

BILL ANALYSIS

Senate Research Center

S.B. 2119
By: Alvarado
State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 2119 transfers the fuel industry's regulatory programs from one state agency to another. Currently, the Texas Department of Agriculture (TDA) oversees the Weights and Measures programs as defined in Chapter 13, Agriculture Code, which includes regulating meters in fuel pumps. Recent legislative changes have made it so that TDA no longer performs any field testing at gas stations. Routine fuel meter inspections, fuel quality sampling, and all other consumer complaint-based inspections are done by third-party licensed service companies (LSCs). The cost of these routine inspections is borne by the retailers. S.B. 2119 simply moves the liquids weights and measures program as it applies to fuel meters over where it belongs at the Texas Department of Licensing and Regulation (TDLR), a true regulatory agency.

S.B. 2119 transfers all Liquid Weights and Measure programs and the Fuel Quality Program from TDA to TDLR. The Liquid Weights and Measure program is Chapter 13, Agriculture Code. The Fuel Quality program is Chapter 17, Agriculture Code. The bill copies Chapters 13 and 17 and uses them to create a new chapter in the Occupations Code, Chapter 2310, to set up the programs in TDLR. S.B. 2119 makes no substantive changes to the Liquid Weights and Measures program or the Fuel Quality Program. (Original Author's/Sponsor's Statement of Intent)

S.B. 2119 amends current law relating to the transfer of the regulation of motor fuel metering and motor fuel quality from the Department of Agriculture to the Texas Department of Licensing and Regulation; provides civil and administrative penalties; creates criminal offenses; requires occupational licenses; and authorizes fees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation (TCLR) in SECTION 1 (Sections 2310.051, 2310.053, 2310.106, 2310.108, 2310.153, 2310.158, 2310.162, 2310.202, and 2310.204, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Agriculture (TDA) is modified in SECTION 11 of this bill.

Rulemaking authority previously granted to the commissioner of agriculture (commissioner) is transferred to TCLR in SECTION 3 (Sections 2310.2012, 2310.2013, and 2310.2014, Occupations Code) of this bill.

Rulemaking authority previously granted to the commissioner or TDA is transferred to TCLR or the Texas Department of Licensing and Regulation, as appropriate, in SECTION 11 of this bill.

Rulemaking authority previously granted to TDA is rescinded in SECTION 10 (Subchapters B-1 and C, Chapter 17, Agriculture Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle A, Title 14, Occupations Code, by adding Chapter 2310, as follows:

CHAPTER 2310. MOTOR FUEL AND METERING AND QUALITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2310.001. DEFINITIONS. (a)(1) Defines "commercial weighing or measuring device."

(2) Defines "commission" as the Texas Commission of Licensing and Regulation (TCLR).

(3) Defines "dealer."

(4) Defines "department" as the Texas Department of Licensing and Regulation (TDLR).

(5) Defines "executive director" as the executive director of TDLR.

(6) Defines "motor fuel."

(7) Defines "motor fuel metering device."

(8) Defines "operator" or "user."

(9) Defines "sell."

(10) Defines "weighing or measuring device."

(11) Defines "weight or measure of a motor fuel."

(b) Provides that a reference to the weight of a motor fuel in this chapter is a reference to the net weight of the motor fuel.

Sec. 2310.002. ENFORCEMENT OF CHAPTER. (a) Requires TDLR, notwithstanding any other law, to administer and enforce the provisions of this chapter and to regulate all motor fuel metering devices sold or offered for sale in this state. Authorizes TDLR to purchase apparatus as necessary for the administration of this chapter.

(b) Provides that, to the extent that this chapter conflicts with Chapter 13 (Weights and Measures), Agriculture Code, with regard to motor fuel metering devices, this chapter controls.

(c) Authorizes TDLR to contract with one or more license holders under Subchapter D of this chapter or Subchapter I (Licensing of Service Technicians and Service Companies), Chapter 13, Agriculture Code, to perform TDLR's duties under this chapter related to motor fuel metering devices. Provides that a reference in this chapter to TCLR or TDLR in the context of a contracted service means the contractor.

