the license fee during the month of August preceding the next license year. (V.A.C.S. Art. 165—8, Secs. 15 (part), 16 (part).)

Sec. 132.026. Fee for Dealer-Wholesaler License

(a) The license fee for each plant operated by a dealer-wholesaler is determined by applying the fee schedule provided by Subsection (c) of this section as follows:

(1) for an applicant for an initial dealer-wholesaler license, the schedule is applied to an estimate of the average weekly volume of the month in which the applicant will handle the most eggs through the applicant's first license year;

(2) for an applicant for renewal of a dealer-wholesaler's license who has been in business for less than one year, the schedule is applied to the average weekly volume of the month in which the licensee handled the most eggs through May of the first license year; and

(3) for any other applicant for renewal of a dealer-wholesaler license, the schedule is applied to the average weekly volume of the 12 months preceding the last May 31.

(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) The fee schedule for a dealer-wholesaler is:

AVERAGE WEEKLY VOLUME PER PLANT	FEE
1 case or more but less than 10 cases	$ 7.50
10 cases or more but less than 50 cases	$ 15.00
50 cases or more but less than 100 cases	$ 22.50
100 cases or more but less than 200 cases	$ 37.50
200 cases or more but less than 500 cases	$ 75.00
500 cases or more but less than 1,000 cases	$112.50
1,000 cases or more but less than 1,500 cases	$150.00
1,500 cases or more but less than 3,000 cases	$300.00
3,000 cases or more	$375.00

(V.A.C.S. Art. 165—8, Sec. 16 (part).)

Sec. 132.027. Fee for Processor's License

(a) The license fee for each plant operated by a processor is determined by applying the fee schedule provided by Subsection (c) of this section as follows:

(1) for an applicant for an initial processor's license, the fee schedule is applied to an estimate of the average weekly volume of the month in which the applicant will handle the most eggs through the applicant's first license year;

(2) for an applicant for renewal of a processor's license who has been in business for less than one year, the fee schedule is applied to the average weekly volume of the month in which the licensee handled the most eggs through May of the first license year; and

(3) for any other applicant for renewal of a processor's license, the fee schedule is applied to the average weekly volume of the 12 months preceding the last May 31.

(b) The fee for an initial processor's license shall be adjusted when records of the applicant's first license year are available.

(c) The fee schedule for a processor is:

AVERAGE WEEKLY VOLUME PER PLANT	FEE
less than 250 cases	$30
250 cases or more but less than 500 cases	$45
500 cases or more but less than 1,000 cases	$60
1,000 cases or more	$75

(V.A.C.S. Art. 165—8, Sec. 16 (part).)

Sec. 132.028. Fee for Broker's License

The license fee for a broker is $7.50. (V.A.C.S. Art. 165—8, Sec. 16 (part).)

Sec. 132.029. No Fee Required for Retailer's License

A retailer need not pay a fee for a retailer's license. (V.A.C.S. Art. 165—8, Sec. 15 (part).)

[Sections 132.030–132.040 reserved for expansion]

SUBCHAPTER C. INSPECTION AND LABELING

Sec. 132.041. Inspections

(a) Grades and sizes established for eggs sold in this state must be established by inspection by a person licensed under this chapter.

(b) The inspection must be made at:

(1) the licensee's place of business within this state; or

(2) a designated location outside the state. (V.A.C.S. Art. 165—8, Sec. 8 (part).)

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. (V.A.C.S. Art. 165—8, Secs. 3(b), 3(c), 4 (part).)

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 of three cents per case of 30 dozen eggs on the first sale of the eggs.

(b) A processor licensed under this chapter shall pay an inspection fee of three cents per case of 30 dozen eggs 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. (V.A.C.S. Art. 165—8, Sec. 16–A.)

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 labeled with a statement showing:

(1) the size and grade of the eggs in the container;

(2) the address and license number of the person who graded and sized the eggs;

(3) the city and state in which the eggs were packed; and

(4) if the eggs are Texas eggs, that they are Texas eggs.

(b) The information required by Subsection (a)(1) of this section must be printed on the container in at least one-fourth inch bold-faced type. The information required by Subsections (a)(2) and (a)(3) of this section must be printed in at least 12-point bold-faced type. The statement of the classification of the eggs must be in accordance with 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. (V.A.C.S. Art. 165—8, Sec. 9 (part).)

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. (V.A.C.S. Art. 165—8, Secs. 7, 10.)

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 loose 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. (V.A.C.S. Art. 165—8, Sec. 9 (part).)

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. (V.A.C.S. Art. 165—8, Sec. 9 (part).)

[Sections 132.048–132.060 reserved for expansion]

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. (V.A.C.S. Art. 165—8, Sec. 17(a) (part).)

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. (V.A.C.S. Art. 165—8, Sec. 17(b).)

[Sections 132.063–132.070 reserved for expansion]

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 repackage the eggs to meet the specifications for their actual grades before selling the eggs. (V.A.C.S. Art. 165—8, Sec. 12(c).)

Sec. 132.072. Suspension of License

If a person is convicted of an offense under this chapter, the department may suspend that person's license for a period not to exceed 90 days. (V.A.C.S. Art. 165—8, Sec. 19 (part).)

[Sections 132.073–132.080 reserved for expansion]

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. (V.A.C.S. Art. 165—8, Sec. 19 (part).)

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. (V.A.C.S. Art. 165—8, Sec. 5.)

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. (V.A.C.S. Art. 165—8, Sec. 8 (part).)

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. (V.A.C.S. Art. 165—8, Secs. 6, 9 (part).)

CHAPTER 133. POULTRY IMPROVEMENT BOARD

Section

133.001. Poultry Improvement Board

CHAPTER 133. POULTRY IMPROVEMENT BOARD

Sec. 133.001. Poultry Improvement Board

(a) The Poultry Improvement Board of the Texas Poultry Improvement Association is the official state agency for the purpose of cooperating with the United States Department of Agriculture in administering the National Poultry Improvement Plan and the National Turkey Improvement Plan and may adopt rules necessary to carry out the approved plans.

(b) The Poultry Improvement Board is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act the board is abolished and this section expires September 1, 1987. (V.A.C.S. Arts. 165—7, 165—7a.)

SUBTITLE B. LIVESTOCK

CHAPTER 141. COMMERCIAL FEED

SUBCHAPTER A. GENERAL PROVISIONS

Section
141.001. Definitions
141.002. Commercial Feed
141.003. Administration
141.004. Rules; Minimum Standards
141.005. Publications
141.006. Custom Processing

[Sections 141.007–141.020 reserved for expansion]

SUBCHAPTER B. REGISTRATION

141.021. Registration Required
141.022. Application for Registration
141.023. Term
141.024. Changes in Guaranteed Composition
141.025. Refusal or Cancellation

[Sections 141.026–141.050 reserved for expansion]

SUBCHAPTER C. LABELING

141.051. Labeling of Packaged Commercial Feed
141.052. Labeling of Bulk Commercial Feed
141.053. Labeling of Customer-Formula Feed
141.054. Labeling of Feed Containing Low-Grade Feeding Materials or Fillers
141.055. Labeling of Feed Containing Medicine or Other Materials

[Sections 141.056–141.070 reserved for expansion]

SUBCHAPTER D. INSPECTION FEE

141.071. Inspection Fee
141.072. Tags or Certificates
141.073. Tonnage Reporting
141.074. Penalty for Late Payment
141.075. Records; Additional Reports; Audits
141.076. Refusal of Tag or Certificate; Revocation of Permit
141.077. Disposition and Use of Fees

[Sections 141.078–141.100 reserved for expansion]

SUBCHAPTER E. INSPECTION, SAMPLING, AND ANALYSIS

141.101. Inspection and Sampling; Entry Power
141.102. Procedure for Sampling
141.103. Identification of Sample
141.104. Procedure for Analysis
141.105. Independent Analysis of Sample

[Sections 141.106–141.120 reserved for expansion]

SUBCHAPTER F. ENFORCEMENT; REMEDIES

Section
141.121. Detention of Feed
141.122. Condemnation of Detained Feed
141.123. Warnings
141.124. Suit to Recover Fees
141.125. Prosecutions
141.126. Venue for Civil and Criminal Actions
141.127. Appeal of Administrative Order or Ruling

[Sections 141.128–141.140 reserved for expansion]

SUBCHAPTER G. PENALTIES

141.141. General Penalty
141.142. Distribution of Customer-Formula Feed in Violation of Chapter
141.143. Distribution of Commercial Feed Without Registration, Labeling, or Payment of Inspection Fee
141.144. Refusal of Inspection or Sampling
141.145. Refusal to Pay Inspection Fee or Submit Records
141.146. Disposal of Detained Feed
141.147. Distribution of Misbranded Feed
141.148. Distribution of Adulterated Feed

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) "Brand" means the term, design, or trademark or other specific designation under which a commercial feed is distributed in this state.

(3) "Container" means a bag, box, barrel, package, carton, object, apparatus, device, or appliance in which commercial feed is packed, stored, or placed for handling or transporting.

(4) "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.

(5) "Director" means the director of the Texas Agricultural Experiment Station.

(6) "Distribute" means sell, offer for sale, barter, exchange, or otherwise supply.

(7) "Ingredient" means a constituent material of commercial feed.

(8) "Label" means a display of written, printed, or graphic matter on or affixed to a container or on an invoice or delivery slip.

(9) "Official sample" means a sample of feed taken by the director or the director's agent and designated as official by the director.

(10) "Purchaser" means a person who buys or otherwise acquires a commercial feed, customer-formula feed, or custom-mix or custom-mill service.

(11) "Ton" means a net weight of 2,000 pounds avoirdupois. (V.A.C.S. Art. 3881e, Secs. 3(b), 3(c), 3(d) (part), 3(e)–(p), 3(s), 4(a) (part).)

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;

(2) planting seed;

(3) cottonseed;

(4) whole grain not containing chemical adulterants;

(5) unadulterated cottonseed, peanut, or rice hulls;

(6) a feed product produced and sold by a farmer;

(7) an individual mineral substance not mixed with another material; or

(8) 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.

(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 director. If guaranteed or claimed, the material is subject to inspection and analysis in accordance with the rules of the director. (V.A.C.S. Art. 3881e, Secs. 3(a), 4(c), 5(a) (part).)

Sec. 141.003. Administration

(a) This chapter is administered by the director of the Texas Agricultural Experiment Station.

(b) The director may delegate responsibilities or powers under this chapter to representatives. (V.A.C.S. Art. 3881e, Secs. 2, 3(d) (part).)

Sec. 141.004. Rules; Minimum Standards

Following notice and public hearing, the director 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. (V.A.C.S. Art. 3881e, Sec. 11 (part).)

Sec. 141.005. Publications

(a) At least annually, the director shall publish:

(1) information concerning the sales of commercial feeds, together with data on commercial feed production and use as the director considers advisable; and

(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.

(b) The director may publish other information relating to feed as the director considers necessary or desirable to the public interest. The director 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. (V.A.C.S. Art. 3881e, Secs. 11 (part), 15.)

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. (V.A.C.S. Art. 3881e, Sec. 4(d).)

[Sections 141.007–141.020 reserved for expansion]

SUBCHAPTER B. REGISTRATION

Sec. 141.021. Registration Required

(a) Before distributing a brand of commercial feed in this state, other than a customer-formula feed, a person shall register the feed with the director.

(b) A person is not required to register a brand of commercial feed that has been registered by another person. (V.A.C.S. Art. 3881e, Secs. 5(a) (part), (b).)

Sec. 141.022. Application for Registration

(a) Each application for registration of a commercial feed shall include the following information relating to the feed:

(1) the name and principal address of the person responsible for distribution;

(2) the brand or the name under which the feed is to be distributed;

(3) the guaranteed analysis, listing in percentage by avoirdupois weight:

(A) the minimum percentage of crude protein;

(B) the minimum percentage of crude fat; and

(C) the maximum percentage of crude fiber;

(4) the maximum or minimum quantity determinable by laboratory method of each mineral, vitamin, antibiotic, antioxidant, medicine, drug, chemical, or other material; and

(5) the common or usual name of each ingredient used in the manufacture of the feed.

(b) If the home office or the principal place of business of the person applying for registration is located outside this state, the person shall deposit with the director a written instrument appointing a resident agent for service of legal process.

(c) If required by the director, application for registration must be accompanied by a label or other printed matter describing the product.

(d) An application for registration shall be submitted on forms furnished by the director. If the form is submitted in duplicate, the director

shall provide the applicant with a copy of the approved registration. (V.A.C.S. Art. 3881e, Secs. 5(a) (part), (e).)

Sec. 141.023. Term

A registration of a commercial feed is permanent unless:

(1) the director or the registrant cancels the registration; or

(2) the director requires new registration. (V.A.C.S. Art. 3881e, Sec. 5(a) (part).)

Sec. 141.024. Changes in Guaranteed Composition

The director may permit a change in the guarantee of the chemical or ingredient composition of a registered commercial feed if the registrant submits satisfactory evidence that the change will not result in a lowered feeding value of the product for the purpose for which it was designed. (V.A.C.S. Art. 3881e, Sec. 5(c).)

Sec. 141.025. Refusal or Cancellation

(a) Following notice and a hearing, the director may refuse to register a commercial feed that is not in compliance with this chapter.

(b) The director may cancel the registration of a commercial feed if the director finds that:

(1) the commercial feed is in violation of a provision of this chapter;

(2) the registrant has failed to comply with a provision of this chapter or a rule adopted under this chapter; or

(3) the registrant has used fraudulent or deceptive practices in attempted evasion of this chapter or a rule adopted under this chapter. (V.A.C.S. Art. 3881e, Secs. 5(d), 14(f) (part).)

[Sections 141.026–141.050 reserved for expansion]

SUBCHAPTER C. LABELING

Sec. 141.051. Labeling of Packaged Commercial Feed

(a) Each packaged commercial feed distributed in this state, other than customer-formula feed, must have a label with the following information:

(1) the net weight avoirdupois of the feed in the container, unless the net weight is shown on the container; and

(2) the information required on the registration application under Section 141.022(a) of this code.

(b) The manufacturer or other person distributing the feed shall affix the label required by this section to the outside of the container in a place prescribed by the director. The information must be grouped together and plainly printed in English in the size of type prescribed by the director.

(c) If the net weight is shown on the container rather than printed on the label, the net weight must be plainly printed in a conspicuous place in the size of type prescribed by the director. (V.A.C.S. Art. 3881e, Secs. 6(a), 7(d) (part).)

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 on the registration application under Section 141.022(a) of this code. (V.A.C.S. Art. 3881e, Secs. 6(b), 7(d) (part).)

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 attach to the invoice furnished 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 director 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 director may adopt rules and prescribe forms for identification of a customer-formula feed under this subsection. (V.A.C.S. Art. 3881e, Secs. 4(a)(part), 6(c), 7(d)(part).)

Sec. 141.054. Labeling of Feed Containing Low-Grade Feeding Materials or Fillers

If a commercial feed contains hulls, shells, screenings, straw, stalks, corncobs, or other low-grade feeding materials or fillers, the name and percentage of the material or filler must be clearly and prominently printed on the label of the feed. (V.A.C.S. Art. 3881e, Sec. 8 (part).)

Sec. 141.055. Labeling of Feed Containing Medicine or Other Materials

If a commercial feed contains a medicine, drug, or another material listed in Section 141.002(d) of this code, the label must show, in accordance with the rules of the director:

(1) the quantity of the material;

(2) a warning statement; and

(3) directions for use. (V.A.C.S. Art. 3881e, Sec. 9 (part).)

[Sections 141.056–141.070 reserved for expansion]

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 director at the director's office an inspection fee prescribed by this section.

(b) Except as otherwise provided by this section, the inspection fee is 12 cents per ton of commercial feed. With the approval of the board of regents of The Texas A & M University System, the director may reduce or increase the inspection in increments of 1 cent per fiscal year, as needed, to a minimum of 10 cents per ton or a maximum of 25 cents per ton.

(c) For each fiscal year or part of a fiscal year, a person who manufactures or distributes commercial feed in individual containers of five pounds or less may pay an advance inspection fee of $25 for each brand of commercial feed manufactured or distributed. All others shall pay the

fee on the basis of tags, certificates, or tonnage reporting, or a combination of those procedures, in accordance with this subchapter.

(d) 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.

(e) The director 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. (V.A.C.S. Art. 3881e, Secs. 4(a) (part), 4(b), 7(a) (part), 7(b), 7(c) (part), 11 (part).)

Sec. 141.072. Tags or Certificates

(a) In order to pay the inspection fee, a person may obtain from the director a tag or certificate printed with:

(1) a statement that all charges under this chapter have been paid; and

(2) the information required for a label under Subchapter C of this chapter.

(b) If the feed is not customer-formula feed and is distributed in a container, the person paying the fee shall affix a tag or certificate to each container of feed. If the feed is customer-formula feed or bulk feed, the person shall attach the tag or certificate to the invoice covering the feed.

(c) The director shall prescribe the form and denomination of tags and certificates under this section. If the actual cost of providing the tags or certificates, including the cost of printing and handling, is equal to more than 50 percent of the amount of the inspection fee, the director may charge the actual cost for the tags or certificates in addition to the amount of the inspection fee. The director shall give reasonable notice before charging the actual cost for tags or certificates. (V.A.C.S. Art. 3881e, Sec. 3(r), 7(c) (part).)

Sec. 141.073. Tonnage Reporting

(a) A person may pay the inspection fee on the basis of reports of the number of tons of feed manufactured or distributed in this state, regardless of the circumstances of the feed's entry into or presence in this state.

(b) In order to pay the fee on the basis of tonnage reporting, a person must apply to the department for a permit. In addition, the person shall deposit with the director:

(1) $1,000 in cash or in securities acceptable to and approved by the director; or

(2) a surety bond approved by the director in the amount of $1,000 that is payable to the State of Texas, executed by a corporate surety company authorized to do business in Texas or by at least two good, sufficient, and solvent personal sureties, and conditioned on the faithful performance of the requirements of this chapter. The bond must be in a form prescribed by the director and is effective for the period of time prescribed by the director.

(c) If the director approves an application for a permit under this section, the director shall issue to the applicant a permit bearing an assigned number.

(d) The holder of the permit shall file with the director a quarterly sworn report setting forth the tonnage of all commercial feed that the

person 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.

(e) A quarterly tonnage report and inspection fee payment is due before the 31st day following the last day of November, February, May, and August.

(f) The director may prescribe and furnish forms as necessary under this section. (V.A.C.S. Art. 3881e, Secs. 3(q), 7(d) (part).)

Sec. 141.074. Penalty for Late Payment

(a) If a person paying the inspection fee on the basis of tonnage reporting does not pay the fee before the 31st day following the last day of a quarter, the person shall pay a penalty equal to 10 percent of the inspection fee due.

(b) A penalty under this section is a debt and is recoverable out of the security deposited under Section 141.073(b) of this code. (V.A.C.S. Art. 3881e, Sec. 7(d) (part).)

Sec. 141.075. Records; Additional Reports; Audits

(a) As required by the director, a person who pays the inspection fee on the basis of tonnage reporting shall maintain and furnish records that accurately reflect the total tonnage of feed manufactured, mixed, milled, processed, or distributed and the portion of the feed that is subject to the inspection fee. The director may require the person to file additional reports, including reports for the purpose of identifying or verifying the records maintained under this section.

(b) The director is entitled to examine at reasonable times the records maintained under this section.

(c) Unless otherwise authorized by the director, a person shall preserve and maintain the records under this section in usable condition for at least two years. The director may require a person to retain the records for a period longer than two years if the director determines it to be in the public interest.

(d) If a person is located outside this state, the person 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 director shall promptly furnish to the person an itemized statement of any costs incurred in an out-of-state audit and the person shall pay the costs before the 31st day following the date of the statement. (V.A.C.S. Art. 3881e, Sec. 7(d) (part).)

Sec. 141.076. Refusal of Tag or Certificate; Revocation of Permit

(a) If a person fails to comply with this chapter or a rule adopted under this chapter, the director may:

(1) refuse to issue a tag or certificate to the person; or

(2) revoke the person's permit to pay the inspection fee on the basis of tonnage reporting.

(b) The director shall revoke the permit and cancel all registrations of a person who fails either to maintain records in this state or to pay for an out-of-state audit under Section 141.075(d) of this code. (V.A.C.S. Art. 3881e, Secs. 7(d) (part), 14(f) (part).)

Sec. 141.077. Disposition and Use of Fees

(a) The director shall deposit fees collected under this subchapter in the state treasury to the credit of a special fund known as the feed control fund.

(b) The feed control fund shall be used, with the approval and consent of the board of regents of The Texas A & M University System, for administering this chapter, including paying the cost of:

(1) equipment and facilities;

(2) inspecting, analyzing, and examining commercial feed manufactured for distribution in this state; and

(3) experiments and research relative to the value of commercial feed. (V.A.C.S. Art. 3881e, Sec. 7(a) (part).)

[Sections 141.078–141.100 reserved for expansion]

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 director is entitled to:

(1) enter during regular business hours and inspect any place of business, mill, building, or vehicle and to open any container, bin, 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. (V.A.C.S. Art. 3881e, Sec. 10(a).)

Sec. 141.102. Procedure for Sampling

(a) The director shall take samples in the presence of the manufacturer or other person in possession of the feed or a representative of that person. If the person refuses to be present and take part in the sampling, the director may take samples in the presence of two disinterested witnesses.

(b) The director shall take samples in the number and quantity that the director determines to be representative of the lot of feed sampled.

(c) If the feed is in bulk, the director shall take portions at random from not less than four different locations in the bulk lot. The director shall thoroughly mix and divide those portions so that each part fairly represents the whole. Any of those parts may be considered the official composite sample of the bulk feed. (V.A.C.S. Art. 3881e, Secs. 10(b), (d).)

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 director. In addition, a report shall be sent to the director stating:

(1) the name or brand of the commercial feed or material sampled;

(2) the serial number of the sample;

(3) the manufacturer 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;

(6) the name of the person who took the sample; and

(7) the name of each person witnessing the taking of the sample.

(c) For the purpose of properly identifying a sample with the lot sampled, the director is entitled to examine and copy any invoice, trans-

portation record, or other record pertaining to the lot. (V.A.C.S. Art. 3881e, Secs. 10(c), (e).)

Sec. 141.104. Procedure for Analysis

(a) The director shall divide each sample into at least four equal portions and retain at least three portions for the purpose of independent analysis under Section 141.105 of this code.

(b) The analysis of a sample shall be made in accordance with the official methods of the Association of Official Analytical Chemists or other methods that the director considers authentic by research and investigation. (V.A.C.S. Art. 3881e, Secs. 10(f), (g).)

Sec. 141.105. Independent Analysis of Sample

(a) If the director finds through chemical analysis or another method that a commercial feed is in violation of a provision of this chapter, the director 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 director's findings.

(b) A person who receives a notice under this section may request that the director submit portions of the sample analyzed to other chemists for independent analysis. After receiving a request, the director shall submit two portions of the sample analyzed to two qualified chemists selected by the director. If requested, the director shall also submit one portion of the sample to the person requesting independent analysis. A request under this subsection must be filed with the director 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 director shall analyze the portion of the sample and certify findings to the director under oath. The findings shall be prepared in duplicate and the director 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 director determines that a violation has not occurred, the director shall pay the cost of the analysis. (V.A.C.S. Art. 3881e, Sec. 10(h).)

[Sections 141.106–141.120 reserved for expansion]

SUBCHAPTER F. ENFORCEMENT; REMEDIES

Sec. 141.121. Detention of Feed

(a) If the director has reasonable cause to believe that a commercial feed is being distributed in violation of a provision of this chapter, the director shall affix to the container of the feed a written notice showing:

(1) a statement that the feed has been detained; and

(2) a warning to all persons not to dispose of the feed in any manner until the director or a court gives permission or until the detainer notice expires.

(b) If the director finds that a detained commercial feed is not in violation of this chapter, the director shall immediately remove the detainer notice.

(c) A detainer notice expires at the end of the 10th day following the day on which it was affixed unless, prior to that time, the director has instituted proceedings under Section 141.122 of this code to condemn the feed. (V.A.C.S. Art. 3881e, Sec. 12(a).)

Sec. 141.122. Condemnation of Detained Feed

(a) If, after examination and analysis, the director finds that a detained commercial feed is in violation of a provision of this chapter, the director 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 owner of the feed for processing or labeling under the supervision of the director. 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 owner of the feed to post good and sufficient bond conditioned on the proper labeling and processing of the feed.

(d) The owner of the feed shall pay all costs of the director's supervision of labeling or processing under Subsection (c) of this section. The court shall return the bond to the owner when the director notifies the court that the commercial feed is no longer in violation of this chapter and that the owner has paid the expenses of supervision. (V.A.C.S. Art. 3881e, Sec. 12(b).)

Sec. 141.123. Warnings

If the director 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 director may issue the warning instead of proceeding to condemn the feed, reporting the violation for prosecution, or taking other administrative action. (V.A.C.S. Art. 3881e, Sec. 14(d).)

Sec. 141.124. Suit to Recover Fees

The director 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. (V.A.C.S. Art. 3881e, Sec. 7(e).)

Sec. 141.125. Prosecutions

(a) Each district attorney, criminal district attorney, or county attorney to whom the director 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.

(b) Before reporting a violation of this chapter for prosecution, the director shall give the violator an opportunity to present his or her views. (V.A.C.S. Art. 3881e, Secs. 14(a) (part), (e).)

Sec. 141.126. Venue for Civil and Criminal Actions

Except as provided by Section 141.124 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 director. (V.A.C.S. Art. 3881e, Sec. 14(c).)

Sec. 141.127. Appeal of Administrative Order or Ruling

A person who is aggrieved by an order or ruling of the director may appeal the order or ruling in the manner provided for contested cases by the Administrative Procedure and Texas Register Act (Article 6252—13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 3881e, Sec. 19.)

[Sections 141.128–141.140 reserved for expansion]

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 misdemeanor punishable by a fine of not less than $50 nor more than $200. (V.A.C.S. Art. 3881e, Sec. 14(b).)

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 misdemeanor punishable by a fine of not less than $50 nor more than $200. (V.A.C.S. Art. 3881e, Secs. 13 (part), 14(a) (part).)

Sec. 141.143. Distribution of Commercial Feed 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 feed:

(1) that is required to be registered but is not registered in accordance with 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 misdemeanor punishable by a fine of not less than $50 nor more than $200. (V.A.C.S. Art. 3881e, Secs. 13 (part), 14(a) (part).)

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 misdemeanor punishable by a fine of not less than $50 nor more than $200. (V.A.C.S. Art. 3881e, Secs. 13 (part), 14(a) (part).)

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 misdemeanor punishable by a fine of not less than $50 nor more than $200. (V.A.C.S. Art. 3881e, Secs. 13 (part), 14(a) (part).)

Sec. 141.146. Disposal of Detained Feed

(a) A person commits an offense if the person disposes of detained feed in violation of Section 141.121 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. (V.A.C.S. Art. 3881e, Secs. 13 (part), 14(a) (part).)

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) does not bear a tag or certificate, if the inspection fee is paid on the basis of tags or certificates;

(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; or

(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.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $50 nor more than $200. (V.A.C.S. Art. 3881e, Secs. 9 (part), 13 (part), 14(a) (part).)

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; or

(9) that is otherwise unfit for feeding to animals.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $50 nor more than $200. (V.A.C.S. Art. 3881e, Secs. 8 (part), 13 (part), 14(a) (part).)

CHAPTER 142. ESTRAYS

Section
142.001. Purpose
142.002. Definition
142.003. Discovery and Impoundment
142.004. Notice of Estray; Estray Records
142.005. Advertisement
142.006. Recovery of Estray by Owner
142.007. Sale of Estray
142.008. Recovery by Owner of Proceeds of Sale
142.009. Escheat of Sale Proceeds
142.010. Use of Estray
142.011. Injury or Death of Estray

CHAPTER 142. ESTRAYS

Sec. 142.001. Purpose

The purpose of this chapter is to provide a method for finally disposing of an estray. (V.A.C.S. Art. 6927a, Sec. 2.)

Sec. 142.002. Definition

In this chapter, "estray" means a stray horse, stallion, mare, gelding, filly, colt, mule, hinny, jack, jennet, hog, sheep, goat, or head of any species of cattle. (V.A.C.S. Art. 6927a, Sec. 3(3).)

Sec. 142.003. Discovery and Impoundment

(a) A person who discovers an estray on that person's property or on public property shall report the presence of the animal to the sheriff of the county in which the animal is discovered. The person shall make the report as soon as reasonably possible.

(b) After receiving a report under Subsection (a) of this section, the sheriff or the sheriff's designee shall impound the animal and hold it for disposition as provided by this chapter. (V.A.C.S. Art. 6927a, Secs. 4(a), (b).)

