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## Requirements for Grain Dealers:

*Texas*



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A National Agricultural Law Center Research Publication

## Requirements for Grain Dealers: Texas

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### [Texas Agric. Code Ann. Ch. 41](#)

*Current through the end of the 2019 Regular Session of the 86th Legislature.*

#### **§ 41.001. Policy**

It is in the interest of the public welfare of the State of Texas that the producers of any agricultural commodity be permitted and encouraged to develop, carry out, and participate in programs of research, disease and insect control, predator control, education, indemnification, and promotion designed to encourage the production, marketing, and use of the agricultural commodity. The purpose of this chapter is to authorize and prescribe the necessary procedures by which the producers of an agricultural commodity grown in this state may finance those programs. The programs may be devised to alleviate any circumstance or condition that serves to impede the production, marketing, or use of any agricultural commodity.

#### **§ 41.002. Definitions**

In this chapter:

(1) "Agricultural commodity" means an agricultural, horticultural, viticultural, or vegetable product, bees and honey, planting seed, rice, livestock or livestock product, or poultry or poultry product, produced in this state, either in its natural state or as processed by the producer. The term does not include flax.

(2) "Board" means a commodity producers board.

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

(4) "District" means a geographical area within the jurisdiction of a board.

(5) "Processor" means a person within this state who:

(A) is a purchaser, warehouseman, processor, or other commercial handler of an agricultural commodity;

(B) processes planting seeds; or

(C) is the mortgagee of an agricultural commodity if the mortgage did not cover the commodity in its state as a growing crop and if the mortgage was executed at a time when the commodity was ready for marketing.

(6) "Producer" means a person engaged in the business of producing or causing to be produced for commercial purposes an agricultural commodity. The term includes the owner of a farm on which the commodity is produced and the owner's tenant or sharecropper.

(7) "Person" means an individual, firm, corporation, association, or any other business unit.

(8) "Secretary-treasurer" means the secretary-treasurer of a board.

#### **§ 41.011. Petition for Certification**

(a) Any nonprofit organization authorized under the laws of this state representing the producers of an agricultural commodity may petition the commissioner for certification as the organization authorized to conduct an assessment referendum and an election of a commodity producers board.

(b) If the referendum and election are to be conducted in a limited area of the state, the petition must describe the boundaries of the area to be included.

(c) The petition must propose a board with an odd number of five to 15 members.

**§ 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.

**§ 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.

**§ 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.

**§ 41.023. Notice of Referendum and Election**

(a) The certified organization shall give public notice of:

(1) the date, hours, and polling places for voting in the referendum and election;

(2) the estimated amount and basis of the assessment proposed to be collected;

(3) whether a producer exemption is to be allowed in accordance with Section 41.082; and

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

(b) The commissioner by rule shall prescribe the manner for providing public notice under Subsection (a).

**§ 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.

**§ 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.

**§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 41.052. State Agency**

(a) Each board is a state agency for purposes of indemnification and is exempt from taxation in the same manner and to the same extent as are other agencies of the state.

(b) Each board is a governmental unit for purposes of Section 101.001, Civil Practice and Remedies Code, and is a governmental body for purposes of Chapters 551 and 552, Government Code.

**§ 41.053. Organizational Meeting; Terms of Office**

(a) On receiving certificates of election from the commissioner, the members of the commodity producers board shall meet and organize.

(b) Members of the initial board shall draw lots so that one-third, or as near one-third as possible, of the members shall hold office for two years, one-third, or as near one-third as possible, for four years, and one-third, or as near one-third as possible, for six years. Thereafter, members of the board serve for terms of six years.

(c) Each member holds office until a successor is elected and has qualified.

**§ 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.

**§ 41.055. Vacancy**

The board shall fill any vacancy on the board by appointment for the unexpired term.

**§ 41.056. Majority Vote Requirement**

A majority vote of all members present is necessary for an action of the board to be valid.