Sec. 2310.003. CIVIL PENALTY; INJUNCTION. (a) Provides that a person who violates Subchapter B or C or a rule adopted under Subchapter B or C is liable to the state for a civil penalty not to exceed \$500 for each violation. Authorizes each day a violation continues to be considered to be a separate violation for purposes of a civil penalty assessment.

(b) Requires the Texas attorney general (attorney general) or the county attorney or district attorney of the county in which the violation is alleged to have occurred, on request of the executive director, to file suit to collect the penalty.

(c) Requires a civil penalty collected under this section to be deposited in the state treasury to the credit of the general revenue fund. Requires a civil penalty

recovered in a suit first instituted by one or more local governments under this section to be equally divided between this state and each local government that first instituted the suit, with 50 percent of the recovery deposited to the credit of the general revenue fund and the other 50 percent distributed equally to each local government.

(d) Entitles the executive director to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. Requires the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring, on request of the executive director, to file suit for the injunctive relief. Provides that venue is in the county in which the alleged violation is threatened or is occurring.

(e) Authorizes TDLR and the attorney general to each recover reasonable expenses incurred in obtaining injunctive relief and civil penalties under this section, including investigative costs, court costs, reasonable attorney's fees, witness fees, and deposition expenses. Authorizes the expenses recovered by TDLR to be appropriated only to TDLR for the administration and enforcement of this chapter. Authorizes the expenses recovered by the attorney general to be appropriated only to the attorney general.

SUBCHAPTER B. STANDARD WEIGHTS AND MEASURES FOR MOTOR FUEL

Sec. 2310.051. LEGAL STANDARDS. (a) Provides that the legal standard for the weight or measure of a motor fuel in this state is the standard weight or measure adopted and used by the government of the United States for that motor fuel. Provides that, if the United States does not provide a standard weight or measure for a motor fuel, the standard for that motor fuel is that established by this subchapter.

(b) Authorizes TDLR to adopt rules for the purpose of administering this subchapter and bringing about uniformity between the standards established under this subchapter and the standards established by federal law.

(c) Requires a contract for work or sales by weight or measure of a motor fuel, except as provided by an express contract, to be construed in accordance with the standards of this subchapter.

(d) Requires the standards of this subchapter to be the guide for making any adjustment of weighing or measuring devices under the law of this state.

Sec. 2310.052. STANDARD FOR LIQUID MOTOR FUEL. (a) Provides that this section does not apply to compressed natural gas or liquefied natural gas.

(b) Provides that the standard unit of measure of capacity for liquid motor fuels is the gallon.

(c) Provides that, except as provided by Subsections (d) and (e), all other measures of capacity for liquid motor fuels are derived from the gallon by continual division by two, making half gallons, quarts, pints, half-pints, and gills.

(d) Requires a mechanism or machine that is adapted to measure and deliver liquid motor fuels by volume and that indicates fractional parts of a gallon to indicate the fractional parts either in terms of binary submultiple subdivisions or in terms of tenths of a gallon.

(e) Provides that, for purposes of the retail sale of motor fuel only, the liquid gallon contains 231 cubic inches without adjustment based on the temperature of the liquid.

Sec. 2310.053. EXEMPTION OF CERTAIN MOTOR FUEL METERING DEVICES. (a) Authorizes TCLR by rule to exempt a motor fuel metering device from a requirement established by this chapter if TCLR determines that imposing or enforcing the requirement is not cost-effective for TDLR, is not feasible with current resources or standards, or will not substantially benefit or protect consumers.

(b) Provides that a motor fuel metering device is exempt from the requirements of this chapter if the motor fuel metering device is not used to calculate the amount of fuel sold in a commercial transaction or to compute the charge for service.

Sec. 2310.054. SALE OF MOTOR FUEL BY PROPER MEASURE. (a) Requires motor fuel, except as otherwise provided by this section, to be sold by liquid measure.

(b) Requires compressed natural gas and liquefied natural gas to be sold by weight.

(c) Provides that a person violates this chapter if, in violation of this section, the person sells motor fuel by other than weight or liquid measure.

Sec. 2310.055. PRICE ADVERTISEMENT; MISREPRESENTATION OF PRICE OR QUANTITY. (a) Provides that, if a price sign, card, tag, poster, or other advertisement displaying the price of motor fuel includes a whole number and a fraction, the figures in the fraction are required to be of proportionate size and legibility to those of the whole number.

