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## Requirements for Grain Warehouses:

*Texas*



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**Requirements for Grain Warehouses: Texas**

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**TX Agric. Code Ann. Ch. 14, Ch. 41**

*Current through the 2019 Regular Session.*

**Sec. 14.001. DEFINITIONS.**

(a) In this chapter:

(1) "Depositor" means a person who:

(A) delivers grain to a public grain warehouse for storing of the grain for hire, handling of the grain for hire, or shipping of the grain for hire;

(B) is the owner or legal holder of an outstanding receipt for grain stored in the public grain warehouse issuing the receipt; or

(C) is lawfully entitled to possession of grain stored in a public grain warehouse.

(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 located in this state;

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

(C) is not owned by the lessee, owner, or operator of the warehouse in which it is stored.

(4) "Public grain warehouse" means a building, bin, or similar structure located in this state and used for:

(A) the storing of grain for hire, shipping of grain for hire, 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 Texas grain warehouse receipt issued by a warehouse operator licensed under this chapter.
- (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 or other person by a warehouse operator licensed under this chapter on:
- (A) initial delivery of the grain to the warehouse; or
- (B) weighing of the grain on the grain warehouse operator's scale, regardless of the destination of the grain.
- (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) "Warehouse operator" means a person engaged in the business of operating a public grain warehouse.
- (b) For purposes of this chapter, the term "public grain warehouse" as defined by Subsection (a)(4) does not include railcars, trucks, boats, or other vehicles when used to transport grain.
- (c) For purposes of this chapter, in those sections that require the warehouse operator to cooperate with or provide information to the department or issue documents or deliver grain to customers of the warehouse operator and in those sections that require notice to be provided to the warehouse operator by the department, the term "warehouse operator" includes all employees, agents, or other persons authorized by the warehouse operator to issue receipts or scale weight tickets or sign contracts or other agreements.

**Sec. 14.011. LIMITATION OF CHAPTER.**

This chapter does not apply to:

- (1) a public grain warehouse covered by a license for the operation of a public grain warehouse issued by the United States Department of Agriculture or other federal agency;
- (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 and who receives all grain with the intent to manufacture the grain or sell manufactured grain; 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.

**Sec. 14.012. BUSINESS INFORMATION.**

- (a) Except as provided by Subsection (b), financial information of a warehouse operator provided to the department is confidential and not subject to public disclosure.
- (b) Notwithstanding Subsection (a), financial information of a warehouse operator provided to the department may be disclosed:

(1) without sealing in an administrative proceeding commenced by the department against the warehouse operator;

(2) to a local or state law enforcement officer, a county attorney, a district attorney, or the attorney general, acting either independently or on behalf of the department, investigating the warehouse operator;

(3) in a civil proceeding commenced by the warehouse operator against the department;

(4) in response to a subpoena from a party in a civil proceeding commenced against the warehouse operator;

(5) to the issuer of the warehouse operator's bond or letter of credit;

(6) to the public after:

(A) revocation of the warehouse operator's license;

(B) a voluntary closeout of all of the license holder's facilities in this state;

(C) a petition for bankruptcy has been filed; or

(D) a receiver for the warehouse operator's assets has been appointed; or

(7) to any federal agency or any agency of another state conducting a compliance inspection or criminal or civil investigation involving the handling, storing, shipping, selling, purchasing, or receipt of grain.

(c) In this section, "financial information" means:

(1) a financial statement or other document provided by the warehouse operator to the department to evaluate net worth requirements under Section 14.031(e);

(2) a financial audit provided by the warehouse operator to the department; and

(3) if the warehouse operator is subject to an ongoing investigation by the department:

(A) the price of grain paid by the warehouse operator to a depositor or other seller of grain delivered to or stored or handled by the warehouse operator;

(B) the price of grain paid by or to the warehouse operator by a depositor or other purchaser of grain delivered to or stored or handled by the warehouse operator; and

(C) the terms of payment for a price described by Paragraph (A) or (B).

(d) Notwithstanding any other provisions of this section:

(1) a party to a contract or other agreement with a warehouse operator may obtain a nonredacted copy of the contract or agreement; and

(2) a person who authored or contributed to the creation of financial information may be provided access to the financial information for the purpose of confirming the authenticity, truthfulness, or accuracy of the information.

**Sec. 14.013. RIGHT TO INTERVENE AND NOTIFICATION OF DEPARTMENT.**

(a) The department may intervene in a suit for receivership, garnishment, bankruptcy, or any other legal action affecting the assets of a warehouse operator licensed under this chapter or the grain assets of a depositor in a warehouse operated under a license issued by the department, including, to assert the rights of depositors not joined in the suit, a suit brought against a bond or surety under Section 14.065.

(b) Any person who files a suit for receivership, garnishment, or bankruptcy or who commences any other legal action affecting the assets of a warehouse operator licensed under this chapter or the grain assets of a depositor in a warehouse operated under a license issued by the department, including a suit against a bond or surety under Section 14.065, must give notice to the department of the suit or legal action.

(c) Notice under this section must be in writing and delivered to the department by certified mail, registered mail, or commercial delivery service not later than the 20th day after the date on which the suit or legal action is commenced.

(d) The judgment in an action described by Subsection (a) is voidable if the notice required by this section is not provided.

(e) The court in which a suit or other legal action described by Subsection (a) is commenced may impose appropriate sanctions against a party who fails to provide the notice required by this section.

**Sec. 14.014. RECEIVERSHIP AFFECTING WAREHOUSE ASSETS.**

(a) A person appointed receiver for the assets of a warehouse operator licensed under this chapter is not required to obtain a license from the department if the person:

(1) is bonded and insured as described by Subsection (b); and

(2) after being appointed, does not:

(A) receive additional grain for storing for hire, handling for hire, or shipping for hire; or

(B) purchase grain for resale.

