

CHAPTER 418

S.B. No. 291

An Act relating to the office of state entomologist, change of name, and the administration of laws relating to beekeeping and beekeeping equipment; authorizing fees; providing penalties; amending the Agriculture Code, as amended, by amending Subchapters A, B, and C, Chapter 131; Sections 131.061, 131.062, 131.063, 131.065, 131.101, and 131.102; and Subsection (a), Section 131.121 and Subsection (a), Section 131.122.

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

SECTION 1. Subchapter A, Chapter 131, Agriculture Code, as amended, is amended to read as follows:

“SUBCHAPTER A. GENERAL PROVISIONS

“Section 131.001. **DEFINITIONS.** In this chapter:

“(1) ‘Abandoned apiary, equipment, or bees’ means an apiary, equipment, or a colony of bees that is not regularly maintained or attended in accordance with this chapter or rules or quarantines adopted under this chapter.

“(2) ‘Apiary’ means a place where six or more colonies of bees or nuclei of bees are kept.

“(3) ‘Beekeeper’ means a person who owns, leases, or manages one or more colonies of bees for pollination or the production of honey, beeswax, or other by-products, either for personal or commercial use.

“(4) ‘Bee’ means any stage of the common honeybee, *Apis mellifera* species.

“(5) ‘Colony’ means the hive and its equipment and appurtenances including bees, comb, honey, pollen, and brood.

“(6) ‘Director’ means the director of the Texas Agricultural Experiment Station.

“(7) ‘Disease’ means American foulbrood, European foulbrood, any other contagious or infectious disease of honeybees, or parasites or pests that affect bees or brood.

“(8) ‘Equipment’ means hives, supers, frames, veils, gloves, tools, machines, or other devices for the handling and manipulation of bees, honey, pollen, wax, or hives, including, storage or transporting containers for pollen, honey, or wax, or other apiary supplies used in the operation of an apiary or honey house.

“(9) ‘Inspector’ means the chief apiary inspector.

“(10) ~~[(9)]~~ ‘Label’ as a noun, means written or printed material accompanying a product and furnishing identification or a description. The term includes material attached to a product or its immediate container and material inserted in an immediate container or other packaging of a product.

“(11) ~~[(10)]~~ ‘Label’ as a verb, means to attach or insert a label.

“(12) ~~[(11)]~~ ‘Nucleus’ means a small mass of bees and combs of brood used in forming a new colony.

“(13) ~~[(12)]~~ ‘Pollen’ means dust-like grains formed in the anthers of flowering plants in which the male elements or sperm are produced.

“(14) ~~[(13)]~~ ‘Pure honey’ means the nectar of plants that has been transformed by, and is the natural product of, bees and that is in the comb or has been taken from the comb and is packaged in a liquid, crystallized, or granular form.

“(15) ~~[(14)]~~ ‘Queen apiary’ means an apiary in which queen bees are reared or kept for sale, barter, or exchange.

“Section 131.002. **CHIEF APIARY INSPECTOR [STATE ENTOMOLOGIST].** (a) The director shall appoint a person qualified by scientific training or personal experience as *chief apiary inspector* ~~[state entomologist]~~ to make inspections and administer this chapter under the direction and control of the director.

“(b) ~~[The state entomologist may employ assistants and inspectors as necessary, subject to the approval of the director and governing board of the experiment station:~~

“(c) ~~The state entomologist shall make an annual report to the director giving a detailed account of inspection activities, receipt and use of funds, and compliance actions brought under this chapter.~~

“(d) ~~The state entomologist may publish information on methods and directions for treating, eradicating, or suppressing infectious diseases of honeybees, the rules adopted for those purposes, and other information that the state entomologist considers of value or necessity to the beekeeping interests of this state.~~

"[(e)] The office of *chief apiary inspector* [~~state entomologist~~] is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the office is abolished effective September 1, 1997 [1995].

"Section 131.003. **CONFLICTS OF INTEREST.** (a) A person may not serve as *chief apiary inspector* or be an assistant of the inspector if the person is an officer, employee, or paid consultant of a trade association in the beekeeping industry.

"(b) A person may not serve as *chief apiary inspector* or be an assistant of the inspector of the grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act, if the person cohabits with or is the spouse of an officer, managerial employee, or paid consultant of a trade association in the beekeeping industry.

"Section 131.004. **ASSISTANTS.** (a) The *chief apiary inspector* may employ assistants and inspectors as necessary, subject to the approval of the director and governing board of the experiment station.

"(b) The inspector shall provide to his assistants as often as is necessary information regarding their qualifications under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

"(c) The inspector shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for the inspector's assistants must be based on the system established under this subsection.