**§ 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.

**§ 41.058. Powers and Duties**

(a) The board may employ necessary personnel, fix the amount and manner of their compensation, and incur other expenses that are necessary and proper to enable the board to effectively carry out the purposes of this chapter.

(b) The board may adopt rules consistent with the purposes of this chapter.

(c) The board shall keep minutes of its meetings and other books and records that clearly reflect all acts and transactions of the board. The board shall open its records to examination by any participating producer during regular business hours.

(d) The board shall set the rate of the assessment. The rate may not exceed the maximum established in the election authorizing the assessment or a subsequent election establishing a maximum rate.

(e) The board may act separately or in cooperation with any person in developing, carrying out, and participating in programs of research, disease and insect control, predator control, education, indemnification, and promotion designed to encourage the production, marketing, and use of the commodity on which the assessment is levied.

**§ 41.059. Budget; Annual Report; Audits**

(a) The board shall file with the commissioner a proposed budget and may expend funds only after the commissioner has approved the budget. If after thorough review the commissioner disapproves the proposed budget, the commissioner shall return the proposed budget to the submitting board not later than the 45th day after the date on which the proposed budget is submitted with a statement of reasons for disapproval.

(b) Accounts of the board are subject to audit by the state auditor.

(c) Within 30 days following the end of each fiscal year of the board, the board shall submit to the commissioner a report itemizing all income and expenditures and describing all activities of the board during the previous fiscal year.

**§ 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.

**§ 41.061. Meetings by Telephone Conference Call**

(a) Notwithstanding Chapter 551, Government Code, a board or a committee established by a board may hold an open or closed meeting by telephone conference call if the convening at one location of a quorum of the board or committee is inconvenient for any member of the board or committee.

(b) The meeting is subject to the notice requirements applicable to other meetings.

(c) The notice of the meeting must specify as the location of the meeting the location where meetings of the board or committee, as applicable, are usually held.

(d) Each part of the meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting and the audio shall be recorded. The audio recording shall be made available to the public.

**§ 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.

#### **§ 41.082. Producer Exemption**

(a) A producer may exempt his or her product sales from assessment by filing a signed request for exemption with the processor at the time of each sale unless the notice of referendum to authorize the assessment or to add new territory stated that such an exemption would not be allowed or unless any board established prior to September 1, 1983, adopts a rule denying such an exemption. The processor shall include copies of the exemption request with the remittance of collected assessments to the secretary-treasurer.

(b) The commissioner shall prescribe the form of the request for exemption. The board shall furnish the prescribed form to each processor within the board's jurisdiction.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 41.101. Failure to Remit Assessment**

(a) The board may investigate conditions that relate to the prompt remittance of the assessment by any producer or processor. If the board has probable cause to believe that a person has failed to collect an assessment or failed to remit to the board an assessment as required by this chapter, the board may:

(1) independently institute proceedings for recovery of the amount due to the board or for injunctive or other appropriate relief;

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

(3) forward to the department for action under Section 41.1011 a complaint and any original evidence or other information establishing probable cause.

(b) Suit under this section may be brought in Travis County or a county in which the person who is alleged to have failed to collect or remit an assessment conducts business related to the commodity subject to the uncollected or unpaid assessment.

(c) The remedies provided by this section are cumulative of other remedies provided by law.

#### **§ 41.1011. Action by Department**

(a) On receipt of a complaint from the board under Section 41.101(a)(3), the department may investigate, audit, and inspect the records of the person who is the subject of the complaint, provided that any audit or inspection must take place during normal business hours.

(b) On determination by the department that a person has failed to collect an assessment or failed to remit to the board an assessment collected from a producer or processor, the department may:

(1) request a hearing under Section 12.032 to determine the amount of payment due to the board, including interest at an annual rate of 10 percent, and issue an order that the person pay the required amount to the board;

(2) impose an appropriate administrative penalty; and

(3) request the attorney general or a county or district attorney having jurisdiction to bring an action for appropriate civil or criminal penalties or injunctive relief.

(c) The attorney general may bring a civil action to enforce an order of the department and collect any amounts owed under the order, including costs and fees under Subsection (d).