(b) A person appointed receiver shall maintain:

(1) a bond in the same amount required for a licensed warehouse operator; and

(2) casualty insurance in the same amount and type as required for a licensed warehouse operator.

(c) A person appointed receiver shall file proof of proper bonding and verification of insurance with the department on or before the date the person is appointed to act as receiver.

**Sec. 14.015. POWERS AND DUTIES OF DEPARTMENT.**

The department shall administer this chapter 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;
  - (4) require that a warehouse operator keep records or submit reports the department determines are necessary in the administration of this chapter;
  - (5) require a warehouse operator or depositor to terminate storing, shipping, and handling agreements within a time specified by the department:
    - (A) on closeout or revocation of the warehouse operator's license;
    - (B) if grain has been abandoned by the warehouse operator or a depositor and the warehouse operator or depositor cannot be located after diligent effort; or
    - (C) on issuance of an injunction ordering an unlicensed warehouse operator to cease operations;
  - (6) prescribe forms, including the form of receipts, bonds, or applications for licenses;
  - (7) for purposes of determining compliance with this chapter or amounts due to a depositor in an action taken by the department against a surety or surety instrument under this chapter, determine a warehouse operator's specific obligations to a depositor, including:
    - (A) the type, quantity, or quality of open storage or receipted grain due a depositor;
    - (B) the payment owed a depositor if a shortage or variance exists in the type, quantity, or quality of a depositor's open storage or receipted grain;
    - (C) the time and manner of delivery of grain due a depositor; and
    - (D) whether a warehouse operator has failed to deliver a depositor's open storage or receipted grain within a reasonable time;
  - (8) by written order require a warehouse operator to deliver grain of a particular type, quantity, and quality to a depositor at a particular time and in a particular manner based on the department's determination that the required delivery of grain is due the depositor;
  - (9) classify grain by category, including open storage, receipted, identity-preserved, company-owned, and abandoned grain, and adopt rules regarding the storage, shipping, or handling of classified grain, including recordkeeping and accounting requirements;
  - (10) seize the records of a warehouse operator, including any electronic records or the equipment or media on which the records are stored, during a period of suspension of a warehouse operator's license;
  - (11) seal or post as sealed, or both seal and post as sealed, the warehouse of a warehouse operator;

(A) whose license has been suspended or revoked;

(B) whose license has expired; or

(C) who is unlicensed;

(12) seal or post as sealed, or both seal and post as sealed, a warehouse that is found to be unsafe for inspection or unsuitable for the storage of grain;

(13) during reasonable hours and to determine compliance with this chapter, enter any facility where the department reasonably believes grain is being handled, stored, shipped, purchased, or sold to examine:

(A) the facility's storage, shipping, handling, and financial records;

(B) grain; and

(C) physical structures;

(14) determine the suitability of a warehouse for storing, shipping, or handling grain or for adequate and safe inspection and, if found unsuitable for any of those purposes, order corrective action;

(15) require the warehouse operator to notify the department regarding:

(A) the handling of commodities that may pose a hazard to humans, animals, the grain of other depositors in the warehouse operator's warehouse, or the grain industry;

(B) existing hazards to inspection, including recent or ongoing fumigations of warehouse facilities and unsafe or inoperable warehouse equipment or structures; or

(C) any change in ownership, management, or legal or financial status of a warehouse licensed under this chapter;

(16) require by rule that sales, purchase, or brokerage agreements between a warehouse operator and a producer be in writing and contain written terms or provisions the department considers appropriate to protect producers, depositors, and warehouse operators and to ensure the department's ability to carry out its regulatory functions under this chapter;

(17) regulate a warehouse operator's temporary storage of grain in a non-warehouse location or facility;

(18) require segregation of grain requiring identity preservation;

(19) enter into cooperative agreements with agencies of the federal government or other states to carry out the purposes of this chapter;

(20) recover the unused warehouse receipts of a warehouse operator:

(A) during any period of probation or suspension of the warehouse operator's license;

(B) on revocation or voluntary surrender of the warehouse operator's license; or

(C) during any period in which the warehouse operator is not licensed, including after a failure to timely renew the license;

(21) order corrective action or impose any reasonable condition of probation necessary to accomplish the regulatory goals authorized by this chapter; and

(22) adopt rules necessary to carry out the provisions of this chapter.

**Sec. 14.021. 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.

**Sec. 14.022. LICENSING OF MULTIPLE WAREHOUSES.**

(a) In this section:

(1) "Combination" means a group of two or more public grain warehouses or facilities operated under a single set of complete records. For purposes of this chapter, a combination is treated as if it were a single public grain warehouse.

(2) "Facility" means two or more public grain warehouses located in close proximity on the same general location. For purposes of this chapter, and except when part of a combination, a facility is treated as if it were a single public grain warehouse.

(b) A warehouse operator may operate all public grain warehouses or facilities within an area no larger than 60 miles in diameter as a combination if a single license covering the combination is obtained from the department and:

(1) a single recordkeeping system covering only warehouses within the combination is maintained by the warehouse operator;

(2) a single, unique set of sequentially numbered receipts containing all information required by department rule and bearing the name of the license holder and a unique combination name, but not bearing individual warehouse or facility names, is used for the combination;

(3) for each scale operated by the warehouse operator, the warehouse operator issues and maintains a single, unique set of sequentially numbered scale weight tickets containing all information required by department rule and bearing the name of the license holder and a unique name identifying the facility where the scale is located;

(4) a single daily position report covering all storage obligations of the combination and only the combination, including company-owned grain, and containing all information required by department rule is maintained;

(5) all original warehouse operator records, except for scale weight tickets, relating to transactions or storage obligations involving the combination are maintained at a single location and separate from all other businesses and separately licensed warehouse operations of the warehouse operator; and

(6) except as provided by department rule, a single unique bond or bond substitute is used to cover the combination.