(b) Provides that person violates this chapter if the person misrepresents the price of motor fuel sold or offered or exposed for sale or represents the price or the quantity of motor fuel sold or offered or exposed for sale in a manner intended or tending to mislead or deceive an actual or prospective customer.

Sec. 2310.056. FALSE REPRESENTATION OF MOTOR FUEL QUANTITY. Provides that a person violates this chapter if the person or the person's representative or agent sells or offers or exposes for sale a quantity of motor fuel that is less than the quantity the person represents or, as a buyer furnishing the weight or measure of a motor fuel by which the amount of the motor fuel is determined, takes or attempts to take more than the quantity the person represents.

Sec. 2310.057. USE OF INCORRECT MOTOR FUEL METERING DEVICE. (a) Provides that a person commits an offense if the person or the person's representative or agent knowingly uses an incorrect weighing or measuring device in buying or selling motor fuel, computing a charge for services rendered on the basis of weight or measure, or determining the weight or measure of motor fuel, if a charge is made for the determination.

(b) Provides that, for the purpose of this section, a weighing or measuring device is incorrect if it:

(1) does not conform as closely as practicable to the official standards;

(2) is not accurate;

(3) is of a construction that is not reasonably permanent in adjustment or does not correctly repeat its indications;

(4) facilitates the perpetration of fraud; or

(5) does not conform to the specifications and tolerances under Section 2310.107.

Sec. 2310.058. SALE OF MOTOR FUEL IN VIOLATION OF SUBCHAPTER. Provides that a person violates this chapter if the person or the person's representative or agent sells or keeps, offers, or exposes for sale motor fuel in violation of this subchapter.

Sec. 2310.059. TESTING BY DEPARTMENT. (a) Requires TDLR to from time to time weigh or measure an amount of motor fuel that is kept or offered for sale, sold, or in the process of delivery, in order to determine if the motor fuel is of the amount or quantity represented or if the motor fuel is being offered for sale or sold in accordance with law.

(b) Authorizes TDLR, if TDLR finds that any lot of motor fuel contains less of the motor fuel than the amount represented, to seize the motor fuel as evidence.

(c) Provides that a person commits an offense if the person or the person's employee or agent refuses to exhibit motor fuel being sold or offered for sale at a given weight or quantity, or ordinarily sold in that manner, to TDLR for testing and proving as to quantity.

Sec. 2310.060. STOP-SALE ORDER. (a) Authorizes the executive director, if TDLR has reason to believe that motor fuel is being sold or kept, offered, or exposed for sale in violation of this chapter or that motor fuel is being sold or offered for sale by or through the use of a motor fuel metering device that is in violation of this chapter, to issue an order to stop the sale of the motor fuel. Requires the executive director to issue the order to the owner or custodian of the motor fuel or seller of the motor fuel. Prohibits the person receiving the order from selling the motor fuel or providing the service until discharged by a court under Subsection (b) or until the executive director finds that the motor fuel or motor fuel metering device is in compliance with this chapter.

(b) Entitles the owner, custodian, or seller of motor fuel prohibited from sale by an order of the executive director to sue in a court where the motor fuel is found or the service is being sold or offered for sale for a judgment as to the justification of the order and for the discharge of the motor fuel in accordance with the findings of the court.

(c) Provides that this section does not limit the right of TDLR to proceed as authorized by other sections of this code.

Sec. 2310.061. PENALTIES; DEFENSE. (a) Provides that an offense under Section 2310.057 or 2310.059 is a Class C misdemeanor.

(b) Provides that it is a defense to prosecution or to the imposition of a civil or administrative penalty for a violation of Section 2310.057 or 2310.059 that a discrepancy between the actual weight or volume at the time of sale to a consumer or a discrepancy between the fill of a container and the capacity of the container is due to unavoidable leakage, shrinkage, evaporation, waste, or causes beyond the control of the seller acting in good faith.

SUBCHAPTER C. INSPECTION AND REGISTRATION OF MOTOR FUEL METERING DEVICES

Sec. 2310.101. AUTHORITY TO INSPECT. (a) Authorizes TDLR, if TDLR has reason to believe that a motor fuel metering device is being used for a commercial transaction and the device is not registered with TDLR, to inspect the device and the records of the owner, operator, or user of the device that relate to use of the device to determine whether the device is in compliance with this chapter.