Sec. 142.004. Notice of Estray; Estray Records

(a) After impounding an estray, the sheriff 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, and other identifying characteristics.

(b) The sheriff shall file each notice of estray in the estray records in the office of the county clerk. (V.A.C.S. Art. 6927a, Secs. 3(4), 3(6), 4(c).)

Sec. 142.005. Advertisement

If an estray has been impounded, the sheriff or the sheriff's designee shall make a diligent search for the owner of the estray in the county register of recorded brands. If the search does not reveal the owner, the sheriff or the sheriff's designee shall advertise the impoundment of the estray in a newspaper of general circulation in the county at least twice

during the next 15 days and post a notice of the impoundment on the public notice board of the courthouse. (V.A.C.S. Art. 6927a, Sec. 5.)

Sec. 142.006. Recovery of 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; and

(4) a description of the animal, including its breed, color, sex, age, size, markings of any kind, and other identifying characteristics.

(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.

(d) 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 day 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. (V.A.C.S. Art. 6927a, Secs. 3(1), 3(2), 3(5), 6.)

Sec. 142.007. Sale of Estray

(a) If the ownership of an estray is not determined before the 15th day following the day of the final advertisement under this chapter, the county has title to the animal and the sheriff or the sheriff's designee shall cause the animal to be sold at a public auction licensed by the United States Department of Agriculture. Title to the animal shall be 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.

(b) The purchaser of an estray at public auction may take possession of the animal on payment of the purchase price.

(c) The sheriff shall receive the proceeds of the sale of the animal and shall:

(1) pay all estray handling expenses to those entitled to receive them;

(2) execute a report of sale of impounded stock; and

(3) cause the report of sale of impounded stock to be filed in the estray records of the county clerk.

(d) The net proceeds remaining from the sale of an estray after all estray handling expenses have been paid shall be delivered by the sheriff to the county treasurer. The county treasurer shall deposit the net proceeds 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 as provided by this chapter. (V.A.C.S. Art. 6927a, Secs. 3(7), 7.)

Sec. 142.008. Recovery by Owner of Proceeds of Sale

Within one year 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 142.006(b) of this code;

(2) the sheriff has approved the affidavit; and

(3) the approved affidavit has been filed in the estray records of the county clerk. (V.A.C.S. Art. 6927a, Sec. 10.)

Sec. 142.009. Escheat of Sale Proceeds

After the expiration of one year from the date of sale of an estray under this chapter, the sale proceeds escheat to the state. (V.A.C.S. Art. 6927a, Sec. 11.)

Sec. 142.010. Use of Estray

During the period an estray is held by a person who impounded the estray, the animal may not be used by the person for any purpose. (V.A.C.S. Art. 6927a, Sec. 8.)

Sec. 142.011. Injury or Death of Estray

A person who has impounded an estray is liable for any abuse or negligent injury of the animal. If the animal dies or escapes while held by the person who impounded it, the person shall report the death or escape to the sheriff or the sheriff's designee under oath. That report shall be filed in the estray records of the county clerk. (V.A.C.S. Art. 6927a, Sec. 9.)

CHAPTER 143. FENCES; RANGE RESTRICTIONS

SUBCHAPTER A. FENCING OF CULTIVATED LAND

Section

143.001. Sufficient Fence Required
143.002. Gate
143.003. Trespass by Livestock on Fenced Property
143.004. Impoundment of Trespassing Livestock
143.005. Liability for Injury to Trespassing Livestock

[Sections 143.006–143.020 reserved for expansion]

SUBCHAPTER B. LOCAL OPTION TO PREVENT CERTAIN ANIMALS FROM RUNNING AT LARGE

Section
143.021. Petition for Election
143.022. Election Orders
143.023. Election
143.024. Effect of Election; Adoption of Subchapter
143.025. Subsequent Elections to Adopt Subchapter
143.026. Repeal
143.027. Extension of Subchapter to Adjoining Area by Order
143.028. Fences
143.029. Trespassing Animals; Impoundment by Individual
143.030. Fees and Damages
143.031. Impounding of Animals by Sheriff or Constable
143.032. Sale of Impounded Animal
143.033. Injury to Trespassing Animal
143.034. Penalty

[Sections 143.035–143.050 reserved for expansion]

SUBCHAPTER C. LOCAL OPTION LIMITED FREE RANGE FOR HOGS

143.051. Petition for Election
143.052. Election Orders
143.053. Election
143.054. Effect of Election
143.055. Subsequent Elections to Adopt or Repeal Free Range
143.056. Combined Elections

[Sections 143.057–143.070 reserved for expansion]

SUBCHAPTER D. LOCAL OPTION TO PREVENT CATTLE OR DOMESTIC TURKEYS FROM RUNNING AT LARGE

143.071. Petition for Election
143.072. Exceptions; Countywide Elections
143.073. Election
143.074. Effect of Election; Adoption of Subchapter
143.075. Subsequent Elections to Adopt Subchapter
143.076. Repeal
143.077. Fences
143.078. Trespassing Animals; Impoundment by Individual
143.079. Fees and Damages
143.080. Impoundment of Animals by Sheriff or Constable
143.081. Sale of Impounded Animal
143.082. Penalty

[Sections 143.083–143.100 reserved for expansion]

SUBCHAPTER E. ANIMALS RUNNING AT LARGE ON HIGHWAYS

Section
143.101. Definition
143.102. Running at Large on Highway Prohibited
143.103. Immunity from Liability
143.104. Herding of Livestock Along Highway
143.105. Impounding of Livestock
143.106. Enforcement
143.107. Conflict with Other Law
143.108. Penalty

[Sections 143.109–143.120 reserved for expansion]

SUBCHAPTER F. REMOVAL OF ADJOINING FENCES

143.121. Prohibition
143.122. Removal of Fence by Owner
143.123. Requiring Removal of Fence by Another Person

[Sections 143.124–143.130 reserved for expansion]

SUBCHAPTER G. USE OF GRAZING LAND UNDER COMMON FENCE

143.131. Definition
143.132. Use of Grazing Land Under Common Fence
143.133. Remedies
143.134. Penalty

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. (V.A.C.S. Art. 3947 (part).)

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. (V.A.C.S. Art. 3947 (part).)

Sec. 143.003. Trespass by Livestock on Fenced Property

(a) If any livestock, including cattle, horses, or hogs, trespass on the cleared and cultivated land of a person, that person may file a complaint with a justice of the peace in the county in which the trespass occurred. On receiving the complaint, the justice shall summon two impartial and disinterested freeholders and shall, with those freeholders, examine the fence and land and determine if the person's fence was sufficient and what damages, if any, the person sustained as a result of the trespass.

The justice and the freeholders shall certify their findings under oath in writing.

(b) If the justice and freeholders determine that the fence of the complaining person is sufficient, the owner of the trespassing livestock is liable to that person for damages resulting from the trespass. If the fence is found to be insufficient, the owner of the trespassing livestock is not liable to the complaining person. (V.A.C.S. Arts. 3948, 3950.)

Sec. 143.004. Impoundment of Trespassing Livestock

(a) If the same livestock trespass more than once on cleared and cultivated land, the owner, lessee, or proprietor of the premises on which the trespass occurs may impound the livestock if the person considers it necessary for the protection and preservation of the premises or the crops growing on the premises.

(b) A person who impounds livestock under Subsection (a) of this section shall turn the livestock over to the sheriff or a constable. The impounded livestock may be sold in order to compensate the injured person for damages and costs resulting from the trespass and impoundment. (V.A.C.S. Art. 3949.)

Sec. 143.005. Liability for Injury to Trespassing Livestock

If a person whose fence is judged insufficient under this subchapter maims, wounds, or kills trespassing livestock by any means, including with a gun or a dog, the person is liable to the owner of the livestock for damages to that livestock. (V.A.C.S. Art. 3951.)

[Sections 143.006–143.020 reserved for expansion]

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 commissions 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. (V.A.C.S. Arts. 6930, 6931 (part), 6932.)

Sec. 143.022. Election Orders

(a) After receiving a petition under this subchapter, the commissioners court at its next regular term shall order than 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. (V.A.C.S. Arts. 6933, 6934.)

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. (V.A.C.S. Arts. 6928, 6935, 6936, 6937 (part).)

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. (V.A.C.S. Art. 6937 (part); new.)

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. (V.A.C.S. Art. 6941.)

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. (V.A.C.S. Arts. 6944, 6945.)

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. (V.A.C.S. Art. 6931 (part).)

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. (V.A.C.S. Art. 6942 (part).)

Sec. 143.029. Trespassing Animals; Impoundment by Individual

(a) If an animal not permitted to run at large enters the enclosed land or, without being herded with other animals, roams about the residence, lot, or cultivated land of another person without the person's consent, that person, whether owner, lessee, or other person in lawful possession of the land, may impound the animal and detain it until all damages and fees under this subchapter have been paid by the owner of the animal. After impounding an animal under this subsection, the person shall immediately give notice to the owner of the animal and shall return possession of the animal to the owner after receiving payment of the fees and damages. If the owner of the animal is unknown, the person impounding the animal may, after five days, treat the animal as an estray under Chapter 142 of this code or may have the animal sold under Section 143.032 of this code.

(b) If a trespass has been committed by any cattle or horses on the cleared or cultivated land of any person who has complied with this subchapter in erecting a sufficient fence, the person may file a complaint with the justice of the peace of the precinct in which the trespass was committed. On receiving the complaint, the justice shall summon two impartial and disinterested freeholders and shall, with those freeholders, examine the fence and land and determine if the person's fence was sufficient and what damages, if any, the persons sustained as a result of the trespass. The justice and the freeholder [83a] shall certify their findings under oath in writing. If they determine that the fence of the complaining person was sufficient, the owner of the trespassing animals is liable to that person for damages resulting from the trespass. If the same cattle or horses trespass a second time on the cleared and cultivated land of the person, the person may impound the animals if he or she considers it necessary for the protection and preservation of the premises or the crops growing on the premises. A person who impounds animals under this section shall turn them over to the sheriff or constable and the impounded animals may be sold in order to compensate the injured person for damages and costs resulting from the trespass and impoundment. In addition, the person impounding the animals may charge the owner 25 cents

83a. So in enrolled bill.

per day per animal impounded. (V.A.C.S. Arts. 6938, 6940 (part), 6942 (part), 6943 (part).)

Sec. 143.030. Fees and Damages

(a) Except as provided by Subsection (b) of this section, a person who impounds animals under this subchapter is entitled to the following fees for each day in which the person detains the animals:

Horses or mules	50 cents a head
Jacks or jennets	30 cents a head
Hogs	25 cents a head
Sheep or goats	15 cents a head

(b) In Menard County, a person who impounds hogs is entitled to a fee not to exceed $5 a head for each day the person detains the hogs.

(c) The fees due under this section and the damages owed as a result of trespass by animals shall be assessed by three disinterested freeholders of the county or area in which this subchapter has been adopted. If this subchapter is applicable to an area within a county, the justice of the peace of the precinct in which the area is located shall appoint the freeholders on application of the person who impounds the animals. If the justice fails or refuses to make the appointments or if this subchapter has been adopted for the entire county, the county judge shall make the appointments.

(d) If the owner of the animals is known, the owner shall be given at least five days' notice of the meeting of the freeholders. If the owner is unknown, written notice of the meeting shall be posted at two public places in the applicable area or county and at the courthouse door.

(e) After being sworn to discharge their duties impartially, the appointed freeholders shall examine the evidence and determine whether a trespass prohibited by this subchapter has occurred, the amount of damages incurred, if any, and the fees owed to the person who impounded the animals. The freeholders shall make their determination of fees and damages in a written assessment and file that assessment with the justice of the peace. The assessment must be signed by at least two of the freeholders and verified by an affidavit of each freeholder to the effect that the assessment is just and that each freeholder has no bias in favor of or against any interested party.

(f) The assessment of the freeholders is final. (V.A.C.S. Art. 6967 (part).)

Sec. 143.031. Impounding of Animals by Sheriff or Constable

(a) The sheriff or a constable of the county or area shall seize and impound in a place provided for that purpose any animal that the sheriff or constable knows to be running at large in violation of this subchapter. If the officer knows who the owner of the animal is, the officer shall immediately notify the owner that the animal has been impounded.

(b) Except as provided by Subsection (c) of this section, an owner of an animal impounded under this section may redeem the animal on payment of an impoundment fee of $1 plus an additional fee in the following amount for each day the animal was impounded:

Horses or mules	$1 a head
Jacks or jennets	50 cents a head
Sheep, goats, or hogs	25 cents a head

(c) In Menard County, the owner of impounded hogs shall pay an impoundment fee of $1 plus an additional fee not to exceed $5 a head for each day the hogs were impounded. (V.A.C.S. Art. 6965 (part).)

Sec. 143.032. Sale of Impounded Animal

(a) If the owner of an animal impounded under this subchapter is known, the animal may be sold in accordance with this section if:

(1) the animal was impounded by an individual and an assessment of fees and damages under this subchapter has been filed; or

(2) the animal was impounded by a sheriff or constable and five days have expired following notice of the impoundment to the owner.

(b) If the owner of an animal impounded under this subchapter is unknown, the animal may be sold in accordance with this section if the individual or officer who impounded the stock makes an affidavit before a justice of the peace that describes the animal and states that the owner is unknown. The justice of the peace shall file the affidavit with the county clerk and the county clerk shall maintain the affidavit open for inspection in the clerk's office.

(c) The constable of the precinct in which the animal was impounded shall sell the animal at public auction for cash. The constable shall give notice of the sale in the manner provided by the Rules of Civil Procedure for the execution sale of personal property.

(d) The proceeds of the sale shall be applied to the expenses of the sale and then to the fees and damages owed to the person impounding the animal. If the owner of the animal is known, any balance remaining shall be paid to the owner. If the owner of the animal is unknown, the constable shall report the balance under oath to the county clerk, who shall remit the funds to the county treasurer. If an individual impounded the animal, the county treasurer shall deposit and disburse the funds in the manner provided by Chapter 142 of this code for proceeds from the sale of an estray. If an officer impounded the animal, the county treasurer shall deposit the funds to the credit of the road and bridge fund of the county. (V.A.C.S. Arts. 6939 (part), 6940 (part), 6969 (part), 6970 (part).)

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, or jennet, 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, or head of cattle of another person. (V.A.C.S. Art. 6943 (part).)

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 misdemeanor punishable by a fine of not less than $5 nor more than $50. (V.A.C.S. Art. 6946a.)

[Sections 143.035–143.050 reserved for expansion]

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. (V.A.C.S. Art. 6947.)

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. (V.A.C.S. Arts. 6948 (part), 6949.)

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." (V.A.C.S. Arts. 6948 (part), 6950, 6951, 6952 (part).)

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. (V.A. C.S. Art. 6952 (part).)

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. (V.A.C.S. Art. 6953.)

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. (V.A.C.S. Art. 6929.)

[Sections 143.057–143.070 reserved for expansion]

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 the 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 thc 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. (V.A.C.S. Arts. 6954, 6954a (part), 6956, 6957.)

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. (V.A.C.S. Art. 6955.)

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. (V.A.C.S. Arts. 6958, 6959, 6960, 6961, 6962 (part).)

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. (V.A.C.S. Art. 6962 (part); new.)

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. (V.A.C.S. Art. 6964.)

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. (V.A.C.S. Art. 6963.)

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. (V.A.C.S. Art. 6971.)

Sec. 143.078. Trespassing Animals; Impoundment by Individual

If an animal not permitted to run at large enters the enclosed land or, without being herded with other animals, roams about the residence, lot, or cultivated land of a person without the person's consent, that person, whether owner, lessee, or other person in lawful possession of the land, may impound the animal and detain it until all fees and damages under this subchapter have been paid by the owner of the animal. After impounding an animal under this section, the person shall immediately give notice to the owner of the animal and shall return possession of the animal to the owner after receiving payment of the fees and damages. (V.A.C.S. Art. 6966.)

Sec. 143.079. Fees and Damages

A person who impounds animals under this subchapter is entitled to a fee of 35 cents a head for cattle or 10 cents a head for domestic turkeys for each day in which the person detains the animals. The fees and damages shall be assessed in the manner provided by Section 143.030 of this code. (V.A.C.S. Arts. 6954a (part), 6967 (part).)

Sec. 143.080. Impoundment of Animals by Sheriff or Constable

(a) The sheriff or a constable of the county or area shall seize and impound in a place provided for that purpose an animal that the sheriff or constable knows to be running at large in violation of this subchapter. If the officer knows who the owner of the animal is, the officer shall immediately notify the owner that the animal has been impounded.

(b) The owner of an animal impounded under this section may redeem the animal on payment of an impoundment fee of $1. If cattle are impounded, the owner shall pay an additional fee of $1 a head for each day on which the animals were impounded. (V.A.C.S. Art. 6965 (part).)

Sec. 143.081. Sale of Impounded Animal

An animal impounded under this subchapter may be sold in accordance with Section 143.032 of this code, except that if the owner of the animal is unknown, any balance of the proceeds of the sale remaining after the payment of expenses, fees, and damages shall be deposited to the credit of the road and bridge fund of the county, regardless of who impounded the animal. (V.A.C.S. Arts. 6968 (part), 6969 (part), 6970 (part).)

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 misdemeanor punishable by a fine of not less than $5 nor more than $200. (V.A.C.S. Arts. 6946b, 6954a (part).)

[Sections 143.083–143.100 reserved for expansion]

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. (V.A.C.S. Art. 6971a, Sec. 1 (part).)

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. (V.A.C.S. Art. 6971a, Sec. 1 (part).)

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 on a finding of:

(1) gross negligence in the operation of the vehicle; or

(2) wilful intent to strike, kill, injure, or damage the animal.

(V.A.C.S. Art. 6971a, Sec. 2.)

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. (V.A.C.S. Art. 6971a, Sec. 3.)

Sec. 143.105. Impounding of Livestock

(a) A peace officer may authorize in writing any holder of a railroad commission permit for hauling livestock to pick up any livestock found unattended on a highway if the officer, after diligent inquiry, has been unable to locate the owner or person responsible for the livestock.

(b) A person who picks up livestock under Subsection (a) of this section shall deliver the livestock to the sheriff or a constable of the county in which the livestock was found. The sheriff or constable shall dispose of the livestock, or the owner may redeem the livestock, in accordance with Subchapter D of this chapter as if the officer had impounded the livestock under that subchapter. (V.A.C.S. Art. 6971a, Sec. 4.)

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. (V.A.C.S. Art. 6971a, Sec. 5 (part).)

Sec. 143.107. Conflict With Other Law

This subchapter prevails to the extent of any conflict with another provision of this chapter. (V.A.C.S. Art. 6971a, Sec. 5 (part).)

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 misdemeanor punishable by a fine of not more than $200.

(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. (V.A.C.S. Art. 6971a, Sec. 1 (part).)

[Sections 143.109–143.120 reserved for expansion]

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 nto 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. (V.A.C.S. Art. 3952.)

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. (V.A.C.S. Art. 3953.)

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. (V.A.C.S. Art. 3954.)

[Sections 143.124–143.130 reserved for expansion]

SUBCHAPTER G. USE OF GRAZING LAND UNDER COMMON FENCE

Sec. 143.131. Definition

In this section, "owner or lessee" means the owner or lessee as shown by a deed, lease, or other written instrument of record in the county clerk's office in the county in which the land owned or leased is located. (V.A.C.S. Art. 6942a, Sec. 1-b.)

Sec. 143.132. Use of Grazing Land Under Common Fence

(a) If an owner or lessee has a tract of land that is adjacent to a tract of another owner or lessee and the tracts are enclosed by one fence or a fence and a natural barrier, neither owner or lessee may:

(1) place or keep, or cause to be placed or kept, more cattle or other livestock in the enclosed tract than the land owned or leased by that person will reasonably pasture; or

(2) place or cause to be placed cattle or other livestock on the land owned or leased by that person unless that land has a sufficient permanent supply of water for those cattle or other livestock.

(b) For purposes of this section, land will reasonably pasture the number of livestock:

(1) that a prudent and experienced livestock raiser is accustomed to grazing on similar land; and

(2) for which it can supply ample grazing under the usual condition of the community in which the land is located. (V.A.C.S. Art. 6942a, Secs. 1 (part), 1-a.)

Sec. 143.133. Remedies

(a) A person who is injured as a result of a violation of Section 143.132 of this code by an adjacent owner or lessee is entitled to sue for and, if successful, be awarded damages for the injury incurred, an injunction enjoining further or threatened violations of that section, or both.

(b) A person who is injured by a violation of Section 143.132(a)(1) of this code has a lien on the cattle or other livestock of the adjacent owner or lessee until the damages and costs recovered by suit under Subsection (a) of this section are fully paid. (V.A.C.S. Art. 6942a, Secs. 1 (part), 2-a.)

Sec. 143.134. Penalty

(a) A person commits an offense if the person wilfully violates Section 143.132 of this code.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not less than $10 nor more than $500;

(2) confinement in county jail for not more than six months; or

(3) both fine and confinement under this subsection.

(c) A person commits a separate offense for each day that each animal is placed or kept in an enclosure in violation of Section 143.132 of this code. (V.A.C.S. Art. 6942a, Sec. 2.)

CHAPTER 144. MARKS AND BRANDS

SUBCHAPTER A. GENERAL PROVISIONS

Section

144.001. Owner's Marks and Brands
144.002. Brands of Minors
144.003. Age for Marking or Branding

[Sections 144.004–144.020 reserved for expansion]

SUBCHAPTER B. COUNTY BRANDS

144.021. County Brands
144.022. Use of County Brand
144.023. Removal of Stock With County Brand
144.024. Lists of County Brands

[Sections 144.025–144.140 reserved for expansion]

SUBCHAPTER C. RECORDING OF MARKS AND BRANDS

144.041. Marks and Brands to be Recorded
144.042. Recording
144.043. Effect of Recording
144.044. Rerecording

[Sections 144.045–144.070 reserved for expansion]

SUBCHAPTER D. PROVISIONS APPLICABLE ONLY IN CERTAIN COUNTIES

Section
144.071. Application
144.072. Recording of Marks and Brands, and Bills of Sale
144.073. Road Brand
144.074. Counterbranding

[Sections 144.075–144.100 reserved for expansion]

SUBCHAPTER E. REGISTRATION OF ANIMAL TATTOO MARKS

144.101. Definition
144.102. Right to Register
144.103. Department of Public Safety to Administer
144.104. Application for Registration
144.105. Certificate of Registration
144.106. Protest of Registration
144.107. Effect of Registration
144.108. Filing With County Clerk
144.109. Assignment of Registered Tattoo Mark
144.110. Fees

[Sections 144.111–144.120 reserved for expansion]

SUBCHAPTER F. PENALTIES

144.121. Use of Unrecorded Mark or Brand
144.122. Altering Mark or Brand
144.123. Marking or Branding Outside Pen
144.124. Improperly Recording Brand
144.125. Counterbranding Without Owner's Consent
144.126. Driving Cattle Without Road Brand
144.127. Reproduction or Destruction of Tattoo Mark
144.128. Purchase, Sale, or Transporation of Tattooed Livestock Without Consent

CHAPTER 144. MARKS AND BRANDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 144.001. Owner's Marks and Brands

Each person who has cattle, hogs, sheep, or goats shall have and may use one or more earmarks and one or more brands differing from the earmarks and brands of the person's neighbors. (V.A.C.S. Arts. 6890 (part); 6899, Sec. 1a.)

Sec. 144.002. Brands of Minors

A minor who owns cattle or hogs 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. (V.A.C.S. Art. 6895.)

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. (V.A.C.S. Art. 6896.)

[Sections 144.004–144.020 reserved for expansion]

SUBCHAPTER B. COUNTY BRANDS

Sec. 144.021. County Brands

Each county shall have a brand for horses and cattle. The following are county brands for use in the branding of horses or cattle:

COUNTY	BRAND
Anderson	A.A.
Andrews	A.N.
Angelina	A.L.
Aransas	A.R.
Archer	A.H.
Armstrong	A.M.
Atascosa	A.T.
Austin	A.U.
Bailey	B.I.
Bandera	B.A.
Bastrop	B.S.
Baylor	B.R.
Bee	B.E.
Bell	B.L.
Bexar	B.X.
Blanco	B.N.
Borden	B.D.
Bosque	B.
Bowie	B.O.
Brazoria	B.D.
Brazos	B.Z.
Briscoe	B.H.
Brown	B.W.
Burleson	B.U.
Burnet	B.T.
Caldwell	C.A.
Calhoun	C.H.
Callahan	C.L.
Cameron	C.M.
Camp	C.P.
Carson	C.R.
Cass	C.S.
Castro	C.T.
Chambers	C.B.
Cherokee	C.K.
Childress	C.D.
Clay	C.Y.
Cochran	C.C.
Coleman	C.E.
Collin	C.I.
Collingsworth	C.W.
Colorado	C.N.

COUNTY	BRAND
Comal	C.O.
Comanche	C.J.
Concho	C.V.
Cooke	C.U.
Coryell	C.X.
Cottle	C.2.
Crockett	C.3.
Crosby	C.4.
Dallam	D.L.
Dallas	D.A.
Dawson	D.N.
Deaf Smith	D.S.
Delta	D.T.
Denton	D.O.
DeWitt	D.E.
Dickens	D.I.
Dimmit	D.M.
Donley	D.N.
Duval	D.D.
Eastland	E.A.
Edwards	E.D.
Ellis	E.L.
El Paso	E.P.
Erath	E.R.
Falls	F.A.
Fannin	F.N.
Fayette	F.E.
Fisher	F.I.
Floyd	F.L.
Fort Bend	F.B.
Franklin	F.K.
Freestone	F.R.
Frio	F.O.
Gaines	G.I.
Galveston	G.A.
Garza	G.R.
Gillespie	G.L.
Goliad	G.D.
Gonzales	G.O.
Gray	G.Y.
Grayson	G.N.
Gregg	G.G.
Grimes	G.M.
Guadalupe	G.E.
Hale	H.
Hall	H.A.
Hamilton	H.I.
Hansford	H.F.
Hardeman	H.N.
Hardin	H.D.
Harris	H.S.
Harrison	H.X.
Hartley	H.T.

COUNTY	BRAND
Haskell	H.6.
Hays	H.Y.
Hemphill	H.M.
Henderson	H.E.
Hidalgo	H.G.
Hill	H.L.
Hockley	H.K.
Hood	H.O.
Hopkins	H.P.
Houston	H.4.
Howard	H.R.
Hunt	H.U.
Hutchinson	H.H.
Jack	J.
Jackson	J.A.
Jasper	J.P.
Jefferson	J.E.
Johnson	J.H.
Jones	J.O.
Karnes	K.
Kaufman	K.A.
Kendall	K.E.
Kent	K.T.
Kerr	K.R.
Kimble	K.I.
King	K.N.
Kinney	K.O.
Knox	K.X.
Lamar	L.A.
Lamb	L.M.
Lampasas	L.P.
LaSalle	L.S.
Lavaca	L.C.
Lee	L.E.
Leon	L.4.
Liberty	L.I.
Limestone	L.T.
Lipscomb	L.B.
Live Oak	L.O.
Llano	L.
Lubbock	L.K.
Lynn	L.N.
Madison	M.1.
Marion	M.2.
Martin	M.4.
Mason	M.N.
Matagorda	M.R.
Maverick	M.K.
McCulloch	M.C.
McLennan	M.L.
McMullen	M.
Medina	M.A.
Menard	M.D.

COUNTY	BRAND
Milam	M.I.
Mitchell	M.H.
Montague	M.E.
Montgomery	M.M.
Moore	M.O.
Morris	M.S.
Motley	M.T.
Nacogdoches	N.S.
Navarro	N.A.
Newton	N.
Nolan	N.O.
Nueces	N.E.
Ochiltree	O.H.
Oldham	O.O.
Orange	O.
Palo Pinto	P.P.
Panola	P.A.
Parker	P.K.
Parmer	P.R.
Pecos	P.
Polk	P.K.
Potter	P.O.
Presidio	P.R.
Rains	R.
Randall	R.A.
Red River	R.R.
Refugio	R.E.
Roberts	R.S.
Robertson	R.O.
Rockwall	R.L.
Runnels	R.N.
Rusk	R.K.
Sabine	S.B.
San Augustine	S.A.
San Jacinto	S.J.
San Patricio	S.P.
San Saba	S.S.
Scurry	S.
Shackelford	S.D.
Shelby	S.H.
Sherman	S.N.
Smith	S.T.
Somervell	S.O.
Starr	S.R.
Stephens	S.E.
Stonewall	S.L.
Swisher	S.I.
Tarrant	T.A.
Taylor	T.E.
Terry	T.
Throckmorton	T.H.
Titus	T.I.
Tom Green	T.G.