(c) Except as permitted while operating a combination, a warehouse operator may not combine or intermingle assets, storage obligations, liabilities of any kind, records or record entries, contractual obligations, other transactions of any kind, or any other business or operating information from different warehouses or businesses owned, managed, or operated by the



warehouse operator. Each licensed combination or individually licensed facility shall be operated as a separate entity under a single, unique name and, except as provided by department rule, shall be covered by a single, separate bond or bond substitute.

**Sec. 14.023. LICENSING PROCEDURE.**

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

(1) the applicant has filed an acceptable bond, a financial statement in a form prescribed by the department, and proof of casualty insurance required by this chapter;

(2) the warehouse is suitable for storage of grain and inspection by department personnel;

(3) the applicant has complied with this chapter and rules adopted under this chapter; and

(4) the applicant has met the net worth or deficiency bond requirements of Section 14.031(e).

(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 an annual license fee, as provided by department rule. The department shall prescribe the information to be contained in the application. A person who fails to submit a renewal fee on or before the expiration date of the license must pay, in addition to the renewal fee, the late fee provided by Section 12.024.

(c) If an applicant for a license previously operated a grain warehouse in this state or another state and that warehouse ceased to operate while the applicant was the operator, the applicant must submit with the application evidence acceptable to the department that all debts from the previous operation evidenced by receipts have been satisfied. The department may not issue a license to an applicant who the department determines has not satisfied all such debts from a previous operation.

**Sec. 14.024. REQUIREMENT FOR INCREASING CAPACITY.**

A warehouse operator may not use any increased warehouse capacity without first obtaining written approval from the department.

**Sec. 14.031. 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 warehouse operator as to receipted grain and open storage grain under this chapter and rules adopted under this chapter, from the effective date of the bond until the

license is revoked or the bond is canceled, whichever occurs first, whether or not the warehouse remains licensed; and

(2) except for a contract for the purchase of grain or to act as broker for the grain, each obligation of a warehouse operator 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 \$35,000 and be based on 10 cents per bushel of storage capacity, not to exceed a maximum of \$500,000.

(e) If the actual net worth of an applicant equals less than the greater of either 25 cents per bushel of storage capacity or \$200,000, the applicant shall file a deficiency bond in an amount equal to the difference between the actual net worth and the greater of either \$200,000 or the amount determined by multiplying 25 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.

(f) Except as provided by department rule, the applicant must give a single bond meeting the requirements of this section to cover warehouses licensed as a single facility or combination. A single bond may not be used to cover more than one individually licensed facility, more than one combination, or one or more individually licensed facilities and one or more combinations.

(g) The liability of the surety of a bond required by this chapter 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.

(h) Subject to the approval of the department, a warehouse operator may deposit the following with the department, for the term of the license plus two years, in lieu of a bond required by this section:

(1) cash;

(2) an irrevocable letter of credit, payable to the State of Texas; or

(3) a certificate of deposit from a federally insured bank or savings and loan institution authorized to do business in this state, assigned to the State of Texas.

(i) The cash, letter of credit, or certificate of deposit under Subsection (h) must be in the same amount or have a value in the same amount as required for the warehouse bond.

(j) Any interest or income earned on an assigned certificate of deposit accrues to the owner of the certificate during the time of the assignment.

#### **Sec. 14.032. ADDITIONAL BOND.**

(a) If the department determines that an approved bond is insufficient, the department shall require the warehouse operator to give additional bond.

(b) If a license has been suspended or revoked or has expired, the department may require a bond from the warehouse operator to protect depositors of grain for as long as any receipts or open storage accounts remain outstanding.

**Sec. 14.033. BOND CANCELLATION.**

(a) A warehouse operator may not cancel a bond approved by the department unless the department first gives written approval of a substitute bond.

(b) The surety may cancel a bond 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. On receipt of notice of cancellation of a bond, the department shall promptly notify the warehouse operator involved. Liability under the bond ceases to accrue on the effective date of cancellation. Notwithstanding cancellation under this section, the department or a depositor may collect under the bond for any claim that arose during the period during which the bond was in effect, provided that the claim is filed within the applicable limitations period established under Section 14.065.

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

(d) Notwithstanding any other provision of this chapter, a public grain warehouse license is automatically suspended if the warehouse operator fails to file a new bond before the cancellation of a bond is effective.

(e) The suspension of a license under this section continues as long as the warehouse operator fails to maintain the bond required by this chapter.

**Sec. 14.034. CANCELLATION OF LETTER OF CREDIT.**

(a) A warehouse operator may not cancel a letter of credit approved by the department in lieu of a bond unless the department gives written approval of a substitute bond or letter of credit.

(b) The issuer of the letter of credit may cancel a letter of credit by sending notice of intent to cancel by registered or certified mail to the department. Cancellation of a letter of credit may not take effect before the 91st day after the date the issuer mails notice of intent to cancel. On receipt of notice of cancellation of a letter of credit, the department shall promptly notify the warehouse operator involved. Liability under the letter of credit ceases to accrue on the effective date of cancellation. Notwithstanding cancellation under this subsection or other law to the contrary, the department or a depositor may collect under the letter of credit for any claim that arose during the period during which the letter of credit was in effect, provided that the claim is filed within the applicable limitations period established under Section 14.065.

