

AGRICULTURE CODE

TITLE 5. PRODUCTION, PROCESSING, AND SALE OF HORTICULTURAL PRODUCTS

SUBTITLE D. HANDLING AND MARKETING OF HORTICULTURAL PRODUCTS

CHAPTER 103. PRODUCE RECOVERY FUND

Sec. 103.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Produce Recovery Fund Board.
- (2) "Fund" means the produce recovery fund.

Acts 1981, 67th Leg., p. 1274, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 103.002. FUND. (a) The produce recovery fund is a special trust fund with the comptroller administered by the department, without appropriation, for the payment of claims against license holders, retailers, and persons required to be licensed under Chapter 101.

(b) Fees collected under Section 101.008 or 103.011 and 50 percent of the fines collected under Section 101.020 or 103.013 shall be deposited in the fund.

(c) The clerk of the county court or county court-at-law and the custodian of the county treasury funds shall keep separate records of all fines collected under Section 101.020 or 103.013. On the first day of each January, April, July, and October, the custodian of the funds in the county treasury shall remit 50 percent of the fines collected under those sections to the comptroller of public accounts and the comptroller shall deposit that amount in the fund.

(d) No more than 10 percent of the fund may be expended during any one year for administration of the claims process.

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

Acts 1981, 67th Leg., p. 1275, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Amended by Acts 1983, 68th Leg., p. 986, ch. 235, art. 1, Sec. 2(b), eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 917, Sec. 11, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1423, Sec. 2.11, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 358, Sec. 20, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.21, eff. September 1, 2009.

Sec. 103.003. BOARD. (a) The Produce Recovery Fund Board is composed of five members appointed by the commissioner. Two members must be producers, one must be a license holder licensed under Chapter 101, and two must be members of the general public.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 4.09(2), eff. September 1, 2009.

(c) Members of the board serve for staggered terms of six years with the term of office expiring on January 31 of odd-numbered years.

(d) Members of the board are entitled to per diem and reimbursement for actual expenses incurred while carrying out their duties.

(e) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(f) The commissioner shall designate a member of the board as the chairman of the board to serve in that capacity at the pleasure of the commissioner.

(g) The board is subject to Chapter 551, Government Code, and Chapter 2001, Government Code.

Acts 1981, 67th Leg., p. 1275, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 987, ch. 235, art. 1, Sec. 2(c), eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 917, Sec. 12, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 419, Sec. 1.21, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 358, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1170, Sec. 35.01, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.06, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 4.09(2), eff. September 1, 2009.

Sec. 103.004. DUTIES OF THE BOARD. (a) The board shall:

(1) advise the department on all matters relating to

the fund, including the fund's budget and the revenues necessary to accomplish the purposes of the fund;

(2) advise the department in the adoption of rules relating to the payment of claims from the fund and to the administration of the fund; and

(3) conduct adjudicative hearings on disputed claims presented for payment from the fund.

(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

(c) The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the commissioner and the staff of the department.

Acts 1981, 67th Leg., p. 1275, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 1.22, eff. Sept. 1, 1995.

Sec. 103.005. INITIATION OF CLAIM. (a) A person who deals with a license holder or a person required to be licensed under Chapter 101 in the purchasing, handling, selling, and accounting for sales of perishable commodities and who is aggrieved by an action of the license holder or person required to be licensed as a result of a violation of terms or conditions of a contract made by the license holder or person required to be licensed for the sale of Texas-grown produce may initiate a claim against the fund by filing with the department:

(1) a sworn complaint against the license holder or person required to be licensed; and

(2) a filing fee, as provided by department rule.

(b) A complaint and the fee under Subsection (a) must be filed on or before the second anniversary of the date that payment was due, or recovery from the fund is barred.

Acts 1981, 67th Leg., p. 1275, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 917, Sec. 13, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 269, Sec. 15, eff. Sept. 1, 1995;

Acts 1995, 74th Leg., ch. 419, Sec. 2.50, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 358, Sec. 22, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 196, Sec. 5, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.22, eff. September 1, 2009.

Sec. 103.0055. BANKRUPTCY OF MERCHANT OR RETAILER. For purposes of this chapter, the amount due an aggrieved party by a license holder or a person required to be licensed is not affected by a final judgment of a bankruptcy court that releases the license holder or person required to be licensed from the legal duty to satisfy the claim.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 121, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 269, Sec. 16, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.23, eff. September 1, 2009.