"Section 131.005. **ANNUAL REPORTS.** (a) The *chief apiary inspector* shall make an annual report to the director giving a detailed account of inspection activities, receipt and use of funds, and compliance actions brought under this chapter.

"(b) The director shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the inspector during the preceding year. The form of the annual report and the time for reporting shall be provided in the General Appropriations Act.

"Section 131.006. **AUDIT.** The State Auditor shall audit the financial transactions of the *chief apiary inspector* at least once during each biennium.

"Section 131.007. **PUBLISHING INFORMATION.** (a) The *chief apiary inspector* shall publish information on methods and directions for treating, eradicating, or suppressing infectious diseases of honeybees, the rules adopted for those purposes, and other information that the inspector considers of value or necessity to the beekeeping interests of this state.

"(b) The inspector shall prepare information of public interest describing the functions of the agency and describing the procedure by which complaints are filed with and resolved by the inspector. The inspector shall make the information available to the general public and appropriate state agencies.

"(c) The inspector shall adopt rules establishing methods by which consumers and service recipients can be notified of the name, mailing address, and telephone number of the inspector's office for the purpose of directing complaints to the inspector. The inspector may provide for the notification by including the information:

"(1) on each registration or application form submitted by a person regulated under this chapter;

"(2) on a sign which is prominently displayed in the place of business of each person regulated under this chapter; or

"(3) in a bill for services or goods provided by a person regulated under this chapter.

"Section 131.008. **COMPLAINTS.** (a) The *chief apiary inspector* shall keep an information file about each complaint filed with the inspector relating to a beekeeper regulated under this chapter.

"(b) If a written complaint is filed with the inspector relating to a beekeeper regulated under this chapter, the inspector shall notify the parties to the complaint, at least quarterly and until final disposition of the complaint, of the status of the complaint, unless notice would jeopardize an undercover investigation.

"Section 131.009. **PUBLIC TESTIMONY.** The *chief apiary inspector* shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the inspector and to speak on any issue under the jurisdiction of the inspector.

"Section 131.010. **FEES.** The *chief apiary inspector* shall make a reasonable effort to set the fees charged under this chapter at amounts that will produce enough revenue to approximate 50 percent of the inspector's total budget. In achieving this goal, the inspector shall balance the revenue needs against the effect of the fees on the industry."

SECTION 2. Subchapter B, Chapter 131, Agriculture Code, as amended, is amended to read as follows:

"SUBCHAPTER B. DISEASE CONTROL

"Section 131.021. POWERS AND DUTIES OF *CHIEF APIARY INSPECTOR* [STATE ENTOMOLOGIST]. (a) For the purpose of enforcing this chapter, the *chief apiary inspector* [state entomologist] may:

"(1) adopt rules and act as necessary to control, eradicate, or prevent the introduction, spread, or dissemination of contagious or infectious diseases of bees;

"(2) prohibit the shipment or entry into this state of bees, honey, combs, pollen, or other items capable of transmitting diseases of bees from another state, territory, or foreign country except in accordance with rules adopted by the *inspector* [state entomologist]; and

"(3) seize and order the destruction, treatment, or sale of a colony of bees, equipment, pollen, or honey that is determined to be diseased, infectious, abandoned, or in violation of this chapter or a rule or quarantine adopted under this chapter.

"(b) For purposes of this section, apiaries, equipment, or bees are considered infectious if:

"(1) the bees are not hived with movable frames or stored so as to prevent the possible spread of disease; or

"(2) the bees, equipment, or apiary generally comprise a hazard or threat to disease control in the beekeeping industry.

"Section 131.022. QUARANTINES. (a) If the *chief apiary inspector* [state entomologist] determines that the public welfare requires the establishment of a quarantine, the *inspector* [state entomologist] may:

"(1) declare a protective quarantine of a district, county, precinct, or other defined area in which a disease of bees or a deleterious exotic species of bees is not known to exist or in which the disease or exotic species is being eradicated in accordance with this subchapter; or

"(2) declare a restrictive quarantine of a district, county, precinct, or other defined area in which a disease of bees or a deleterious exotic species of bees is located.

"(b) A person may not move or ship bees, equipment, pollen, or honey into or out of an area quarantined under this section, except in accordance with rules adopted by the *inspector* [state entomologist].