COUNTY	BRAND
Travis	T.S.
Trinity	T.R.
Tyler	T.L.
Upshur	U.P.
Uvalde	U.
Van Zandt	V.
Victoria	V.I.
Walker	W.K.
Waller	W.
Washington	W.N.
Webb	W.E.
Wharton	W.T.
Wheeler	W.H.
Wichita	W.A.
Wilbarger	W.R.
Williamson	W.I.
Wilson	W.L.
Wise	W.S.
Wood	W.O.
Yoakum	Y.
Young	Y.O.
Zapata	X.
Zavala	X.X.

(V.A.C.S. Art. 6891.)

Sec. 144.022. Use of County Brand

In addition to a person's private brand, a person may place the county brand on all horses and cattle owned by that person. (V.A.C.S. Art. 6892.)

Sec. 144.023. Removal of Stock With County Brand

If horses or cattle branded with a county brand are removed to another county, the owner of the animals shall counterbrand with the original county brand and a bar under it. After that counterbranding, the animals may be branded with the county brand of the county to which the animals were removed. (V.A.C.S. Art. 6893.)

Sec. 144.024. Lists of County Brands

The secretary of state shall furnish a printed list of the county brands to the county clerk of each county. The county clerk shall securely post the list in the clerk's office. (V.A.C.S. Art. 6894.)

[Sections 144.025–144.040 reserved for expansion]

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 and brands with the county clerk of the county in which the animals are located.

(b) The county clerk shall keep a record of the marks and brands of each person who applies to the clerk for that purpose.

(c) A person may record that person's marks and brands in as many counties as necessary.

(d) 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. (V.A. C.S. Art. 6890 (part); Art. 6898 (part); Art. 6899, Sec. 1 (part).)

Sec. 144.042. Recording

In recording a mark or brand, the county clerk shall note the date on which the mark or brand is recorded. In addition, the person recording a brand shall designate the part of the animal on which the brand is to be placed and the clerk shall include that in the records. (V.A.C.S. Art. 6898 (part), 6898a (part).)

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. (V.A.C.S. Art. 6897; Art. 6899, Sec. 1 (part).)

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. (V.A.C.S. Art. 6899j, Secs. 1(a), 1(b), 1(c), 3.)

[Sections 144.045–144.070 reserved for expansion]

SUBCHAPTER D. PROVISIONS APPLICABLE ONLY IN CERTAIN COUNTIES

Sec. 144.071. Application

This subchapter applies only in those counties that are subject to Subchapter C, Chapter 146, of this code. (New.)

Sec. 144.072. Recording of Marks, Brands, and Bills of Sale

(a) Marks and brands of cattle shall be recorded in the county or counties in which the cattle usually range. Except as provided by Subsection (b) of this section, the county clerk shall refuse to record a mark or brand already on record.

(b) If the applicant has a certificate from the clerk of another county stating that the mark or brand that the applicant desires to record was recorded by the applicant in that other county on a date before it was recorded in the county in which the applicant is applying, the county clerk shall record the mark or brand in the name of the applicant and note those facts on the record. (V.A.C.S. Arts. 6995, 6996 (part).)

Sec. 144.073. Road Brand

(a) A person who drives cattle to market beyond the limits of this state shall, before removing the cattle from the county in which they are gathered, place on each animal to be driven a large and plain road brand. The brand may be composed of any device and shall be branded on the left side of the back behind the shoulder.

(b) Each person required to use a road brand shall record the brand in the county from which the cattle are to be driven in the same manner as provided by this chapter for recording other brands. The road brand must be recorded before the animals are removed from the county. (V.A.C.S. Art. 6986.)

Sec. 144.074. Counterbranding

(a) If the counterbranding of cattle is considered necessary or expedient, the person counterbranding shall, in addition to the counterbrand, place below the existing brand a facsimile of that brand in similar letters, characters, or numbers.

(b) A person may not change or alter the earmarks of any animal. In counterbranding an animal, the person counterbranding shall leave the earmark unchanged.

(c) A person may not counterbrand cattle without consent of the owner. (V.A.C.S. Arts. 6998, 6998a (part).)

[Sections 144.075–144.100 reserved for expansion]

SUBCHAPTER E. REGISTRATION OF ANIMAL TATTOO MARKS

Sec. 144.101. Definition

In this subchapter, "director" means the director of the Department of Public Safety. (New.)

Sec. 144.102. Right to Register

In accordance with this subchapter, a person who owns hogs, dogs, sheep, or goats in this state is entitled to register for exclusive use any tattoo mark that is not previously recorded. (V.A.C.S. Art. 6899—1, Sec. 1 (part).)

Sec. 144.103. Department of Public Safety to Administer

The Department of Public Safety shall administer this subchapter under the supervision of the director of that department. (V.A.C.S. Art. 6899—1, Sec. 2.)

Sec. 144.104. Application for Registration

(a) A person shall apply to the director for registration of a tattoo mark. The application must be signed by the applicant or the applicant's agent and show:

(1) the applicant's place of residence;

(2) the applicant's citizenship;

(3) the location of the livestock owned by the applicant;

(4) the kinds of livestock owned by the applicant; and

(5) the place or part of the animal on which the tattoo mark is to be placed.

(b) An application for registration of a tattoo mark must have attached a drawing of the tattoo mark for which registration is sought. The drawing must be signed by the applicant or the applicant's agent and must comply with the requirements of the director. The applicant shall furnish as many copies of the drawing as required by the director. (V.A.C.S. Art. 6899—1, Sec. 3.)

Sec. 144.105. Certificate of Registration

The director shall examine or cause to be examined each application for registration and shall immediately issue a certificate of registration after determining that there is satisfactory evidence that the registration should be made. (V.A.C.S. Art. 6899—1, Sec. 4.)

Sec. 144.106. Protest of Registration

(a) A person who would be damaged by the issuance of a certificate of registration may file a written notice of protest of that issuance with the director. The notice must be sworn to and filed not later than the 20th day after the date on which the protested application for registration is filed. In addition, the notice must state the grounds for the protest.

(b) After receiving a notice of protest, the director shall conduct hearings and take other steps necessary to determine whether the application for registration should be granted or denied. Except as provided by Subsection (c) of this section, the decision of the director is final and the director must provide reasons for the decision.

(c) If the director abuses discretion, the contestant may appeal the decision of the director to a district court of the county in which the contestant resides. (V.A.C.S. Art. 6899—1, Sec. 5.)

Sec. 144.107. Effect of Registration

The registration of a tattoo mark under this subchapter creates an exclusive right to use that mark in this state. In a criminal or civil action in a court of this state, a registered tattoo mark is prima facie evidence of the ownership of the tattooed livestock. (V.A.C.S. Art. 6899—1, Sec. 10 (part).)

Sec. 144.108. Filing With County Clerk

The director shall forward a certified copy of each registration to the county clerk of the county of the applicant's residence. The county clerk shall file the certificate in records maintained for that purpose. (V.A.C.S. Art. 6899—1, Sec. 9 (part).)

Sec. 144.109. Assignment of Registered Tattoo Mark

(a) A certificate of registration and the exclusive right to use a tattoo mark may be assigned in connection with the goodwill of a ranch, farm, or other business in which the tattoo mark is used if written notice of the assignment, sworn to by the assignor, is filed with the director.

(b) A certificate of registration and the exclusive right to use a tattoo mark may not be assigned except as provided by this section. (V.A.C.S. Art. 6899—1, Sec. 8.)

Sec. 144.110. Fees

(a) Each person who registers, assigns, or protests the registration of a tattoo mark shall pay the following appropriate fee to the director at the time the application, notice of assignment, or notice of protest is filed:

(1) $5 for an application for registration;
(2) $1 for a notice of assignment; or
(3) $10 for a notice of protest.

(b) A person whose registered tattoo mark is recorded with the county clerk shall pay the clerk a filing fee of 25 cents.

(c) The director shall remit all fees collected under this subchapter by the director to the comptroller of public accounts, who shall deposit the fees in the treasury to the credit of a special fund known as the live-

stock tattoo fund. That fund may be used only in the administration of this subchapter, but the legislature may appropriate general revenue funds for that purpose. (V.A.C.S. Art. 6899—1, Secs. 6, 7, 9 (part).)

[Sections 144.111–144.120 reserved for expansion]

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. (V.A.C.S. Art. 6890a.)

Sec. 144.122. Altering Mark or 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 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. (V.A.C.S. Art. 6890b.)

Sec. 144.123. Marking or Branding Outside Pen

(a) A person commits an offense if the person marks or brands any animal outside a pen.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $10 nor more than $50. (V.A.C.S. Art. 6890c.)

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. (V.A.C.S. Art. 6898a (part).)

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. (V.A.C.S. Art. 6998a (part).)

Sec. 144.126. Driving Cattle Without Road Brand

(a) A person commits an offense if the person drives cattle without a road brand in violation of Section 144.073 of this code.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $20 nor more than $100 for each animal driven. (V.A.C.S. Art. 6986a.)

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 Corrections for not less than 2 years nor more than 12 years. (V.A.C.S. Art. 6899—1, Sec. 10 (part).)

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 Corrections for not less than 2 years nor more than 12 years. (V.A.C.S. Art. 6899—1, Sec. 10 (part).)

CHAPTER 145. GRADING OF LIVESTOCK

Section

145.001. Definitions
145.002. Grading by Department
145.003. Inspectors
145.004. Grade Standards
145.005. Procedure
145.006. Fees

CHAPTER 145. GRADING OF LIVESTOCK

Sec. 145.001. Definitions

In this chapter:

(1) "Livestock" means cattle, sheep, goats, and hogs.

(2) "Person" means an individual, firm, partnership, corporation, or association. (V.A.C.S. Art. 55f, Sec. 1.)

Sec. 145.002. Grading by Department

On request of an owner or a cooperative marketing association, the department may grade living livestock in this state. (V.A.C.S. Art. 55f, Sec. 2.)

Sec. 145.003. Inspectors

The department may employ inspectors for the purpose of grading livestock and may require applicants for that position and persons employed as inspectors to pass examinations and meet other requirements established by the department to demonstrate competence in the grading of livestock. (V.A.C.S. Art. 55f, Sec. 3.)

Sec. 145.004. Grade Standards

The standards and classifications of the United States Department of Agriculture are the grade standards for classifying livestock under this chapter. (V.A.C.S. Art. 55f, Sec. 4.)

Sec. 145.005. Procedure

The department may adopt rules relating to the method and procedures for the grading of livestock under this chapter. (V.A.C.S. Art. 55f, Sec. 5 (part).)

Sec. 145.006. Fees

The department may collect fees for livestock grading in amounts necessary to cover the costs incurred in providing the service. (V.A.C.S. Art. 55f, Sec. 5 (part).)

CHAPTER 146. SALE AND SHIPMENT OF LIVESTOCK

SUBCHAPTER A. GENERAL PROVISIONS

Section
146.001. Bill of Sale or Transfer Required
146.002. Recording Bill of Sale and List of Animals Before Driving
146.003. Register of Shipped Cattle
146.004. Sale of Animals at Auction
146.005. Permits to Transport Animals
146.006. Penalty for Driving Stock to Market Without Bill of Sale or Sworn List
146.007. Penalty for Selling Animal at Auction Without Statement of Ownership
146.008. Penalty for Transporting Animals Without Permit or With Fraudulent Permit
[Sections 146.009–146.020 reserved for expansion]

SUBCHAPTER B. EXPORT–IMPORT PROCESSING FACILITIES

146.021. Department Facilities
146.022. Contracts
146.023. Payment of Fees and Debts
146.024. Abandoned Animals
146.025. Care and Treatment of Animals in Facilities
[Sections 146.026–146.050 reserved for expansion]

SUBCHAPTER C. INSPECTION, SALE, AND SHIPMENT OF HIDES AND ANIMALS IN CERTAIN COUNTIES

146.051. Definition
146.052. Application of Subchapter
146.053. Inspector of Hides and Animals
146.054. Local Option Elections
146.055. Bond
146.056. Seal
146.057. Deputies
146.058. Bill of Sale; Marks and Brands
146.059. List of Persons Authorized to Handle Animals
146.060. Inspections
146.061. Certificate of Inspection
146.062. Inspection of Herds in Transit
146.063. Change of Destination
146.064. Inspection at Point of Destination
146.065. Inspection Before Movement Out of State
146.066. Inspection of Animals Exported to Mexico
146.067. Inspection of Hides and Animals Imported From Mexico
146.068. Seizure of Imported Hides or Animals Believed Stolen
146.069. Inspection and Seizure of Hides or Animals Without Brand or With Unhealed Brand
146.070. Inspection Fees
146.071. Penalty for Issuing Fraudulent Certificate
146.072. Penalty for Failure to Inspect
146.073. Penalty for Failure to Keep or File Records

SUBCHAPTER C. INSPECTION, SALE, AND SHIPMENT OF HIDES AND ANIMALS IN CERTAIN COUNTIES—Continued

Section

146.074. Penalty for Incorrectly Stating Brands in Certificate of Inspection or Acknowledgment
146.075. Penalty for Improper Export or Import of Cattle or Carcasses
146.076. Penalty for Shipping or Selling Hides Without Inspection
146.077. Penalty for Driving Animals Without Consent of Owner
146.078. Penalty for Purchasing Animal or Hide Without Bill of Sale
146.079. Penalty for Agent Selling Without Power of Attorney
146.080. Penalty for Receiving Uninspected Animal for Shipment

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. (V.A.C.S. Art. 6903.)

Sec. 146.002. Recording Bill of Sale and List of Animals Before Driving

(a) A person who purchases animals of a class listed in Section 146.001 of this code for the purpose of driving to a market out of the county where purchased or out of this state shall, before moving the animals out of the county, record with the county clerk:

(1) a bill of sale;

(2) a list of the number, marks, brands, and kind of animals; and

(3) the address of the purchaser.

(b) The bill of sale and list recorded under Subsection (a) of this section must be signed and acknowledged by each vendor.

(c) The clerk shall record the bill of sale, list, and address of the purchaser in records maintained for that purpose and, on payment of recording fees, shall return to the person presenting the information a certificate of record under seal.

(d) A person intending to drive stock owned and raised by that person out of the county where raised or out of the state shall, before so driving the animals, record with the county clerk a list of the animals with a description of the marks and brands. The list must be verified by affidavit of the person recording the information. The county clerk shall record and certify the list and return it to the person presenting the information. (V.A.C.S. Arts. 6905, 6906.)

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. (V.A.C.S. Art. 6907 (part).)

Sec. 146.004. Sale of Animals at Auction

(a) An auctioneer who sells a horse, mule, or ox at auction shall require the party for whom the sale is made to provide a signed, written statement of the manner in which the animal was acquired and the name and address of the person from whom the animal was acquired.

(b) Not later than the 10th day after the day on which the animal is sold at auction, the auctioneer shall file the statement required by Subsection (a) of this section with the clerk of the county court. The statement must be attested as to genuineness by the auctioneer and must be accompanied by a certificate containing a description of the animal sold and the name and address of the seller and the purchaser. (V.A.C. S. Art. 6907a (part).)

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. (V.A.C.S. Art. 6983b (part).)

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. (V.A.C.S. Art. 6905a.)

Sec. 146.007. Penalty for Selling Animal at Auction Without Statement of Ownership

(a) A person commits an offense if, as an auctioneer, the person fails to require a statement from the seller, or fails to timely file a statement with the clerk of the county court, in accordance with Section 146.004 of this code.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $50 nor more than $100. (V.A.C.S. Art. 6907a (part).)

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. (V.A.C.S. Art. 6983b (part).)

[Sections 146.009–146.020 reserved for expansion]

SUBCHAPTER B. EXPORT-IMPORT PROCESSING FACILITIES

Sec. 146.021. Department Facilities

The department may receive and hold for processing animals transported in international trade and may establish and collect reasonable fees for yardage, maintenance, feed, medical care, and other necessary

expenses incurred in the course of processing those animals. (V.A.C.S. Art. 7008a, Sec. 1.)

Sec. 146.022. Contracts

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. (V.A.C.S. Art. 7008a, Sec. 2.)

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. (V.A.C.S. Art. 7008a, Sec. 3 (part).)

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. (V.A.C.S. Art. 7008a, Sec. 3 (part).)

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. (V.A.C.S. Art. 7008a, Sec. 4.)

[Sections 146.026–146.050 reserved for expansion]

SUBCHAPTER C. INSPECTION, SALE, AND SHIPMENT OF HIDES AND ANIMALS IN CERTAIN COUNTIES

Sec. 146.051. Definition

In this subchapter, "inspector" means the inspector of hides and animals. (V.A.C.S. Arts. 6972 (part), 6976.)

Sec. 146.052. Application of Subchapter

(a) This subchapter applies only in the following counties: Andrews, Baylor, Blanco, Briscoe, Castro, Coleman, Concho, Crane, Dawson, Duval, Ector, Edwards, Fisher, Gaines, Glasscock, Hardin, Haskell, Jefferson, Jim Wells, Jones, Kent, Kerr, Kimble, King, LaSalle, Lee, Liberty, McCulloch, McMullen, Martin, Menard, Mitchell, Nolan, Ochiltree, Presidio, Real, Roberts, Runnels, San Jacinto, San Saba, Sherman, Stonewall, Sutton, Taylor, Travis, Walker, Waller, Webb, Wood, and Yoakum.

(b) This subchapter does not apply to sheep, goats, or swine or to the hides of those animals.

(c) Salted hides in packinghouses or slaughterhouses are exempt from inspection under this subchapter if taken from animals previously inspected as required by this subchapter. (V.A.C.S. Arts. 6979, 7005, 7005—1, 7005—2; Acts 48th Legis., Ch. 243, Sec. 1.)

Sec. 146.053. Inspector of Hides and Animals

(a) The qualified voters of each county subject to this subchapter shall elect an inspector of hides and animals.

(b) An inspector serves for a term of four years.

(c) Until a vacancy in the office of inspector is filled by appointment, the sheriff of the county shall discharge the duties of the office. (V.A. C.S. Art. 6972 (part).)

Sec. 146.054. Local Option Elections

(a) The qualified voters of a county may petition the commissioners court to conduct an election to determine if the county shall elect an inspector of hides and animals. Except as otherwise provided by this subsection, the petition must be signed by 25 voters of each justice precinct of the county. If a precinct contains fewer than 50 qualified voters, the petition must be signed by a majority of the voters of the precinct.

(b) If presented with a petition under this section, the commissioners court, at a regular or special term, shall order an election. The commissioners court shall give 30 days' notice of the election by posting a notice in each of the justice precincts and by publishing notice in a newspaper published in the county. The county clerk shall prepare the notices and the sheriff shall post them. The sheriff shall file a return of the posting with the county clerk, showing the time and place of posting.

(c) The commissioners court shall appoint two election judges and two clerks at the time of ordering the election. The court shall designate one judge as presiding judge. The election judges shall conduct the election in the manner provided for general elections.

(d) All qualified voters are entitled to vote at an election under this section. The ballot shall be printed to provide for voting for or against the proposition: "An inspector of hides and animals."

(e) The presiding judge shall deliver, or cause to be delivered, one copy of the results of the election to the county clerk not later than the fifth day after the day of the election and shall retain one copy. Not later than the fifth day after the delivery of the returns to the clerk, the commissioners court shall count the votes, declare the results, and enter the results in the election record.

(f) The county shall pay the expenses of an election under this section.

(g) A subsequent election may not be held under this section earlier than two years following the date of the last election.

(h) If a majority of the votes at an election are cast for electing an inspector of hides and animals, a person holding that office retains office until the next general election or until a successor is elected and qualifies. If the county has no inspector, the commissioners court shall appoint a person to serve until the next general election. (V.A.C.S. Arts. 7006, 7007.)

Sec. 146.055. Bond

(a) Before exercising the duties of the office, a person elected as inspector shall execute a bond with two or more good and sufficient sureties that is:

(1) approved by the commissioners court;

(2) payable to the county judge;

(3) in an amount set by the commissioners court at not less than $1,000 nor more than $10,000; and

(4) conditioned that the person will well and truly perform the duties of the office.

(b) A sheriff acting as inspector during a vacancy in the office is not required to give additional bond, but the bond as sheriff extends to the faithful and proper performance of the duties as inspector. (V.A.C.S. Art. 6973.)

Sec. 146.056. Seal

(a) The commissioners court shall furnish to the inspector a seal of office with the words, "Inspector of Hides and Animals, _____ County, Texas," with the blank filled in with the name of the county.

(b) Each inspector and deputy inspector shall certify official acts with the seal of the inspector.

(c) On retiring from office, the inspector shall deliver the seal and the books, records, and papers of the office to the successor to the office. (V.A.C.S. Art. 6974.)

Sec. 146.057. Deputies

(a) An inspector may appoint as many deputies as necessary to perform the duties imposed by this subchapter. Each appointment shall be made in writing and impressed with the seal of the inspector.

(b) The inspector shall require a deputy to post bond conditioned on the faithful performance of duties. Each deputy shall take and subscribe to the official oath of office.

(c) The inspector is responsible to any person injured by the official act of a deputy. The inspector has the same remedies against a deputy and the deputy's sureties as any other person has against the inspector and the inspector's sureties. (V.A.C.S. Art. 6975.)

Sec. 146.058. Bill of Sale; Marks and Brands

(a) A person who buys or drives any animal for sale or shipment out of the county or who buys or drives an animal to slaughter shall procure a written bill of sale from the owner or the owner's agent at the time of purchase or before driving. The bill of sale must be properly signed and acknowledged and must give the number, kind, age, and marks and brands of the animals.

(b) A person who buys the hides of cattle shall procure a written bill of sale from the owner or the owner's agent at the time of purchase. The bill of sale must be properly acknowledged and must state the marks and brands of each hide, the weight of each hide, and whether each hide is dry or green.

(c) An inspector may authenticate bills of sale and may give a signed and sealed certificate of acknowledgment of each bill of sale authenticated. An inspector may collect a fee of 50 cents for each acknowledgment issued.

(d) If cattle are gathered near the county line, the bills of sale must be recorded in both counties.

(e) The inspector shall keep current certified copies of the county's recorded marks and brands. If cattle or other stock are sold, that fact shall be noted on the record opposite or near the record of each animal's mark or brand, giving the name of the vendor and vendee and the date of sale. (V.A.C.S. Arts. 6977, 6983 (part), 6984, 6996 (part).)

Sec. 146.059. List of Persons Authorized to Handle Animals

A person who has marks and brands recorded with the county clerk may authorize others to gather, drive, or otherwise handle the person's animals by filing with the inspector a list of the marks and brands to

which a list of the persons authorized to handle the animals is attached. The lists must be certified by the county clerk. (V.A.C.S. Art. 6999.)

Sec. 146.060. Inspections

(a) The inspector or a deputy inspector shall personally examine and inspect each hide or animal that is known or reported to be:

(1) sold in the county;

(2) leaving the county for sale or shipment; or

(3) driven in the county for slaughter.

(b) The inspector or a deputy inspector shall inspect animals being driven for sale or shipment out of the county before the animals are removed from the county.

(c) The inspector or deputy inspector shall examine each hide or animal separately so as to identify:

(1) the number, age, marks, and brands of an animal; or

(2) the number, marks, and brands of a hide, whether the hide was dry or green, and the vendor and purchaser of the hide.

(d) The inspector shall record the information obtained under Subsection (c) of this section in a well-bound book. On the last day of each month the inspector shall file a certified copy of the entries for the previous month with the county clerk, who shall file that copy in the records of the county court. (V.A.C.S. Arts. 6978, 6983 (part), 7000 (part).)

Sec. 146.061. Certificate of Inspection

(a) For each inspection of animals, following proof of ownership under Subsection (b) of this section and payment of inspection fees, the inspector shall issue a certificate of inspection stating that the inspector has carefully examined and inspected each animal and that the purchaser has complied with the law. If cattle were inspected, the certificate must also state:

(1) the number of cattle for each mark or brand;

(2) the age and sex of each head;

(3) the name of the person for whom the cattle were inspected and that the cattle appear to be the property of that person as either the owner of the mark or brand or as the person named in the bill of sale;

(4) that no other cattle in the herd or under control of the person for whom they are inspected should be inspected;

(5) that the person for whom the cattle were inspected intends to drive or ship them; and

(6) the name of the place in this state at which the cattle are to be sold or slaughtered or the place on the border through which they are to be shipped.

(b) Except as otherwise provided by this subsection, the inspector may not issue a certificate of inspection unless presented with a written bill of sale or power of attorney from the owner of the animal or an agent authorized to act for the owner by a written, signed, and acknowledged instrument. The inspector shall carefully examine the bills of sale and lists of marks and brands for cattle inspected. Before issuing a certificate of inspection for cattle, the inspector must be satisfied that no cattle are among the herd inspected other than those for which the person claiming the cattle has:

(1) a bill of sale or chain of transfer in writing from the record owner; or

(2) a certificate from a county clerk stating that the mark and brand are recorded with the clerk as the mark and brand of that person.

(c) The certificate of inspection and bill of sale shall be recorded in the office of the county clerk and certified under the clerk's hand and seal. Each inspector shall maintain a record of all certificates issued.

(d) The inspector shall deliver the certificate of inspection to the purchaser of the animal under the bill of sale or to the purchaser's agent.

(e) A person who possesses a certificate of inspection may not be required to pay inspection fees for inspection of the animals described in the certificate in any county other than a county from which the animals are exported. (V.A.C.S. Arts. 6985, 7000 (part).)

Sec. 146.062. Inspection of Herds in Transit

(a) On request of any person, the inspector shall stop and inspect any drove of cattle that is passing through the county. The inspector may not unnecessarily detain the drove.

(b) If any cattle found in a drove inspected under this section are not listed in the certificate of inspection of the county in which the drove was gathered, the fees for inspection under this section shall be paid from the sale of those cattle.

(c) If all cattle found in a drove inspected under this section are listed in the certificate of inspection accompanying the drove, the fees for inspection under this section shall be paid by the person who requested that the drove be inspected. (V.A.C.S. Art. 6988.)

Sec. 146.063. Change of Destination

If the owner of inspected cattle desires to sell, ship, or slaughter the animals at a place other than the destination named in the certificate of inspection, the owner may have the animals inspected at the point of destination named in the certificate and have issued a new certificate with a new destination. On arrival at the new destination point, the herd shall be inspected and compared as provided for at the original destination point. (V.A.C.S. Art. 7004.)

Sec. 146.064. Inspection at Point of Destination

(a) If the inspector of a herd at the point of destination finds cattle other than those covered by the certificate of inspection from the county from which the cattle were driven, the inspector shall seize the cattle. If the person in charge of the cattle refuses to deliver them to the inspector, the inspector may apply for a writ of sequestration from a court of competent jurisdiction, as determined by the value of the cattle, by filing with the court an affidavit stating that the inspector believes the cattle to have been unlawfully acquired. The court shall issue the writ without bond and the sheriff or a constable of the county shall immediately execute the writ.

(b) The court issuing the writ of sequestration shall issue a citation directed to the constable and addressed "To whom it may concern." The citation must state that the animals have been seized, describe the animals, and command that concerned persons appear on a day named in the citation to show cause why the animals should not be forfeited to and sold for the benefit of the county in which they were seized. The sheriff or constable shall post certified copies of the citation in three public places in the county for a period of 10 days before the date named in the citation. On receiving proof of posting, the court shall proceed to condemn the animals unless satisfactory proof of ownership is made or un-

less other sufficient cause is shown why the property should not be condemned.

(c) If animals are condemned under this section, the court shall order the inspector to sell the animals at public auction to the highest bidder. The inspector is entitled to retain one-fourth of the proceeds of the sale after deducting expenses. The remaining proceeds shall be paid into the county treasury subject to the claim of the true owner of the cattle. The deposit in the county treasury must be accompanied by a certified statement, under the hand and seal of the inspector, of the number of cattle sold, the mark and brand of each animal, and the sale price. If a claim to those proceeds is not established earlier than one year after the date of deposit in the county treasury, the proceeds pass to the general fund of the county and all claims to the proceeds are barred.

(d) Proceedings under this section may be conducted while the court is in term or on vacation. (V.A.C.S. Arts. 7002, 7003.)

Sec. 146.065. Inspection Before Movement Out of State

(a) The inspector at the point of shipment or at the border county, as applicable, shall inspect any herd about to be driven or shipped out of this state that the inspector has reason to believe contains animals not covered by the certificate of inspection or by a bill of sale.

(b) If on inspection under this section the inspector finds in the herd animals that are not covered by the certificate of inspection or by a bill of sale, the fees for inspection shall be paid from the sale of those animals. The inspector is not entitled to more than three cents for each head of cattle so inspected.