(b) Provides that TDLR has reason to believe a motor fuel metering device is being used for a commercial transaction if the motor fuel metering device is found near motor fuel being sold or offered for sale by weight or measure and the device appears to be under the control or in the possession of the person selling the motor fuel or offering the motor fuel for sale or if other available evidence is sufficient

for a prudent person to believe that the motor fuel metering device is being used for a commercial transaction.

Sec. 2310.104. COMPLAINTS REGARDING MOTOR FUEL METERING DEVICES. Requires the executive director, in accordance with Chapter 51 (Texas Department of Licensing and Regulation), to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of TDLR for the purpose of directing complaints to TDLR. Requires TDLR to provide to the person filing the complaint and to each person who is a subject of the complaint information about TDLR's policies and procedures relating to complaint investigation and resolution.

Sec. 2310.105. REPAIR OR DESTRUCTION OF INCORRECT MOTOR FUEL METERING DEVICES. (a) Authorizes TDLR, if, in the judgment of TDLR, a motor fuel metering device found to be incorrect is not capable of being repaired, to condemn, seize, and destroy the device.

(b) Requires TDLR, if, in the judgment of TDLR, an incorrect motor fuel metering device is capable of being repaired, to place on the device a tag or other mark with the words "Out of Order." Prohibits the owner or user of the motor fuel metering device from using it until it is reinspected and released for use by TDLR or inspected and released for use in any other manner authorized by TDLR rule.

(c) Prohibits the owner, operator, or user of a motor fuel metering device from destroying, replacing, or otherwise disposing of a device declared to be incorrect or condemned under this section except as provided by TDLR rule.

Sec. 2310.106. INSPECTION OF STANDARDS USED TO PERFORM DEVICE MAINTENANCE ACTIVITIES. (a) Defines "state metrology laboratory" for purposes of this section.

(b) Authorizes TDLR to adopt rules to regulate the frequency and place of inspection and correction of the standards for motor fuel used by an individual or business licensed by TDLR to perform device maintenance activities under Subchapter D or an individual or business licensed under Subchapter I, Chapter 13, Agriculture Code.

(c) Authorizes TDLR to inspect any standard for motor fuel used by an individual or business licensed by TDLR to perform device maintenance activities described by Subchapter D or an individual or business licensed under Subchapter I, Chapter 13, Agriculture Code, if TDLR has reason to believe a standard is no longer in compliance with this chapter.

(d) Requires TDLR to keep a record of the inspection and character of standards for motor fuel inspected under this section.

(e) Requires the state metrology laboratory to purchase additional sets of standards as necessary for use by a TDLR inspector or other TDLR personnel.

(f) Requires the state metrology laboratory to inspect and correct the standards for motor fuel used by a TDLR inspector, another TDLR employee, an individual or business licensed by TDLR to perform device maintenance activities under Subchapter D, or an individual or business licensed under Subchapter I, Chapter 13, Agriculture Code.

(g) Requires TDLR and the state metrology laboratory to enter into a memorandum of understanding to implement this section. Requires the memorandum of understanding to provide TDLR personnel and persons licensed under Subchapter D with access to state metrology laboratory services equal to the access provided to Texas Department of Agriculture (TDA) personnel and

persons licensed under Subchapter I, Chapter 13, Agriculture Code, and under equivalent terms and conditions.

Sec. 2310.107. TOLERANCES. Requires specifications and tolerances for motor fuel metering devices to be the same as those recommended by the National Institute of Standards and Technology (NIST).

Sec. 2310.108. FEES. Requires TCLR by rule to establish fees in amounts reasonable and necessary to cover the cost of administering this chapter.

Sec. 2310.109. REFUSING TO ALLOW TEST OF MOTOR FUEL METERING DEVICE. (a) Provides that a person commits an offense if the person refuses to allow a motor fuel metering device under the person's control or in the person's possession to be inspected, tested, or examined by TDLR, and the inspection, test, or examination is required or authorized by this chapter.

(b) Provides that a person commits an offense if the person hinders or obstructs in any way TDLR, a TDLR inspector, or other TDLR employee in the performance of official duties.

