

BILL ANALYSIS

Senate Research Center
82R16433 TRH-F

C.S.S.B. 893
By: Whitmire
Natural Resources
3/23/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2009, the Texas Legislature strengthened consumer protection in Texas by authorizing the Texas Department of Agriculture (TDA) to regulate fuel quality. TDA developed a statewide program to test fuel for water and other contaminants. This bill addresses several statutory revisions and/or clean-up provisions identified by TDA since the implementation of the program. Stakeholders and the industries impacted by the regulation worked with the author and the agency to develop the clean-up provisions proposed in this legislation.

C.S.S.B. 893 amends current law relating to motor fuel quality and testing.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to commissioner of agriculture in SECTION 3 (Section 17.053, Agriculture Code) and SECTION 4 (Section 17.054, Agriculture Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Agriculture is modified in SECTION 5 (Section 17.071, Agriculture Code) of this bill.

Rulemaking authority is expressly granted the Texas Department of Agriculture in SECTION 5 (Section 17.071, Agriculture Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 12.020(c), Agriculture Code, as follows:

(c) Provides that the provisions of law subject to this section include, among certain provisions, Chapters 17 (Sale and Regulation of Certain Fuel Mixtures) and that the applicable penalty is not more than \$5,000. Makes nonsubstantive changes.

SECTION 2. Amends Section 17.052(a), Agriculture Code, as follows:

(a) Deletes existing text prohibiting a distributor, supplier, wholesaler, or jobber of motor fuel, except as provided by Subsection (b), from delivering to an outlet in this state a motor fuel mixture that contains ethanol or methanol exceeding one percent by volume of the mixture unless, at the time of the delivery of the mixture, the person also delivers to the outlet receiving the delivery signs required by Section 17.051 (Notice of Sale of Alcohol and Fuel Mixture) in a number sufficient for the dealer receiving the mixture to comply with that section, and evidences delivery of the signs required under Subdivision (1) (relating to the percentage of ethanol or methanol contained in the mixture). Makes nonsubstantive changes.

SECTION 3. Amends Section 17.053, Agriculture Code, as follows:

Sec. 17.053. RECORD OF DELIVERY DOCUMENTS; INSPECTION AUTHORIZED. (a) Deletes existing text requiring the dealer, during the first 60 days following delivery of a fuel mixture subject to this chapter, to keep a copy at the station or retail outlet where the motor fuel was delivered.

(b) Requires each distributor, supplier, wholesaler, and jobber of motor fuel to keep, rather than keep at the person's principal place of business, a copy of each document required to be delivered to the dealer by Section 17.052 (Documentation of Motor Fuel Mixture Sales) until the first anniversary of the delivery date.

(c) Requires the dealer, distributor, supplier, wholesaler, or jobber, on written notice presented by the commissioner of agriculture (commissioner) or an authorized representative of the commissioner to any employee at a dealer's station or retail outlet or mailed to the principal place of business of a dealer, distributor, supplier, wholesaler, or jobber, to provide the commissioner or authorized representative of the commissioner with the documents described by this section within the period specified in the notice.

(d) Authorizes the commissioner by rule to:

(1) require each dealer, distributor, supplier, wholesaler, and jobber to maintain and make available to the Texas Department of Agriculture (TDA) invoices, receipts, or other transmittal documents or records, including electronically stored information, showing or describing the purchase, sale, delivery, or distribution of motor fuel; invoices, receipts, work orders, reports, or other documents, including electronically stored information, showing or describing the installation, maintenance, or repair of motor fuel dispensing devices, and any equipment used in connection with motor fuel dispensing devices to record, display, or produce receipts or audit trails concerning the purchase, sale, delivery, or distribution of motor fuel; and any record or other document related to the sampling and testing of motor fuel purchased, sold, delivered, or distributed by the dealer, distributor, supplier, wholesaler, or jobber; and

(2) prescribe the manner of filing documents or records required to be kept under this section or by TDA rule; and the time, place, and manner of inspection of the documents or records. Makes nonsubstantive changes.

SECTION 4. Amends Section 17.054, Agriculture Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Requires the dealer, on written notice presented by the commissioner or an authorized representative of the commissioner to any employee at a dealer's station or retail outlet or mailed to the dealer's principal place of business, to provide the commissioner or authorized representative of the commissioner with the documents described by this section within the period specified in the notice.