(c) If on inspection under this section the inspector finds that all animals in the herd are co· ered by the certificate of inspection or by a bill of sale, the fees for inspection shall be paid by the person requesting the inspection, unless the inspection was made on the inspector's own motion, in which case the inspector is not entitled to fees. (V.A.C.S. Art. 7001.)

Sec. 146.066. Inspection of Animals Exported to Mexico

(a) A person may not drive or ship animals to Mexico from a point in Texas other than a point where a customshouse of the United States is located.

(b) A person driving or shipping animals from Texas to Mexico shall have the animals inspected by the inspector of the county in which the point of shipment or place at which they are to be driven across the Rio Grande is located. The inspection must occur before the animals are shipped from this state or pass across the river. (V.A.C.S. Art. 6987.)

Sec. 146.067. Inspection of Hides and Animals Imported From Mexico

(a) The inspector of the county into which cattle hides or cattle, horses, or mules are imported from Mexico shall inspect those hides or animals.

(b) If an importer of hides fails or refuses to place the imported hides in a position where they may be inspected, or if the inspector finds that the hides are folded or bound together in a manner that prevents inspection without injury to the hides, the inspector shall take possession of the hides and have them treated in a manner that permits the hides to be unfolded without injury. The inspector is not liable for any damage to the hides resulting from treatment under this subsection. Treatment is at the risk of the importer or the person in possession of the hides after importation.

(c) In addition to the inspection fees allowed by this subchapter, the importer or the person in possession of the hides after importation shall pay all expenses of treatment of the hides under Subsection (b) of this section, including the cost of freight and handling.

(d) If a person responsible for payment fails or refuses to pay the inspection fees under this subchapter or the treatment expenses under this section, the inspector may retain possession of the hides or animals and sell a number of them sufficient to pay the fees and expenses. The inspector shall give three days' public notice of the sale and shall sell the hides or animals to the highest and best bidder. (V.A.C.S. Arts. 6989, 6990.)

Sec. 146.068. Seizure of Imported Hides or Animals Believed Stolen

(a) An inspector shall take possession of any hides or animals imported from Mexico that the inspector has reason to believe, on the basis of the brands or other evidence, are stolen from the lawful owner. The inspector shall notify any person that the inspector believes to be interested to institute suit for recovery of the hides or animals. If no person claims the hides or animals within 24 hours, the inspector under oath shall notify a court of competent jurisdiction, as determined by the value of the property seized, that there is reason to believe that the hides or animals are stolen. The court shall issue a citation directing the owner or person claiming the hides or animals to appear at the judge's or justice's office within a specified time, not to exceed 24 hours, to show cause why the property should not be condemned.

(b) If a person proves to be the lawful owner of hides or animals seized under this section, the court shall direct that the property be delivered to that person on payment of the inspection fees and other costs. A person may prove ownership by showing a bill of sale from the prior owner or an agent of the prior owner and a complete chain of transfer of title from the original owner.

(c) If no person proves to be the owner of hides or animals seized under this section, the court shall direct that the property be sold at public auction by the inspector. Notice of the sale shall be published for 10 days in a newspaper published in the county. If no newspaper is published in the county, notice shall be posted for 10 days at the courthouse door and at two or more other places in the county. The property shall be sold to the highest and best bidder.

(d) Proceeds of a sale under this section shall first be used to satisfy expenses of the sale. Of the balance remaining, the inspector is entitled to retain 25 percent and shall remit 75 percent to the county treasurer. The county treasurer shall deposit one-half of that sum to the credit of the county available school fund and one-half to the credit of the county jury fund.

(e) At any time before proceedings are begun under this section, the importer of the hides or animals may pay the lawful owner or the owner's agent or attorney for those hides or animals. Following that payment and payment of the inspection fees, the inspector shall release the hides or animals to the importer. (V.A.C.S. Arts. 6991, 6992, 6993, 6994.)

Sec. 146.069. Inspection and Seizure of Hides or Animals Without Brand or With Unhealed Brand

(a) An inspector may not issue a certificate of inspection for unbranded hides or animals or for hides or animals for which the brand cannot be ascertained.

(b) Unless the hide or animal is identified in accordance with Subsection (c) of this section, an inspector may seize and sequestrate a hide or an animal that is about to be slaughtered or driven or shipped out of the county if:

(1) the hide or animal is unbranded;

(2) the mark or brand for the animal cannot be ascertained; or

(3) the animal is a calf or yearling on which a fresh mark or brand is unhealed.

(c) An inspector may not seize a hide or an animal that is identified by a bill of sale signed by the owner or the owner's agent and acknowledged before an officer authorized to authenticate instruments for record in this state. An inspector may not seize a calf or yearling that is accompanied by its mother.

(d) An inspector who seizes a hide or an animal under this section shall report the seizure to a court of competent jurisdiction as determined by the value of the property seized. The court shall issue a citation directed to the sheriff or a constable that is addressed "To whom it may concern." The citation must state that the property has been seized, describe the property, and command that concerned persons appear at a day named in the citation to show cause why the property should not be forfeited to and sold for the benefit of the county in which it was seized.

(e) The sheriff or constable shall post certified copies of the citation in three public places in the county for a period of 10 days before the date named in the citation. On receiving proof of posting, the court issuing the citation shall proceed to condemn the property unless satisfactory proof of ownership is made or unless other sufficient cause is shown why the property should not be condemned.

(f) If the property is condemned, the court shall order the inspector to sell it at public auction to the highest bidder. The inspector is entitled to retain one-fourth of the proceeds of the sale after deducting expenses and shall immediately pay the remaining proceeds into the county treasury for deposit to the credit of the general fund of the county. (V. A.C.S. Arts. 6980, 6981, 6982.)

Sec. 146.070. Inspection Fees

(a) Each inspector or deputy inspector is entitled to receive 10 cents for each animal personally inspected as part of a lot containing 50 or fewer animals. If the lot contains more than 50 animals, the inspector or deputy inspector is entitled to 10 cents for each of the first 50 animals and 3 cents for each animal thereafter.

(b) Following a hearing on the necessity of increased fees, the commissioners court of Duval, Fisher, Jim Wells, LaSalle, McMullen, Mitchell, Nolan, or Webb County by order may provide for fees in excess of those prescribed by Subsection (a) of this section. Notice of the time and place of the hearing must be published at least once a week for three consecutive weeks in a newspaper of general circulation in the county. The fees prescribed may not exceed 25 cents for each animal inspected as part of a lot containing 50 or fewer animals or, for lots of more than 50 animals, 25 cents for each of the first 50 animals and 10 cents for each animal thereafter. (V.A.C.S. Art. 7008.)

Sec. 146.071. Penalty for Issuing Fraudulent Certificate

(a) A person commits an offense if, as an inspector, the person:

(1) issues a certificate of inspection without having first made an inspection in accordance with this subchapter; or

(2) issues a fraudulent certificate of inspection.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $50 nor more than $500. (V.A.C.S. Art. 6985a.)

Sec. 146.072. Penalty for Failure to Inspect

(a) A person commits an offense if, as an inspector, the person knowingly fails or refuses to faithfully examine and inspect all hides and animals known or reported to be sold, leaving the county for sale or shipment, or driven in the county for slaughter.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $25 nor more than $200. (V.A.C.S. Art. 6978a.)

Sec. 146.073. Penalty for Failure to Keep or File Records

(a) A person commits an offense if, as an inspector, the person fails to record information or file that record with the county clerk as required by Section 146.060 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. (V.A.C.S. Arts. 6978b, 6978d.)

Sec. 146.074. Penalty for Incorrectly Stating Brands in Certificate of Inspection or Acknowledgment

(a) A person commits an offense if, as an inspector or deputy inspector, the person fails to correctly state in a certificate of inspection or certificate of acknowledgment each mark and brand of an animal or hide inspected by that person.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $25 nor more than $300. (V.A.C.S. Art. 6978c).

Sec. 146.075. Penalty for Improper Export or Import of Cattle or Carcasses

(a) A person commits an offense if the person drives cattle or moves the carcasses of cattle across the Rio Grande from Mexico into Texas or from Texas into Mexico:

(1) at a point other than a place of inspection by United States customshouse officers; or

(2) without having the cattle or carcasses inspected in accordance with law.

(b) An offense under this section is a felony punishable by imprisonment in the Texas Department of Corrections for not less than two years nor more than five years. (V.A.C.S. Art. 6987a.)

Sec. 146.076. Penalty for Shipping or Selling Hides Without Inspection

(a) A person commits an offense if the person:

(1) ships from any port in this state cattle hides imported from Mexico that have not been inspected in accordance with this subchapter; or

(2) sells cattle hides that have not been inspected in accordance with this subchapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $1 nor more than $5 for each hide shipped or sold. (V.A.C.S. Arts. 6990a, 6990b.)

Sec. 146.077. Penalty for Driving Animals Without Consent of Owner

(a) A person commits an offense if the person drives cattle or horses out of a county without the written authority of the owner of the ani-

mals, authenticated as required by law, and without first having the animals inspected in accordance with this subchapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $20 nor more than $100 for each animal driven. (V.A.C.S. Art. 6983a.)

Sec. 146.078. Penalty for Purchasing Animal or Hide Without Bill of Sale

(a) A person commits an offense if the person purchases an animal or the hide of a head of cattle without obtaining a bill of sale from the owner or an agent of the owner.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $20 nor more than $100 for each animal or hide purchased. (V.A.C.S. Art. 6984a.)

Sec. 146.079. Penalty for Agent Selling Without Power of Attorney

(a) A person commits an offense if, as the agent of another, the person sells cattle without first having obtained an authenticated power of attorney from the other person.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $50 nor more than $500. (V.A.C.S. Art. 6984b.)

Sec. 146.080. Penalty for Receiving Uninspected Animal for Shipment

(a) A person commits an offense if, as the agent of a railroad, steamship, sailing vessel, or shipping company, the person receives for shipment a horse or head of cattle that has not been inspected in accordance with this subchapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $25 nor more than $1,000 for each animal received. (V.A.C.S. Art. 6990c.)

CHAPTER 147. LIVESTOCK COMMISSION MERCHANTS

SUBCHAPTER A. GENERAL PROVISIONS

Section

147.001. Definitions
147.002. Commission Merchants
147.003. Exceptions
147.004. Remittance of Sale Proceeds
147.005. Deposit of Proceeds in Dispute

[Sections 147.006–147.020 reserved for expansion]

SUBCHAPTER B. BOND

147.021. Bond Required
147.022. Terms and Conditions of Bond
147.023. Amount of Bond
147.024. More Than One Person Under Single Bond
147.025. Approval of Bond by County Judge
147.026. Recording of Bond and Statement of Sales
147.027. Commission Merchant's Copy of Bond
147.028. Suit on Bond
147.029. Insolvency of Surety

[Sections 147.030–147.040 reserved for expansion]

SUBCHAPTER C. RECORDS

Section
147.041. Record of Sales
147.042. Record of Transportation

[Sections 147.043–147.060 reserved for expansion]

SUBCHAPTER D. PENALTIES

147.061. Failure to File or Maintain Bond
147.062. Failure to Post Copy of Bond
147.063. Failure to Remit Proceeds of Sale
147.064. Appropriation of Proceeds of Sale
147.065. Failure to Keep or Exhibit Transportation Records

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) "Livestock" includes cattle, hogs, sheep, goats, mules, horses, jacks, and jennets. (V.A.C.S. Art. 1281 (part); Art. 1281a (part); Art. 1287a, Secs. 1 (part), 8 (part); new.)

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. (V.A.C.S. Art. 1281 (part); Art. 1281a (part); Art. 1287a, Secs. 1 (part), 8 (part).)

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 710,000 nor more than 720,000 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 Agri-

culture under the Packers and Stock Yards Act (7 U.S.C. Sec. 181 et seq.). (V.A.C.S. Art. 1287a, Secs. 1 (part), 3a.)

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. (V.A.C.S. Art. 1283 (part); Art. 1287a, Sec. 3 (part).)

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. (V.A.C.S. Art. 1286; Art. 1287a, Sec. 6.)

[Sections 147.006–147.020 reserved for expansion]

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. (V.A.C.S. Art. 1282 (part); Art. 1287a, Sec. 2 (part).)

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, han-

dling, 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. (V.A.C.S. Art. 1282 (part); Art. 1283 (part); Art. 1287a, Secs. 2 (part), 3 (part).)

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. (V.A.C.S. Art. 1283 (part); Art. 1287a, Sec. 3 (part).)

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. (V.A.C.S. Art. 1283 (part); Art. 1287a, Sec. 3 (part).)

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. (V.A.C.S. Art. 1284; Art. 1287a, Sec. 4.)

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 retain the original bond and sworn statement of a livestock commission merchant in the archives of the clerk's office. (V.A.C.S. Art. 1282 (part); Art. 1285 (part); Art. 1287a, Secs. 2 (part), 5 (part).)

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. (V.A.C.S. Art. 1285 (part); Art. 1285a (part); Art. 1287a, Secs. 5 (part), 12 (part).)

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. (V.A.C.S. Art. 1282 (part); Art. 1287 (part); Art. 1287a, Secs. 2 (part), 7 (part).)

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. (V.A.C.S. Art. 1287 (part); Art. 1287a, Sec. 7 (part).)

[Sections 147.030–147.040 reserved for expansion]

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. (V.A.C.S. Art. 1287a, Secs. 3 (part), 9 (part).)

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. (V.A.C.S. Art. 1287a, Sec. 3a.)

[Sections 147.043–147.060 reserved for expansion]

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) of this section 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 Corrections 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. (V.A.C.S. Art. 1282a; Art. 1287a, Sec. 9 (part).)

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. (V.A.C.S. Art. 1285a (part); Art. 1287a, Sec. 12 (part).)

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 more [83b] 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. (V.A.C.S. Art. 1286a; Art. 1287a, Sec. 10.)

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.

83b. So in enrolled bill; probably should read "less".

(c) An offense under Subsection (a) of this section is a felony punishable by imprisonment in the Texas Department of Corrections 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. (V. A.C.S. Art. 1286b; Art. 1287a, Sec. 11.)

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. (V.A.C.S. Art. 1287a, Sec. 3b.)

CHAPTER 148. SLAUGHTERING OF LIVESTOCK

SUBCHAPTER A. GENERAL PROVISIONS

Section

148.001. Definition
148.002. Slaughterer to Register
148.003. Slaughter of Unbranded or Unmarked Livestock; Slaughter Without Bill of Sale

[Sections 148.004–148.010 reserved for expansion]

SUBCHAPTER B. RECORDS AND REPORTS

148.011. Record of Purchase and Slaughter
148.012. Reports to County

[Sections 148.013–148.020 reserved for expansion]

SUBCHAPTER C. PAYMENT FOR LIVESTOCK PURCHASED FOR SLAUGHTER

148.021. Meat Processor
148.022. Time and Method of Payment for Purchases
148.023. Agreement on Time and Method of Payment
148.024. Delay in Collection of Payment Instruments
148.025. Damages
148.026. Lien
148.027. Commingling of Livestock Under Lien
148.028. Priority of Lien

[Sections 148.029–148.040 reserved for expansion]

SUBCHAPTER D. PROVISIONS APPLICABLE ONLY TO CERTAIN COUNTIES

148.041. Application of Subchapter
148.042. Slaughterer's Bond
148.043. Records
148.044. Inspections
148.045. Purchase of Slaughtered Cattle Without Hide or Ears

[Sections 148.046–148.060 reserved for expansion]

SUBCHAPTER E. PENALTIES

Section
148.061. Failure to Register
148.062. Slaughter of Unbranded or Unmarked Livestock; Slaughter Without Bill of Sale
148.063. Failure to Keep or Provide Records of Purchase or Slaughter
148.064. Failure to Report to County
148.065. Failure to File Bond
148.066. Failure to Keep or Permit Inspection of Records
148.067. Failure to Have Hide and Ears Inspected
148.068. Inspector's or Magistrate's Failure to Keep or File Records
148.069. Purchase of Slaughtered Cattle Without Hide or Ears

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 slaughtering livestock for profit. (V.A.C.S. Art. 6908e, Sec. 1(b) (part).)

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. (V.A.C.S. Art. 6908b (part).)

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. (V.A.C.S. Arts. 6908f—1 (part), 6908f—2.)

[Sections 148.004–148.010 reserved for expansion]

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 cattle, horses, hogs, sheep, or goats 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 for public inspection within 24 hours after the slaughterer receives the livestock. The slaughterer shall preserve the record for at least one year 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. (V.A.C.S. Art. 6908e, Secs. 1(b) (part), 2, 5.)

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, who may destroy the report after keeping it on file for at least five years.

(c) In addition to the report made under Subsection (a) of this section, a slaughterer of cattle shall file with the county clerk a record showing:

(1) the marks, brands, and general description of the cattle;

(2) the names of the persons from whom the cattle were purchased;

(3) the date of purchase; and

(4) the county from which the cattle were driven.

(d) The slaughterer shall file the record required by Subsection (c) of this section on the first day of each month with the county clerk of the county where the cattle were slaughtered. The clerk shall copy the report into records maintained for that purpose and return the original to the person recording the information. (V.A.C.S. Arts. 6904, 6907 (part).)

[Sections 148.013–148.020 reserved for expansion]

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. (V.A.C.S. Art. 6910b, Sec. 1.)

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. (V.A.C.S. Art. 6910b, Sec. 2 (part).)

Sec. 148.023. Agreement on Time and Method of Payment

(a) The purchaser and seller of cattle, sheep, goats, or hogs, or their 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. (V.A.C.S. Art. 6910b, Sec. 2 (part).)

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. (V.A.C.S. Art. 6910b, Sec. 2 (part).)

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. (V.A.C.S. Art. 6910b, Sec. 3.)

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. (V.A.C.S. Art. 6910b, Secs. 4, 5.)

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. (V.A.C.S. Art. 6910b, Sec. 6.)

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. (V.A.C.S. Art. 6910b, Sec. 7.)

[Sections 148.029–148.040 reserved for expansion]

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. (V.A.C.S. Arts. 6910, 6910a.)

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. (V. A.C.S. Arts. 6908 (part), 6908a (part).)

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. (V.A.C.S. Arts. 6908 (part), 6908d (part).)

Sec. 148.044. Inspections

(a) Not later than the 20th day after the day of slaughter, a slaughterer shall have the hide and ears of any cattle slaughtered inspected by the inspector of hides and animals or by a magistrate of the county.

(b) The inspector or magistrate shall keep a record of inspections made under this section, including:

(1) the marks, brands, color, and general description of each hide;

(2) the person for whom each hide was inspected; and

(3) the date of each inspection.

(c) The inspector or magistrate shall file a copy of the records of inspection with the county clerk of the county in which the hides were inspected not later than the 30th day following the date of the inspection.

(d) An inspector or magistrate is entitled to collect a fee of 10 cents for each hide inspected under this section from the person for whom the hide was inspected.

(e) This section applies only in counties subject to Subchapter C, Chapter 146, of this code. (V.A.C.S. Arts. 6908 (part), 6909, 6909a (part).)

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. (V.A.C.S. Art. 6908 (part).)

[Sections 148.046–148.060 reserved for expansion]

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. (V.A.C.S. Art. 6908b (part).)

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. (V.A.C.S. Art. 6908f—1 (part).)

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. (V.A.C.S. Art. 6908e, Sec. 3.)

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. (V.A.C.S. Art. 6904a.)

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 a 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. (V.A.C.S. Art. 6908a (part).)

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. (V.A.C.S. Arts. 6908c (part), 6908d (part).)

Sec. 148.067. Failure to Have Hide and Ears Inspected

(a) A person required by Section 148.044 of this code to have the hide and ears of a slaughtered animal inspected commits an offense if the person fails to have the hide and ears inspected as required by that section.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $20 nor more than $200. (V.A.C.S. Art. 6908c (part).)

Sec. 148.068. Inspector's or Magistrate's Failure to Keep or File Records

(a) A person commits an offense if, as an inspector or magistrate, the person:

(1) fails to keep a record required by Section 148.044(b) of this code; or

(2) fails to file a copy of a record with the county clerk in accordance with Section 148.044(c) of this code.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $1 nor more than $25. (V.A.C.S. Art. 6909a (part).)

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. (V.A.C.S. Art. 6908g.)

SUBTITLE C. CONTROL OF ANIMAL DISEASES AND PESTS

CHAPTER 161. GENERAL DISEASE AND PEST CONTROL

SUBCHAPTER A. GENERAL PROVISIONS

Section

161.001. Definitions
161.002. Caretaker of Animal
161.003. Duty of County Commissioners Court
161.004. Disposal of Diseased Livestock Carcass
161.005. Commission Written Instruments
161.006. Documents to Accompany Shipment
161.007. Exposure or Infection Considered Continuing

[Sections 161.008–161.020 reserved for expansion]

SUBCHAPTER B. TEXAS ANIMAL HEALTH COMMISSION

161.021. Composition
161.022. Term
161.023. Bond
161.024. Chairman
161.025. Vacancies
161.026. Per Diem; Expenses
161.027. Sunset Provision

[Sections 161.028–161.040 reserved for expansion]

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF COMMISSION

161.041. Disease Control
161.042. Sale and Distribution of Veterinary Biologics
161.043. Regulation of Exhibitions

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF COMMISSION—Continued

Section

161.044. Regulation of Livestock Movement From Stockyards or Railway Shipping Pens
161.045. Employees; Chief Veterinarian
161.046. Rules
161.047. Entry Power
161.048. Inspection of Shipment of Livestock or Livestock Products

[Sections 161.049–161.060 reserved for expansion]

SUBCHAPTER D. QUARANTINES

161.061. Establishment
161.062. Publication of Notice
161.063. Contents of Notice
161.064. Effect of Quarantine
161.065. Movement From Quarantined Area; Movement of Quarantined Animals
161.066. Compensation of Owner for Destruction of Animal Quarantined for Glanders

[Sections 161.067–161.080 reserved for expansion]

SUBCHAPTER E. REGULATION OF IMPORTATION OF ANIMALS

161.081. Health Certificate Required for Importation
161.082. Exceptions
161.083. Contents of Certificate
161.084. Health Certificate for Cattle
161.085. Health Certificate for Hogs
161.086. Testing of Cattle After Entry
161.087. Importing Cattle From Quarantined Herds
161.088. Importing Animals From Area Quarantined for Screwworm Infestation

[Sections 161.089–161.100 reserved for expansion]

SUBCHAPTER F. VETERINARIAN REPORTS OF DISEASED ANIMALS

161.101. Duty to Report
161.102. Submission of Specimen of Anthrax Victim
161.103. Notice of Required Method of Disposal

[Sections 161.104–161.110 reserved for expansion]

SUBCHAPTER G. REGULATION OF LIVESTOCK MARKETS

161.111. Definition
161.112. Rules
161.113. Testing or Treatment of Livestock
161.114. Inspection of Livestock
161.115. Entry Power
161.116. Sale or Delivery of Diseased Cattle

[Sections 161.117–161.130 reserved for expansion]

SUBCHAPTER H. REMEDIES AND PENALTIES

Section
161.131. Injunction
161.132. Civil Suit Against Nonresident Violator
161.133. Violation by Corporation
161.134. Proof of Treatment or Vaccination
161.135. Improper Disposal of Diseased Carcass
161.136. Entry of Animals in Exhibition Without Certificate
161.137. Movement of Animals From Stockyard or Railway Shipping Pen Without Certificate
161.138. Refusal to Permit Search
161.139. Refusal to Permit Inspection of Shipment
161.140. Refusal to Permit Examination of Livestock or Carcass
161.141. Movement in Violation of Quarantine
161.142. Sale or Movement of Animal With Glanders
161.143. Importation of Animals Without Health Certificate
161.144. Importation of Animals Without Screwworm Certificate
161.145. Veterinarian Failure to Report Diseased Animal
161.146. Compliance With Livestock Market Regulation

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) "Commission" means the Texas Animal Health Commission.

(2) "Livestock" includes cattle, horses, mules, asses, sheep, goats, and hogs.

(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. (V.A.C.S. Art. 7009b; Art. 7014f—1, Secs. 1 (part), 1(a).)

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. (V.A.C.S. Art. 7014f—1, Sec. 7.)

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. (V.A.C.S. Art. 7014f—1, Sec. 8.)

Sec. 161.004. Disposal of Diseased Livestock Carcass

A person who is the owner or caretaker of livestock that die from a disease listed in Section 161.041 of this code, or who owns or controls the land on which the livestock die or on which the carcasses are found, shall, within 24 hours after the carcasses are found:

(1) bury the carcass of each animal by digging a grave five feet deep, placing the carcass in the grave, covering the carcass with lime, and filling the grave with dirt; or

(2) set fire to the carcass of each animal and burn it until it is thoroughly consumed. (V.A.C.S. Art. 7014f—1, Sec. 21 (part).)

Sec. 161.005. Commission Written Instruments

(a) A written instrument, including a quarantine or written notice, signed under the authority of the chairman of the commission has the same force and effect as if signed by the entire commission.

(b) The signatures of the commissioners or the signature of the chairman shall be written or stamped on each written instrument issued by the commission or the chairman.

(c) Any written instrument issued by the commission or the chairman is admissible as evidence in court if certified by the chairman. (V.A.C.S. Art. 7014f—1, Sec. 24.)

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 documents 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. (V.A.C.S. Art. 7014f—1, Sec. 17.)

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. (V.A.C.S. Art. 7014f—1, Sec. 2 (part).)

[Sections 161.008–161.020 reserved for expansion]

SUBCHAPTER B. TEXAS ANIMAL HEALTH COMMISSION

Sec. 161.021. Composition

(a) The commission is composed of nine commissioners appointed by the governor with the advice and consent of the senate, with one commissioner from each of the following categories:

(1) a practitioner of veterinary medicine;

(2) a dairyman;

(3) a practical cattle raiser;

(4) a practical 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; and
(9) an individual involved in the livestock marketing 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. (V.A.C.S. Arts. 7009(a) (part), (b) (part).)

Sec. 161.022. Term

Commissioners serve for staggered terms of six years, with the terms of three members expiring every other year. (V.A.C.S. Art. 7009(b) (part).)

Sec. 161.023. Bond

Each commissioner shall give bond payable to the State of Texas in the amount of $10,000. A bond is subject to approval by the comptroller of public accounts. (V.A.C.S. Art. 7009(a) (part).)

Sec. 161.024. Chairman

The governor shall designate one commissioner as chairman of the commission. (V.A.C.S. Art. 7009(a) (part).)

Sec. 161.025. Vacancies

The governor shall fill vacancies by appointment for the unexpired term. (V.A.C.S. Art. 7009(b) (part).)

Sec. 161.026. Per Diem; Expenses

Each commissioner is entitled to receive $20 per diem plus reimbursement for actual and necessary expenses incurred in the performance of official duties. (V.A.C.S. Art. 7009(b) (part).)

Sec. 161.027. Sunset Provision

The commission is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the commission is abolished effective September 1, 1987. (V.A.C.S. Art. 7009c.)

[Sections 161.028–161.040 reserved for expansion]

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF COMMISSION

Sec. 161.041. Disease Control

(a) The commission shall protect all livestock, domestic animals, and domestic 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; and

(11) other diseases recognized as communicable by the veterinary profession.

(b) If the commission considers it necessary or advisable, the commission may act to eradicate or control any disease that affects livestock, domestic animals, domestic fowl, or canines regardless of whether the disease is communicable.

(c) The commission may not act under this chapter to eradicate ticks, nor may it act under this chapter to control or eradicate scabies except as provided by Chapter 164 of this code. (V.A.C.S. Art. 7014f—1, Sec. 1 (part).)

Sec. 161.042. Sale and Distribution of Veterinary Biologics

The commission may control the sale and distribution of veterinary biologics. (V.A.C.S. Art. 7014f—1, Sec. 1 (part).)

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. (V.A.C.S. Art. 7014f—1, Sec. 16 (part).)

Sec. 161.044. Regulation of Lifestock 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. (V.A.C.S. Art. 7014f—1, Sec. 16 (part).)

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. (V.A.C.S. Art. 7014f—1, Sec. 23.)

Sec. 161.046. Rules

The commission may adopt rules, to be proclaimed by the governor, as necessary for the administration and enforcement of this chapter. (V.A.C.S. Art. 7014f—1, Sec. 1 (part).)

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. (V.A.C.S. Art. 7014f—1, Sec. 6 (part).)

Sec. 161.048. Inspection of Shipment of Livestock or Livestock Products

(a) An agent of the commission is entitled to stop and inspect a shipment of livestock or livestock 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 livestock or livestock 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.

(e) In this section, "livestock 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. (V.A.C.S. Art. 7014d, Secs. 1, 2, 4.)