(c) The issuer of a letter of credit shall send a copy of the notice required by this section to any government agency requesting the copy. Notwithstanding any other provision of this chapter, a public grain warehouse license is automatically suspended if the warehouse operator fails to file a new bond or letter of credit before the cancellation of a letter of credit is effective.

(d) The suspension of a license under this section continues as long as the warehouse operator fails to maintain the bond or letter of credit required by this chapter.

**Sec. 14.035. CANCELLATION OF CERTIFICATE OF DEPOSIT OR CASH.**

(a) A warehouse operator may not repossess a certificate of deposit or cash approved by and deposited with the department in lieu of a bond unless:

(1) the department gives written approval of a substitute bond or letter of credit; and

(2) at least two years have passed after the expiration of the last licensing period during which the certificate of deposit or cash was deposited with the department in lieu of a bond.

(b) Notwithstanding any other provision of this chapter, the department may not release a certificate of deposit or cash deposited with the department while a claim filed within the applicable limitations period established under Section 14.065 is pending before the department or a court.

(c) A warehouse operator may, on written request to the department, recover cash or a certificate of deposit from the department before the expiration of the two-year period specified in Subsection (a)(2) if:

(1) the department performs a closeout inspection;

(2) the department determines on the best available evidence that no outstanding obligations exist at the time of the closeout inspection;

(3) the warehouse operator submits with the written request a bond:

(A) in an amount equal to six cents per bushel for 50 percent of the total storage capacity of the facility or combination covered by the cash or certificate of deposit the warehouse operator is attempting to recover; and

(B) covering any failure of obligation that may have occurred during all licensing periods covered by the cash or certificate of deposit the warehouse operator is attempting to recover; and

(4) at least 30 days have passed since the closeout inspection.

(d) A claim against the bond required by Subsection (c) must be filed with the department or in a court of competent jurisdiction not later than the second anniversary of the date of the closeout inspection.

#### **Sec. 14.041. CASUALTY INSURANCE.**

(a) Except as provided by Subsections (c) and (d), 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 or, with the approval of the department, by an eligible surplus lines insurer that meets the requirements of Chapter 981, Insurance Code, and rules adopted by the commissioner of insurance under that chapter; and

(2) the policy insures, in the name of the applicant, all depositor grain that is or may be in the public grain warehouse for its full market value against loss by or due to water or other fluid resulting from an insured peril, excluding flood and other rising waters resulting from natural causes, malicious mischief, vandalism, smoke, fire, internal explosion, lightning, hail, windstorm, hurricane, or tornado.

(b) If water or other fluid resulting from an insured peril, excluding flood and other rising waters resulting from natural causes, malicious mischief, vandalism, smoke, fire, internal explosion, lightning, hail, windstorm, hurricane, or tornado destroys or damages grain in a public grain warehouse, the warehouse operator 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 the warehouse operator'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 in writing, at or before the time the certificate of insurance is due, that all grain within the warehouse at the time the license is to be effective is or will be owned by the applicant free of any lien. The applicant shall file the required certificate of insurance on or before the first day any grain not owned by the applicant free of any lien is stored for hire, handled for hire, or shipped for hire.

(d) An applicant for a license shall insure depositor grain for its full market value against loss by or due to fire or windstorm if the grain is in temporary or emergency storage. The certificate required under Subsection (a) must evidence that the applicant has an effective policy of insurance under this subsection before the applicant may store depositor grain in temporary or emergency storage.

#### **Sec. 14.042. INSURANCE CANCELLATION.**

(a) A warehouse operator may not cancel an insurance policy approved by the department unless the department gives written approval of a substitute policy.

(b) The insurer may cancel an insurance policy by sending notice of intent to cancel by registered or certified mail to the department. Cancellation of an insurance policy is not effective before the 31st day following the date the insurer mails notice of intent to cancel. On receipt of notice of cancellation of an insurance policy, the department shall promptly notify the warehouse operator involved.

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

(d) Notwithstanding any other provision of this chapter, a public grain warehouse license is automatically suspended if the warehouse operator fails to file a new certificate of insurance before the cancellation of an insurance policy is effective or fails to provide a certification of ownership under Section 14.041(c).

(e) The suspension of a license under this section continues as long as the warehouse operator fails to maintain the insurance required by this chapter.

#### **Sec. 14.043. ADDITIONAL INSURANCE.**

(a) If the department determines that an approved insurance policy is insufficient, the department shall require the warehouse operator to obtain additional insurance.

(b) If a license has been suspended or revoked or has expired, the department may require continued insurance coverage by the warehouse operator to protect depositors of grain for as long as any receipts or open storage accounts remain outstanding.

(c) The warehouse operator shall obtain the additional insurance required by this section and provide verification of the additional insurance within a time specified by the department, and

the additional insurance shall be maintained or continued as necessary to meet the requirements of this chapter.

**Sec. 14.051. POSTING OF LICENSE.**

Each warehouse operator shall immediately on receipt of a license post the original in a conspicuous place at the primary recordkeeping location for the individually licensed facility or combination. A copy of the license must be conspicuously posted at each facility where grain is stored for hire, handled for hire, or shipped for hire.

**Sec. 14.052. WAREHOUSE OPERATOR OBLIGATIONS.**

(a) The obligations of a warehouse operator include the obligation to:

(1) deliver grain to a person holding a receipt for grain stored in the warehouse; and

(2) maintain the quantity and quality of all grain not owned by the warehouse operator, including open storage grain.

(b) Except as otherwise provided by this chapter or by department rule, the obligation of a warehouse operator 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.

(c) If a warehouse operator accepts for storage, shipping, handling, purchase, or sale any grain that is nonfungible or for which identity must be preserved, the warehouse operator shall safeguard the grain from intermingling with grain that would impair or destroy the identity-preserved or nonfungible nature of the grain. Nothing in this section requires the warehouse operator to accept grain that is nonfungible or that requires identity preservation.