"Section 131.023. SALE OF QUEEN BEE AND ATTENDANTS, PACKAGE BEES, AND NUCLEI. A person may not sell or offer for sale a queen bee and attendant bees, package bees, nuclei, or queen cells in this state unless the bees are accompanied by:

"(1) a copy of a certificate from the *chief* [an official] apiary inspector [or the state entomologist] certifying that the apiary from which the queen bee was shipped has been inspected not more than 12 months before the date of shipment and found apparently free from disease; or

"(2) a copy of an affidavit made by the beekeeper stating that:

"(A) to his knowledge, the bees are not diseased; and

"(B) the honey used in making the candy contained in the queen cage has been diluted and boiled for at least 30 minutes in a closed vessel.

"Section 131.024. SEIZURE OF BEES, EQUIPMENT, POLLEN, OR HONEY. (a) Bees, equipment, pollen, or honey seized by the *chief apiary inspector* [state entomologist] under Section 131.021 of this code shall be treated, destroyed, or sold at public auction.

"(b) At least five days before an item seized under Section 131.021 of this code may be treated, destroyed, or sold, the *inspector* [state entomologist] shall send by certified mail, return receipt requested, written notice of the proposed disposition of the item to the last known address of the beekeeper or the owner of the item. The notice must describe the item, the proposed disposition of the item, and the reason for the disposition. If the name or address of the beekeeper or owner of the item is unknown, the *inspector* [state entomologist] shall:

"(1) publish notice of the proposed disposition for at least five consecutive days in a newspaper of general circulation in the county where the property was seized; or

"(2) post notice of the proposed disposition for at least five consecutive days in three public places, including the door of the county courthouse, in the county where the property was seized.

"(c) If the *inspector* [state entomologist] sells bees, equipment, pollen, or honey at a public auction under this section, the *inspector* [state entomologist] shall return the proceeds of the sale to the former owner after deducting the costs of the sale.

"(d) The owner of bees, equipment, pollen, or honey treated or destroyed under this section is liable for the costs of treatment or destruction, and the *inspector* [state entomologist] may sue to collect those costs. The *inspector* [state entomologist] shall remit money collected under this subsection to the state treasurer for deposit to the credit of the general revenue fund.

"Section 131.025. DUTY TO REPORT DISEASED BEES. If a beekeeper knows that a colony of bees is diseased, the beekeeper shall immediately report to the *chief apiary inspector* [state entomologist] all facts known about the diseased bees."

SECTION 3. Subchapter C, Chapter 131, Agriculture Code, as amended, is amended to read as follows:

"SUBCHAPTER C. PERMITS AND REGISTRATION

"Section 131.041. PERMIT FOR IMPORTATION. (a) A person may not ship or cause to be shipped bees or equipment into this state unless the person has a permit issued by the *chief apiary inspector* [state entomologist] authorizing the shipment.

"(b) A person may apply for a permit under this section by filing an application with the *inspector* [state entomologist] before the 10th day preceding the date of the shipment. An application for a permit must include:

- "(1) a complete description of the shipment;
- "(2) the destination of the shipment;
- "(3) the approximate date of the shipment;
- "(4) the names and addresses of the consignor and consignee; and
- "(5) a certificate of inspection signed by the official apiary inspector or entomologist of the state, territory, or country from which the bees are to be shipped.

"(c) A certificate of inspection for a permit required by Subsection (b)(5) of this section must certify that the bees or equipment are apparently free from disease based on an actual inspection conducted not more than 12 months before the date of the shipment. If the bees or equipment are to be shipped into this state from a state, territory, or country that does not have an official apiary inspector or entomologist, the person shipping the bees or equipment may provide other suitable evidence that the bees and equipment are free from disease.

"(d) If a person files an application in accordance with Subsection (b) of this section and the *inspector* [state entomologist] is satisfied that the shipment does not pose a threat to disease control in the beekeeping industry, the *inspector* [state entomologist] shall issue a permit authorizing the shipment.

"(e) This section does not apply to a shipment of live bees in wire cages without combs or honey.

"Section 131.042. PERMIT FOR EXPORTATION. (a) A person who ships bees or equipment from this state to another state, territory, or country may apply to the *chief apiary inspector* [state entomologist] for a permit authorizing the shipment. The application must include:

- "(1) a complete description of the shipment;
- "(2) the destination of the shipment;
- "(3) the approximate date of the shipment;
- "(4) the names and addresses of the consignor and consignee; and
- "(5) evidence that the shipment is apparently free from a disease of bees.

"(b) The *inspector* [state entomologist] shall accept as evidence that a shipment is apparently free from disease either:

- "(1) a certificate of inspection issued under Section 131.044 of this code; or
- "(2) an affidavit by the beekeeper or owner of the bees or equipment stating that to his knowledge, the bees or equipment are free from disease.

"(c) If a person files an application in accordance with Subsection (a) of this section, and the *inspector* [state entomologist] is satisfied that the shipment does not pose a threat to disease control in the beekeeping industry, the *inspector* [state entomologist] shall issue a permit for the shipment.