[Sections 161.049–161.060 reserved for expansion]

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, domestic animals, or domestic fowl, or that a place in this state or livestock, domestic animals, or domestic 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 livestock, domestic animals, or domestic fowl, 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 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. (V.A.C.S. Art. 7014f—1, Secs. 1 (part), 5 (part).)

Sec. 161.062. Publication of Notice

(a) 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. (V.A.C.S. Art. 7014f—1, Sec. 3 (part).)

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. (V.A.C.S. Art. 7014f—1, Secs. 3 (part), 4 (part), 5 (part).)

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. (V.A.C.S. Art. 7014f—1, Sec. 3 (part).)

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. (V.A.C.S. Art. 7014f—1, Secs. 4 (part), 5 (part), 26 (part).)

Sec. 161.066. Compensation of Owner for Destruction of Animal Quarantined for Glanders

(a) If a horse, mule, or ass is found to be affected with glanders and is quarantined by the commission, the county judge of the county in which the animal is located shall appoint three disinterested persons to act as appraisers and determine the value of the animal.

(b) Following their determination, the appraisers shall report the appraisal in writing to the county judge. The commissioners court shall pass on the written report and pay to the owner of the animal an amount equal to the appraised value.

(c) On receipt of the appraisers' report, the county judge shall order the sheriff, a deputy sheriff, or a constable of the county to seize the affected animal, take it to a secluded place, kill it, and burn the carcass until thoroughly consumed.

(d) Each appraiser and officer is entitled to receive reasonable compensation from the commissioners court for services performed under this section. (V.A.C.S. Art. 7014f—1, Sec. 20.)

[Sections 161.067–161.080 reserved for expansion]

SUBCHAPTER E. REGULATION OF IMPORTATION OF ANIMALS

Sec. 161.081. Health Certificate Required for Importation

(a) Except as otherwise provided by this subchapter, a person, including a railroad or other common carrier, may not move livestock, domestic animals, or domestic fowl into this state from another state, territory, or country unless the shipment is accompanied by a health certificate that meets the requirements of this subchapter and is signed by a veterinarian recognized for that purpose by the commission.

(b) A health certificate must be in the form prescribed by the commission.

(c) The commission shall adopt rules for recognizing veterinarians of this state, other states, and departments of the federal government for the purpose of issuing health certificates. (V.A.C.S. Art. 7014f—1, Secs. 9 (part), 11 (part).)

Sec. 161.082. Exceptions

(a) Steers or spayed heifers are not required to have a health certificate for entry into this state.

(b) Cattle, sheep, or hogs billed or shipped for immediate slaughter shall be admitted into this state without certification, treatment, vaccination, or testing if:

(1) handled in accordance with the rules of the commission; and

(2) accompanied by a written statement attached to the waybill, bill of lading, or shipping papers, or in possession of the driver of the vehicle, that they are intended for immediate slaughter and are being handled in accordance with the rules of the commission. (V. A.C.S. Art. 7014f—1, Secs. 9 (part), 10.)

Sec. 161.083. Contents of Certificate

In addition to any special requirements provided by this subchapter, a health certificate must show that:

(1) the animals were inspected by a recognized veterinarian within 10 days before the day of entry into this state;

(2) the veterinarian found the animals to be free of all communicable diseases determined by the commission to be dangerous to those animals; and

(3) the animals were subjected to tests, immunizations, and treatment required by rule of the commission. (V.A.C.S. Art. 7014f—1, Secs. 9 (part), 11 (part).)

Sec. 161.084. Health Certificate for Cattle

(a) Except as provided by this section, a health certificate for cattle must show a negative brucellosis agglutination test within 30 days before the day of entry into this state.

(b) Subsection (a) of this section does not apply to:

(1) cattle eight months of age or younger;

(2) cattle originating from a certified brucellosis-free herd;

(3) cattle originating from a negative, nonquarantined herd in a modified certified free area;

(4) cattle consigned to:

(A) a federally recognized slaughter establishment for immediate slaughter;

(B) an approved livestock auction market;

(C) a public stockyard; or

(D) an approved feedlot; or

(5) cattle exempt from testing under rules of the commission.

(c) The commission may prescribe the manner and method of testing cattle for tuberculosis prior to entry into this state. The commission may not require tuberculosis testing prior to entry for grade cattle from beef breeds originating in nonquarantined herds in modified accredited tuberculosis free areas. (V.A.C.S. Art. 7014f—1, Secs. 11 (part), 13 (part).)

Sec. 161.085. Health Certificate for Hogs

(a) A health certificate for hogs must show that the veterinarian who issued the certificate vaccinated the hogs and dipped them in a two percent solution of cresol compound USP, as prescribed by the rules of the commission.

(b) A health certificate that shows that hogs have been vaccinated by the use of serum alone expires on the 30th day following the day of treatment.

(c) A person may not move hogs into this state if the health certificate shows that the hogs were vaccinated by the use of virus during the 30 days before the day of entry into this state or were vaccinated by the use of serum alone more than 30 days before the day of entry into this state. (V.A.C.S. Art. 7014f—1, Sec. 12 (part).)

Sec. 161.086. Testing of Cattle After Entry

(a) The commission may provide by rule for permits authorizing the entry of cattle into this state without tuberculosis or brucellosis testing if the cattle are to be tested after arrival in this state.

(b) The commission may require any cattle required to have a health certificate to be tested for tuberculosis or brucellosis not later than the 90th day after the day of entry into this state, regardless of whether the cattle were tested prior to entry. A veterinarian authorized in writing by the commission shall perform the tests.

(c) The commission by rule may exempt cattle from testing under Subsection (b) of this section and may establish restrictions and quarantines as necessary to accomplish testing under that subsection. (V.A.C.S. Art. 7014f—1, Secs. 11 (part), 13 (part).)

Sec. 161.087. Importing Cattle From Quarantined Herds

A person may not move into this state cattle from a herd quarantined for any disease. (V.A.C.S. Art. 7014f—1, Sec. 11 (part).)

Sec. 161.088. Importing Animals From Area Quarantined for Screwworm Infestation

(a) A person may not move or cause to be moved into, across, or through this state from an area in another state, territory, or country that is under state or federal quarantine for screwworm infestation any livestock, jacks, jennets, or exotic or circus animals unless the animals:

(1) have been treated in a manner recognized by Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture and the commission for the eradication of screwworm infestation; and

(2) are certified as having been treated under Subdivision (1) of this subsection and as being free of screwworm infestation by an authorized inspector of Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture or of the commission.

(b) A copy of the certificate required by this section must accompany the animals to their final destination in this state or so long as they are moving through this state. (V.A.C.S. Art. 7014g—2, Sec. 2.)

[Sections 161.089–161.100 reserved for expansion]

SUBCHAPTER F. VETERINARIAN REPORTS OF DISEASED ANIMALS

Sec. 161.101. Duty to Report

(a) A veterinarian shall report the existence of the following diseases among livestock or domestic fowl to the commission within 24 hours after diagnosis:

(1) anthrax;
(2) foot-and-mouth disease;
(3) hog cholera;
(4) ornithosis;
(5) piroplasmosis;

(6) pullorum;
(7) scabies;
(8) typhimurium;
(9) typhoid;
(10) vesicular exanthema; or
(11) vesicular stomatitis.

(b) In addition to reporting the existence of a disease under this section, the veterinarian shall also report to the commission information relating to:

(1) the species and number of animals involved;
(2) any clinical diagnosis or postmortem findings; and
(3) any death losses. (V.A.C.S. Art. 7014f—10, Secs. 1, 3.)

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. (V.A.C.S. Art. 7014f—10, Sec. 2.)

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. (V.A.C.S. Art. 7014f—10, Sec. 4.)

[Sections 161.104–161.110 reserved for expansion]

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 are assembled or concentrated at regular or irregular intervals for sale, trade, barter, or exchange. (V.A.C.S. Art. 7014c, Sec. 1(d).)

Sec. 161.112. Rules

Following notice and public hearing, the commission shall adopt rules relating to the movement of livestock from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases. (V.A.C.S. Art. 7014c, Secs. 2, 2a.)

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 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 immedi-

ate vicinity of the livestock market. (V.A.C.S. Art. 7014c, Secs. 1(f), 3 (part), 4.)

Sec. 161.114. Inspection of Livestock

An authorized inspector shall visually examine all 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. (V.A.C.S. Art. 7014c, Sec. 5.)

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. (V.A.C.S. Art. 7014c, Sec. 3 (part).)

Sec. 161.116. Sale or Delivery of Diseased Cattle

(a) In this section, "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. (V.A.C.S. Art. 7014f—11, Secs. 1, 2, 3, 4, 5, 6, 9.)

[Sections 161.117–161.130 reserved for expansion]

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. (V.A.C.S. Art. 7014f—1, Sec. 27.)

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. (V.A.C.S. Art. 7014f—1, Sec. 25 (part).)

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. (V.A.C.S. Art. 7014f—1, Sec. 19.)

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. (V.A.C.S. Art. 7014f—1, Sec. 2 (part).)

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 misdemeanor punishable by a fine of not less than $25 nor more than $100 for each animal carcass. (V.A.C.S. Art. 7014f—1, Sec. 21 (part).)

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, domestic animals, or domestic fowl into an exhibition, show, or fair; or

(2) brings livestock, domestic animals, or domestic 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 misdemeanor punishable by a fine of not less than $25 nor more than $100 for each animal. (V.A.C.S. Art. 7014f—1, Sec. 16 (part).)

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 misdemeanor punishable by a fine of not less than $25 nor more than $100 for each head of livestock. (V.A.C.S. Art. 7014f—1, Sec. 16 (part).)

Sec. 161.138. 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 161.047 of this code, that person's assistant, or a peace officer, to enter the property described in the warrant or to exercise an authority or perform a duty designated in the warrant in accordance with this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $25 nor more than $100.

(c) A person commits a separate offense for each day of refusal under Subsection (a) of this section during the first 30 days following the day on which the warrant was issued. (V.A.C.S. Art. 7014f—1, Sec. 6 (part).)

Sec. 161.139. Refusal to Permit Inspection of Shipment

(a) A person commits an offense if the person:

(1) refuses to permit inspection of livestock under Section 161.048 of this code; or

(2) fails to stop a truck, trailer, wagon, or automobile suspected of carrying livestock or livestock products if requested or signaled to do so by an agent of the commission.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $25 nor more than $100. (V.A.C.S. Art. 7014d, Sec. 3.)

Sec. 161.140. Refusal to Permit Examination of Livestock 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 livestock or all or part of a livestock 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 misdemeanor punishable by a fine of not less than $100 nor more than $500. (V.A.C.S. Art. 7014b.)

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, domestic animals, or domestic 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 misdemeanor punishable by a fine of not less than $25 nor more than $100 for each animal moved in violation of the quarantine.

(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 misdemeanor punishable by a fine of not less than $25 nor more than $100 for each shipment moved in violation of the quarantine.

(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 misdemeanor punishable by:

(1) a fine of not less than $500 nor more than $5,000;

(2) confinement in county jail for not less than 6 months; or

(3) both fine and confinement under this subsection.

(d) A second or subsequent offense under Subsection (c) of this section is a felony punishable by:

(1) imprisonment in the Texas Department of Corrections 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. (V.A.C.S. Art. 7014f—1, Secs. 4 (part), 5 (part), 18, 28; Art. 7014f—14, Sec. 3.)

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 Subsection (a)(1) of this section is a misdemeanor punishable by:

(1) a fine of not less than $25 nor more than $200; or

(2) confinement in county jail for not less than 10 nor more than 90 days.

(c) An offense under Subsection (a)(2) of this section is a misdemeanor punishable by:

(1) a fine of not less than $5 nor more than $100; or

(2) confinement in county jail for not less than 10 nor more than 90 days.

(d) An offense under Subsection (a)(3) or (a)(4) of this section is a misdemeanor punishable by a fine of not less than $10 nor more than $200. (V.A.C.S. Arts. 7014f—6, 7014f—7, 7014f—8.)

Sec. 161.143. Importation of Animals Without Health Certificate

(a) A person, including a railroad or other common carrier, commits an offense if the person:

(1) moves animals into this state without a health certificate required by Section 161.081 of this code;

(2) moves cattle into this state with a health certificate that does not contain the information required by Section 161.084 of this code;

(3) moves hogs into this state with a health certificate that is expired or does not contain the information required by Section 161.085 of this code; or

(4) moves hogs into this state in violation of Section 161.085(c) of this code.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $25 nor more than $100 for each animal moved into this state. (V.A.C.S. Art. 7014f—1, Secs. 9 (part), 11 (part), 12 (part).)

Sec. 161.144. Importation of Animals Without Screwworm Certificate

(a) A person commits an offense if the person moves animals or causes animals to be moved into, across, or through this state in violation of Section 161.088 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.

(c) A person commits a separate offense for each animal moved in violation of Section 161.088 of this code. (V.A.C.S. Art. 7014g—2, Sec. 4 (part).)

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.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $10 nor more than $100. (V.A.C.S. Art. 7014f—10, Sec. 5.)

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 misdemeanor punishable by a fine of not less than $25 nor more than $100. An offense under Subsection (b) of this section is a misdemeanor punishable by a fine of not less than $25 nor more than $100 for each animal removed from the livestock market. (V.A.C.S. Art. 7014c, Secs. 3 (part), 6, 7; Art. 7014f—11, Secs. 7, 8.)

CHAPTER 162. TUBERCULOSIS CONTROL

Section

162.001. Definitions
162.002. Cooperative Program
162.003. Testing
162.004. Certificate of Test or Vaccination of Cattle or Other Animals
162.005. Branding and Tagging of Cattle
162.006. Quarantine
162.007. Sale or Slaughter
162.008. Compensation of Owner
162.009. Modified Accredited Tuberculosis Free Areas
162.010. Duty of Owner or Caretaker to Assist; Notice
162.011. Penalty for Veterinarian's Failure to File Certificate or to Brand or Tag Animals
162.012. Penalty for Movement, Sale, or Disposal of Quarantined or Diseased Cattle
162.013. Penalty for Owner's or Caretaker's Failure to Assist

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. (New.)

(b) References to animals in this chapter shall be construed to include all or part of the carcasses of the animals.

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 modified accredited areas.

(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. V.A.C.S. Art. 7014f—1, Sec. 22(1) (part).)

Sec. 162.003. Testing

The commission by rule shall prescribe the manner, method, and system of testing cattle for tuberculosis under a cooperative program. (V. A.C.S. Art. 7014f—1, Sec. 22(1) (part).)

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. (V.A.C.S. Art. 7014f—1, Sec. 15 (part).)

Sec. 162.005. Branding and Tagging of Cattle

(a) 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) brand with a hot iron the letter "T" not less than three inches high on the left jaw of each animal that shows a positive reaction;

(2) affix a metal ear tag bearing a number for identification on the left ear of each of those animals; and

(3) report the branding and tagging to the commission, together with the location, description, and number of animals branded and tagged.

(b) A report under Subsection (a)(3) of this section must be sent to the commission within 48 hours after the branding and tagging. (V.A.C. S. Art. 7014f—1, Secs. 14 (part), 15 (part).)

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, except as provided by Section 162.007 of this code. 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. (V.A.C.S. Art. 7014f—1, Secs. 1 (part), 14 (part).)

Sec. 162.007. Sale or Slaughter

(a) If cattle show a positive reaction to a tuberculin test, the cattle may not be slaughtered or otherwise disposed of except under direction of the commission. Except as provided by this section or by the commission, a person may not:

(1) kill or destroy an animal that shows a positive reaction; or

(2) remove the carcass of an animal that showed a positive reaction from the place in which the animal was quarantined or tested.

(b) The owner of cattle that show a positive reaction to a tuberculin test under a cooperative program shall, under the direction of the commission:

(1) sell the cattle for immediate slaughter at a public slaughtering establishment maintaining federal postmortem inspection; or

(2) if authorized by the commission, slaughter the cattle on the owner's property or another place. (V.A.C.S. Art. 7014f—1, Sec. 22(1) (part).)

Sec. 162.008. Compensation of Owner

(a) If cattle are sold and slaughtered under Section 162.007(b) of this code, the commission may pay to the owner an amount equal to not more than one-third of the appraised value of the animal after deducting any amount received for salvage.

(b) Compensation under this section may not exceed $35 for a grade animal or $70 for a purebred animal and may not exceed any compensation made for the same purpose by the United States Department of Agriculture.

(c) In order to be eligible for compensation under this section, an owner must comply with the rules of the commission.

(d) For purposes of this section, the appraised value of an animal shall be determined by a representative of the commission or the United States Department of Agriculture and a representative of the owner of the animal. If they cannot agree on the value, they shall appoint a third appraiser and the value of the animal shall be determined by agreement of any two of the three appraisers.

(e) The commission may compensate persons under this section only from funds appropriated for that purpose in the General Appropriations Act. (V.A.C.S. Art. 7014f—1, Secs. 22(1) (part), (6a).)

Sec. 162.009. Modified Accredited 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 each county as a modified accredited 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 in a modified accredited tuberculosis free area at intervals considered necessary or advisable by the commission to control and eliminate bovine tuberculosis. (V.A.C.S. Art. 7014f—1, Secs. 22(2), (3).)

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. (V.A.C.S. Art. 7014f—1, Secs. 22(4), (5).)

Sec. 162.011. Penalty for Veterinarian's Failure to File Certificate or to Brand or Tag 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 of this code; or

(2) fails to brand or tag cattle in accordance with Section 162.005 of this code.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $25 nor more than $200. (V.A.C.S. Art. 7014f—1, Sec. 15 (part).)

Sec. 162.012. Penalty for Movement, Sale, or Disposal of Quarantined or Diseased Cattle

(a) A person commits an offense if the person:

(1) moves, sells, trades, barters, grants, or loans animals in violation of Section 162.006(b) of this code; or

(2) kills or destroys an animal, or removes the carcass of an animal, in violation of Section 162.007(a) of this code.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $100 nor more than $500 for each animal or carcass, as applicable, that was moved, sold, traded, bartered, granted, loaned, killed, or destroyed. (V.A.C.S. Art. 7014f—1, Secs. 14 (part), 22(1) (part).)

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 misdemeanor punishable by a fine of not less than $25 nor more than $200.

(c) A person commits a separate offense for each day of failure or refusal. (V.A.C.S. Art. 7014f—1, Sec. 22(6).)

CHAPTER 163. BRUCELLOSIS CONTROL

SUBCHAPTER A. GENERAL PROVISIONS

Section
163.001. Definitions
163.002. Cooperative Program

[Sections 163.003–163.020 reserved for expansion]

SUBCHAPTER B. BRUCELLOSIS CONTROL AREAS

163.021. Petition; Boundaries
163.022. Proclamation
163.023. Hearing
163.024. Type I Area
163.025. Type II Area

[Sections 163.026–163.040 reserved for expansion]

SUBCHAPTER C. MODIFIED CERTIFIED FREE AREAS

163.041. Designation of Modified Certified Free Area

[Sections 163.042–163.060 reserved for expansion]

SUBCHAPTER D. ENFORCEMENT

163.061. Rules; Reports
163.062. Employees
163.063. Entry Power
163.064. Testing and Vaccination
163.065. Branding and Handling of Diseased Cattle
163.066. Regulation of Movement of Cattle; Exception
163.067. Appeals
163.068. Compensation to Owner of Cattle

[Sections 163.069–163.075 reserved for expansion]

SUBCHAPTER E. CERTIFIED FREE AREAS

163.076. Transition to Certified Free Areas

[Sections 163.077–163.080 reserved for expansion]

SUBCHAPTER F. PENALTIES

163.081. Failure to Vaccinate Female Calves
163.082. Failure of Owner to Assist
163.083. Refusal of Entry
163.084. Movement of Cattle in Violation of Commission Rule
163.085. Failure to Brand Infected Animal
163.086. Sale of Infected Milk Cattle

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. (New.)

(b) References to cattle in this chapter shall be construed to include all or part of the carcasses of cattle.

Sec. 163.002. Cooperative Program

(a) In order to bring about effective control and the eventual eradication of bovine brucellosis, and to accomplish that purpose 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.

(b) In cooperation with the United States Department of Agriculture, the commission may engage in area or county programs for the control and eradication of bovine brucellosis to the end that each area of this state may eventually become a modified certified brucellosis free area. (V.A.C.S. Art. 7014f—1, Secs. 23A(1), 23A(2), 23A(3).)

[Sections 163.003–163.020 reserved for expansion]

SUBCHAPTER B. BRUCELLOSIS CONTROL AREAS

Sec. 163.021. Petition; Boundaries

(a) The cattle owners of any county or area may petition the commission to designate the county or area as a brucellosis control area. The petition must be signed by persons who, according to the tax rolls:

(1) constitute at least 75 percent of the cattle owners in the county or area; and

(2) own at least 51 percent of the cattle in the county or area.

(b) The petition must state whether the brucellosis control area requested is to be a Type I or Type II area as provided by this subchapter. The commission may not establish a control area unless the petition states the type requested.

(c) If the commission determines that conditions within and surrounding a county from which a petition originates make it impractical to operate a brucellosis control area within the boundaries of the county, the commission may add a reasonable amount of territory to that proposed, or eliminate a reasonable amount of territory from that proposed, in order to establish the boundaries along practical and reasonable lines. Before establishing a control area with boundaries determined under this subsection, the commission must determine that designation of the area as a modified certified brucellosis free area is requested by persons in the area who, according to the tax rolls:

(1) constitute at least 75 percent of the cattle owners in the area; and

(2) own at least 51 percent of the cattle in the area.

(d) If the area follows county boundary lines, the commission shall designate it as a county brucellosis control area, with the name of the county identifying the area. If the area does not follow county boundary

lines, the commission shall designate it as a special brucellosis control area. (V.A.C.S. Art. 7014f—1, Secs. 23A(4), (5), (7) (part).)

Sec. 163.022. Proclamation

(a) Before establishing a brucellosis control area, the commission shall issue a proclamation that:

(1) describes the area by boundaries;

(2) states that the area is to be designated a county or special brucellosis control area;

(3) states the type of control area to be established;

(4) states the date on which brucellosis control work is to begin in the area, which must be not earlier than the 90th day after the date of the proclamation; and

(5) states the date for a hearing on the establishment of the control area, which must be not earlier than the 30th day after the date of the proclamation.

(b) The commission shall post the proclamation in at least three public places in the area and at the door of the courthouse of each county in the area. The proclamation must be posted not later than the 90th day before the date on which brucellosis control work is to begin in the area. (V.A.C.S. Art. 7014f—1, Secs. 23A(6) (part), (7) (part).)

Sec. 163.023. Hearing

(a) Before establishing a brucellosis control area, the commission shall conduct a hearing at its office at which any person owning cattle in the affected area is entitled to appear and protest the establishment of the area.

(b) A person may present views at a hearing under this section by appearing in person, by representative, or by both.

(c) The commission shall issue a written statement of its decision on establishment of the brucellosis control area not later than the 10th day after the day of the hearing. The decision of the commission is final. (V.A.C.S. Art. 7014f—1, Sec. 23A(6) (part).)

Sec. 163.024. Type I Area

(a) If an area is established as a Type I area, no testing is required of cattle in the area, but each person who owns cattle in the area shall have the person's female calves officially vaccinated in accordance with the rules of the commission. The commission by rule shall specify the ages within which the calves must be vaccinated.

(b) Vaccination of female calves in a Type I area is at the expense of the owner. (V.A.C.S. Art. 7014f—1, Secs. 23A(7) (part), (8) (part).)

Sec. 163.025. Type II Area

(a) If an area is established as a Type II area, the commission may, in accordance with its rules, conduct tests, vaccinations, and identifying and other practices, establish quarantines, and provide for the disposition of infected animals.

(b) The commission may adopt and enforce rules in a Type II area as necessary to qualify the county for certification or recertification as a modified certified brucellosis free area as outlined in the uniform regulations of the United States Department of Agriculture and the rules of the commission.

(c) Notwithstanding any other provision of this chapter, the commission may designate any county or area as a Type II area if the commis-

sion finds that establishment of Type II areas has been requested by petition by persons who, according to the tax rolls:

(1) constitute at least 75 percent of the cattle owners in the state; and

(2) own at least 51 percent of the cattle in the state.

(d) If directed by the commission or its representative, the owner, part owner, or caretaker of cattle located in a Type II area shall submit the cattle and furnish sufficient labor and facilities in order that:

(1) necessary blood or milk specimens may be taken from the cattle; or

(2) the cattle may be vaccinated, tattooed, branded, ear-notched, or tagged in accordance with the rules of the commission. (V.A.C.S. Art. 7014f—1, Secs. 23A(4A), (7) (part), (9) (part), (17) (part).)

[Sections 163.026–163.040 reserved for expansion]

SUBCHAPTER C. MODIFIED CERTIFIED FREE AREAS

Sec. 163.041. Designation of Modified Certified Free Area

The commission may designate an area as a modified certified brucellosis free area if not more than one percent of the cattle in the area and not more than five percent of the herds in the area are positive to the official brucellosis agglutination test, not including:

(1) officially vaccinated animals under 30 months of age;

(2) calves under 6 months of age; and

(3) steers and spayed heifers. (V.A.C.S. Art. 7014f—1, Sec. 23A(9) (part).)

[Sections 163.042–163.060 reserved for expansion]

SUBCHAPTER D. ENFORCEMENT

Sec. 163.061. Rules; Reports

(a) 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 in the process of accreditation or into a modified certified brucellosis free area.

(b) Notice of a hearing under Subsection (a) of this section must state that the hearing will be held on a specified date in the office of the commission. (V.A.C.S. Art. 7014f—1, Secs. 23A(11), 23A(20) (part).)

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. (V.A.C.S. Art. 7014f—1, Sec. 23A(15).)

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. (V.A.C.S. Art. 7014f—1, Secs. 23A(13) (part), (14).)

Sec. 163.064. Testing and Vaccination

(a) Only a person certified by the commission may perform testing and vaccinating under Subchapters A–D of this chapter, regardless of whether the person is a veterinarian.

(b) In order to certify or recertify cattle to be free of brucellosis, an owner, part owner, or caretaker of cattle is entitled to have the commission test the cattle by means of a brucellosis milk ring test. The person shall submit the cattle for the test and the cattle must show a negative reaction to three successive tests each year conducted not less than three nor more than four months apart.

(c) If any one of the three annual milk ring tests shows a positive reaction and indicates that a reactor may be present in a herd, the commission shall notify the owner, part owner, or caretaker. That person may request and is entitled to receive a second milk ring test, but must request it not later than the 10th day following the day on which the person receives the notice. If the second test shows a positive reaction, the person shall submit the cattle for a brucellosis blood test at the expense of the commission and the commission may determine the cattle to be free of brucellosis only if the cattle show a negative reaction to the blood test.

(d) If cattle show a positive reaction to a blood test under Subsection (c) of this section, the owner, part owner, or caretaker may request and is entitled to receive a second blood test at the expense of the commission. If the second blood test shows a positive reaction, the cattle shall be branded and disposed of in accordance with Section 163.065 of this code.

(e) In the milk ring testing of a problem herd, the commission shall send the culture material of a positive reactor to an approved laboratory to determine if the positive test is the result of inoculation with a brucellosis vaccine or the actual disease of brucellosis. (V.A.C.S. Art. 7014f—1, Secs. 23A(10a), (16).)

Sec. 163.065. Branding and Handling of Diseased Cattle

(a) If an animal tested by a representative of the commission, a representative of the United States Department of Agriculture, or an authorized veterinarian shows evidence of infection with brucellosis, the person performing the test shall:

(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 a metal tag with a number in the ear of the animal; and

(4) report the tag number in writing to the commission.

(b) The branding, tagging, and reporting of cattle that show a positive reaction to a blood test must be performed within 48 hours after the test.

(c) An animal branded under this section and the herd of which it is a part shall 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 infected herds; or

(4) the cleaning and disinfecting of premises following the removal of reactor cattle. (V.A.C.S. Art. 7014f—1, Sec. 23A(18); Art. 7014f—12, Sec. 1.)

Sec. 163.066. Regulation of Movement of Cattle; Exception

The commission may not adopt a rule that:

(1) prohibits or interferes with the free movement of officially vaccinated calves that are under 30 months of age and from unquarantined herds; or

(2) prohibits a person from moving cattle owned by that person within an area that is declared to be in the process of accreditation or is a modified certified brucellosis free area, if the movement is confined to unquarantined contiguous lands owned or controlled by that person. (V.A.C.S. Art. 7014f—1, Secs. 23A(10), (12) (part).)

Sec. 163.067. Appeals

A person dissatisfied with a rule or order of the commission under Subchapters A–D of this chapter may appeal that rule or order in the manner provided by the Administrative Procedure and Texas Register Act (Article 6252—13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 7014f—1, Sec. 23A(21).)

