

**SUBJECT:** Specifying the offense for failing to certify compliance of certain tanks

**COMMITTEE:** Natural Resources — favorable, without amendment

**VOTE:** 8 ayes — Puente, Callegari, Campbell, R. Cook, Geren, Hamilton,  
Hardcastle, Hope

0 nays

1 absent — Wolens

**WITNESSES:** For — Les Findeisen, Texas Motor Transportation Association; Gregory K.  
Price, United Petroleum Transports, Texas Motor Transportation Association

Against — None

On — Paul Sarahan, Texas Commission on Environmental Quality

**BACKGROUND:** The Texas Commission on Environmental Quality (TCEQ) requires owners of regulated underground storage tanks to register the tanks with TCEQ. An owner of an underground tank used to store motor fuels must complete an annual compliance certification form. Under Water Code, sec. 26.3467(a), an underground tank owner or operator must provide the motor carrier a certificate of compliance for the tank before accepting the product. Violating this requirement is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

Penal Code, sec. 6.03 specifies that a person acts knowingly with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

**DIGEST:** The bill would specify that it was an offense to knowingly violate sec. 23.3467(a), requiring an underground tank owner or operator to provide to a motor carrier a certificate of compliance for the tank before accepting motor fuel for storage in the tank.

The bill would take effect on September 1, 2003.

**SUPPORTERS  
SAY:**

HB 755 would protect truck drivers from being penalized for circumstances beyond their control. A current tank certification must be provided to the driver before delivery of the product. A motor carrier can be prosecuted for depositing a product into a tank that is not certified. Such a violation, however, could be due simply to a paperwork delay. For instance, a gas-station owner might have filed the certification with TCEQ a few days before. If the driver delivered the fuel and the tank's certification was not current because the renewal filing had been delayed, the driver would have committed a violation under the law. However, the driver could not have known that the renewal had been delayed and the tank's certification was not current.

Truck drivers should not be required to be "tank cops," making judgments on the spot on whether a tank's registration is current. The bill would raise the standard of culpability to clarify that a driver committed an offense only if he or she knowingly violated the law.

**OPPONENTS  
SAY:**

No apparent opposition.