(c) Provides that a person commits an offense if the person removes or obliterates a tag or device placed or required by TDLR to be placed on a motor fuel metering device under this chapter.

Sec. 2310.110. SALE OR USE OF INCORRECT MOTOR FUEL METERING DEVICE. (a) Authorizes TDLR to condemn and prohibit the sale or distribution of any incorrect motor fuel metering device that is sold, offered for sale, or about to be sold in this state.

(b) Provides that a person commits an offense if the person or the person's representative or agent knowingly offers or exposes for sale, hire, or award or sells an incorrect motor fuel metering device, possesses an incorrect motor fuel metering device, or sells, offers for sale, uses, or possesses for the purpose of sale or use a device or instrument to be used to falsify or intended to falsify a weight or measure for motor fuel.

Sec. 2310.111. DISPOSING OF CONDEMNED MOTOR FUEL METERING DEVICE. Provides that a person commits an offense if the person or the person's representative or agent disposes of a motor fuel metering device condemned under Section 2310.105 or 2310.110 in a manner contrary to those sections.

Sec. 2310.112. PENALTIES. Provides that an offense under Section 2310.109, 2310.110, or 2310.111 is a Class C misdemeanor.

SUBCHAPTER D. LICENSING OF MOTOR FUEL METERING DEVICE SERVICE TECHNICIANS AND MOTOR FUEL METERING DEVICE SERVICE COMPANIES

Sec. 2310.151. DEFINITIONS. Defines "device maintenance activities," "license holder," "service company," and "service technician" for purposes of this subchapter.

Sec. 2310.152. DEVICE MAINTENANCE ACTIVITIES. Provides that a person performs device maintenance activities if the person or the person's employee:

- (1) places a motor fuel metering device in service;
- (2) installs, calibrates, inspects, tests, or repairs a motor fuel metering device; or

(3) removes an out-of-order tag, stop-sale order, security seal, lock, condemnation notice, or other form of use prohibition placed on a motor fuel metering device by TDLR.

Sec. 2310.153. POWERS AND DUTIES OF DEPARTMENT. (a) Authorizes TDLR, to verify compliance with licensing requirements, trade practices, TCLR rules, and this chapter, to periodically or in response to a complaint or previous violation inspect an applicant's or license holder's:

- (1) facilities;
- (2) inspecting and testing equipment and procedures;
- (3) repair and calibration equipment, standards, and procedures;
- (4) transportation equipment; and
- (5) invoices, work orders, and other records related to device maintenance activities.

(b) Authorizes TDLR to periodically or in response to a complaint or previous violation monitor and inspect or test motor fuel metering devices that have been inspected and tested by a license holder and any standards used by the license holder during an inspection or test.

(c) Authorizes TCLR by rule to adopt additional requirements for the issuance of a license and for the denial of an application for a license or renewal of a license. Requires rules adopted by TCLR under this subsection to be designed to protect the public health, safety, and welfare and ensure the proper inspection, testing, and operation of commercial motor fuel metering devices.

(d) Authorizes TCLR to adopt other rules necessary for the regulation of device maintenance activities, for the proper operation of motor fuel metering devices, and to protect the health, safety, and welfare of the public and license holders.

(e) Authorizes TDLR to specify the date, time, and place for any inspection authorized by this section.

Sec. 2310.154. EXEMPTIONS FROM LICENSE REQUIREMENTS. (a) Provides that a person is not required to hold a license issued under this subchapter if the person:

(1) is a TDLR employee who is performing device maintenance activities in the scope of the person's duties for TDLR;

(2) is the owner or operator of a motor fuel metering device or an employee of the owner or operator of a motor fuel metering device and the person:

(A) completely removes the motor fuel metering device from the location at which the device was installed, including a device subject to an out-of-order tag, stop-sale order, security seal, lock, condemnation notice, or other item placed on the device by TDLR to prohibit use of the device; and

(B) notifies TDLR of the motor fuel metering device's removal not later than the 10th day after the date the device was removed in the manner provided by TCLR rule;

(3) performs device maintenance activities only on a motor fuel metering device that is:

(A) exempt from the inspection and registration requirements of Sections 2310.102 and 2310.103 under TCLR rules; and

(B) not required to be inspected by other TCLR rules; or

(4) is a license holder under Subchapter I, Chapter 13, Agriculture Code.