Sec. 163.068. Compensation to Owner of Cattle

(a) In a problem herd or in a case of extreme hardship, the commission may pay to the owner of cattle exposed to brucellosis an amount not to exceed $40 a head.

(b) The commission may adopt rules for the implementation of this section, including rules for determining eligibility for compensation.

(c) The commission shall determine the amount of compensation to be paid in each case within the limit prescribed by this section and the amount of funds appropriated for the purpose of this section.

(d) The commission may not expend funds appropriated for the purpose of this section for any purpose other than direct payment to owners of exposed cattle. (V.A.C.S. Art. 7014f—1a.)

[Sections 163.069–163.075 reserved for expansion]

SUBCHAPTER E. CERTIFIED FREE AREAS

Sec. 163.076. Transition to Certified Free Areas

(a) If all counties of this state are certified by the commission as having reached the status of modified certified brucellosis free, the commission may begin all reasonably necessary operations to establish and maintain the counties as certified brucellosis free.

(b) The commission may designate a county as a certified brucellosis free area if:

(1) in the 18 months prior to the request for certification, no more than two-tenths percent of the cattle in the county, and no more than one percent of the herds in the county or one herd, whichever is greater, have been found infected; and

(2) at the time of the request for certification, there are no herds in the county under quarantine for brucellosis.

(c) Following a public hearing, the commission may adopt rules to carry out this section. (V.A.C.S. Art. 7014f—1, Sec. 23B.)

[Sections 163.077–163.080 reserved for expansion]

SUBCHAPTER F. PENALTIES

Sec. 163.081. Failure to Vaccinate Female Calves

(a) A person who owns cattle in a Type I brucellosis control area commits an offense if the person fails to vaccinate a female calf owned by that person in accordance with Section 163.024 of this code and the rules of the commission.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $10 nor more than $100. (V.A.C.S. Art. 7014f—1, Sec. 23A(8) (part).)

Sec. 163.082. Failure of Owner to Assist

(a) A person who owns cattle in a Type II brucellosis control area commits an offense if the person fails or refuses to gather cattle or to furnish necessary labor and facilities in accordance with Section 163.025 of this code.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $10 nor more than $200.

(c) A person commits a separate offense for each day of failure or refusal. (V.A.C.S. Art. 7014f—1, Sec. 23A(17) (part).)

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 misdemeanor punishable by a fine of not less than $10 nor more than $200.

(c) A person commits a separate offense for each day of refusal. (V.A.C.S. Art. 7014f—1, Sec. 23A(13) (part).)

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 moves cattle into and within an area declared to be in the process of accreditation or a modified certified brucellosis free area without a permit or certificate required by rule of the commission.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $10 nor more than $100 for each head of cattle moved without a permit or certificate. (V.A.C.S. Art. 7014f—1, Sec. 23A (12) (part).)

Sec. 163.085. Failure to Brand Infected Animal

(a) A person commits an offense if the person fails or refuses to allow an authorized veterinarian or a representative of the commission to brand the letter "B" on the left jaw of a cow showing a positive reaction to the agglutination test for brucellosis.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $200. (V.A.C.S. Art. 7014f—12, Secs. 2, 3.)

Sec. 163.086. Sale of Infected Milk Cattle

(a) A person commits an offense if the person sells or otherwise disposes of a cow for milk purposes that the person knows or has reason to believe is infected with brucellosis.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $10 nor more than $100.

(c) The sale or disposal of a cow with the letter "B" branded on the left jaw is prima facie evidence that the person knew the cow was infected with brucellosis. (V.A.C.S. Art. 7014f—13.)

CHAPTER 164. SCABIES CONTROL

SUBCHAPTER A. GENERAL PROVISIONS

Section

164.001. Definitions
164.002. Scabies Infection or Exposure
164.003. Inspectors
164.004. Duties of Inspectors
164.005. Entry Power
164.006. Actions of Commission Chairman
164.007. Duty of Commissioners Court

[Sections 164.008–164.020 reserved for expansion]

SUBCHAPTER B. DIPPING

164.021. Dipping Required on Order of Commission
164.022. Hearing
164.023. Method of Dipping
164.024. Dipping Intervals
164.025. Dip Solutions for Sheep
164.026. Dip Solutions for Cattle
164.027. Dipping of Goats
164.028. Dipping at Expense of County

[Sections 164.029–164.040 reserved for expansion]

SUBCHAPTER C. QUARANTINES

164.041. Establishment
164.042. Notice
164.043. Effect of Quarantine
164.044. Movement From Quarantined Premises; Movement of Quarantined Animals
164.045. Disinfection of Shearing Plant in Quarantined Area
164.046. Disinfection of Quarantined Premises

[Sections 164.047–164.060 reserved for expansion]

SUBCHAPTER D. IMPORTATION OF SHEEP

164.061. Permit Required
164.062. Certificate Required
164.063. Quarantine of Imported Sheep
164.064. Designation of Infected or Free Areas; Dipping Requirements
164.065. Exhibitions

[Sections 164.066–164.080 reserved for expansion]

SUBCHAPTER E. REMEDIES AND PENALTIES

164.081. Carrier Forfeiture for Transporting Sheep Without Permit
164.082. Civil Suits to Recover Penalty for Corporate Offense
164.083. Failure to Dip for Scabies
164.084. Movement of Infected, Exposed, or Quarantined Animals
164.085. Refusal to Permit Entry or Gather Animals for Inspection
164.086. Failure to Disinfect Shearing Plant
164.087. Failure to Properly Disinfect Quarantined Premises
164.088. Importation of Sheep Without Certificate or Permit

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. (New.)

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. (V.A.C.S. Art. 7014e—1, Sec. 6 (part); Art. 7014f—1, Sec. 2 (part).)

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. (V.A.C.S. Art. 7014e—1, Secs. 18 (part), 20.)

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. (V.A.C.S. Art. 7014e—1, Secs. 6 (part), 18 (part); Art. 7014f—1, Sec. 1 (part).)

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. (V.A.C.S. Art. 7014e—1, Secs. 12 (part), 19 (part); Art. 7014f—1, Secs. 1 (part), 6 (part).)

Sec. 164.006. Actions of Commission Chairman

The chairman of the commission may perform any act or duty of the commission under this chapter. (V.A.C.S. Art. 7014e—1, Sec. 26.)

Sec. 164.007. Duty of Commissioners Court

(a) The commissioners court of each county shall cooperate with the commission in the eradication and control of scabies in that county if the commission has reason to believe or determines that a scabies infection exists in the county.

(b) If, following investigation or inspection, the commission determines that a scabies infection exists in a county, the commissioners court of the county shall appropriate a sum of money sufficient to employ local inspectors.

(c) If a commissioners court does not appropriate money under Subsection (b) of this section, the commission shall place the county under quarantine and no sheep or cattle may be moved from that county unless certified by a commission inspector. (V.A.C.S. Art. 7014e—1, Secs. 8, 18 (part).)

[Sections 164.008–164.020 reserved for expansion]

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 chairman 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. (V.A.C.S. Art. 7014e—1, Secs. 2 (part), 10, 11 (part).)

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 chairman 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 chairman. 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. (V.A.C.S. Art. 7014e—1, Sec. 11 (part).)

Section 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. (V.A.C.S. Art. 7014e—1, Sec. 1a).

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. (V.A.C.S. Art. 7014e—1, Secs. 2 (part), 5 (part).)

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 1½ percent 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. (V.A.C.S. Art. 7014e—1, Sec. 3.)

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. (V.A.C.S. Art. 7014e—1, Secs. 4, 5 (part).)

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. (V.A.C.S. Art. 7014e—1, Sec. 9.)

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. (V.A.C.S. Art. 7014e—1, Sec. 18 (part).)

[Sections 164.029–164.040 reserved for expansion]

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. (V.A.C.S. Art. 7014e—1, Sec. 25 (part); Art. 7014f—1, Sec. 4 (part).)

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. (V.A.C.S. Art. 7014e—1, Sec. 25 (part).)

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. (V.A.C.S. Art. 7014e—1, Sec. 25 (part).)

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. (V.A.C.S. Art. 7014e—1, Sec. 7 (part); Art. 7014f—1, Sec. 26 (part).)

Sec. 164.045. Disinfection of Shearing Plant in Quarantined Area

(a) If scabies-infected sheep located on premises 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. (V.A.C.S. Art. 7014e—1, Secs. 13, 14.)

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. (V.A.C.S. Art. 7014e—1, Secs. 16, 17 (part).)

[Sections 164.047–164.060 reserved for expansion]

SUBCHAPTER D. IMPORTATION OF SHEEP

Sec. 164.061. Permit Required

(a) A person may not import sheep into this state without first obtaining a permit from the commission.

(b) A rail common carrier may not receive a shipment of sheep from a shipper or a connecting carrier for importation into this state unless the bill of lading covering the shipment is accompanied by a written permit from the commission permitting those sheep to enter this state. (V.A.C.S. Art. 7014e—1, Secs. 22 (part), 23.)

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 authorized sheep scabies inspector of the state of origin of the shipment or by a sheep scabies inspector of the Animal and Plant Health Inspection Service, United States Department of Agriculture. (V.A.C.S. Art. 7014e—1, Sec. 22 (part).)

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. (V.A.C.S. Art. 7014e—1, Sec. 22 (part).)

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. (V.A.S.C. Art. 7014e—1, Sec. 22 (part).)

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. (V.A.C.S. Art. 7014e—1, Sec. 22 (part).)

[Sections 164.066–164.080 reserved for expansion]

SUBCHAPTER E. REMEDIES AND PENALTIES

Sec. 164.081. Carrier Forfeiture for Transporting Sheep Without Permit

(a) A rail common carrier that transports sheep without a permit under Section 164.061 of this code forfeits to the state an amount equal to not less than $1 nor more than $5 for each head of sheep transported.

(b) The county attorney of a county through which the rail common carrier transports the shipment may sue on behalf of the state in a court of competent jurisdiction to recover the forfeiture under this section. (V.A.C.S. Art. 7014e—1, Sec. 24 (part).)

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. (V.A.C.S. Art. 7014e—1, Sec. 24 (part).)

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 misdemeanor punishable by a fine of not less than $5 nor more than $200.

(c) A person commits a separate offense for each day of failure or refusal. (V.A.C.S. Art. 7014e—1, Sec. 1.)

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 misdemeanor punishable by a fine of not less than $10 nor more than $200.

(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. (V.A.C.S. Art. 7014e—1, Secs. 7 (part), 21.)

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 misdemeanor punishable by a fine of not less than $10 nor more than $200.

(c) A person commits a separate offense for each day of refusal. (V.A.C.S. Art. 7014e—1, Secs. 12 (part), 19 (part).)

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 misdemeanor punishable by a fine of not less than $1 nor more than $100. (V.A.C.S. Art. 7014e—1, Sec. 15.)

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 misdemeanor punishable by a fine of not less than $25 nor more than $50. (V.A.C.S. Art. 7014e—1, Sec. 17 (part).)

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 misdemeanor punishable by a fine of not less than $25 nor more than $100 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. (V.A.C.S. Art. 7014e—1, Sec. 22 (part).)

CHAPTER 165. CONTROL OF DISEASES OF SWINE

SUBCHAPTER A. GENERAL PROVISIONS

Section
165.001. Definition
165.002. Owner Treatment
165.003. Sale or Distribution of Unattenuated Hog Cholera Virus

[Sections 165.004–165.020 reserved for expansion]

SUBCHAPTER B. COOPERATIVE PROGRAM FOR DISEASE ERADICATION

165.021. Cooperation With U. S. Department of Agriculture
165.022. Method of Disease Eradication
165.023. Use of Biologics
165.024. Sale and Slaughter of Diseased Animals
165.025. Compensation of Owner
165.026. Feeding Garbage to Swine
165.027. Entry Power

[Sections 165.028–165.040 reserved for expansion]

SUBCHAPTER C. PENALTIES

165.041. General Penalty
165.042. Sale of Unattenuated Hog Cholera Virus

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. (New.)

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. (V.A.C.S. Art. 7014a (part).)

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 dis-

tribution 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. (V.A.C.S. Art. 7014f—9, Secs. 1, 2, 4.)

[Sections 165.004–165.020 reserved for expansion]

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. (V.A.C.S. Art. 7014f—1, Sec. 22a(1).)

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. (V.A.C.S. Art. 7014f—1, Secs. 22a(2), (11).)

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. (V.A.C.S. Art. 7014f—1, Sec. 22a(3).)

Sec. 165.024. Sale and Slaughter of Diseased Animals

(a) The commission may order swine infected with or exposed to a swine disease to be:

(1) sold for immediate slaughter at a public slaughtering establishment maintaining federal postmortem inspection; or

(2) slaughtered on the owner's property or another place under the direction of the commission.

(b) A person may appeal an order of the commission under this section to the county court of the county in which the swine are located. (V.A.C.S. Art. 7014f—1, Sec. 22a(4).)

Sec. 165.025. Compensation of Owner

(a) If an animal infected with or exposed to vesicular exanthema, foot and mouth disease, or hog cholera is sold and slaughered under Section 165.024 of this code, the commission may pay the owner an amount equal to not more than 50 percent of the appraised value of the animal, after deducting any amount received by the owner for salvage.

(b) Compensation under this section may not exceed the amount of any compensation paid to the owner of the swine by the United States Department of Agriculture.

(c) In order to be eligible for compensation under this section, an owner must have complied with Section 165.026 of this code and the rules of the commission applicable to the swine for which payment is made.

(d) For purposes of this section, the appraised value of an animal shall be determined by a representative of the commission or the United States Department of Agriculture and a representative of the owner of the animal. If they cannot agree on the value, they shall appoint a third appraiser and the value of the animal shall be determined by agreement of any two of the three appraisers. If either party is not satisfied with the value as appraised, that party may appeal to a court of competent jurisdiction in the county of the owner's residence. The appeal is by trial de novo as that term is used in appeals from the justice court to the county court.

(e) The commission may compensate persons under this section only from funds appropriated for that purpose. (V.A.C.S. Art. 7014f—1, Secs. 22a(5), (6).)

Sec. 165.026. Feeding Garbage to Swine

(a) A person may not feed garbage to swine unless:

(1) the person first registers with and secures a permit from the commission; and

(2) the garbage has been heated to a temperature of 212 degrees Fahrenheit for a period of 30 consecutive minutes within 48 hours prior to feeding.

(b) Registration with the commission shall be made on forms prescribed by the commission, and the commission shall furnish those forms on request.

(c) This section does not apply to an individual who feeds garbage from the individual's own household, farm, or ranch to swine owned by the individual.

(d) In this section, "garbage" includes the animal or vegetable refuse matter and the putrescible animal or vegetable waste resulting from handling, preparing, cooking, or consuming food containing all or part of an animal carcass, the waste material by-products of a restaurant, kitchen, cookery, or slaughterhouse, and refuse accumulations of animal or vegetable matter, liquid or otherwise. (V.A.C.S. Art. 7014f—1, Secs. 22a(7), (7a), (8).)

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. (V.A.C.S. Art. 7014f—1, Sec. 22a(10).)

[Sections 165.028–165.040 reserved for expansion]

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 misdemeanor punishable by a fine of not less than $25 nor more than $200.

(c) A person commits a separate offense for each day of violation. (V.A.C.S. Art. 7014f—1, Sec. 22a(12).)

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 misdemeanor punishable by a fine of not less than $25 nor more than $100. (V.A.C.S. Art. 7014f—9, Sec. 3.)

CHAPTER 166. ANTHRAX CONTROL

Section

166.001. Anthrax Research
166.002. Supervision of Isolation of Infected Livestock
166.003. Reporting Anthrax
166.004. Quarantine
166.005. Destruction of Infected Carcasses
166.006. Petition for Election to Prevent Animals From Running at Large
166.007. Election Order
166.008. Election Expenses
166.009. Election
166.010. Effect of Election
166.011. Failure to Report Anthrax
166.012. Failure to Obey Quarantine
166.013. Failure to Destroy Carcass
166.014. Allowing Animals to Run at Large

CHAPTER 166. ANTHRAX CONTROL

Sec. 166.001. Anthrax Research

(a) The Texas Board of Health shall employ a bacteriologist to analyze and perform research for the purpose of combating anthrax during a time in which the disease is prevalent.

(b) The board may require a bacteriologist employed under this section to remain in an area affected by anthrax as long as the board considers it necessary. (V.A.C.S. Art. 4447 (part).)

Sec. 166.002. Supervision of Isolation of Infected Livestock

The Texas Board of Health, acting through a member of the board or the county health officer of a county in which anthrax is reported to be prevalent, shall:

(1) inspect stock reported to have anthrax and ensure that the infected stock is isolated from other stock; and

(2) isolate for any period it considers necessary stock exposed to anthrax. (V.A.C.S. Art. 4447 (part).)

Sec. 166.003. Reporting Anthrax

(a) A person who resides in an area in which anthrax is prevalent or is alleged to be prevalent and who discovers anthrax in an animal shall report that fact in writing to the county health officer, who shall report the occurrence in writing to the chairman of the Texas Board of Health.

(b) A physician practicing in this state who discovers the presence of anthrax in a person shall report that fact to the chairman of the Texas Board of Health. (V.A.C.S. Art. 7014f—2 (part).)

Sec. 166.004. Quarantine

(a) After making a determination that a quarantine is necessary to prevent the spread of anthrax in a county in which anthrax is prevalent or may become prevalent, a county health officer may issue a quarantine

proclamation directing the owners or keepers of certain animals to isolate those animals in an enclosure.

(b) The quarantine applies to any animal of a class specified in the proclamation that is located:

(1) anywhere in the county, if the proclamation specifies that it applies to the whole county; or

(2) anywhere in a political subdivision of the county, if the proclamation specifies that it applies to that political subdivision.

(c) The proclamation must be published once in a newspaper published in the county. If no newspaper is published in the county:

(1) a proclamation applying to the entire county must be posted in three public places in the county, including at the county courthouse door; and

(2) a proclamation applying to a political subdivision of the county must be posted in three public places in the subdivision.

(d) A quarantine established under this section takes effect on the third day after the day on which the notice is published or posted under Subsection (c) of this section and expires when the county health officer determines that a quarantine is no longer necessary. (V.A.C.S. Arts. 4447 (part), 7014f—4 (part).)

Sec. 166.005. Destruction of Infected Carcasses

An owner or person in charge of stock that has died from anthrax shall destroy each carcass by burning it within 24 hours after the death of the stock. (V.A.C.S. Art. 7014f—3 (part).)

Sec. 166.006. Petition for Election to Prevent Animals From Running at Large

(a) In accordance with this section, the qualified voters of a county or a political subdivision of a county affected with anthrax may petition the commissioners court to determine if cattle, horses, sheep, goats, or hogs are to be prohibited from running at large in the county or subdivision.

(b) A petition for a countywide election must be signed by at least 10 percent of the qualified voters in the county. A petition for an election in a political subdivision must be signed by at least 10 percent of the qualified voters in that subdivision.

(c) The petition must:

(1) clearly state each class of animals that the petitioners seek to keep from running at large;

(2) clearly state whether the prohibition is to be in effect for the entire year or at specified times during the year; and

(3) describe the county or political subdivision in which the election is to be held. (V.A.C.S. Art. 4447 (part).)

Sec. 166.007. Election Order

(a) After receiving a petition for an election, the commissioners court shall order an election to be held throughout the county or in the political subdivision of the county, as determined by the petition.

(b) The order must specify, in accordance with the petition:

(1) each class of animals to be prohibited from running at large; and

(2) whether the prohibition is to be in effect for the entire year or at specified times during the year. (V.A.C.S. Art. 4447 (part).)

Sec. 166.008. Election Expenses

A county in which an election is held under this chapter shall compensate election officers and pay expenses of the election. (V.A.C.S. Art. 4447 (part).)

Sec. 166.009. Election

(a) Ballots for the election shall be printed to provide for voting for or against the proposition: "Prohibiting domestic animals from running at large."

(b) The presiding officers of the precinct or precincts in which the election is held shall return the ballots cast to the county judge. The county judge shall convene the commissioners court for the purpose of canvassing the returns.

(c) The commissioners court shall issue a proclamation declaring the result and post it at three public places in the county or political subdivision of the county in which the election was held. (V.A.C.S. Art. 4447 (part).)

Sec. 166.010. Effect of Election

If a majority of votes in an election are cast for the proposition, after the date on which the proclamation of the result is posted, a person may not allow a domestic animal of the class named in the election petition to run at large in the county or political subdivision of the county, as applicable, during the prohibited time named in the petition. (V.A.C.S. Art. 7014f—5 (part).)

Sec. 166.011. Failure to Report Anthrax

(a) A person commits an offense if the person fails to make a report required by Section 166.003 of this code.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $10 nor more than $25.

(c) A person commits a separate offense for each case of anthrax the person fails to report. (V.A.C.S. Art. 7014f—2 (part).)

Sec. 166.012. Failure to Obey Quarantine

(a) A person commits an offense if the person violates a quarantine established under Section 166.004 of this code.

(b) Except as provided by Subsection (c) of this section, an offense under this section is a misdemeanor punishable by a fine of not less than $10 nor more than $50.

(c) If a person who commits an offense under this section owns or keeps more than 10 animals subject to the quarantine:

(1) the offense is a misdemeanor punishable by a fine of not less than $20 nor more than $100; and

(2) the person commits a separate offense for each day the person violates the quarantine. (V.A.C.S. Art. 7014f—4 (part).)

Sec. 166.013. Failure to Destroy Carcass

(a) A person commits an offense if the person fails to destroy an animal carcass as required by Section 166.005 of this code.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $25 nor more than $100.

(c) A person commits a separate offense for each 24 hours after the first 24 hours following death that the person fails to destroy the carcass. (V.A.C.S. Art. 7014f—3 (part).)

Sec. 166.014. Allowing Animals to Run at Large

(a) A person commits an offense if the person allows an animal to run at large in violation of Section 166.010 of this code.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $5 nor more than $50.

(c) A person commits a separate offense for each day that the person allows the animal to run at large. (V.A.C.S. Art. 7014f—5 (part).)

CHAPTER 167. TICK ERADICATION

SUBCHAPTER A. GENERAL PROVISIONS

Section

167.001. Definitions
167.002. Caretaker of Animal
167.003. General Powers and Duties of Commission
167.004. Classification of Animals or Premises as Infested, Exposed, or Free From Exposure
167.005. Eradication, Free, and Inactive Quarantine Areas
167.006. Designation of Tick Eradication Area
167.007. Tick Eradication in Free Area
167.008. Inspections

[Sections 167.009–167.020 reserved for expansion]

SUBCHAPTER B. QUARANTINES; REGULATION OF MOVEMENT OF ANIMALS AND COMMODITIES

167.021. General Quarantine Power
167.022. Quarantine of Tick Eradication Area
167.023. Quarantine of Free Area
167.024. Movement In or From Quarantined Area
167.025. Movement In or From Inactive Quarantined Area
167.026. Movement Into This State From Quarantined Area
167.027. Permit or Certificate to Accompany Movement
167.028. Statement of Possession and Destination
167.029. Conditions, Manner, and Method of Moving and Handling
167.030. Disinfection of Conveyance
167.031. Use of Sand as Bedding in Conveyance
167.032. Movement of Commodities
167.033. Handling and Removal of Refuse or Dead or Injured Livestock

[Sections 167.034–167.050 reserved for expansion]

SUBCHAPTER C. DIPPING

167.051. Livestock Subject to Dipping
167.052. Order to Dip
167.053. Hearing
167.054. Excuse From Compliance With Order
167.055. Persons Responsible for Dipping and Assistance
167.056. Manner of Dipping
167.057. Dipping Materials
167.058. Dipping Intervals
167.059. Dipping Facilities
167.060. Dipping Required for Movement From Quarantined Area

[Sections 167.061–167.080 reserved for expansion]

SUBCHAPTER D. STOCKYARD REGULATION

Section
167.081. Designation of Facility to Handle Certified Livestock
167.082. Notice and Hearing
167.083. Maintenance of Tick-Free Facilities

[Sections 167.084–167.100 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT

167.101. Inspectors
167.102. Entry Power
167.103. Dipping of Cattle by Peace Officer on Request of Inspector
167.104. Seizure and Disposal of Livestock Running at Large
167.105. Seizure and Disposal of Livestock Moved in Violation of Quarantine
167.106. Injunction; Mandamus
167.107. Sale of Livestock Dipped or Seized by Peace Officer
167.108. Liens
167.109. Admissibility of Commission Instruments; Identification in Complaint
167.110. Presumption of Existence or Sufficiency of Dip
167.111. Presumption of Ownership or Care
167.112. Venue of Criminal Prosecution
167.113. Civil Suit Against Corporate Offender

[Sections 167.114–167.130 reserved for expansion]

SUBCHAPTER F. PENALTIES

167.131. Refusal of Inspection
167.132. Movement of Livestock in Violation of Quarantine
167.133. Movement of Animals or Commodities Into Texas From Quarantined Area
167.134. Movement of Livestock in Violation of Permit or Certificate
167.135. Failure to Possess or Exhibit Permit or Certificate
167.136. Failure to Make Statement of Possession and Destination; Making False Statement
167.137. Failure to Disinfect Conveyance
167.138. Use of Sand as Bedding
167.139. Movement of Commodities From Quarantined Area
167.140. Improper Handling and Removal of Livestock Refuse or Dead or Injured Livestock
167.141. Failure to Dip Livestock
167.142. Destruction of Public Dipping Facilities
167.143. Failure to Provide Tick-Free Stockyard Facilities
167.144. Refusal to Permit Search

CHAPTER 167. TICK ERADICATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 167.001. Definitions

In this chapter:

(1) "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." (V.A.C.S. Art. 7014g—1, Secs. 2 (part), 17, 34 (part); new.)

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. (V.A.C.S. Art. 7014g—1, Sec. 13 (part).)

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 livestock 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 dipping 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 livestock. (V.A.C.S. Art. 7014g—1, Secs. 1 (part), 35, 36, 37a.)

Sec. 167.004. Classification of Animals or Premises as Infested, Exposed, or Free From Exposure

(a) If a tick is found on a head of livestock, the following are classified as tick infested:

(1) each head of livestock 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 livestock 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 livestock, unless the commission determines that the infestation or exposure occurred after the livestock were removed and that the livestock 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. (V.A.C.S. Art. 7014g—1, Secs. 2 (part), 10 (part).)

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. (V.A.C.S. Art. 7014g—1, Secs. 2 (part), 3 (part).)

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 preced-

ing 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. (V.A.C.S. Art. 7014g—1, Sec. 3 (part).)

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 dipping of livestock 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 livestock 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. (V.A.C.S. Art. 7014g—1, Sec. 25 (part).)

Sec. 167.008. Inspections

The commission may order the owner, part owner, or caretaker of livestock to gather the livestock 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 dip livestock. (V.A.C.S. Art. 7014g—1, Sec. 37 (part).)

[Sections 167.009–167.020 reserved for expansion]

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 livestock 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. (V.A.C.S. Art. 7014g—1, Secs. 3 (part), 33 (part).)

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 livestock in the area quarantined, regardless of whether any person's land, premises, or livestock are specifically described in the quarantine order. (V.A.C.S. Art. 7014g—1, Sec. 4 (part).)

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 livestock 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 livestock in the area to be quarantined or to each owner or caretaker of land or premises in the area on which livestock 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. (V.A.C.S. Art. 7014g—1, Sec. 25 (part).)

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 livestock 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 livestock in a quarantined area may not move the livestock, or permit the livestock 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 livestock are subject to dipping under this chapter and the land or enclosure to which the livestock 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 livestock are subject to dipping but are not being dipped under this chapter in the conduct of regular systematic tick eradication by the commission and the land or enclosure to which the livestock 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 livestock located in a quarantined area may move livestock, or permit livestock to be moved, to and from dipping vats for the purpose of dipping the livestock on a regular dipping date at the vat to which the livestock are to be moved or on another date designated by the inspector in charge of the vat. The movement of livestock 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. (V.A.C.S. Art. 7014g—1, Sec. 4 (part).)

Sec. 167.025. Movement In or From Inactive Quarantined Area

A person may not move livestock or permit livestock to be moved from or within the inactive quarantined area except in accordance with the rules of the commission. (V.A.C.S. Art. 7014g—1, Sec. 3 (part).)

Sec. 167.026. Movement Into This State From Quarantined Area

(a) A person may not move livestock, or permit livestock 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 livestock 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 animals, 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 dipped 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. (V.A.C.S. Art. 7014g—1, Sec. 21 (part); Art. 7014g—2, Secs. 1 (part), 3 (part).)

Sec. 167.027. Permit or Certificate to Accompany Movement

(a) A certificate or permit required for movement of livestock 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 goats, hogs, sheep, exotic animals, or circus animals, or for movement of articles listed in Section 167.026(c) of this code, must accompany the movement to the final destination in this state or so long as the animals or articles are moving through this state. (V.A.C.S. Art. 7014g—1, Sec. 21 (part); Art. 7014g—2, Secs. 1 (part), 3 (part).)