(d) The warehouse operator remains liable for the quality and quantity of grain deposited at the warehouse and for any other obligations established under this chapter for any period during which the warehouse has been sealed or during any period of probation, suspension, or revocation imposed under this chapter or for grain abandoned by the warehouse operator unless:

(1) the warehouse operator makes a written request to the department for access to the warehouse;

(2) the request adequately describes why access is necessary to meet the warehouse operator's obligations under this chapter;

(3) the request adequately describes what type of access is necessary to meet the warehouse operator's obligations under this chapter;

(4) the request for access is reasonable;

(5) allowing access would not impair the department's ability to preserve evidence, warehouse operator records, or depositor grain assets; and

(6) the request is denied by the department or the department imposes unreasonable restrictions that prevent the operator from meeting the obligations described in the request.

(e) The department is entitled, on behalf of depositors, to recover from the warehouse operator's bond the cost of damages suffered by depositors as a result of sealing the

warehouse or as a result of the warehouse operator abandoning the warehouse and the grain contained in the warehouse.

**Sec. 14.053. RECEIPT FORMS.**

(a) A warehouse operator shall use one set of serially numbered and sequentially issued receipts for all warehouses operated under a single license. In addition to a unique serial number, each receipt form must contain all of the information prescribed by department rule. If further provided by department rule, the warehouse operator shall request the receipt forms from the printer on a form approved, prescribed, or furnished by the department.

(b) The warehouse operator shall provide the department with an exemplar of the receipt forms and an affidavit from the printer showing the number of receipts printed and their serial numbers before issuing any receipt from the printed set. The exemplar and affidavit required by this subsection shall be provided each time a new set of receipts is printed.

(c) The warehouse operator may use an electronic receipt system if the provider of the electronic receipt system has been approved by the department or by the United States Department of Agriculture or any other federal agency that issues a license for the operation of a public grain warehouse.

(d) The department may require a warehouse operator to provide a bond to cover any loss resulting from 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.

**Sec. 14.054. ISSUANCE OF SCALE WEIGHT TICKET OR RECEIPT.**

(a) On receiving grain, a warehouse operator 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 warehouse operator 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 14.055 for duplicate receipts, a warehouse operator may not issue two scale weight tickets or two receipts bearing the same number during any calendar year.

(f) Unless previously canceled in accordance with the provisions of Chapter 7, Business & Commerce Code, a Texas grain warehouse receipt issued under this chapter expires 10 years after the date of issuance.

**Sec. 14.055. DUPLICATE RECEIPTS.**

(a) Except as otherwise provided by this section, if a receipt issued under this chapter is outstanding, another receipt covering all or part of the grain covered by the initial receipt may

not be issued by the warehouse operator 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 warehouse operator shall require from the owner 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 warehouse operator may not obtain, purchase, or become a surety on a bond for a lost, stolen, or destroyed receipt.
- (d) A court may not order delivery of grain covered by a lost, stolen, or destroyed receipt without requiring the bond provided by this section.

**Sec. 14.056. RECEIPT FOR GRAIN OWNED BY WAREHOUSE OPERATOR.**

A warehouse operator may issue a receipt for grain that is owned by the warehouse operator, in whole or part, and located in the warehouse operator's warehouse. The negotiation, transfer, sale, or pledge of that receipt may not be defeated because of its ownership.

**Sec. 14.057. RECORDS.**

- (a) Every warehouse operator 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 warehouse operator's possession;
  - (3) receipts and scale weight tickets issued by the warehouse operator; and
  - (4) receipts returned to and canceled by the warehouse operator.
- (b) The warehouse operator shall retain the records required by this section for the period of time prescribed by the department. The warehouse operator shall retain copies of receipts or other documents evidencing ownership of grain or liability of a warehouse operator as long as the documents are outstanding. If the documents are canceled, the warehouse operator shall retain the documents or receipts for a period of not less than two years from the date of cancellation.
- (c) The warehouse operator 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;
  - (3) issue in numerical order all scale weight tickets and receipts; and



(4) keep in numerical order copies of the scale weight tickets and receipts issued by the warehouse operator.

(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 operator; or

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

(e) The warehouse operator shall report to the department on forms furnished by the department the following information on scale weight tickets used in the warehouse operator'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 warehouse operator shall make any records required by this section or department rule accessible and available for inspection by the department at any reasonable time.

**Sec. 14.058. POSTING OF STORAGE RATES OR TARIFFS.**

(a) A public grain warehouse licensed under this chapter shall post a copy of all storage rates and tariffs charged by the warehouse operator at the main warehouse office and at each warehouse facility operating under the license.

(b) The warehouse operator shall post any change to the posted storage rates or tariffs not later than the third day before the day on which the change is to take effect.

(c) Department inspectors shall check compliance with this section during inspections of a public grain warehouse under this chapter.

**Sec. 14.059. INSPECTIONS; FEE.**

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

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

(c) The department shall collect from the warehouse operator whose public grain warehouse is inspected an inspection fee for an annual inspection or an inspection requested by the warehouse operator, but may not collect an inspection fee for other inspections unless the inspection is conducted:

(1) under the terms of an agreed or ordered suspension or probation;

(2) in response to a complaint that the warehouse operator has not complied with the duties and obligations provided for by this chapter and the complaint is determined by the department to be valid;

(3) as a follow-up inspection to:

(A) determine whether a shortage of grain discovered by the department has been corrected;

(B) obtain records not immediately available at the location designated as the recordkeeping location in department records or to which access was refused during a previous inspection;

(C) ensure that recordkeeping discrepancies discovered during a previous inspection have been corrected; or

(D) monitor a suspension or probation under this chapter; or

(4) to monitor termination of arrangements for storing, shipping, or handling of grain under this chapter.