Sec. 103.006. INVESTIGATION; HEARING ON CLAIM. (a) After a claim is initiated, the department shall investigate the complaint and determine the amount due the aggrieved party. If the amount determined by the department is disputed by the license holder, a person required to be licensed, or the aggrieved party, the board shall conduct a hearing on the claim and determine the amount due the aggrieved party.

(b) A quorum of the board must be present in order to conduct a hearing. The board shall conduct the hearing and a party not satisfied with the decision of the board may appeal in the manner provided for contested cases under Chapter 2001, Government Code.

(c) A hearing on a claim may be conducted at any department district office.

Acts 1981, 67th Leg., p. 1276, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 987, ch. 235, art. 1, Sec. 2(d), eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 917, Sec. 14, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff.

Sept. 1, 1995; Acts 1995, 74th Leg., ch. 269, Sec. 17, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 3.24, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.24, eff. September 1, 2009.

Sec. 103.007. PAYMENT OF CLAIM. (a) If the amount determined by the department's investigation to be due the aggrieved party is not disputed by the license holder, a person required to be licensed, or the aggrieved party, the department shall pay the claim within the limits prescribed by this chapter.

(b) If a hearing is held on a disputed amount, the department shall pay to the aggrieved party the amount determined by the board, within the limits prescribed by this chapter.

Acts 1981, 67th Leg., p. 1276, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 917, Sec. 15, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 269, Sec. 18, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.25, eff. September 1, 2009.

Sec. 103.008. LIMITS ON CLAIM PAYMENTS. (a) In making payments from the fund the department may pay the aggrieved party the full value of their validated claim, subject to Subsections (b) and (d).

(b) The total payment of all claims arising from the same contract with a license holder or a person required to be licensed may not exceed \$50,000.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 5.35(8), eff. September 1, 2009.

(d) Payment of a claim filed against a person who is not licensed in violation of Chapter 101 shall be limited to 80 percent of the recovery prescribed under this section.

(e) Payments from the fund during a fiscal year may not exceed two times the average amount of money deposited into the fund during the previous three fiscal years, except that surplus funds remaining at the end of each fiscal year are available for the

payment of claims during any succeeding year. In no case shall payment of claims cause the balance of the fund to fall below \$100,000.

(f) If a license holder or a person required to be licensed owes money to the produce recovery fund at the time the license holder or person required to be licensed makes a claim against the fund, the department shall offset the amount owed to the fund from the amount dispensed.

Acts 1981, 67th Leg., p. 1276, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 917, Sec. 15, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 269, Sec. 19, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 358, Sec. 23, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.26, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.35(8), eff. September 1, 2009.

Sec. 103.009. REIMBURSEMENT OF FUND AND PAYMENT TO COMPLAINING PARTY BY LICENSEE. (a) If the department pays a claim against a license holder or a person required to be licensed, the license holder or person required to be licensed shall:

(1) reimburse the fund immediately or agree in writing to reimburse the fund on a schedule to be determined by rule of the department; and

(2) immediately pay the aggrieved party any amount due that party or agree in writing to pay the aggrieved party on a schedule to be determined by rule of the department.

(b) Payments made to the fund or to the aggrieved party under this section shall include interest at the rate of eight percent a year.

(c) If the license holder or person required to be licensed does not reimburse the fund or pay the aggrieved party, or does not agree to do so, in accordance with this section, the department shall issue an order canceling the license and may not issue a new license to or renew the license of that person for four years from the date of cancellation. If the license holder or person required

to be licensed is a corporation, an officer or director of the corporation or a person owning more than 25 percent of the stock in the corporation may not be licensed under Chapter 101 during the four-year period in which the corporation is ineligible for licensing.

(d) Subsections (a) and (b) do not apply to a license holder or a person required to be licensed who is released by a final judgment of a bankruptcy court from the legal duty to satisfy the claim paid by the department.

(e) The amount to be reimbursed under this section shall be one and one-half times the amount of the claim paid if the person required to reimburse the department was not licensed on the date on which the transaction forming the base of the claim occurred.

Acts 1981, 67th Leg., p. 1276, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 917, Sec. 15, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 230, Sec. 122, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 269, Sec. 20, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 358, Sec. 24, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.27, eff. September 1, 2009.