(b) Provides that TDLR is not required to hold a license issued under this subchapter or Subchapter I, Chapter 13, Agriculture Code.

Sec. 2310.155. SERVICE TECHNICIAN LICENSE REQUIRED. Prohibits an individual, unless exempt from the licensing requirement, from performing or offering to perform device maintenance activities unless the individual holds a service technician license issued by TDLR under this subchapter.

Sec. 2310.156. SERVICE COMPANY LICENSE REQUIRED. (a) Prohibits a person, unless exempt from the license requirement, from employing or contracting with an individual who performs or offers to perform device maintenance activities unless the person holds a service company license issued by TDLR under this subchapter.

(b) Prohibits an individual, unless exempt from the licensing requirement, from performing or offering to perform device maintenance activities as a sole proprietor unless the individual holds a service technician license and a service company license issued by TDLR under this subchapter.

Sec. 2310.157. APPLICATION FOR LICENSE. (a) Requires an applicant for a license under this subchapter to submit to TDLR an application form prescribed by TDLR, any other information required by TDLR, and a fee in an amount set by TDLR.

(b) Requires TDLR to conduct a criminal background check on each applicant who submits an application for a license under this subchapter and on any controlling person of the applicant. Authorizes TDLR, as permitted by law, to examine any criminal conviction, guilty plea, or deferred adjudication of the applicant or controlling person and to obtain any criminal history or record of the applicant or controlling person.

Sec. 2310.158. SERVICE TECHNICIAN LICENSE REQUIREMENTS. (a) Requires TDLR to issue a license to each qualified applicant who applies for a service technician license.

(b) Authorizes TCLR by rule to require an applicant for the issuance or renewal of a service technician license to:

(1) provide proof that the applicant has completed an academic, trade, or professional course of instruction approved by TDLR; and

(2) pass a written test, practical skills test, or both.

Sec. 2310.159. SERVICE COMPANY LICENSE REQUIREMENTS. (a) Requires TDLR to issue a license to each qualified applicant who applies for a service company license.

(b) Requires an applicant for the issuance or renewal of a license under this section to submit to TDLR a certificate of insurance evidencing that the applicant has an insurance policy that meets the requirements of Section 2310.160 effective for the period for which the license is to be issued or renewed and to meet any other requirements provided by TCLR rule.

Sec. 2310.160. INSURANCE POLICY REQUIRED FOR SERVICE COMPANY. Requires a service company to maintain a current effective liability insurance policy issued by an insurance company authorized to do business in this state or by a surplus lines insurer that meets the requirements of Chapter 981 (Surplus Lines Insurance), Insurance Code, and rules adopted by the commissioner of insurance in an amount set by TCLR rule and based on the type of licensed activities to be performed.

Sec. 2310.161. TERM OF LICENSE. Provides that a license issued under this subchapter is valid for one or two years as established by TCLR rule.

Sec. 2310.162. LICENSE RENEWAL. Requires TCLR by rule to establish the requirements for renewing a license and issuing a renewal license under this chapter, including payment of applicable fees.

Sec. 2310.163. PRACTICE BY LICENSE HOLDER. (a) Requires a license holder to perform device maintenance activities in compliance with TCLR rules.

(b) Authorizes a license holder to use only equipment approved by TDLR, as provided by TCLR rules, when performing device maintenance activities.

Sec. 2310.164. CRIMINAL PENALTY. (a) Provides that a person commits an offense if the person violates Section 2310.155 or 2310.156 or causes another person to violate Section 2310.155 or 2310.156.

(b) Provides that an offense under Subsection (a) is a Class B misdemeanor, unless the person has been previously convicted of an offense under this section, in which case the offense is a Class A misdemeanor.

SUBCHAPTER E. SALE, DELIVERY, AND QUALITY OF MOTOR FUEL

Sec. 2301.201. NOTICE OF SALE OF ALCOHOL AND FUEL MIXTURE. (a) Prohibits a dealer from selling or offering for sale motor fuel from a motor fuel pump supplied by a storage tank into which motor fuel, in a mixture in which at least one percent of the mixture measured by volume is ethanol or methanol, has been delivered within the 60-day period preceding the date of sale or offer of sale unless the dealer prominently displays on the pump from which the mixture is sold a sign that:

(1) is displayed on each side of the motor fuel pump on which the price of the motor fuel mixture sold from the pump is displayed;

(2) states "Contains Ethanol" or "Contains Methanol," as applicable;

(3) appears in contrasting colors with block letters at least one-half inch high and one-fourth inch wide; and

(4) is displayed in a clear, conspicuous, and prominent manner, visible to customers using either side of the pump.