(d) The department by rule shall set the inspection fee.

**Sec. 14.061. WAREHOUSE RECEIPT AS PRIMA FACIE EVIDENCE.**

In an action involving a warehouse operator that is brought under this chapter, a warehouse receipt constitutes prima facie evidence of the truth of the facts stated in the receipt.

**Sec. 14.062. INVALID RECEIPTS.**

Notwithstanding any other provision of this code or the Business & Commerce Code, a receipt for grain is void as to any person who receives the receipt with knowledge that the grain purported to be covered by the receipt was not, at the time the receipt was issued, actually stored in the warehouse of the warehouse operator issuing the receipt.

**Sec. 14.063. TERMINATION OF STORAGE.**

(a) A warehouse operator desiring to terminate the storage of grain in the warehouse operator's warehouse, including grain that is abandoned or is unclaimed prior to the sale of a warehouse, shall do so in accordance with Sections 7.206 and 7.210, Business & Commerce Code, except that the warehouse operator is not required to hold the balance of the proceeds of a sale, but may transfer the balance to the comptroller, who shall treat the money in the same manner as an escheated bank account.

(b) A purchaser in good faith of grain sold under Section 7.210, Business & Commerce Code, takes the grain free of any rights of the holder of the receipt, but the receipt is evidence of entitlement to the escheated funds deposited with the comptroller under Subsection (a).

**Sec. 14.064. CERTAIN LOADOUT FEES PROHIBITED.**

(a) A warehouse operator may not charge a fee for loading out grain if the loadout was the result of the misconduct of the warehouse operator.

(b) Misconduct under this section includes:

(1) violation of this chapter as established by final, unappealable order of the commissioner;

(2) conviction of a crime, including a plea of nolo contendere, described as an offense under this chapter; and

(3) conviction of a crime, including a plea of nolo contendere, described as an offense under the Penal Code and involving any type of fraud or theft related to the storing, shipping, handling, sale, or purchase of grain or the sale or purchase of grain handling, shipping, or storage equipment or warehouse structures or other assets.

(c) A loadout fee collected during a period of suspension of a warehouse operator's license by the department, after revocation of a warehouse operator's license, or during a period in which criminal charges are pending against a warehouse operator, shall be placed in an escrow account by the warehouse operator until:

(1) the department's suspension is lifted;

(2) the prosecutor ceases to pursue criminal charges;

(3) the indictment or information is dismissed by a court; or

(4) the warehouse operator is acquitted.

(d) If misconduct is finally determined to have occurred as provided by Subsection (b), the loadout fees placed in escrow shall be returned to the person originally paying those fees. The loadout fees placed in escrow shall be returned to the warehouse operator if the warehouse operator is found not to have committed misconduct by acquittal, by the dismissal of the criminal charges, or by final order of the commissioner.

**Sec. 14.065. RECOVERY ON BOND; LIABILITY OF WAREHOUSE OPERATOR.**

(a) If no action on the bond or cash, certificate of deposit, or letter of credit deposited in lieu of a bond of a warehouse operator 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 or cash, certificate of deposit, or letter of credit deposited in lieu of a bond for recovery of damages suffered by the depositor as a result of the failure of the warehouse operator to comply with any condition of the bond, or if cash, a certificate of deposit, or a letter of credit is deposited in lieu of a bond, failure to comply with any obligation of the warehouse operator under this chapter that would have been covered by a 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 or is on the department as intervenor on behalf of other depositors.

(c) A warehouse operator is liable for damages for loss of or injury to grain caused by the warehouse operator's failure to exercise the care that a reasonably prudent person would exercise in regard to the grain under similar circumstances, but, unless otherwise agreed, a warehouse operator is not liable for damages to grain that could not have been avoided through the exercise of that care.

(d) A person who files an action on a bond under this section must serve notice of the suit on the department in the same manner and within the same period as for the defendant or surety who issued the bond.

(e) On authentication by the department, the court shall accept into evidence as a public record any report prepared by the department under this chapter that describes potential bond claims by other depositors, regardless of whether any of those depositors are joined in the suit.

(f) A person is prohibited from filing a claim on an invalid receipt.

(g) An action under this section must be brought not later than the second anniversary of the date of expiration of the public grain warehouse license in effect at the time the claim arose.

(h) The department by rule may set a limitations period for filing claims with the department on a bond filed with the department or cash, a certificate of deposit, or a letter of credit deposited with the department in lieu of a bond.

**Sec. 14.066. APPEAL OF DEPARTMENT ACTION BY WAREHOUSE OPERATOR.**

(a) A department action or order affecting a warehouse operator under this chapter is appealable in accordance with this section unless the action involves agency rulemaking, the assessment of an administrative penalty, imposition of a license sanction, or any other action for which a specific administrative or judicial remedy is available under this chapter, Chapter 12 of this code, or Chapter 2001, Government Code.

(b) Not later than the 10th day after the date the department takes an action or issues an order described by Subsection (a), the warehouse operator may serve notice on the department to appear in a district court of Travis County or the district court of the county in which the public grain warehouse is located. The court shall fix the time of the hearing not less than 3 days or more than 20 days after the date of service of the notice.

(c) The burden is on the warehouse operator to show by a preponderance of the evidence that the action taken or order issued by the department was not authorized under this chapter or, if authorized, was an abuse of the department's discretion.

**Sec. 14.071. GENERAL PENALTY.**

(a) A person commits an offense if the person violates a provision of this chapter for which an offense is not expressly provided.