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 livestock 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 livestock were obtained, if the livestock were obtained in the 30 days preceding the request, or, if the livestock 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. (V.A.C.S. Art. 7014g—1, Sec. 20 (part).)

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 livestock:

(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) Livestock must be certified as being free from ticks and exposure to ticks, and must be moved to the destination without exposure, if the livestock 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 livestock moving into this state from another state or country. (V.A.C.S. Art. 7014g—1, Sec. 27 (part).)

Sec. 167.030. Disinfection of Conveyance

(a) A person, including a railway or transportation company, who operates a conveyance into which livestock are loaded shall clean and disinfect each car or other conveyance after removal of the livestock unless the livestock are clean and free from ticks or exposure to ticks.

(b) The commission shall adopt rules relating to the cleaning and disinfecting of conveyances. (V.A.C.S. Art. 7014g—1, Sec. 22 (part).)

Sec. 167.031. Use of Sand as Bedding in Conveyance

The commission may establish quarantines and restrict the use of sand as bedding in a livestock conveyance except for sand from known tick-free sand pits. (V.A.C.S. Art. 7014g—1, Sec. 32 (part).)

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. (V.A.C.S. Art. 7014g—1, Sec. 32 (part).)

Sec. 167.033. Handling and Removal of Refuse or Dead or Injured Livestock

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 livestock that die or are injured in transit. (V.A.C.S. Art. 7014g—1, Sec. 32 (part).)

[Sections 167.034–167.050 reserved for expansion]

SUBCHAPTER C. DIPPING

Sec. 167.051. Livestock Subject to Dipping

(a) Livestock located in the tick eradication area are subject to dipping if the livestock:

(1) are infested with ticks;

(2) were exposed to ticks within the nine months preceding an order to dip; or

(3) are on premises described in an order to dip 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 livestock.

(b) Livestock located in the free area are subject to dipping if:

(1) the livestock are infested with ticks;

(2) the livestock were exposed to ticks within the nine months preceding an order to dip;

(3) the livestock are on premises described in an order to dip 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 livestock; or

(4) the commission determines that dipping is necessary to ensure that the livestock are entirely free from infestation.

(c) The commission may require the dipping of livestock that are located in the free area and are tick infested or have been exposed to ticks regardless of whether the livestock or the area in which the livestock are located is under quarantine. (V.A.C.S. Art. 7014g—1, Secs. 10 (part), 25 (part).)

Sec. 167.052. Order to Dip

(a) The commission may order the owner, part owner, or caretaker of livestock to dip the livestock 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 commission chairman.

(b) An order to dip must:

(1) state the period of time covered by the order;

(2) describe the premises on which the livestock to be dipped are located;

(3) state that the person to whom the order is directed shall dip all livestock 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 dipping must be done under the supervision of an inspector;

(5) designate the vat at which the livestock are to be dipped;

(6) state the dates on which the livestock are to be dipped; and

(7) state that if the person does not dip the livestock on those dates, the dipping 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 livestock 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 dipping of the livestock on as many dates as the commission considers necessary for eradicating the infestation or exposure of the livestock or the premises on which the livestock is located.

(e) An order to dip 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 dipping, not including the date of delivery or the date of the first dipping.

(f) A person to whom an order to dip is directed shall comply with the order and dip the livestock in accordance with the directions of the commission. If the order is not delivered within the time provided by Subsection (e) of this section, the person receiving the order shall begin dipping on the first dipping date that is more than 12 days after the date of receipt of the order and shall continue dipping on subsequent dates as specified in the order.

(g) If the livestock or the premises are not freed from ticks or exposure to ticks before an order to dip expires, the commission may issue additional orders regardless of whether the livestock were exposed to ticks in the nine months preceding the date of the subsequent order. (V.A.C.S. Art. 7014g—1, Secs. 10 (part), 11 (part).)

Sec. 167.053. Hearing

(a) A person is entitled to request and obtain a hearing for the purpose of protesting an order to dip by filing a sworn application with the supervising inspector of the county in which the livestock 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 dipping the livestock on the first dipping 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 dipping on the first dipping date in the order that is more than four days after the day on which the decision was deposited in the mail. (V.A.C.S. Art. 7014g—1, Sec. 12 (part).)

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 dip, but shall be held responsible for excusing compliance without good cause. (V.A.C.S. Art. 7014g—1, Sec. 12 (part).)

Sec. 167.055. Persons Responsible for Dipping and Assistance

(a) A person who owns any interest in livestock subject to dipping or who is the caretaker of that livestock is responsible for the dipping of the livestock under this chapter and is subject to prosecution for failure to dip the livestock.

(b) A husband and wife are jointly and severally liable for the dipping of livestock subject to dipping that belong to their community estate. Each spouse is responsible for the dipping of livestock belonging to that person's separate estate, except that a spouse who is the caretaker of livestock owned by the other spouse is responsible for the dipping of that livestock.

(c) A person responsible for the dipping of livestock subject to dipping shall furnish all necessary labor, at the person's own expense, for gathering the livestock, driving the livestock to the dipping vat, dipping the livestock, and returning the livestock to the person's premises after dipping. (V.A.C.S. Art. 7014g—1, Sec. 13 (part).)

Sec. 167.056. Manner of Dipping

If the commission requires livestock to be dipped, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by the commission. (V.A.C.S. Art. 7014g—1, Sec. 2 (part).)

Sec. 167.057. Dipping Materials

(a) The commission shall prescribe by rule the official materials in which livestock are to be dipped under this chapter. A person may not dip livestock 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 dipping of livestock under this chapter. (V.A.C.S. Art. 7014g—1, Secs. 5 (part), 8(a), 10 (part).)

Sec. 167.058. Dipping Intervals

A person to whom an order to dip is directed shall dip the livestock 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 dipping date, between the days on which it directs the livestock to be dipped. The order of the commission may provide an interval longer than 13 days. (V.A.C.S. Art. 7014g—1, Sec. 10 (part).)

Sec. 167.059. Dipping 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 dipping of livestock 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 dipping 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 dipping facilities, for the purpose of acquiring dipping facilities that have already been constructed, or for the purpose of ac-

quiring 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 chairman 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. (V.A.C.S. Art. 7014g—1, Secs. 5 (part), 7.)

Sec. 167.060. Dipping Required for Movement From Quarantined Area

(a) An inspector may not issue a certificate or permit for the movement of livestock from a quarantined enclosure unless the owner or caretaker of the livestock:

(1) is cooperating with the commission in the regular systematic dipping of the livestock listed in Subsection (b) of this section; and

(2) has dipped those livestock on the last two dipping dates that were prescribed for the area in which the livestock 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 dipping of livestock of which the person is the owner or caretaker and which:

(1) are located in the enclosure from which the livestock are to be moved;

(2) are located in quarantined enclosures that connect with the enclosure from which the livestock are to be moved, including an enclosure that:

(A) connects with an enclosure that connects with the enclosure from which the livestock are to be moved; or

(B) is on the opposite side of a lane or road from the enclosure from which the livestock 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) of this subsection.

(c) If ticks are found on any of the livestock submitted for movement, before the certificate or permit is issued, each head of the livestock must be dipped at intervals of not less than every 7th day nor more than every 14th day and found free from ticks at the last dipping.

(d) The commission may waive the enforcement of this section for good cause. A waiver of the commission must be in writing. (V.A.C.S. Art. 7014g—1, Sec. 26.)

[Sections 167.061–167.080 reserved for expansion]

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. (V.A.C.S. Art. 7014g—1, Sec. 23 (part).)

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 of this code for requesting a hearing on an order to dip. 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. (V.A.C.S. Art. 7014g—1, Sec. 23 (part).)

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. (V.A.C.S. Art. 7014g—1, Sec. 23 (part).)

[Sections 167.084–167.100 reserved for expansion]

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 livestock 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. (V.A.C.S. Art. 7014f—1, Sec. 1 (part); Art. 7014g—1, Secs. 5 (part), 6, 27 (part).)

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 livestock are on the property, the application for the warrant shall state that. If the warrant is obtained for the purpose of seizing or dipping livestock, the application and the warrant shall describe the livestock, state whether the animals are cattle, horses, mules, jacks, or jennets, 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. (V.A.C.S. Art. 7014g—1, Sec. 24 (part).)

Sec. 167.103. Dipping of Cattle by Peace Officer on Request of Inspector

(a) If a person responsible for dipping livestock fails to dip the livestock at the time and place directed in the order or, prior to a dipping date in the order, states that he or she does not intend to dip the livestock, 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 livestock are located, and shall gather and dip

the livestock under the supervision of an inspector and in accordance with the directions of the commission.

(c) The peace officer shall continue to dip the livestock on each dipping date specified in the order until the person responsible for dipping begins and continues the dipping in accordance with that order. (V.A.C.S. Art. 7014g—1, Sec. 15 (part).)

Sec. 167.104. Seizure and Disposal of Livestock Running at Large

(a) An inspector may request a peace officer to seize livestock if:

(1) the inspector determines the livestock 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 livestock.

(b) The peace officer may deputize assistants, shall seize the livestock, and shall dip the livestock under the supervision of an inspector. The officer shall impound the livestock at a place designated by the inspector or otherwise dispose of the livestock as necessary for the purpose of tick eradication. (V.A.C.S. Art. 7014g—1, Sec. 19 (part).)

Sec. 167.105. Seizure and Disposal of Livestock Moved in Violation of Quarantine

(a) An inspector who discovers livestock that are being or have been moved in violation of a quarantine may request a peace officer to seize the livestock and

(1) impound the livestock at the expense of the owner; or

(2) if practicable, return the livestock at the expense of the owner to the point of origin.

(b) In addition to other expenses, the owner of the seized livestock shall pay the officer a fee of $2 and the cost of feeding, watering, and holding the livestock. (V.A.C.S. Art. 7014g—1, Sec. 20 (part).)

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 livestock to dip that livestock in accordance with this chapter if the person has failed or refused to dip the livestock or has threatened to fail or refuse to dip the livestock. If the court finds that the defendant has been served with an order of the commission to dip the livestock, that the livestock are subject to dipping, and that the material allegations of the plaintiff's petition are true, the court shall enter an order commanding the defendant to dip the livestock 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 dip the livestock in accordance with the order of the court. The expense of dipping the livestock 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. (V.A.C.S. Art. 7014g—1, Secs. 18 (part), 23 (part), 29.)

Sec. 167.107. Sale of Livestock Dipped or Seized by Peace Officer

(a) A peace officer who gathers and dips or who seizes and impounds or disposes of livestock under Section 167.103, 167.104, or 167.105 of this code is entitled to retain and sell the livestock for the purpose of securing payment for the expenses of handling, including the expenses of holding, feeding, and watering the livestock.

(b) Not later than the 60th day after the day on which livestock are dipped 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 livestock 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 livestock.

(d) A peace officer who dips livestock under Section 167.103 of this code is entitled to act under this section to secure the expenses of each day on which the animals are dipped. (V.A.C.S. Art. 7014g—1, Secs. 15 (part), 16 (part).)

Sec. 167.108. Liens

(a) A peace officer who gathers and dips or who seizes and impounds or disposes of livestock under Section 167.103, 167.104, or 167.105 of this code has a lien on the livestock for the purpose of securing payment of the officer's fees and the expenses of handling the livestock, including the expenses of holding, feeding, and watering the livestock and the expenses of paying assistants. Instead of retaining and selling the livestock under Section 167.107 of this code, the officer may perfect and foreclose a lien granted by this section.

(b) A peace officer who dips livestock in accordance with an order of a court under Section 167.106(c) of this code, and the peace officer's assistants, have a lien on the livestock to secure payment of the expenses and costs of the dipping.

(c) A peace officer may perfect a lien under Subsection (a) of this section by filing a sworn statement of indebtedness with the county clerk of the county in which the livestock are located. The statement must describe the livestock and must be filed within six months after the dipping 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 dipping or other action giving rise to the lien.

(d) A peace officer may perfect a lien under Subsection (b) of this section by filing a sworn statement covering a single dipping or a number of dippings with the clerk of the district court. The statement must show the number of livestock dipped and must describe the livestock. The statement must be filed within 12 months after each dipping.

(e) A peace officer may foreclose a lien under Subsection (a) of this section by filing suit against the owner of the livestock 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 livestock. (V.A.C.S. Art. 7014g—1, Secs. 15 (part), 16 (part), 18 (part), 19 (part), 20 (part).)

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 chairman 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. (V.A.C.S. Art. 7014g—1, Sec. 33 (part).)

Sec. 167.110. Presumption of Existence or Sufficiency of Dip

(a) In the trial of any case under this chapter in connection with the dipping of livestock or the failure to dip livestock, it is presumed that:

(1) the dipping vat contained a sufficient amount of dipping solution and the dipping solution had been properly tested; or

(2) the dipping solution could have and would have been put into the vat and tested if the owner or caretaker had brought the livestock to the vat for the purpose of dipping.

(b) In a criminal prosecution for failure to dip livestock under this chapter, the state is not required to allege and prove that the vat contained dipping solution.

(c) If it is necessary in a court proceeding to prove the test of a dipping solution, it is only necessary to prove that:

(1) the dipping solution used was one of the official dipping materials prescribed by the commission; and

(2) the inspector tested the dipping solution in accordance with the rules of the commission. (V.A.C.S. Art. 7014g—1, Sec. 8(b).)

Sec. 167.111. Presumption of Ownership or Care

(a) If an inspector determines that a person is the owner, part owner, or caretaker of livestock subject to dipping and an order to dip is issued and served, it is presumed that, at the time of a failure to dip, the person was still the owner, part owner, or caretaker of livestock subject to dipping 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 livestock subject to dipping located on the premises at the time the order was served.

(b) After the service of an order to dip, if there are no longer any livestock subject to dipping located on the premises and if no livestock subject to dipping 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. (V.A.C.S. Art. 7014g—1, Sec. 14.)

Sec. 167.112. Venue of Criminal Prosecution

The owner, part owner, or caretaker of livestock is subject to prosecution under this chapter in the county in which the livestock 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 dip, at the time of the failure to dip, or at the time of violation of the quarantine. (V.A.C.S. Art. 7014g—1, Sec. 34 (part).)

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. (V.A.C.S. Art. 7014g—1, Sec. 28.)

[Sections 167.114–167.130 reserved for expansion]

SUBCHAPTER F. PENALTIES

Sec. 167.131. Refusal of Inspection

(a) A person commits an offense if, as the owner, part owner, or caretaker of livestock, the person fails to gather the livestock for inspection at the time and place ordered by the commission under Section 167.008 of this code.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $25 nor more than $200. (V.A.C.S. Art. 7014g—1, Sec. 37 (part).)

Sec. 167.132. Movement of Livestock 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, livestock 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 a head of livestock 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 misdemeanor punishable by a fine of not less than $100 nor more than $500 for each head of livestock moved, permitted to move, or permitted to enter the pen.

(d) Except as provided by this subsection, a person commits a separate offense under Subsection (a) of this section for each county into which livestock are moved within 30 days following the day on which the livestock 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. (V.A.C.S. Art. 7014g—1, Secs. 21 (part), 30.)

Sec. 167.133. Movement of Animals or Commodities Into Texas From Quarantined Area

(a) A person commits an offense if the person:

(1) moves livestock or, as owner, part owner, or caretaker, permits livestock to be moved into this state in violation of Section 167.026(a) of this code; or

(2) moves animals or commodities into this state in violation of Section 167.026(b) or (c) of this code.

(b) An offense under Subsection (a)(1) of this code is a misdemeanor punishable by a fine of not less than $100 nor more than $500 for each head of livestock moved or permitted to be moved.

(c) An offense under Subsection (a)(2) of this section is a misdemeanor punishable by a fine of not less than $50 nor more than $200. A person commits a separate offense under that subsection for the movement of each animal, each animal product, or each shipment of another commodity. (V.A.C.S. Art. 7014g—1, Sec. 21 (part); Art. 7014g—2, Sec. 4 (part).)

Sec. 167.134. Movement of Livestock 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, livestock 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 misdemeanor punishable by a fine of not less than $100 nor more than $500 for each head of livestock moved. (V.A.C.S. Art. 7014g—1, Sec. 21 (part).)

Sec. 167.135. Failure to Possess or Exhibit Permit or Certificate

(a) A person commits an offense if the person is in charge of livestock for which a certificate or permit is required or is in charge of the conveyance transporting that livestock and the person fails to possess or exhibit the certificate or permit in the manner provided by Section 167.027 of this code.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $100 nor more than $500 for each head of livestock in the movement or conveyance. (V.A.C.S. Art. 7014g—1, Sec. 21 (part).)

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 misdemeanor punishable by a fine of not less than $50 nor more than $200. (V.A.C.S. Art. 7014g—1, Sec. 20 (part).)

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 misdemeanor punishable by a fine of not less than $50 nor more than $100 for each car or other means of conveyance not cleaned and disinfected.

(c) A person commits a separate offense for each day of failure or refusal. (V.A.C.S. Art. 7014g—1, Sec. 22 (part).)

Sec. 167.138. Use of Sand as Bedding

(a) A person commits an offense if the person uses sand as bedding in a livestock conveyance in violation of a quarantine established or a commission rule adopted under Section 167.031 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. (V.A.C.S. Art. 7014g—1, Sec. 32 (part).)

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 misdemeanor punishable by a fine of not less than $50 nor more than $200. (V.A.C.S. Art. 7014g—1, Sec. 32 (part).)

Sec. 167.140. Improper Handling and Removal of Livestock Refuse or Dead or Injured Livestock

(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 misdemeanor punishable by a fine of not less than $50 nor more than $200. (V.A.C.S. Art. 7014g—1, Sec. 32 (part).)

Sec. 167.141. Failure to Dip Livestock

(a) A person who is the owner, part owner, or caretaker of livestock commits an offense if, after the 12th day following the day on which notice of an order to dip is received, the person fails or refuses to dip the livestock 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, in an official dipping material, or in the dipping vat designated in the order.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $25 nor more than $200. (V.A.C.S. Art. 7014g—1, Sec. 11 (part).)

Sec. 167.142. Destruction of Public Dipping 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 misdemeanor punishable by:

(1) a fine of not less than $200 nor more than $1,000;

(2) confinement in county jail for not less than 30 days nor more than one year; or

(3) both fine and confinement under this subsection. (V.A.C.S. Art. 7014g—1, Sec. 9.)

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 misdemeanor punishable by a fine of not less than $200 nor more than $500.

(c) A person commits a separate offense for each 30 days of failure or refusal within the 24 months following service of notice. (V.A.C.S. Art. 7014g—1, Sec. 23 (part).)

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 misdemeanor punishable by a fine of not less than $50 nor more than $200.

(c) A person commits a separate offense for each day of refusal. (V.A.C.S. Art. 7014g—1, Sec. 24 (part).)

CHAPTER 168. PULLORUM DISEASE AND FOWL TYPHOID CONTROL

Section

168.001. Definitions
168.002. Control and Eradication Program
168.003. Administration of Program; Search Warrant
168.004. Quarantine and Disposal
168.005. Public Exhibition
168.006. Assistance by Flock Owner
168.007. No Fee Charged
168.008. Penalty

CHAPTER 168. PULLORUM DISEASE AND FOWL TYPHOID CONTROL

Sec. 168.001. Definitions

In this chapter:

(1) "Commission" means the Texas Animal Health Commission.

(2) "Experiment station" means the Texas Agricultural Experiment Station.

(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. (V.A.C.S. Art. 7014h—1, Sec. 1.)

Sec. 168.002. Control and Eradication Program

The experiment station 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). (V.A.C.S. Art. 7014h—1, Sec. 2.)

Sec. 168.003. Administration of Program; Search Warrant

(a) In administering the program, the experiment station 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. (V.A.C.S. Art. 7014h—1, Sec. 3.)

Sec. 168.004. Quarantine and Disposal

(a) If the experiment station 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 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. (V.A.C.S. Art. 7014h—1, Sec. 4.)

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. (V.A.C.S. Art. 7014h—1, Sec. 5.)

Sec. 168.006. Assistance by Flock Owner

The owner of a flock shall assist the experiment station and the commission in handling the poultry and shall pen and present the flock on request. (V.A.C.S. Art. 7014h—1, Sec. 6.)

Sec. 168.007. No Fee Charged

Neither the experiment station nor the commission may charge a fee for testing or laboratory examination provided for under this chapter. (V.A.C.S. Art. 7014h—1, Sec. 7.).

Sec. 168.008. Penalty

(a) A person commits an offense if the person refuses to:

(1) comply with an order of the commission or experiment station 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 C 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. (V.A.C.S. Art. 7014h—1, Sec. 8.)

TITLE 7. SOIL AND WATER CONSERVATION

CHAPTER 201. SOIL AND WATER CONSERVATION

SUBCHAPTER A. GENERAL PROVISIONS

Section

201.001. Findings, Purpose, and Policy
201.002. Definitions
201.003. Eligible Voter
201.004. Notice; Election Informalities

[Sections 201.005–201.010 reserved for expansion]

SUBCHAPTER B. STATE SOIL AND WATER CONSERVATION BOARD

201.011. Composition
201.012. State Districts
201.013. State District Conventions
201.014. Election
201.015. Term
201.016. Vacancy
201.017. Oath; Compensation
201.018. Majority Vote Requirement

SUBCHAPTER B. STATE SOIL AND WATER CONSERVATION BOARD—Continued

Section
201.019. Officers and Employees
201.020. Records; Hearings; Rules
201.021. Office
201.022. General Powers and Duties
201.023. Funds Management
201.024. Contracts for Watershed Protection and Flood Control Plans
201.025. Sunset Provision

[Sections 201.026–201.040 reserved for expansion]

SUBCHAPTER C. CREATION, BOUNDARY CHANGES, AND DISSOLUTION OF SOIL AND WATER CONSERVATION DISTRICTS

201.041. Petition
201.042. Hearing
201.043. Election
201.044. State Board Determination of Administrative Practicability and Feasibility
201.045. Subsequent Petitions
201.046. Establishment of District Subdivisions; Appointment of Initial Directors
201.047. Application for Certificate of Organization
201.048. Issuance of Certificate
201.049. Effect of Certificate; Admissibility
201.050. Change in Conservation District or Subdivision Boundaries
201.051. Dissolution of Conservation District

[Sections 201.052–201.070 reserved for expansion]

SUBCHAPTER D. SOIL AND WATER CONSERVATION DISTRICT ADMINISTRATION

201.071. Composition of Board of Directors
201.072. Qualifications of Directors
201.073. Election of Directors
201.074. Election of Initial Directors
201.075. Term of Directors
201.076. Vacancy; Removal
201.077. Compensation and Mileage Allowance
201.078. Majority Vote Requirement
201.079. Officers and Employees; Surety Bonds
201.080. Records, Reports, Accounts, and Audits
201.081. Annual Meeting of Directors

[Sections 201.082–201.100 reserved for expansion]

SUBCHAPTER E. GENERAL POWERS AND DUTIES OF SOIL AND WATER CONSERVATION DISTRICTS

201.101. Corporate Powers
201.102. Preventive and Control Measures
201.103. Cooperation and Agreements With Other Entities
201.104. Acquisition, Administration, and Sale of Real or Personal Property

SUBCHAPTER E. GENERAL POWERS AND DUTIES OF SOIL AND WATER CONSERVATION DISTRICTS—Continued

Section
201.105. Acquisition Administration, and Sale of Materials and Equipment
201.106. Construction and Maintenance of Structures
201.107. Conservation Plans and Information
201.108. Assumption of Government Projects; Acceptance of Government Grants

[Sections 201.109–201.120 reserved for expansion]

SUBCHAPTER F. LAND-USE REGULATION

201.121. Regulatory Powers; Petition for Adoption
201.122. Hearing
201.123. Election
201.124. Effect of Ordinance
201.125. Distribution of Copies of Ordinance
201.126. Amendment or Repeal of Ordinance
201.127. Frequency of Elections
201.128. Enforcement
201.129. Board of Adjustment
201.130. Procedures of Board of Adjustment
201.131. Petition for Variance
201.132. Hearing on Variance Petition
201.133. Granting of Variance

[Sections 201.134–201.150 reserved for expansion]

SUBCHAPTER G. POWERS AND DUTIES OF OTHER GOVERNMENTAL SUBDIVISIONS

201.151. Use of County Machinery and Equipment
201.152. Contracts for Flood Control and Drainage

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 any 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; improverishment 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 soil 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 agencies created, powers conferred, and activities contemplated in this chapter for the conservation of soil and water resources and for the reduction of public damage resulting from failure to conserve those natural resources, are supplementary and complementary to the

work of various river and other authorities in this state and to other state officers, agencies, and districts engaged in closely related projects, and shall not duplicate or conflict with that work. (V.A.C.S. Art. 165a—4, Sec. 2.)

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) "Federal agency" includes the Soil Conservation Service of the United States Department of Agriculture and any other agency or instrumentality of the federal government.

(4) "Occupier" means a person who is in possession of land lying within a conservation district, either as lessee, tenant, or otherwise.

(5) "State agency" includes a subdivision, agency, or instrumentality of the state.

(6) "State board" means the State Soil and Water Conservation Board.

(7) "State district" means a district established under Section 201.012 of this code. (V.A.C.S. Art. 165a—4, Secs. 3(1), (2), (3), (4), (8), (9), (14).)

Sec. 201.003. Eligible Voter

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. (V.A.C.S. Art. 165a—4, Sec. 3(11).)

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; or

(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. (V.A.C.S. Art. 165a—4, Secs. 3(13), 5(D) (part).)

[Sections 201.005–201.010 reserved for expansion]

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 five members, with one member elected from each of the state districts in accordance with this subchapter. (V.A.C.S. Art. 165a—4, Sec. 4(A) (part).)

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. (V.A.C.S. Art. 165a—4, Sec. 4(A) (part).)

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) No later than the 10th day after the date that notice of the location of the convention is received, 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 10th day after the date of their selection.

(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 18 cents a mile 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. (V.A.C.S. Art. 165a—10, Secs. 9, 9A, 10 (part).)

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. (V.A. C.S. Art. 165a—4, Secs. 4(C)(a) (part), (b) (part); Art. 165a—10, Sec. 10 (part).)

Sec. 201.015. Term

(a) Members of the state board serve for staggered terms of five years, with the term of one member expiring each year.

(b) The term of office of a member of the state board begins on the day after the day on which the member was elected. (V.A.C.S. Art. 165a—4, Secs. 4(C)(a) (part), (b) (part), (c).)

Sec. 201.016. Vacancy

Vacancies on the state board are filled by election in the manner provided by this subchapter for an unexpired term or for a full term. (V.A. C.S. Art. 165a—4, Sec. 4(D) (part).)

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. (V.A.C.S. Art. 165a—4, Sec. 4(D) (part).)

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. (V.A.C.S. Art. 165a—4, Sec. 4(E) (part).)

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 administrative officer 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) The state board shall provide for the execution of surety bonds for each officer or employee who is entrusted with funds or property. The bonds must be executed by a solvent company authorized to transact business as a surety in this state.

(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. (V.A.C.S. Art. 165a—4, Secs. 4(D) (part), (E) (part), (F) (part).)

Sec. 201.020. Records; Hearings; Rules

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. (V.A.C.S. Art. 165a—4, Sec. 4(E) (part).)

Sec. 201.021. Office

The board may select the location of its office. (V.A.C.S. Art. 165a—4, Sec. 4(F) (part).)

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; and

(5) encourage the formation of a conservation district in each area in which the organization of a conservation district is desirable.

(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. (V.A.C.S. Art. 165a—4, Sec. 4(G); Acts 47th Legis., Reg. Sess., Ch. 308, Sec. 5(C) (part).)

Sec. 201.023. Funds Management

(a) 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 state board shall obtain a biennial audit from the state auditor and shall furnish a biennial report to the governor.

(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 state treasurer to honor payment of the warrant. (V.A.C.S. Art. 165a—4, Sec. 4(H).)

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. (V.A.C.S. Art. 165a—4a.)

Sec. 201.025. Sunset Provision

The state board is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the board is abolished and this chapter expires effective September 1, 1985. (V.A.C.S. Art. 165a—4, Sec. 4(I).)

[Sections 201.026–201.040 reserved for expansion]

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. (V.A.C.S. Art. 165a—4, Sec. 5(A).)

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. (V. A.C.S. Art. 165a—4, Secs. 5(B) (part), (D) (part), (F) (part).)

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. (V.A.C.S. Art. 165a—4, Secs. 5(C), (D) (part).)

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 conversation 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. (V.A.C.S. Art. 165a—4, Sec. 5(E).)