"(d) The *inspector* [state entomologist] shall charge a [\$50] fee for each permit issued under this section. The *inspector* shall set the fee at an amount that is reasonable in relation to the costs of administering this section, but at not less than \$50. Additional copies of each permit issued under this section shall be available from the *inspector* [state entomologist] for a reasonable [\$10] fee set by the *inspector* at not less than \$10.

"Section 131.043. PERMITS FOR INTRASTATE SHIPMENT. (a) A person may not ship or cause to be shipped bees or equipment between counties in this state unless the person has a permit issued by the *chief apiary inspector* [state entomologist] authorizing the shipment.

"(b) A person may apply for a permit under this section by filing an application for a permit with the *inspector* [state entomologist] before the 10th day preceding the date of shipment. An application for a permit must include:

- "(1) the name, address, and telephone number of the beekeeper;

- “(2) a complete description of the bees or equipment to be moved;
- “(3) the number of intercounty movements anticipated;
- “(4) the destination of each shipment; and
- “(5) the approximate date or dates of movement.

“(c) If a person files an application in accordance with Subsection (b) of this section and the inspector [state entomologist] is satisfied that the shipment does not pose a threat to disease control in the beekeeping industry, the inspector [state entomologist] shall issue a permit authorizing the shipment.

“(d) The inspector [state entomologist] shall charge a [~~\$25~~] fee for each permit issued under this section. The inspector shall set the fee at an amount that is reasonable in relation to the costs of administering this section, but at not less than \$25.

“(e) An individual who owns not more than 12 colonies of bees is exempt from the permit fee charged under Subsection (d) of this section.

“(f) A permit issued under this section entitles the permittee to move the bees or equipment between the designated counties during the state fiscal year in which the permit was issued.

“Section 131.044. CERTIFICATE OF INSPECTION. (a) A person who wants a certificate of inspection for bees, equipment, pollen, or honey must file a written request for the inspection with the chief apiary inspector [state entomologist].

“(b) On receipt of a request, the inspector [state entomologist] shall authorize the inspection of the bees, equipment, pollen, or honey for the presence of disease.

“(c) If a disease is not found in the bees, equipment, pollen, or honey, the inspector [state entomologist] shall certify in writing that the bees, equipment, pollen, or honey is apparently free from disease.

“(d) The inspector [state entomologist] shall charge [the following] fees for inspections requested under this section. The inspector shall set the fees in amounts that are reasonable in relation to the costs of administering this section, but at not less than the following amounts:

- “(1) for each inspection of an apiary or group of apiaries, except a queen apiary, located within an area of 100 square miles \$50
- “(2) for an inspection of a queen apiary or group of queen apiaries located within an area of 100 square miles \$200
- “(3) for each additional inspection of a queen apiary or group of queen apiaries located within an area of 100 square miles \$50.

“(e) The beekeeper of diseased bees or equipment shall pay an additional [~~\$25~~] fee, in a reasonable amount set by the inspector at not less than \$25, for each subsequent inspection that the inspector [state entomologist] determines is necessary to contain, treat, or eradicate the disease.

“[~~(f) An individual owning no more than 12 colonies of bees will be exempt from the \$25 permit fee.~~]

“Section 131.045. APIARY REGISTRATION. (a) The chief apiary inspector [state entomologist] may provide for the periodic registration of all apiaries in this state.

- “(b) A registration must include:
 - “(1) the beekeeper's name, address, and telephone number;
 - “(2) the county or counties in which the apiary will be located; and
 - “(3) the approximate dates that the apiary will be located in each county.

“(c) The inspector may require a beekeeper to submit with the registration information a map showing the exact location of each of the beekeeper's apiaries. A map submitted under this section is a trade secret under the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and may not be disclosed.

“Section 131.046. DISPOSITION AND USE OF FEES. (a) Fees collected under this subchapter shall be deposited in the State Treasury to the credit of a special fund [a local account] to be known as the bee disease control fund to be used only to defray the costs of administering and enforcing this chapter.

“(b) The chief apiary inspector [state entomologist] may sue to collect a delinquent fee under this subchapter.”

SECTION 4. Sections 131.061, 131.062, 131.063, and 131.065, Agriculture Code, as amended, are amended to read as follows:

“Section 131.061. IDENTIFICATION REQUIRED. A person may not operate an apiary in this state unless the apiary equipment is:

- “(1) clearly and indelibly marked with the name and address of the person; or
- “(2) branded in accordance with Section 131.064 of this code with a brand registered to the person by the chief apiary inspector [department].