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

**Sec. 14.072. 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 chapter; or

(2) continues to transact public grain warehouse business after a license has been revoked or suspended, or the license holder has been placed on probation, except as permitted under Section 14.084.

(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.

**Sec. 14.073. 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 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 14.055; or

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

(b) An offense under this section is a felony of the second degree.

**Sec. 14.074. 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 grain 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 warehouse operator.

(b) It is an affirmative 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 warehouse operator's lien;

(2) a warehouse operator's lawful termination of a storing, shipping, or handling agreement;

(3) a delivery to the person lawfully entitled to delivery;

(4) a delivery authorized by prior approval of the person lawfully entitled to delivery and the delivery is shown on the appropriate records of the warehouse operator;

(5) necessary to prevent destruction of the grain;

(6) taken under the order of a state or federal court; or

(7) permitted by a rule of the department necessary to carry out this chapter.

(c) An offense under this section is a felony of the second degree.

**Sec. 14.075. 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.

**Sec. 14.076. 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 warehouse operator for partial delivery or corrections made by the warehouse operator to reflect accuracy of accounts.

(c) An offense under this section is a felony of the second degree.

**Sec. 14.077. 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.

**Sec. 14.078. 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.

**Sec. 14.079. PENALTY FOR INTERFERING WITH SEALED WAREHOUSE OR DEPARTMENT INSPECTION OR INVESTIGATION.**

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

(1) without the department's consent and with the intent to obstruct the department's regulation, management, or control of sealed grain, obtains or exercises control over grain stored in a building, bin, or other similar structure sealed by the department;

(2) breaks, removes, vandalizes, or otherwise interferes with a department seal placed on a building, bin, or other similar structure used for the receiving of grain for hire, shipping of grain for hire, storing of grain for hire, or handling of grain for hire;

(3) without the department's consent and with the intent to obstruct the department's regulation, management, or control of sealed grain, interferes with the department's access to or control of grain stored in a building, bin, or other similar structure sealed by the department; or

(4) interferes with the lawful investigation or inspection of the facilities, records, or grain deposits of a public grain warehouse by a department inspector or other department official.

(b) It is an affirmative defense to prosecution under this section that the person's action is:

(1) necessary to prevent destruction of stored grain or the sealed structure; or

(2) taken under the order of a state or federal court.

(c) An offense under this section is a felony of the third degree.

**Sec. 14.081. OFFENSE IS VIOLATION; STANDARD OF PROOF.**

(a) Commission of an offense under this chapter is also a violation for purposes of administrative enforcement by the department.

(b) Proof of a violation under this chapter for purposes of administrative enforcement, by assessment of an administrative penalty or license sanction, is by a preponderance of the evidence.

(c) In an administrative enforcement action against a person for the commission of an offense under this chapter, the department is required to prove any intent element provided by the description of the offense.

(d) Both an administrative enforcement action and a criminal prosecution may be maintained against a person who violates this chapter.

**Sec. 14.082. DISCOVERY OF SHORTAGE; REFUSAL OF INSPECTION.**

(a) If the department determines that a warehouse operator does not possess sufficient grain to cover outstanding receipts and outstanding scale weight tickets issued or assumed by the warehouse operator, or if a warehouse operator refuses or is unable to submit records or property for lawful inspection or the department is unable to conduct an inspection of the warehouse due to the condition of the warehouse or grain stored in the warehouse, the department may seal the warehouse to prevent delivery or receipt of grain except as authorized by the department, suspend the license of the warehouse operator, and give notice to the warehouse operator requiring the warehouse operator to submit records or property for lawful inspection, to correct any condition interfering with the department's inspection of the warehouse or grain, or to cover a shortage of a particular type of grain by:

(1) storing to the credit of or delivering to each depositor affected by the shortage grain of the same type and quality that is stored at any of the warehouse operator's licensed warehouses in this state and that has been designated as company-owned grain by the warehouse operator;

(2) purchasing and storing to the credit of or delivering to each depositor affected by the shortage grain of the same type and quality;

(3) selling company-owned grain of a different type and paying to each depositor affected by the shortage, on a pro rata basis, the market value of the depositor's grain as determined on the day the shortage was discovered by the department; or

(4) using any combination of the remedies described by Subdivisions (1)-(3) or another fair and reasonable method for meeting the shortage approved by the department.

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

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

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

- (1) the warehouse operator or surety on the bond satisfies the claims of all depositors, within the limitations on liability imposed by this chapter; 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 warehouse operator 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 warehouse operator in accordance with law.

(f) A license suspension issued under this section remains in effect until lifted by the department through written notice to the warehouse operator or as provided by Section 14.066.

**Sec. 14.083. DENIAL, REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE OR PROBATION.**

(a) The department may deny an application for a license or license renewal if the applicant fails to comply with a requirement of this chapter, a rule adopted by the department under this chapter, or a lawful order of the commissioner or the commissioner's designee.

(b) The department may revoke, modify, or suspend a license or assess an administrative penalty against, place on probation, or reprimand a license holder for a violation of this chapter, a rule adopted by the department under this chapter, or a lawful order of the commissioner or the commissioner's designee.



(c) In addition to or in lieu of a license suspension authorized by another provision of this chapter, if the department considers it necessary, the department may suspend a license and prohibit the movement of grain into or out of a warehouse for up to 30 days without a hearing. For good cause, a suspension under this subsection may be extended for additional periods of up to 30 days each, not to exceed a total of 90 days of suspension in a licensing period.

(d) During a period of license suspension or probation, the department may seal and restrict access to the warehouse operator's buildings, bins, or other similar structures used to receive, store, ship, or handle grain, for hire, and require the warehouse operator to:

(1) maintain additional information in the records of the warehouse or report regularly to the department on matters that are the basis of the suspension or probation;

(2) limit practice to the areas prescribed by the department;

(3) operate under conditions or by methods prescribed by the department; or

(4) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the suspension or probation.

