

BILL ANALYSIS

Senate Research Center
76R6527 DB-F

S.B. 992
By: Lucio
Natural Resources
4/7/1999
As Filed

DIGEST

Currently, under Texas law, the Produce Recovery Fund exists to provide a type of insurance program for growers in cases in which the growers are not paid by licensed produce dealers. This bill would revise the regulations regarding the handling and marketing of perishable commodities and to the payment of claims from the Produce Recovery Fund.

PURPOSE

As proposed, S.B. 992 revises regulations regarding the handling and marketing of perishable commodities and to the payment of claims from the Produce Recovery Fund.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Department of Agriculture in SECTION 7 (Section 101.006(b), Agriculture Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 101, Agriculture Code, to amend the chapter heading, as follows:

CHAPTER 101. New heading: HANDLING AND MARKETING OF PERISHABLE
COMMODITIES

SECTION 2. Amends Section 101.001, Agriculture Code, to define “perishable commodity,” and redefine “handle,” “packer,” “producer,” and “warehouseman.” Deletes the definition of “vegetable.”

SECTION 3. Amends Section 101.002, Agriculture Code, as follows:

Sec. 101.002. New heading: PERISHABLE COMMODITIES. Provides that this chapter applies to perishable commodities, rather than vegetables. Deletes text limiting this chapter to products grown in this state. Provides that the effects of freezing do not change a perishable commodity into an article of food of a different kind or character. Makes conforming changes.

SECTION 4. Amends Section 101.003, Agriculture Code, to provide that this section does not apply to a retailer, unless the retailer has annual sales of perishable commodities, that comprise 50 percent, rather than 75 percent, or more of the retailer’s total sales, is a person shipping less than six standard boxes of citrus fruit in any one separate shipment, or is a person who ships a noncommercial shipment of perishable commodities. Deletes text providing that a person holding a license under this section also holds a license under Section 102.003. Makes conforming changes.

SECTION 5. Amends Section 101.004, Agriculture Code, as follows:

Sec. 101.004. New heading: LICENSE OR REGISTRATION CATEGORIES. Deletes text requiring a person who is required to be licensed to apply for the appropriate category. Makes conforming changes.

SECTION 6. Amends Section 101.005, Agriculture Code, to require the applicant to provide and certify certain information, including the name and address of a registered agent, rather than the application be under oath. Requires the applicant to answer whether the applicant has been previously licensed by the U.S. Department of Agriculture. Provides that an applicant’s failure to truthfully and accurately provide

the required information is a violation for purposes of administrative penalty action and may result in the denial of an application. Makes conforming and nonsubstantive changes.

SECTION 7. Amends Section 101.006, Agriculture Code, to require the Department of Agriculture (department) to charge a registration fee for a cash dealer, as provided by department rule. Deletes text requiring the fee to be \$25; text regarding a person applying for a license as a commission merchant or retailer; and text regarding a person who applies for a license under Subsection (b).

SECTION 8. Amends Sections 101.007(a) and (c), Agriculture Code, to delete text requiring the department to immediately issue a license to certain persons. Makes conforming and nonsubstantive changes.

SECTION 9. Amends Section 101.010(a), Agriculture Code, to make a conforming change.

SECTION 10. Amends Section 101.011, Agriculture Code, to delete text providing that any attempt to assign a license or identification card voids the license or card.

SECTION 11. Amends Sections 101.013(a) and (c), Agriculture Code, to make conforming and nonsubstantive changes.

SECTION 12. Amends Section 101.014, Agriculture Code, to make conforming changes.

SECTION 13. Amends Section 101.015, Agriculture Code, to delete text concerning vegetables obtained and handled on a consignment basis. Makes conforming changes.

SECTION 14. Amends Chapter 101, Agriculture Code, by adding Section 101.0151, as follows:

Sec. 101.0151. BUYING OR SELLING BY WEIGHT. Requires a licensee who buys or sells perishable commodities by weight to weigh or have the perishable commodities weighed on scales that meet state requirements.

SECTION 15. Amends Section 101.016, Agriculture Code, to require the licensee, packer, processor, or warehouseman to keep certain records for a minimum of three years from the date of the transaction. Requires the licensee, packer, handler, or warehouseman to perform certain actions. Authorizes the department to periodically investigate licensees or persons alleged to be selling perishable commodities in violation of this chapter, and authorizes the department to require evidence of purchase of any perishable commodities in a person's possession, without notice. Makes conforming and nonsubstantive changes.

SECTION 16. Amends Section 101.017, Agriculture Code, to require a licensee to maintain for each sale a record containing certain information, except a retailer. Requires the licensee to furnish the information by a certain date on the demand of the department or of an owner, seller, or agent of the owner or seller. Requires a licensee to maintain the required information for at least three years after the date of the sale. Deletes text requiring on demand a licensee who handles vegetables on a consignment or commission basis to furnish a record containing certain information. Makes conforming and nonsubstantive changes.

SECTION 17. Amends Section 101.018, Agriculture Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Makes a conforming change.

(d) Provides that failure to provide access to records for purpose of examination, as required by Subsections (b) and (c), is a violation for purposes of assessment of administrative penalties.

SECTION 18. Amends Section 101.019, Agriculture Code, to make a conforming change.

SECTION 19. Amends Section 101.020(a), Agriculture Code, to provide that a person commits an offense if the person acts or assumes to act as a transporting agent or buying agent after receiving notice of cancellation of an identification card; buys or sells, as license holder, perishable commodities by weight and does not have the perishable commodities on scales that meet state requirements; fails to prepare and maintain required records; or fails to provide records as required. Makes conforming and nonsubstantive changes.

SECTION 20. Amends Sections 103.002(a), (b), and (c), Agriculture Code, to provide that the produce recovery fund (fund) is a special trust fund for the payment of claims against license holders, rather than commission merchants. Makes conforming and nonsubstantive changes.

SECTION 21. Amends Section 103.003(a), Agriculture Code, to provide that the Produce Recovery Fund Board is composed of two license holders, rather than two commission merchants or retailers. Makes conforming changes.

SECTION 22. Amends Section 103.005(a), Agriculture Code, to make a conforming change.

SECTION 23. Amends Sections 103.008(a) - (e), Agriculture Code, to authorize the department to make payments from the fund to pay the aggrieved party all of the first \$2,000, rather than \$1,000, of any claim and no more than 70 percent, rather than 60 percent, of the claim above \$2,000. Prohibits the total payment of all claims arising from the same contract with a license holder from exceeding \$35,000, rather than \$20,000. Prohibits the total payment of claims against a single license holder from exceeding \$85,000, rather than \$50,000. Prohibits payments from the fund during a fiscal year from exceeding two times the average amount of money deposited into the fund during the three previous fiscal years. Provides that in no case shall payment of claims cause the balance of the fund to fall below \$100,000. Makes conforming changes.

SECTION 24. Amends Section 103.009(c), Agriculture Code, to make a conforming change.

SECTION 25. Amends Section 103.011, Agriculture Code, to delete text requiring the annual fee as provided by department rule to be \$200. Deletes text regarding license holders whose annual purchases of vegetables and citrus fruit are less than \$15,000; and persons required by Subsection (a) to pay a fee and who are licensed in a classification under both Chapters 101 and 102. Makes conforming and nonsubstantive changes.

SECTION 26. Amends Section 103.013(a), Agriculture Code, to make a conforming change.

SECTION 27. Repealer: Chapter 102A, Agriculture Code (Regulation of Citrus Fruit Dealers).

SECTION 28. Makes application of this Act prospective.

SECTION 29. Emergency clause.

Effective date: 90 days after adjournment.