(d) On prevailing in an action commenced by the department through the attorney general or a county or district attorney under this section, the department and the attorney general or county or district attorney are each entitled to recover, in addition to other relief available:

(1) investigation costs and fees;

(2) reasonable attorney's fees; and

(3) court costs.

(e) Suit under this section may be brought in Travis County or a county in which the person who failed to collect or remit an assessment conducts business related to the commodity subject to the uncollected or unpaid assessment.

(f) An assessment and any interest collected under this section shall be deposited in the account of the board that levied the assessment.

(g) The remedies provided by this section are cumulative of other remedies provided by law.

### **§ 41.102. Suspension or Revocation of License**

In addition to other remedies provided by law, a violation of any provision of Subchapter B, C, D, E, H, or I<sup>1</sup> 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.

### **§ 41.103. General Penalty**

(a) A person commits an offense if the person violates any provision of Subchapters B-E of this chapter.<sup>1</sup>

(b) An offense under this section is a Class C misdemeanor.

### **§ 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.

### **§ 41.125. Inactive Status**

(a) The Texas Mohair Producers Board and the Texas Pork Producers Board are inactive as provided by Section 41.126 of this code until reactivated under Section 41.127 of this code. Neither board is abolished, and a referendum election under Subchapter C of this chapter<sup>1</sup> is not required to reactivate either board.

(b) The Southern Rolling Plains Cotton Producers Board and the Texas Soybean Producers Board are inactive as provided by Section 41.126 of this code until reactivated under Section 41.127 of this code. Neither board is abolished, and a referendum election under Subchapter C of this chapter is not required to reactivate either board.

### **§ 41.126. Powers and Duties**

(a) A board listed in Subsection (a) of Section 41.125 of this code may not exercise any powers under this chapter after the end of the board's 1989 fiscal year other than preparing and submitting the fiscal year 1989 report required by Subsection (c) of Section 41.059 of this code.

(b) The Southern Rolling Plains Cotton Producers Board may not exercise any powers under this chapter after the end of the board's 1993 fiscal year other than preparing and submitting the fiscal year 1993 report required by Subsection (c) of Section 41.059 of this code.

(c) The Texas Soybean Producers Board may not exercise any powers under this chapter after the end of the board's 1997 fiscal year other than preparing and submitting the fiscal year 1997 report required by Subsection (c) of Section 41.059 of this code.

(d) After submitting the report required by Subsection (a), (b), or (c) of this section, the board may not conduct biennial elections under Section 41.032 of this code or submit the report required by Subsection (c) of Section 41.059 of this code.

(e) The board may collect the assessment only during the fiscal year for which a report is required by Subsection (a), (b), or (c) of this section.

(f) The board shall disburse funds as provided in the budget of the fiscal year for which a report is required by Subsection (a), (b), or (c) of this section. Money of the board remaining on the first day after that fiscal year shall remain in the board's depository bank until the board is reactivated or the department by rule provides for the disposition of the funds.

(g) Members of the board serving on the date the final report is submitted continue to serve until their successors are elected and qualify for office.

### **§ 41.127. Reactivation**

(a) The commissioner shall order the reactivation of a board listed in Subsection (a) or (b) of Section 41.125 of this code if:

(1) a majority of the members of the board petition the commissioner to reactivate the board and the commissioner determines that reactivation of the board is in the best interest of the producers subject to assessment by the board; or

(2) for a board listed in Subsection (a) of Section 41.125 of this code, a federal assessment is not assessed on mohair or pork, as applicable.

(b) If a board is reactivated, the board will consist of:

(1) members of the board whose terms have not expired; and

(2) persons elected at an election held as provided by Subsection (c) of this section.

(c) An election shall be held after reactivation to fill any vacancies on the board. The election shall be held in the manner provided for the biennial election of members by Section 41.032 of this code. Persons elected shall draw lots to determine the length of each person's term.

#### **§ 41.128. Texas Grain Producer Indemnity Board**

(a) The Texas Grain Producer Indemnity Board is not abolished but is inactive as provided by this section until reactivated under Subsection (d).