Sec. 103.010. SUBROGATION OF RIGHTS. If the department pays a claim against a license holder or a person required to be licensed, the department is subrogated to all rights of the aggrieved party against the license holder or person required to be licensed to the extent of the amount paid to the aggrieved party.

Acts 1981, 67th Leg., p. 1277, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 917, Sec. 15, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 269, Sec. 21, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.28, eff. September 1, 2009.

Sec. 103.011. FEE. (a) Except as otherwise provided by this section, a license holder licensed under Chapter 101 shall pay an annual fee to the fund as provided by department rule.

(b) A person registered as a marketing association organized under Chapter 52 that handles citrus fruit only for its members is exempt from payment of the fee under this section.

(c) The fee required by Subsection (a) is in addition to any licensing fee paid and is due at the time of making the license application. The department may not issue a license to a person who fails to pay the fee.

Acts 1981, 67th Leg., p. 1277, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1995, 74th Leg., ch. 269, Sec. 22, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 2.51, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 358, Sec. 25, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.29, eff. September 1, 2009.

Sec. 103.012. RULES. With the advice of the board, the department shall adopt rules, consistent with this chapter, for the payment of claims from the fund.

Acts 1981, 67th Leg., p. 1277, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 103.013. PENALTY FOR FAILURE TO PAY FEE. (a) A person commits an offense if the person acts or assumes to act as a license holder under Chapter 101 without first paying the annual fee required by Section 103.011.

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

(c) A person commits a separate offense for each day the person acts in violation of this section.

Acts 1981, 67th Leg., p. 1277, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1983, 68th Leg., p. 987, ch. 235, art. 1, Sec. 2(e), eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 917, Sec. 16, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 269, Sec. 23, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 358, Sec. 26, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.30, eff. September 1, 2009.

Sec. 103.014. PENALTY FOR FALSE CLAIMS. (a) A person

commits an offense if, with intent to obtain a benefit for himself or to harm another, he:

(1) institutes a claim under this chapter in which he knows he has no interest; or

(2) institutes any suit or claim under this chapter that he knows is false.

(b) An offense under this section is a Class B misdemeanor. Added by Acts 1983, 68th Leg., p. 987, ch. 235, art. 1, Sec. 2(f), eff. Sept. 1, 1983.

Sec. 103.015. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty not to exceed \$500 for each violation. Each day a violation 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 district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) 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 first instituted by a local government or governments under this section shall be equally divided between the State of Texas 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 equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 123, eff. Sept. 1, 1989.

Sec. 103.016. BOARD CONFLICT OF INTEREST. (a) An officer, employee, or paid consultant of a Texas trade association in the field of agriculture may not be a member of the board.

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of agriculture may not be a member of the board.

(c) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(d) A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.23, eff. Sept. 1, 1995.

Sec. 103.017. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Section 103.003;

(2) does not maintain during service on the board the qualifications required by Section 103.003;

(3) violates a prohibition established by Section 103.016;

(4) cannot because of illness or disability discharge the member's duties for a substantial part of the term for which the member is appointed; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member

exists.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 4.09(2), eff. September 1, 2009.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.23, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 4.09(2), eff. September 1, 2009.

Sec. 103.018. QUALIFICATIONS AND STANDARDS OF CONDUCT. The commissioner or the commissioner's designee shall provide to members of the board, as often as necessary, information regarding their qualification for office under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.23, eff. Sept. 1, 1995.

Sec. 103.019. BOARD MEMBER TRAINING. (a) Before a member of the board may assume the member's duties, the member must complete at least one course of the training program established under this section.

(b) A training program established under this section shall provide information to the member regarding:

- (1) this chapter;
- (2) the programs operated by the board;
- (3) the role and functions of the board;
- (4) the rules of the board with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the produce recovery fund;
- (6) the requirements of:
 - (A) Chapter [551](#), Government Code;
 - (B) Chapter [552](#), Government Code; and
 - (C) Chapter [2001](#), Government Code;
- (7) the requirements of the conflict of interest laws and other laws relating to public officials; and
- (8) any applicable ethics policies adopted by the

department or the Texas Ethics Commission.

Added by Acts 1995, 74th Leg., ch. 419, Sec. 1.23, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 4.07, eff. September 1, 2009.