(b) Provides that this section does not prohibit the posting of any other alcohol or additive information. Provides that other alcohol or additive information and any relevant posting are subject to regulation by TDLR.

Sec. 2310.202. MINIMUM MOTOR FUEL QUALITY AND TESTING STANDARDS. (a) Requires TCLR by rule to adopt minimum motor fuel quality and testing standards for motor fuel that is sold or offered for sale in this state. Requires the standards to comply with the nationally recognized minimum standards established by:

(1) the American Society for Testing and Materials (ASTM), for motor fuels other than motor fuels blended with ethanol; and

(2) NIST, for motor fuels blended with ethanol.

(b) Authorizes TCLR 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).

Sec. 2310.203. TESTING OF MOTOR FUEL QUALITY. (a) Authorizes TDLR or a representative of TDLR to collect samples and conduct testing at any location where motor fuel is kept, transferred, sold, or offered for sale to verify that the motor fuel complies with the minimum standards required by Section 2310.202.

(b) Requires the collection of samples and conducting of testing at a dealer's location to be performed by a license holder under Subchapter D of this chapter or Subchapter I, Chapter 13, Agriculture Code, under contract with the dealer. Provides that the license holder is considered a representative of TDLR for purposes of this section.

(c) Requires a representative of TDLR, on arriving at a facility to conduct testing under Subsection (a), to notify the owner or manager of the facility of the representative's presence and purpose. Requires the TDLR representative to follow the most recent applicable procedures specified by ASTM International Standard D4057, D4177, D5842, or D5854 for the collection, sampling, and handling of fuel to prepare for laboratory analysis.

(d) Provides that a person commits an offense if the person refuses to allow a TDLR representative to collect samples or conduct motor fuel testing under Subsection (a).

(e) Provides that an offense under Subsection (d) is a Class C misdemeanor.

Sec. 2310.204. RULES; FEES. (a) Authorizes TCLR to adopt rules consistent with this subchapter for the regulation of the sale of motor fuels, including motor fuels that contain ethanol and methanol.

(b) Authorizes TCLR by rule to impose a fee for testing, inspection, or the performance of other services provided as determined necessary by TCLR in the administration of this subchapter. Requires a fee imposed under this subsection to be collected from each dealer, distributor, and supplier, as defined by Section 162.001 (Definitions), Tax Code, on a periodic basis determined by TCLR without regard to whether the motor fuel is subject to regulation under this subchapter.

(c) Requires TCLR by rule to prescribe the form for reporting and remitting the fees imposed under this section.

(d) Authorizes fees collected under this section to be used only to administer and enforce this subchapter.

Sec. 2301.205. CIVIL PENALTY. Provides that a person who sells or offers for sale motor fuel in violation of this subchapter or a rule adopted under this subchapter is liable to this state for a civil penalty of not less than \$200 and not more than \$2,500.

Sec. 2310.206. ADMINISTRATIVE PENALTY. Authorizes TCLR to impose an administrative penalty on a person under Subchapter F (Administrative Penalty), Chapter 51, if the person sells or offers for sale motor fuel in violation of this subchapter or a rule adopted under this subchapter.

SECTION 2. Transfers Sections 13.1015 and 13.1016, Agriculture Code, to Subchapter C, Chapter 2310, Occupations Code, as added by this Act, redesignates them as Sections 2310.102 and 2310.103, Occupations Code, and amends them as follows:

Sec. 2310.102. INSPECTION OF MOTOR FUEL METERING DEVICES. (a) Requires a motor fuel metering device, unless the device is exempt from the application of this section by TCLR rule, to be inspected, tested, and calibrated for correctness by a license holder under Subchapter D of this chapter or Subchapter I, Chapter 13, Agriculture Code, rather than requiring a motor fuel metering device, unless the device is exempt from the application of this section by TDA rule, to be inspected, tested, and calibrated for correctness by a license holder under Subchapter I, at least once every two years if the device meets certain criteria.