(b) The terms of office of the members of the Texas Grain Producer Indemnity Board expire, as determined by the commissioner, on December 31, 2017, or when the board files the report under Section 41.059(c) for the board's fiscal year that includes September 1, 2017. That report is the board's final report unless the board is reactivated under Subsection (d).

(c) While the board is inactive, the department shall administer the grain producer indemnity fund. From money available in the fund, the department shall pay all or part of any claims under Subchapter 1<sup>1</sup> that the department determines are valid. When the department determines that no potential claims remain, the department shall refund any money remaining in the fund to grain producers who paid an assessment under Section 41.206 on a pro rata basis.

(d) The commissioner shall order the reactivation of the Texas Grain Producer Indemnity Board if at least 200 grain producers petition the commissioner to reactivate the board. If the board is reactivated, the commissioner shall appoint board members as provided by Section 41.204.

#### **§ 41.151. Definitions**

In this subchapter:

(1) "Beef products" means products produced in whole or in part from beef. The term does not include milk or products made from milk.

(2) "Council" means the Beef Promotion and Research Council of Texas.

(3) "Producer" means a person who owns or acquires ownership of cattle, except that a person is not a producer if the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.

#### **§ 41.152. Declaration of Policy**

(a) The legislature intends that the promotion, marketing, research, and educational efforts regarding beef and beef products under this subchapter use existing cattle industry infrastructure to the extent possible.

(b) The council shall be the certified organization to plan, implement, and operate research, education, promotion, and marketing programs under this subchapter. If the council establishes a state beef check off program under Section 41.1571, the council shall administer that program.

#### **§ 41.153. Administrative Costs**

The department may recover costs for administration of this subchapter.

#### **§ 41.154. Annual report**

The council shall deliver to the commissioner and the appropriate oversight committee in the senate and house of representatives an annual report giving details of its efforts to carry out the purposes of this subchapter.

#### **§ 41.155. Conflict with General Commodity Law Provisions**

To the extent that the provisions of this subchapter conflict with other provisions of this chapter, the provisions of this subchapter prevail.

#### **§ 41.156. Council Members**

(a) A member of the council must be:

(1) nominated by the entity qualified to collect the proceeds of and administer the beef check off program established by federal law in this state or, in the entity's absence, the certified organizations that composed the entity; and

(2) appointed by the commissioner.

(b) A council member serves a one-year term or until his or her successor is appointed. A council member may serve not more than six consecutive one-year terms, except that a council member who is elected to serve as an officer during the member's sixth consecutive one-year term may serve as chairman or past chairman for not more than two additional consecutive one-year terms.

(c) The commissioner shall fill a vacancy on the council by appointment for the unexpired term from nominations received in accordance with Subsection (a).

(d) A council member is not a state officer for purposes of Section 572.021, Government Code, solely because of the member's service on the council.

#### **§ 41.1565. Meetings by Telephone Conference Call**

(a) Notwithstanding Chapter 551, Government Code, the council or a committee established by the council may hold an open or closed meeting by telephone conference call if the convening at one location of a quorum of the council or committee is inconvenient for any member of the council or committee.

(b) The meeting is subject to the notice requirements applicable to other meetings.

(c) The notice of the meeting must specify as the location of the meeting the location where meetings of the council or committee, as applicable, are usually held.

(d) Each part of the meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting and the audio shall be recorded. The audio recording shall be made available to the public.

#### **§ 41.157. General Powers of Council**

The council may take action or exercise other authority as necessary to execute any act authorized by this chapter or the Texas Nonprofit Corporation Law as described by Section

1.008, Business Organizations Code. The council may contract or enter into agreements with the entity qualified to collect the proceeds of and administer the beef check off program established by federal law in this state.

**§ 41.1571. State Beef Check Off Program**

The council may establish and operate a state beef check off program that is separate from the beef check off program established by federal law.