"Section 131.062. BRAND; REGISTRATION. (a) The chief apiary inspector [department] shall maintain a system of registration of apiary equipment brands to identify equipment used by a beekeeper in an apiary.

"(b) Each brand shall consist of three numbers separated by hyphens, with the first number signifying that the brand is a state-registered brand, the second number identifying the registrant's county of residence, and the third number identifying the registrant.

"Section 131.063. REGISTRATION OF BRAND; FEE. (a) The chief apiary inspector [department] shall register a brand for each person who applies for a brand and pays a recording fee. The inspector shall set the fee at an amount that is reasonable in relation to the costs of administering this section, but at not less than [of] 50 cents.

"(b) The inspector shall remit money collected under this section to the State Treasurer for deposit to the credit of the bee disease control fund."

"Section 131.065. TRANSFER OF BRAND. (a) A brand may be transferred only if:

"(1) the chief apiary inspector [department] approves the transfer; and

"(2) the transferor is selling all of the transferor's bees and equipment to the person to whom the brand is to be transferred.

"(b) If a brand is to be transferred, the seller shall give a bill of sale for the bees and equipment that shows the seller's brand.

"(c) A person may sell an individual piece of branded equipment, but the brand is not transferred to the buyer. If the buyer of the equipment has a brand, the buyer shall affix the buyer's brand below the brand of the prior owner."

SECTION 5. Sections 131.101 and 131.102, Agriculture Code, as amended, are amended to read as follows:

"Section 131.101. ENFORCEMENT AUTHORITY. The chief apiary inspector [state entomologist] is the official responsible for enforcing Subchapters B, [and] C, and D of this chapter. [The department is the agency responsible for enforcing Subchapter D.] The Texas Department of Health is the agency responsible for enforcing Subchapter E of this chapter.

"Section 131.102. ENTRY POWER. (a) The chief apiary inspector [state entomologist] may enter at a reasonable hour any public or private premises, including a building, depot, express office, storeroom, vehicle, or warehouse, in which bees, equipment, pollen, or honey may be located to determine whether a violation of Subchapter B, [or] C, or D of this chapter has occurred or is occurring.

"(b) [The department may enter at a reasonable hour any public or private premises, including a building, depot, express office, storeroom, vehicle, or warehouse, in which bees, equipment, pollen, or honey may be located to determine whether a violation of Subchapter D of this chapter has occurred or is occurring.]

"[(e)] The Texas Department of Health may enter at a reasonable hour any public or private premises, including a building, depot, express office, storeroom, vehicle, or warehouse, in which bees, equipment, pollen, or honey may be located to determine whether a violation of Subchapter E of this chapter has occurred or is occurring."

SECTION 6. Subsection (a), Section 131.121, Agriculture Code, as amended, is amended to read as follows:

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

"(1) violates a provision of Section 131.022 or 131.023 of this code;

"(2) fails to report diseased bees in accordance with Section 131.025 of this code;

"(3) ships or causes bees or equipment to be shipped into this state or between counties in this state without the permit required by Section 131.041 or 131.043 of this chapter;

"(4) violates a rule, order, or quarantine of the chief apiary inspector [state entomologist or the department] adopted under this chapter;

"(5) prevents or attempts to prevent an inspection of bees, equipment, pollen, or honey under the direction of the inspector [state entomologist] under this chapter;

"(6) prevents or attempts to prevent the discovery or treatment of diseased bees;

"(7) interferes with or attempts to interfere with the inspector [state entomologist or the department] in the discharge of the duties under this chapter;

"(8) as the owner or keeper of a diseased colony of bees, barter, gives away, sells, ships, or moves diseased bees, equipment, pollen, or honey or exposes other bees to the disease;

"(9) exposes honey, pollen, hives, frames, combs, bees, or appliances known to be diseased in a manner that provides access to bees; or

"(10) sells, offers for sale, barter, gives away, ships, or distributes honey or pollen taken from a colony of diseased bees."

SECTION 7. Subsection (a), Section 131.122, Agriculture Code, as amended, is amended to read as follows:

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

“(1) violates Section 131.061 of this code; or

“(2) alters or attempts to alter a registered apiary equipment brand without authorization from the *chief apiary inspector* [~~department~~].”

SECTION 8. Not later than September 1, 1985, the Texas Department of Agriculture shall transfer to the chief apiary inspector all records, files, and other information regarding the apiary brand registration program established under Subchapter D, Chapter 131, Agriculture Code.

SECTION 9. This Act takes effect September 1, 1985.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 11, 1985, by a viva-voce vote; passed the House on May 22, 1985, by a non-record vote.

Approved: June 11, 1985

Effective: September 1, 1985