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. (V.A.C.S. Art. 165a—4, Secs. 5(B) (part), (G).)

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. (V.A.C.S. Art. 165a—4, Sec. 5(F) (part).)

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. (V.A.C.S. Art. 165a—4, Sec. 5(F) (part).)

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 seal of this state, of the due organization of the conservation district. The secretary shall record the certificate with the application and statement. (V.A.C.S. Art. 165a—4, Sec. 5(F) (part).)

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. (V.A.C.S. Art. 165a—4, Sec. 5(I).)

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. (V.A.C.S. Art. 165a—4, Secs. 5(F) (part), (H).)

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.

(b) Certification by the state board to the secretary of state is sufficient notice of the dissolution of a conservation district.

(c) Except as provided by Subsection (d) of this section, after dissolution of a conservation district has been authorized as provided in Subsection (a) of this section, the directors of the conservation district shall sell at public sale all machinery, equipment, and supplies of the conservation district purchased with state funds. The directors shall deposit the proceeds of that sale and any other state funds to the credit of the conservation district in the state treasury to the credit of the general revenue fund.

(d) 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 conserva-

tion 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. (V.A.C.S. Art. 165a—10, Secs. 7, 8.)

[Sections 201.052–201.070 reserved for expansion]

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. (V.A.C.S. Art. 165a—4, Secs. 5(F) (part), 6(d) (part).)

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. (V.A.C.S. Art. 165a—4, Sec. 6(d) (part).)

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 subdivision are entitled to elect one director. For that purpose, the eligible voters shall meet 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.

(b) The eligible voters meeting for the purpose of electing a director shall proceed by electing a chairman, a secretary, and tally clerks. Nominations are then in order, and when nominations have ceased, the secretary shall announce the nominees. Each eligible voter present shall cast a vote by written ballot. If after tabulation of votes by the tally clerks no nominee has received a majority of the votes cast, 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 is elected.

(c) The secretary shall record the proceedings of the meeting and shall, no later than the fifth day after the day of the election, certify to the state board the name and the proper address of the person elected. (V.A.C.S. Art. 165a—4, Secs. 6(a) (part), (c) (part), (f).)

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) In each of the subdivisions designated for an election, persons who are eligible voters and own land in that subdivision are entitled to elect one director. The eligible voters shall meet and elect the director 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) If there is no objection, the state board may designate places outside of a subdivision as the polling places for electing a director. If there is an objection, the board must receive the approval of a majority of the persons qualified to vote for director before it may make that designation.

(d) The Election Code does not apply to elections under this section. (V.A.C.S. Art. 165a—4, Secs. 6(a) (part), (b); new.)

Sec. 201.075. Terms of Directors

(a) Except as provided for the initial directors, directors serve for staggered terms of five years with the term of one member expiring each year. The term of a director elected from Subdivision No. 1 expires in a year that ends in a four or a nine. The term of a director elected from Subdivision No. 2 expires in a year that ends in a five or a zero. The term of a director elected from Subdivision No. 3 expires in a year that ends in a six or a one. The term of a director elected from Subdivision No. 4 expires in a year that ends in a seven or a two. The term of a director elected from Subdivision No. 5 expires in a year that ends in an eight or a three.

(b) The term of office of a director begins on the day after the director's election.

(c) The term of each elected or appointed initial director expires in the year provided for by Subsection (a) of this section according to the subdivision for which the director was appointed or elected. (V.A.C.S. Art. 165a—4, Secs. 6(c) (part), (e) (part).)

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) 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. (V.A.C.S. Art. 165a—4, Secs. 6(g), (j) (part).)

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 18 cents a mile 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 18 cents a mile for travel, while attending the annual statewide meeting of directors. (V.A.C.S. Art. 165a—4, Sec. 6(h) (part).)

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. (V.A.C.S. Art. 165a—4, Sec. 6(h) (part).)

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 the State Employee Bonding Act (Article 6003b, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 165a—4, Secs. 6(e) (part), (i) (part); Art. 165a—10, Sec. 3(a).)

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.

(c) The directors shall deposit soil conservation funds appropriated to the conservation district under Chapter 332, Acts of the 53rd Legislature, Regular Session, 1953, 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 as of August 31 of every second year. The audit must be performed by a registered public accountant. The directors shall furnish a copy of the audit to the governor and the Legislative Budget Board no later than January 1 of the year following the audit.

(e) The conservation district may pay the cost for keeping accounts and making audits out of any available funds of the conservation district. (V.A.C.S. Art. 165a—4, Sec. 6(i) (part); Art. 165a—10, Secs. 2, 3(b), (c), (d).)

Sec. 201.081. Annual Meeting of Directors

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. (V.A.C.S. Art. 165a—4, Sec. 6(h) (part).)

[Sections 201.082–201.100 reserved for expansion]

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. A note must mature no later than 12 months from the date of issuance and may bear interest at a rate not to exceed six percent a year.

(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.

(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. (V.A.C.S. Art. 165a—4, Secs. 5(F) (part), 7 (part).)

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. (V.A.C.S. Art. 165a—4, Sec. 7 (part).)

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 di-

rectors 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. (V.A.C.S. Art. 165a—4, Secs. 6(k), 7 (part), 11, 12.)

Sec. 201.104. Aquisition, 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. (V.A.C.S. Art. 165a—4, Sec. 7 (part).)

Sec. 201.105. Acquisition, Administration, and Sale of Materials and Equipment

(a) Subject to Subsections (b) and (c) of this section, a conservation district may purchase machinery, equipment, seed, fertilizer, or another supply essential for the purposes of a conservation district program and make it 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) A conservation district may not purchase any machinery, equipment, seed, fertilizer, or another supply unless:

(1) demand for the purchase is made to the directors in writing by at least 10 owners or occupiers of land in the conservation district; and

(2) the directors have entered in their minutes a finding that:

(A) a demand exists for use within the conservation district that is sufficient to justify the purchase; and

(B) the revenue derived from the purchased items can reasonably be expected to pay the cost of replacement.

(c) A conservation district shall make any purchase of machinery or equipment through the State Purchasing and General Services Commission 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 prior to receiving state

funds or earned or acquired from the operation or sale of machinery or equipment acquired prior to receiving state funds 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 or seed to reimburse the conservation district for its costs, including handling charges. (V.A.C.S. Art. 165a—10, Secs. 4, 5.)

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. (V.A.C.S. Art. 165a—4, Sec. 7 (part).)

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. (V.A.C.S. Art. 165a—4, Sec. 7 (part); Art. 165a—10, Sec. 6.)

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. (V.A.C.S. Art. 165a—4, Sec. 7 (part).)

[Sections 201.109–201.120 reserved for expansion]

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. (V.A.C.S. Art. 165a—4, Sec. 8 (part).)

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. (V.A.C.S. Art. 165a—4, Sec. 8 (part).)

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. (V.A.C.S. Art. 165a—4, Sec. 8 (part).)

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. (V.A.C.S. Art. 165a—4, Sec. 8 (part).)

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. (V.A.C.S. Art. 165a—4, Sec. 8 (part).)

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. (V.A.C.S. Art. 165a—4, Sec. 8 (part).)

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. (V.A.C.S. Art. 165a—4, Sec. 8 (part).)

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. (V.A.C.S. Art. 165a—4, Sec. 9.)

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. (V.A.C.S. Art. 165a—4, Sec. 10(A).)

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 a 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. (V.A.C.S. Art. 165a—4, Sec. 10(B).)

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. (V. A.C.S. Art. 165a—4, Sec. 10(C) (part).)

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. (V.A.C.S. Art. 165a—4, Sec. 10(C) (part).)

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 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. (V.A.C.S. Art. 165a—4, Sec. 10(C) (part).)

[Sections 201.134–201.150 reserved for expansion]

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 nor 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. (V.A.C.S. Arts. 165a—5; 165a—6; 165a—7; 2372c, Secs. 3, 4.)

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 may contribute funds to a conservation district for the conservation district to use in matching all or part of funds received by the conservation district from the state for use in soil conservation and flood control programs.

(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. (V.A.C.S. Art. 1109k.)

CHAPTER 202. WIND EROSION DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Section
202.001. Definitions
202.002. Purpose
202.003. Authorization
202.004. District Boundaries; Name

[Sections 202.005–202.010 reserved for expansion]

SUBCHAPTER B. CREATION OF DISTRICT

202.011. Petition and Election Orders
202.012. Election
202.013. Returns; Effect of Election

[Sections 202.014–202.020 reserved for expansion]

SUBCHAPTER C. ADMINISTRATION

202.021. Governing Body
202.022. General Powers
202.023. Cooperation

[Sections 202.024–202.030 reserved for expansion]

SUBCHAPTER D. FINANCES

202.031. Power to Borrow Money
202.032. Acceptance of Federal Funds
202.033. Acceptance of Donations
202.034. Automobile Registration Fees
202.035. District May Not Tax
202.036. Expenditures; Audits

[Sections 202.037–202.040 reserved for expansion]

SUBCHAPTER E. ASSESSMENT

202.041. Assessment
202.042. Prehearing Requirements
202.043. Notice of Assessment Hearing
202.044. Assessment Hearing
202.045. Payment of Assessment
202.046. Assessment Lien
202.047. Foreclosure on Lien

CHAPTER 202. WIND EROSION DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 202.001. Definitions

In this chapter:

(1) "District" means a wind erosion conservation district.

(2) "Governing body" means the governing body of a wind erosion conservation district. (New.)

Sec. 202.002. Purpose

The purpose of a district created under this chapter is to conserve the soil by:

(1) prevention of unnecessary erosion caused by wind; and

(2) reclamation of land that has been depreciated or denuded of soil by wind. (V.A.C.S. Art. 165a—2, Sec. 5 (part).)

Sec. 202.003. Authorization

(a) The creation and incorporation of a wind erosion conservation district is authorized under Article XVI, Section 59, of the Texas Constitution.

(b) A district created and incorporated under this chapter is a state agency and may exercise rights, privileges, and functions granted under this chapter and Article XVI, Section 59, of the Texas Constitution. (V. A.C.S. Art. 165a—2, Secs. 1 (part), 3 (part).)

Sec. 202.004. District Boundaries; Name

A district must be coextensive with the boundaries of a county and must bear the name of that county. (V.A.C.S. Art. 165a—2, Sec. 1 (part).)

[Sections 202.005–202.010 reserved for expansion]

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 202.011. Petition and Election Orders

(a) The qualified property tax paying voters of any county may petition the commissioners court of the county to conduct an election on the creation of a district. The petition must be signed by at least 50 qualified property tax paying voters.

(b) After receiving a petition under this section, the commissioners court shall order that an election be held throughout the county to determine whether or not a district should be created. (V.A.C.S. Art. 165a—2, Sec. 2 (part).)

Sec. 202.012. Election

(a) The procedure for holding and declaring the result of an election must be in substantial compliance with requirements for elections to vote bonds for public improvements.

(b) In order to vote at an election, a person must be a qualified property tax paying voter.

(c) The ballot for the election must be printed to provide for voting for or against the proposition: "Creating and incorporating the _____ County Wind Erosion Conservation District," with the blank space printed with the name of the county in which the election is held. (V.A.C.S. Art. 165a—2, Sec. 2 (part).)

Sec. 202.013. Returns; Effect of Election

(a) The commissioners court shall:

(1) canvass the returns of the election; and

(2) declare the result by entering it in the minutes of the commissioners court.

(b) If a majority of votes are cast for the proposition, the county judge shall issue an order declaring the district to be created and incorporated. The order must be entered in the minutes of the commissioners court and a certified copy of the order must be entered into the deed records of the county.

(c) Upon completion of the requirements under this section by the commissioners court and county judge, the district is created and incorporated. (V.A.C.S. Art. 165a—2, Secs. 1 (part), 3 (part).)

[Sections 202 014–202.020 reserved for expansion]

SUBCHAPTER C. ADMINISTRATION

Sec. 202.021. Governing Body

(a) The governing body of a wind erosion conservation district is the commissioners court.

(b) The county judge shall serve as chairman of the board and may vote in case of a tie.

(c) The county treasurer shall serve as treasurer of the district and shall manage funds, obligations, and securities of the district in compliance with the orders of the governing body.

(d) The county treasurer shall execute and deliver to the county judge a bond that is:

(1) in the penal sum of not less than $5,000 nor more than $10,000;

(2) conditioned on the faithful discharge of the treasurer's duty to dispose of the funds and obligations of the district as required by this chapter; and

(3) signed by a solvent surety company authorized to do business in this state.

(e) The district shall pay the premium on the bond required of the county treasurer by Subsection (d) of this section.

(f) The county clerk shall serve as clerk of the district and shall:

(1) keep an accurate record of orders, minutes, and resolutions of the governing body;

(2) countersign vouchers and documents of the governing body; and

(3) perform other duties directed by the governing body.

(g) Duties imposed on the governing body, the county clerk, and the county treasurer are ex officio duties.

(h) By vote, the governing body may authorize the district to pay compensation of not more than $25 a month to the county treasurer and county clerk. (V.A.C.S. Art. 165a—2, Sec. 4.)

Sec. 202.022. General Powers

A district may:

(1) prevent or aid in the prevention of damage to land, highways, and public roads due to the unnecessary movement of sand, dust, and soil from land inside or outside the district;

(2) make improvements and maintain facilities to stop or prevent wind erosion of soil or land in the district;

(3) enter land in the district to prevent soil erosion and damage to other land in the district;

(4) sue or be sued in its corporate capacity;

(5) adopt a corporate seal; and

(6) adopt bylaws and rules necessary to carry out its corporate functions. (V.A.C.S. Art. 165a—2, Sec. 5 (part).)

Sec. 202.023. Cooperation

(a) The governing body of a district shall consult with:

(1) the director of the Texas Agricultural Experiment Station;

(2) the county agent;

(3) the department; and

(4) the soil erosion service of the United States Department of Agriculture.

(b) The district may conform to and cooperate in a regional conservation plan in order to further the purposes of this chapter. (V.A.C.S. Art. 165a—2, Sec. 6.)

[Sections 202.024–202.030 reserved for expansion]

SUBCHAPTER D. FINANCES

Sec. 202.031. Power to Borrow Money

(a) Subject to the requirements of Subsection (b) of this section, a district may:

(1) borrow money for the corporate purposes of the district;

(2) pledge certificates, obligations, or securities held by the district as security for a loan; and

(3) pledge and assign revenue or income to secure repayment of a loan.

(b) An obligation, bond, warrant, debenture, or other evidence of indebtedness must:

(1) bear interest not to exceed five percent a year;

(2) mature within 10 years;

(3) be payable out of and secured by the revenue and income of the district; and

(4) not be paid out of money received from ad valorem taxes. (V.A.C.S. Art. 165a—2, Sec. 5 (part).)

Sec. 202.032. Acceptance of Federal Funds

A district may:

(1) accept grants and borrow money from the federal government or a corporation or agency created or designated by the federal government to loan or grant money; and

(2) enter into agreements necessary to receive grants or loans accepted or borrowed under this section. (V.A.C.S. Art. 165a—2, Sec. 5 (part).)

Sec. 202.033. Acceptance of Donations

The governing body of a district may accept gifts, grants, donations, advances, and services from the United States or any government agency in order to further the purposes of this chapter. (V.A.C.S. Art. 165a—2, Sec. 7 (part).)

Sec. 202.034. Automobile Registration Fees

(a) The commissioners court of a county in which a district is located may transfer to the district an amount not to exceed 20 percent of automobile registration fees accruing to the county.

(b) The governing body of the district may spend funds received under this section on soil erosion work.

(c) On approval of the voters of the county, the commissioners court may transfer all or part of the county road and bridge fund to the district. (V.A.C.S. Art. 165a—2, Sec. 11.)

Sec. 202.035. District May Not Tax

A district created under this chapter may not impose an ad valorem tax or create an obligation payable by funds raised by taxation. (V.A.C.S. Art. 165a—2, Sec. 12.)

Sec. 202.036. Expenditures; Audits

(a) The governing body shall:

(1) administer and disburse money and property received under this chapter in accordance with the law and in its discretion; and

(2) expend money received under this chapter in accordance with laws applicable to commissioners courts.

(b) Accounts shall be audited annually and a copy of the audit shall be filed with the county clerk for public inspection. (V.A.C.S. Art. 165a—2, Sec. 7 (part).)

[Sections 202.037–202.040 reserved for expansion]

SUBCHAPTER E. ASSESSMENT

Sec. 202.041. Assessment

The governing body may make an assessment on land in order to help pay for soil conservation work performed on that land to achieve the purposes of this chapter. (New.)

Sec. 202.042. Prehearing Requirements

Before holding an assessment hearing required by Section 202.044 of this code, the governing body shall:

(1) estimate the cost of the work;

(2) tentatively allocate a portion of that cost to each landowner who is to benefit from the work;

(3) enter an order on its minutes setting a date for a hearing on whether the assessment shall be made; and

(4) comply with the notice requirements under Section 202.043 of this code. (V.A.C.S. Art. 165a—2, Sec. 8 (part).)

Sec. 202.043. Notice of Assessment Hearing

(a) The governing board shall give notice of an assessment hearing to each owner of property against which a lien or assessment is proposed.

(b) Notice need not state the name of an owner, interested party, or lienholder, but must contain:

(1) a brief description, by survey and block number or other reasonable means, of the land on which an assessment is to be imposed;

(2) a statement that a party desiring to contest the proposed assessment must appear at a hearing in the county courthouse of the county in which the land is located; and

(3) a statement of the amount of the proposed assessment.

(c) Notice may be given in person to a landowner or by publication for two weeks in a newspaper of general circulation published in the county, the first publication to be not less than 10 days before the day of the hearing. (V.A.C.S. Art. 165a—2, Sec. 8 (part).)

Sec. 202.044. Assessment Hearing

(a) The governing body may not make an assessment for soil conservation work until the body holds a hearing to determine the necessity of the assessment.

(b) At the hearing the governing body shall determine:

(1) the amount of all assessments proposed for a particular project; and

(2) whether a particular piece of land proposed for an assessment will receive a benefit from the work equal to or in excess of the amount of the assessment.

(c) The governing body may not impose an assessment that is in excess of the actual benefit to the owner in protection of the property. If the governing body determines that a piece of land will receive a benefit from the work equal to or in excess of the amount of the assessment, it shall impose the assessment. (V.A.C.S. Art. 165a—2, Sec. 8 (part).)

Sec. 202.045. Payment of Assessment

(a) A property owner on whom an assessment is imposed may pay the assessment in three equal annual installments, which shall bear interest at the rate of five percent a year.

(b) The governing board shall evidence the assessment by recording a certificate in the deed records of the county. The county judge shall sign the certificate and the county clerk shall attest to the certificate by corporate seal.

(c) When executed and levied, the certificate is a valid first lien on the property on which the assessment is made and when recorded is notice of the lien to a subsequent purchaser of the property. (V.A.C.S. Art. 165a—2, Sec. 8 (part).)

Sec. 202.046. Assessment Lien

The governing body may not make an assessment on property used, claimed, or occupied as a homestead, but may take a lien securing the assessment in the same manner as provided by law for taking a lien to secure the cost of improvements on a homestead. (V.A.C.S. Art. 165a—2, Sec. 9.)

Sec. 202.047. Foreclosure on Lien

If a property owner fails to pay an assessment at its maturity, the governing body may sue in a court of competent jurisdiction for foreclosure of the lien securing the assessment. Upon foreclosure, the property shall be sold in the same manner as property sold under foreclosure of other liens on real estate. (V.A.C.S. Art. 165a—2, Sec. 10.)

Sec. 2. Section 1, Chapter 146, Acts of the 40th Legislature, Regular Session, 1927 (Article 7014a, Vernon's Texas Civil Statutes), is amended [84] to read as follows:

Sec. 1.

No law of this State shall prevent any person from vaccinating, inoculating, or treating his own dogs or for any person employed as County Demonstration Agent from vaccinating, inoculating or treating any dogs with any serum or virus that will prevent rabies, and any law in conflict with this Act is hereby repealed.

Sec. 3. Section 11.16, Property Tax Code, is amended [85] to read as follows:

Sec. 11.16. Farm Products

A producer is entitled to an exemption from taxation of the farm products that he produces and owns. A nursery product, as defined by Section 71.041, Agriculture Code, is a farm product for purposes of this section if it is in a growing state.

Sec. 4. The following laws, as amended, are repealed:

(1) The following articles and acts as compiled in Vernon's Texas Civil Statutes: 47, 47a, 48, 49, 50, 51, 52, 53, 54, 55, 55a, 55c, 55c—1, 55d, 55e, 55f, 55g, 67b, 68, 69, 70, 71, 72, 73, 74, 74a, 76, 76a, 77, 78, 79,

84. Vernon's Ann.Civ.St. art. 7014a.
85. V.T.C.A. Tax Code, § 11.16.

80, 81, 82, 82a, 93b, 93c, 93d—1, 93d—2, 93d—3, 93d—4, 93d—5, 93d—6, 93d—7, 93d—8, 108a, 109, 110, 110a, 111, 112, 113, 114, 115, 116, 117, 118, 118a, 118b, 118b—1, 118b—2, 118b—3, 118c, 118c—1, 118c—3, 118c, 119, 119a, 121, 122, 123, 123a, 124, 125, 126, 126a, 126b, 127, 127a, 127b, 127c, 127d, 128, 128a, 129, 129a, 130, 131, 131a, 132, 133, 135, 135.1, 135a—1, 135a—2, 135a—3, 135a—4, 135b—4, 135b—5a, 135b—7, 135c, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 163a, 164, 165, 165a—2, 165a—3, 165a—4, 165a—4a, 165a—5, 165a—6, 165a—7, 165a—10, 165—4a, 165—4b, 165—4c, 165—6, 165—7, 165—7a, 165—8, 549, 549a, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 564a, 565, 565a, 565b, 1109k, 1281, 1281a, 1282, 1282a, 1283, 1284, 1285, 1285a, 1286, 1286b, 1287, 1287a, 1287—1, 1287—2, 1287—3, 1514, 1515, 1516, 1517, 1518, 1519, 2372c, 2485, 2485a, 2486, 2486a, 2487, 2488, 2489, 2489a, 2490, 2490a, 2491, 2492, 2493, 2494, 2495, 2495a, 2496, 2496a, 2497, 2497a, 2498, 2498a, 2499, 2499a, 2499b, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2507a, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519. 2520, 2521, 2522, 2523, 2524, 3881e, 3947, 3948, 3949, 3950, 3951, 3952, 3953, 3954, 4386c, 4386c—1, 4447, 5562, 5563, 5564, 5566, 5567, 5568, 5569, 5570, 5570a, 5571, 5572, 5573, 5574, 5577, 5577a, 5577b, 5578, 5579, 5580, 5581, 5582, 5583, 5584, 5585, 5586, 5587, 5588, 5589, 5590, 5591, 5592, 5593, 5594, 5595, 5596, 5597, 5598, 5599, 5600, 5601, 5602, 5603, 5608, 5610, 5611, 5666, 5675, 5676, 5677, 5678, 5679, 5679a, 5679a—1, 5679b, 5679c, 5679d, 5679e, 5679f, 5679g, 5679h, 5680, 5680a, 5681, 5683, 5683a, 5683b, 5684, 5685, 5686, 5637, 5688, 5689, 5690, 5691, 5692, 5693, 5693a, 5694, 5695, 5696, 5696a, 5697, 5698, 5698a, 5699, 5700, 5701, 5702, 5703, 5704, 5704—A, 5705, 5706, 5707, 5707a, 5708, 5708a, 5709, 5710, 5711, 5712, 5713, 5714, 5714a, 5715, 5716, 5717, 5718, 5719, 5720, 5721, 5722, 5722a, 5723, 5724, 5725, 5726, 5726a, 5726b, 5726c, 5726d, 5727, 5727a, 5728, 5729, 5730, 5731, 5732, 5733, 5733a, 5734, 5736, 5736a, 5736b, 5736c, 5736d, 5736e, 5736f, 5736g, 5736—1, 5737, 5738, 5739, 5740, 5741, 5742, 5742—A, 5743, 5744, 5745, 5746, 5747, 5748, 5749, 5750, 5751, 5752, 5753, 5754, 5755, 5756, 5757, 5758, 5759, 5760, 5761, 5762, 5763, 5764, 5764a, 6890, 6890a, 6890b, 6890c, 6891, 6892, 6893, 6894, 6895, 6896, 6897, 6898, 6898a, 6899, 6899a, 6899b, 6899c, 6899d, 6899d—1, 6899d—2, 6899e, 6899f, 6899g, 6899h, 6899i, 6899j, 6899—1, 6903, 6904, 6904a, 6905, 6905a, 6906, 6907, 6907a, 6908, 6908a, 6908b, 6908c, 6908d, 6908e, 6908f—1, 6908f—2, 6908g, 6909, 6909a, 6910, 6910a, 6910b, 6927a, 6928, 6929, 6930, 6931, 6932, 6933, 6934, 6935, 6936, 6937, 6938, 6939, 6940, 6941, 6942, 6942a, 6943, 6944, 6945, 6946, 6946a, 6946b, 6947, 6948, 6949, 6950, 6951, 6952, 6953, 6954, 6954a, 6955, 6956, 6957, 6958, 6959, 6960, 6961, 6962, 6963, 6964, 6965, 6966, 6967, 6968, 6969, 6970, 6971, 6971a, 6972, 6973, 6974, 6975, 6976, 6977, 6978, 6978a, 6978b, 6978c, 6978d, 6979, 6980, 6981, 6982, 6983, 6983a, 6983b, 6984, 6984a, 6984b, 6985, 6985a, 6986, 6986a, 6987, 6987a, 6988, 6989, 6990, 6990a, 6990b, 6990c, 6991, 6992, 6993, 6994, 6995, 6996, 6997, 6997a, 6998, 6998a, 6999, 7000, 7001, 7002, 7003, 7004, 7005, 7005—1, 7005—2, 7006, 7007, 7008, 7008a, 7009, 7009a, 7009b, 7009c, 7014a, 7014b, 7014c, 7014d, 7014e—1, 7014e—2, 7014e—3, 7014e—4, 7014e—5, 7014f—1, 7014f—1a, 7014f—2, 7014f—3, 7014f—4, 7014f—5, 7014f—6, 7014f—7, 7014f—8, 7014f—9, 7014f—10, 7014f—11, 7014f—12, 7014f—13, 7014f—14, 7014g—1, 7014g—2, 7014h—1;

(2) The following laws:

(A) Chapter 13, Acts of the 39th Legislature, Regular Session, 1925; [86]

(B) Chapter 121, Special Laws, Acts of the 42nd Legislature, Regular Session, 1931; [87]

(C) Section 3, Chapter 16, Acts of the 45th Legislature, 1st Called Session, 1937; [88]

(D) Section 13, Chapter 5, p. 41, General Laws, Acts of the 46th Legislature, Regular Session, 1939; [89]

(E) Section 5, Chapter 308, Acts of the 47th Legislature, Regular Session, 1941; [90]

(F) Chapter 64, Acts of the 48th Legislature, Regular Session, 1943; [91]

(G) Chapter 243, Acts of the 48th Legislature, Regular Session, 1943; [92]

(H) Chapter 192, Acts of the 56th Legislature, Regular Session, 1959; [93]

(I) Section 3A, Acts of the 56th Legislature, Regular Session, 1959; [94]

(J) Sections 1 and 2, Chapter 176, Acts of the 59th Legislature, Regular Session, 1965; [90] and

(K) Sections 20 and 21, Chapter 386, Acts of the 65th Legislature, Regular Session, 1977; [95] and

(3) Article 1037a, Penal Code of Texas, 1925.

Sec. 5.[96] This Act is intended as a recodification only, and no substantive change in the law is intended by this Act.

Sec. 6. This Act takes effect September 1, 1981.

Sec. 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 1, 1981, by a non-record vote; passed by the Senate on May 22, 1981: Yeas 30, Nays 0.

Approved June 10, 1981.

Effective Sept. 1, 1981.

86. Vernon's Ann.Civ.St. foll. art. 5611, repealed.
87. Vernon's Ann.Civ.St. art. 6701d—19, repealed.
88. Vernon's Ann.Civ.St. art. 1287—2, repealed.
89. Vernon's Ann.Civ.St. art. 118b note, repealed.
90. Vernon's Ann.Civ.St. art. 165a—4 note, repealed.
91. Vernon's Ann.Civ.St. art. 51—1 note, repealed.
92. Vernon's Ann.Civ.St. art. 7005 note, repealed.
93. Vernon's Ann.Civ.St. art. 7009a, repealed.
94. So in enrolled bill.
95. Vernon's Ann.Civ.St. arts. 118b note, 1287—3 note, repealed.
96. V.T.C.A. Agriculture Code, prec. § 1.001 note.