**§ 41.158. Donations**

The council may accept gifts, donations, and grants of money, including appropriated funds, from state government, federal government, local governments, private corporations, or other persons, to be used for the purposes of this subchapter.

**§ 41.159. Borrowing**

The council may borrow money on approval of the commissioner.

**§ 41.160. Assessments; Applicability of Other Law**

(a) The commissioner, on the recommendation of the council, shall propose the maximum assessment in a referendum under Section 41.162.

(b) If an assessment referendum is approved, the council shall recommend to the commissioner an assessment amount not greater than the maximum amount approved in the referendum. After the assessment is approved by the commissioner, the council shall collect the assessment.

(c) An assessment levied on producers shall be applied by the council to efforts relating to the marketing, education, research, and promotion of beef and beef products in Texas, the United States, and international markets, including administrative costs of conducting an assessment referendum.

(d) Assessments collected by the council are not state funds and are not required to be deposited in the state treasury.

(e) Section 41.083 applies to an assessment collected by the council under this subchapter. Section 41.082 does not apply to an assessment collected under this subchapter. The

commissioner, on the council's recommendation, may exempt from the assessment certain producers who are exempt under federal law.

#### **§ 41.161. Financial Oversight**

(a) The commissioner shall annually review and approve the council's operating budget for the funds collected under this subchapter.

(b) The commissioner and the state auditor at any time may inspect the financial records of the council.

#### **§ 41.162. Conduct of Referendum; Balloting**

(a) On the recommendation of the council, the commissioner shall conduct a referendum authorized under this subchapter.

(b) Only a producer who has owned cattle in the last 12 months before the date of the referendum is eligible to vote in the referendum.

(c) An eligible producer may vote only once in a referendum.

(d) Each producer's vote is entitled to equal weight regardless of the producer's volume of production.

(e) A referendum is approved if a simple majority of votes are cast in favor of the referendum.

(f) Individual voter information, including an individual's vote in a referendum conducted under this section, is confidential and not subject to disclosure under Chapter 552, Government Code.

(g) The council shall pay all expenses incurred in conducting a referendum with funds collected from the beef industry.

#### **§ 41.163. Rules**

The commissioner may adopt rules as necessary to implement this subchapter, including rules relating to:

- (1) the auditing of the financial records of the council;
- (2) fidelity bonds required for certain council employees;
- (3) conflicts of interest;
- (4) penalties; and
- (5) a statewide referendum under Section 41.156.

**§ 41.164. Penalties**

(a) A person who violates this subchapter or a rule adopted under this subchapter commits an offense.

(b) An offense under this section is a Class C misdemeanor.

**§ 41.201. Definitions**

In this subchapter:

- (1) "Board" means the Texas Grain Producer Indemnity Board.
- (2) "Claim initiation date" means the earliest date on which a grain buyer:
  - (A) files for federal bankruptcy protection;
  - (B) becomes the subject of an involuntary bankruptcy proceeding;
  - (C) is found to be insolvent by a court or a state or federal licensing agency;
  - (D) is ordered by a court having jurisdiction to pay a judgment to a grain producer; or

(E) loses its public warehouse license under:

(i) the United States Warehouse Act (7 U.S.C. Section 241 et seq.); or

(ii) Chapter 14.

(3) "Financial failure" means an event described by Subdivision (2)(A), (B), (C), (D), or (E).

(3-a) "Fund" means the grain producer indemnity fund.

(4) "Grain" means corn, soybeans, wheat, and grain sorghum.

(5) "Grain buyer" means a person who buys grain from a grain producer or stores unsold grain for a grain producer. The term includes:

(A) a purchaser;

(B) a warehouseman;

(C) a processor; or

(D) a commercial handler.

(6) "Grain producer" means a person, including the owner of a farm on which grain is produced, or the owner's tenant or sharecropper, engaged in the business of producing grain or causing grain to be produced for commercial purposes.

(7) [Blank].

(8) "Reinsurance" means an insurance product purchased by the board to reduce the financial risk and capital balance associated with the function of the board.