(e) Except as provided by Subsection (c), if the department proposes to deny, revoke, modify, or suspend a person's application or license or place a warehouse operator on probation, the person is entitled to a hearing conducted under Section 12.032. The decision of the department is appealable in the same manner as provided for contested cases under Chapter 2001, Government Code.

(f) A license suspension under Subsection (c) remains in effect until lifted by the department through written notice to the warehouse operator or as provided by Section 14.066 or until it expires by operation of law in accordance with the department's notice of suspension or the limitations provided by Subsection (c).

**Sec. 14.084. OPERATION AFTER REVOCATION OR SUSPENSION OF A LICENSE OR PROBATION.**

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

(b) During a period of suspension of a license or probation, the warehouse operator:

(1) shall operate the warehouse in a manner prescribed by the department;

(2) may deliver grain previously received, subject to the department's written conditions of suspension, if any; and

(3) may not receive grain for storing, shipping, or handling without the department's written authorization.

**Sec. 14.085. INJUNCTION.**

(a) If, after notice, a warehouse operator refuses to comply with this chapter, the department may apply for an injunction in a district court in Travis County or in a district or county court in the county where the warehouse is located.

(b) 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 either without a license or during a period of suspension of a warehouse operator's license or during a period when the warehouse operator is under probation;

(2) interference by any person with the carrying out by the department, or by a receiver appointed under this chapter, of duties and powers granted by this chapter; or

(3) any other violation of this chapter for which injunctive relief is an appropriate remedy.

(c) The notice provided for in Subsection (a) shall be delivered to the warehouse operator not less than 10 business days before the date the department applies for an injunction under Subsection (b)(1).

(d) The notice provided for in Subsection (a) shall be delivered to the warehouse operator not less than two business days before the date the department applies for an injunction under Subsection (b)(2) or (3).

**Sec. 14.086. CIVIL PENALTY.**

(a) A person who violates this chapter is liable for a civil penalty of not less than \$500 or more than \$10,000 for each violation. Each day a violation occurs or continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or the district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty. The attorney general, a county attorney, or a district attorney may file suit under this section without a request from the department.

(c) A county attorney, a district attorney, or the attorney general shall sue in the name of the state for the collection of a penalty provided by this section.

(d) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund. All civil penalties recovered in suits initially instituted by a local government or governments under this section shall be divided equally between the state and the local government or governments, with 50 percent of the recovery to be paid to the general revenue fund and the other 50 percent to be paid equally to the local government or governments initially instituting the suit.

(e) A civil penalty may not be collected for any violation that constituted the basis for a department proceeding to assess an administrative penalty, regardless of whether the department was successful in obtaining a judgment for the administrative penalty.

**Sec. 14.087. RECOVERY OF COURT COSTS.**

(a) On prevailing in an action commenced by the department through the attorney general under this chapter, the department and the attorney general are each entitled to recover:

(1) investigation costs and fees;

(2) reasonable attorney's fees;

(3) court costs; and

(4) other costs relating to the action, including the cost of depositions and other forms of discovery and copying charges.

(b) The costs recoverable under this section are in addition to other relief available to the department or attorney general.

**Sec. 14.088. VENUE.**

(a) Venue for a criminal prosecution under this chapter is in the county in which the alleged offense occurred.

(b) Except for an action for injunctive relief, venue for a civil action under this chapter commenced by the attorney general or a county or district attorney, either independently or on behalf of the department, is in any county in which all or part of the cause of the action accrued.

(c) Venue for an action for injunctive relief under this chapter is in a district court in Travis County or in a district or county court in the county where the warehouse is located.

(d) Venue for an administrative action commenced under this chapter is governed by Chapter 2001, Government Code, or, to the extent not inconsistent with Chapter 2001, the rules of the State Office of Administrative Hearings or the department.

**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, 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.

**Sec. 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.

**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 a board with an odd number of five to 15 members.

**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.

**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.

**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.

**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;
- (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).

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**Sec. 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.

**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, 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.

**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.

**Sec. 41.055. VACANCY.**

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

**Sec. 41.056. MAJORITY VOTE REQUIREMENT.**

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

**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.

**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, indemnification, and promotion designed to encourage the production, marketing, and use of the commodity on which the assessment is levied.

**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. 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.

**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.

**Sec. 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.

**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.

**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 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.

**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.

**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.

**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.

**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 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.

**Sec. 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.

**Sec. 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 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.

**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 Class C misdemeanor.

**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.

**Sec. 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 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.

**Sec. 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.

**Sec. 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.

**Sec. 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 I 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.

**Sec. 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.

**Sec. 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.

**Sec. 41.153. ADMINISTRATIVE COSTS.**

The department may recover costs for administration of this subchapter.

**Sec. 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.

**Sec. 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.

**Sec. 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.

**Sec. 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.

**Sec. 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.

**Sec. 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.

**Sec. 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.

**Sec. 41.159. BORROWING.**

The council may borrow money on approval of the commissioner.

**Sec. 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.

**Sec. 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.

**Sec. 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.

**Sec. 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.

**Sec. 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.

**Sec. 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.
- (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.

**Sec. 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.

**Sec. 41.203. CONFLICT WITH GENERAL COMMODITY LAW PROVISIONS.**

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

**Sec. 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.

**Sec. 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.

**Sec. 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.

**Sec. 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.

**Sec. 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.

**Sec. 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.

**Sec. 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).

**Sec. 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.

**Sec. 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.

**Sec. 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.

**Sec. 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.

**Sec. 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.

**Sec. 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.

**Sec. 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.