(b) Authorizes the commissioner by rule to:

(1) require each dealer to maintain and make available to TDA invoices, receipts, or other transmittal documents or records, including electronically stored information, showing or describing the purchase, sale, delivery, or distribution of motor fuel; invoices, receipts, work orders, reports or other documents, including electronically stored information, showing or describing the installation, maintenance, or repair of motor fuel dispensing devices; and any equipment used in connection with motor fuel dispensing devices to record, display, or produce receipts or audit trails concerning the purchase, sale, delivery, or distribution of motor fuel; and any record or other document relating to the sampling and testing of motor fuel purchased, sold, delivered, or distributed by the dealer; and prescribe the manner of filing documents or records required to be kept under this section or by TDA rule; and the time, place, and manner of inspection of the documents and records.

SECTION 5. Amends Section 17.071, Agriculture Code, as follows:

Sec. 17.071. MINIMUM MOTOR FUEL QUALITY AND TESTING STANDARDS.

(a) Creates this subsection from existing text. Requires that minimum motor fuel quality and testing standards comply with the nationally recognized minimum standards established by the American Society for Testing and Materials for motor fuels other than fuels blending with ethanol, rather than the minimum standards established by the American Society for Testing and Materials, as those standards existed on September 1, 2009; and the National Institute of Standards and Technology for motor fuels blended with ethanol, rather than the National Institute of Standards and Technology, as those standards existed on September 1, 2009, other than the standard vapor to liquid ration specification for motor fuels blended with ethanol.

(b) Authorizes TDA to adopt rules as necessary to bring about uniformity between the standards established under this subchapter and the nationally recognized standards described by Subsection (a).

SECTION 6. Amends Section 17.073, Agriculture Code, as follows:

Sec. 17.073. New heading: STOP-SALE ORDER; SHUTDOWN OF DISPENSING DEVICES. (a) Creates this subsection from existing text. Authorizes TDA, if TDA has reason to believe that motor fuel is in violation of this chapter or a rule adopted under this chapter, or that the motor fuel is being sold or offered for sale in a manner that violates this chapter or a rule adopted under this chapter, to:

- (1) issue and enforce a written order to stop the sale of the motor fuel;
- (2) place on a device used to dispense the motor fuel a tag or other mark with the words "Out of Order"; or
- (3) stop the sale of the motor fuel and mark a device used to dispense the motor fuel as out of order.

(b) Creates this subsection from existing text. Requires TDA to present an order issued under this section to the dealer, distributor, jobber, supplier, or wholesaler who is in control of the motor fuel at the time the motor fuel or the dealer, distributor, jobber, supplier, or wholesaler of the motor fuel is inspected by the commissioner, rather than requiring TDA to present the order to the dealer, distributor, jobber, supplier, or wholesaler who is in control of the motor fuel at the time the motor fuel is tested. Prohibits the person who receives the order from selling motor fuel subject to a stop-sale order or use a device on which TDA has placed a tag or other mark under Subsection (a)(2) or (3) until TDA determines that the motor fuel or device is in compliance with this chapter and TDA rules. Makes nonsubstantive changes.

SECTION 7. Amends Section 17.155(a), Agriculture Code, as follows:

(a) Provides that an administrative penalty is imposed and collected in the manner provided by Section 12.020 (Administrative Penalties). Deletes existing text relating to an exception as otherwise provided by this section.

SECTION 8. Repealers: Sections 17.051(c) (relating to notice of sale of motor fuel) and (d) (relating to the requirements of a dealer), Agriculture Code.

Repealers: Section 17.155(b) (relating to the requirement that a violation shall not exceed \$5,000 a day), (c) (relating to conditions on which to base the penalty) (d) (relating to the commissioner's report of the violation), (e) (relating to written notice), (f) (relating to the

person receiving charges), (g) (relating to the acceptance of the violation), (h) (relating to the violation process), and (i) (relating to the person's right to judicial review), Agriculture Code.

SECTION 9. Makes application of this Act prospective.

SECTION 10. Effective date: September 1, 2011.