**§ 41.202. Declaration of Policy**

(a) The legislature intends for the board to indemnify grain producers for economic hardships in the event that a grain buyer is unable to pay the grain producer for the grain producer's grain.

(b) The board shall be the certified organization to indemnify grain producers under this subchapter.

**§ 41.203. Conflict with General Commodity Law Provisions**

To the extent that this subchapter conflicts with other provisions of this chapter, this subchapter prevails.

**§ 41.2035. Fund**

(a) The grain producer indemnity fund is a trust fund outside the state treasury to be held and administered by the board, without appropriation, for the payment of claims against a grain buyer who has experienced a financial failure.

(b) The board shall deposit assessments remitted under Section 41.206 in the fund.

(c) Interest or other income from investment of the fund shall be deposited to the credit of the fund.

(d) As a part of the annual budget proposal procedure described by Section 41.059, the board shall set a minimum balance for the fund to be held in reserve to pay for administrative costs in the event that claims against the fund exceed the total balance of the fund. The board shall post the minimum balance set under this subsection on the board's Internet website.

**§ 41.204. Board**

(a) The board is composed of:

(1) one representative of each of the following organizations or their successor organizations who is recommended to the commissioner by the board of directors of the organization and appointed by the commissioner:

(A) the Corn Producers Association of Texas;

(B) the Texas Wheat Producers Association;

(C) the Texas Grain Sorghum Association;

(D) the Texas Soybean Association; and

(E) the Texas Farm Bureau; and

(2) the following members, appointed by the commissioner:

(A) one representative of the Texas Agricultural Cooperative Council or its successor organization;

(B) one representative of the Texas Grain & Feed Association or its successor organization;

(C) one representative of the non-warehouse grain-buying industry; and

(D) one member with expertise in production agriculture financing.

(b) Members of the board serve staggered terms of two years each and may serve for a maximum of three terms.

(c) The directors described by Subsection (a)(1) shall select a chair and vice chair from among those directors.

(d) A vacancy on the board, including a vacancy resulting from the failure of a board member to fulfill the board member's responsibilities, shall be filled in the manner provided by Subsection (a). If a vacancy on the board is the result of an organization described by Subsection (a) dissolving or failing to fulfill its responsibilities under this subchapter, the commissioner may fill the vacancy by appointing an individual from the sector or industry represented by the organization.

**§ 41.205. Powers and Duties of Board**

(a) The board shall meet at least quarterly to:

(1) review expenses of the board, claims made to the board by grain producers, and amounts paid on claims by the board;

(2) coordinate all matters relating to the board, including the board's budget under Section 41.059, and the revenues necessary to accomplish the purposes of the board;

(3) establish, maintain, or adjust the rate of assessments collected under Section 41.206; and

(4) determine the most effective use of the board's budget to provide protection to grain producers.

(b) Notwithstanding Chapter 551, Government Code, the board may hold an open or closed meeting by telephone conference call or videoconference if:

(1) immediate action or a quarterly meeting is required; and

(2) the location at which a quorum of the board convenes is inconvenient for any member of the board.

(c) A meeting under Subsection (b) is subject to the notice requirements of Chapter 551, Government Code.

(d) Notice of a meeting under Subsection (b) must specify that the location at which meetings of the board are usually held is the location of the meeting.

(e) Each part of an open meeting under Subsection (b) shall be conducted in a manner that is audible to the public at the location specified in the notice of the meeting. The board shall ensure that each open meeting is tape recorded and that the tape recording is made available to the public after the meeting.

(f) The board may borrow money, with the approval of the commissioner, as necessary to implement this subchapter.

#### **§ 41.206. Collection of Assessment**

(a) Except as provided by this subsection, a grain buyer shall collect assessments in the manner prescribed for processors under Section 41.081. The assessment shall be collected at the first point of sale. Section 41.081(b) does not apply to the collection of assessments under this section.

(b) Except as provided by Subsection (c), not later than the 10th day of each quarter of the calendar year, the grain buyer shall remit the amount collected during the preceding quarter to the secretary-treasurer of the board for deposit with the bank selected by the board under Section 41.060.

(c) The grain buyer may retain a portion of the assessment in an amount determined by the board to cover the grain buyer's administrative costs in collecting the assessment.

(d) The board shall notify the grain producer of the manner by which the grain producer may initiate a claim under Section 41.208. The notice may be provided in a manner determined by the board.

#### **§ 41.207. Assessments; Applicability of Other Law**

(a) An assessment levied on grain producers shall be applied by the board to efforts relating to the indemnification of grain producers in this state, including administrative costs of conducting an assessment referendum.

(b) Assessments collected by the board are not state funds and are not required to be deposited in the state treasury.

(c) Sections 41.082 and 41.083 do not apply to an assessment collected under this subchapter.

#### **§ 41.208. Initiation of Claim**

(a) A grain producer who has delivered grain to a grain buyer may initiate a claim with the board as provided by board rule if:

(1) the grain buyer has suffered a financial failure and:

(A) has failed to pay to a grain producer an amount owed to the grain producer; or

(B) is unable to deliver to the grain producer grain held by the grain buyer for the grain producer as a bailment; and

(2) the grain producer provides to the board:

(A) written documentation showing that the grain was delivered to the grain buyer; and

(B) a copy of the written contract for purchase of the grain signed by the grain producer and the grain buyer and showing:

(i) the agreed price for the grain;

(ii) the amount of grain purchased; and

(iii) any other relevant term required by the board to establish facts related to the claim.

(b) A claim under this section must:

(1) be initiated:

(A) not more than 60 days after the applicable claim initiation date; or

(B) before a date determined by the board to be reasonable, if the board determines such a date; and

(2) be for a loss of grain delivered to the grain buyer not more than one year before the applicable claim initiation date.

**§ 41.209. Payment of Claim**

(a) After a claim is initiated by a grain producer under Section 41.208, the board may take any action necessary to:

(1) investigate the grain producer's claim; and

(2) determine the amount due to the grain producer within the limit prescribed by Subsection (b) and subject to Subsection (f).

(b) In determining the amount due to a grain producer under Subsection (a) for a loss of grain, the board may award the grain producer 85 percent of:

(1) the value of the grain on the claim initiation date, as determined by board rule, if the grain has not been sold; or

(2) the contract price of the grain, if the grain has been sold.

(c) The board shall make a determination under Subsection (a) within a reasonable period of time as established by the board.

(d) Except as provided by Subsection (e), the board shall, not later than the 30th day after the date the board makes a determination under Subsection (a):

(1) pay to the grain producer the amount determined under Subsection (a); or

(2) notify the grain producer that the grain producer's claim is denied.

(e) If claims filed with the board that are due to grain producers under this section exceed the amount of the board's budget allocated for the payment of claims, the board shall pay each grain producer on a prorated basis without regard to the order in which claims are made or approved. The board shall pay the remainder of the amount owed to each grain producer on a prorated basis from future revenue as the revenue is collected.

(f) The board may deny a grain producer's claim in whole or in part:

(1) if the grain producer has failed to pay assessments under Section 41.206;

(2) if the applicable grain buyer has a history of failure to collect assessments as required by Section 41.206;

(3) if the documentation submitted by the grain producer in support of the grain producer's claim is incomplete, false, or fraudulent;

(4) to prevent the grain producer from recovering from multiple payments an amount greater than the amount the grain producer lost due to the financial failure of a grain buyer or to the grain buyer's refusal, failure, or inability to deliver to the grain producer grain held by the grain buyer as a bailment, including:

(A) payments made by the board;

(B) payments made from a grain warehouse operator's bond;

(C) payments ordered by a bankruptcy court; or

(D) a recovery under a state or federal crop insurance policy or program; or

(5) if documentation submitted by the grain producer demonstrates that deferred payment on sold grain was beyond normal and customary practices.

(g) Notwithstanding Subsection (f)(3), if the board determines that the documentation submitted in support of a grain producer's claim is incomplete, the board shall give the grain producer an opportunity to provide complete documentation.

(h) The board may adopt rules specifying the circumstances under which a claim may be denied in whole or in part under Subsection (f).

**§ 41.210. Reimbursement of Board by Grain Buyer; Subrogation of Rights; Reinsurance**

(a) If the board pays a claim against a grain buyer, the board is subrogated to the extent of the amount paid to a grain producer by the board to all rights of the grain producer against the grain buyer and any other entity from which the grain producer is entitled to a payment for the loss giving rise to the grain producer's claim under this subchapter.

(b) Funds recovered under this section shall be deposited with the depository bank selected by the board under Section 41.060.

(c) The board may purchase reinsurance policies to mitigate the board's financial risks.

**§ 41.211. Rules**

Except as provided by Section 41.212, the board may adopt rules as necessary to implement this subchapter, including rules relating to:

(1) notice and collection of assessments;

(2) the orderly distribution of refunds;

(3) the management of the board's budget;

(4) the use of insurance and reinsurance products;

(5) administration of the board's duties;

(6) the statewide referendum conducted under Section 41.212;

(7) the selection of agents, designees, or devices to carry out the intent of the board; and

(8) guidelines for industry practices that do or do not qualify for indemnification by the board.

**§ 41.212. Referendum; Balloting**

(a) The commissioner shall conduct a referendum of grain producers to determine the maximum amount that may be assessed to a grain producer under Section 41.206.

(b) Only a grain producer who has sold grain to a grain buyer in the 36 months preceding the date of the referendum is eligible to vote in the referendum.

(c) An eligible grain producer may vote only once in a referendum.

(d) Each grain producer's vote is entitled to equal weight regardless of the grain producer's volume of production.

(e) A referendum is approved if a majority of votes cast are in favor of the referendum.

(f) Individual voter information, including an individual's vote in a referendum conducted under this section, is confidential and not subject to disclosure under Chapter 552, Government Code.

(g) The board shall locate private sources, including the organizations described by Section 41.204(a)(1), to pay all expenses incurred in conducting a referendum.

(h) The commissioner shall adopt rules as necessary to implement this section.

**§ 41.213. Notice of Referendum**

(a) The commissioner shall give public notice of:

(1) the date, hours, and polling places for voting in the referendum conducted under Section 41.212;

(2) the estimated amount of the assessment proposed to be collected, as determined by the board, and the basis for which the assessment will be collected; and

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

(b) The commissioner shall publish the notice under Subsection (a) in one or more statewide or regional newspapers that provide reasonable notice throughout the state. The notice shall be published at least 90 days before the date of the referendum. In addition, at least 90 days before the date of the referendum the commissioner shall give direct written notice to the county agent in each county of this state.

#### **§ 41.2145. Refund of Assessments**

(a) A grain producer who has paid an assessment under Section 41.206 may be eligible for a refund from excess money in the indemnity fund as provided by this section.

(b) As a part of the annual budget proposal procedure described by Section 41.059, the board shall review the budget for the next year and the board's current financial status. Based on that review, the board shall determine whether funds are available in excess of the minimum fund balance to issue refunds to grain producers who paid an assessment under Section 41.206.

(c) The board shall adopt rules regarding the procedure for determining the amount of a grain producer's refund and the timing, method, and order of refund issuance.

#### **§ 41.215. Annual Report**

(a) The board shall submit a report to the commissioner annually that contains a summary of the board's activities and a review of the board's effectiveness.

(b) The board shall post the report online on the board's Internet website.

#### **§ 41.216. Administrative Review**

(a) The board by rule shall establish an administrative review process to informally review and resolve claims arising from an action of the board under this subchapter. The board shall adopt rules:

(1) designating which board actions are subject to review under this section; and

(2) outlining available remedial actions.

(b) A person may appeal an administrative review decision made by the board under Subsection (a) to the commissioner.

(c) A person may appeal a decision of the commissioner in the manner provided for a contested case under Chapter 2001, Government Code.

(d) This section does not waive this state's sovereign immunity.