(b) Makes conforming changes to this subsection.

Sec. 2310.103. REQUIRED REGISTRATION OF MOTOR FUEL METERING DEVICES. (a) Makes a conforming change to this subsection.

(b) Requires an application for a motor fuel metering device registration to:

(1) and (2) makes no changes to these subdivisions;

(3) include any fees required under Section 2310.108, rather than include the registration fee required under Section 13.1151 (Fees For Registration and Inspection), Agriculture Code; and

(4) include documentation of compliance with Section 2310.102, rather than with Section 13.1015, Agriculture Code.

(c) Provides that a registration under this section is valid for one or two years as established by TCLR rule, rather than valid for one year unless a different period is established by TDA rule. Makes a conforming change to this subsection.

(d) Makes no further changes to this subsection.

(e) Prohibits the amount of the late fee, rather than the amount of the penalty, from exceeding a certain amount, with a certain maximum penalty per year.

SECTION 3. Transfers Sections 17.001, 17.0515, 17.052, 17.053, 17.054, 17.055, 17.152, 17.153, and 17.154, Agriculture Code, to Subchapter E, Chapter 2310, Occupations Code, as added by this Act, redesignates them as Sections 2310.2001, 2310.2011, 2310.2012, 2310.2013, 2310.2014, 2310.2015, 2310.207, 2310.208, and 2310.209, Occupations Code, and amends them as follows:

Sec. 2310.2001. DEFINITIONS. Defines "automotive fuel rating," "dealer," "distributor," "jobber," "motor fuel," "supplier," and "wholesaler" for purposes of this subchapter, rather than for purposes of Chapter 17 (Sale and Regulation of Certain Fuel Mixtures), Agriculture Code.

Sec. 2310.2011. NOTICE OF MOTOR FUEL TAX RATES. (a) Requires TDLR, rather than TDA, to display a certain notice on each motor fuel pump from which motor fuel is sold.

(b) Requires TDLR to include the notice required under Subsection (a) with any other notice displayed or required by TCLR rule to be displayed, rather than requiring TDA to include the notice required under Subsection (a) with any other notice displayed or required by TDA rule to be displayed, including a "Fuel Feedback?" sticker.

Sec. 2310.2012. DOCUMENTATION OF MOTOR FUEL MIXTURE SALES. (a) and (b) Makes no further changes to these subsections.

(c) Authorizes TCLR, rather than the commissioner of agriculture (commissioner), by rule to prescribe a certain form.

Sec. 2310.2013. RECORD OF DELIVERY DOCUMENTS; INSPECTION AUTHORIZED. (a) and (b) Makes conforming changes to these subsections.

(c) Authorizes TDLR or an authorized representative of TDLR, rather than the commissioner or an authorized representative of the commissioner, to inspect certain documents. Requires a dealer, distributor, supplier, wholesaler, or jobber, on written notice issued by TDLR or an authorized representative of TDLR 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 TDLR or the authorized representative of TDLR, rather than requiring a dealer, distributor, supplier, wholesaler, or jobber, 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 principal place of business of a dealer, distributor, supplier, wholesaler, or jobber, to provide the commissioner or authorized representative of the commissioner, with certain documents within a certain period.

(d) Authorizes TCLR, rather than the commissioner, by rule to:

(1) makes no further changes to this subdivision; and

(2) prescribe:

(A) the manner of filing documents or records required to be kept under this section or by TCLR rule, rather than by TDA rule; and

(B) makes no further changes to this paragraph.

Sec. 2310.2014. DOCUMENTS RELATING TO POSTING OR CERTIFICATION OF AUTOMOTIVE FUEL RATINGS. (a) and (b) Makes no further changes to these subsections.

(c) and (d) Makes conforming changes to these subsections.

Sec. 2310.2015. SALE OF MOTOR FUEL WITH INACCURATE AUTOMOTIVE FUEL RATING. Makes no further changes to this section.

Sec. 2310.207. CIVIL ACTION. Makes changes conforming to the transfer made by this section of this Act to this section.

Sec. 2310.208. CIVIL PENALTY. Makes changes conforming to the transfer made by this section of this Act to this section.

Sec. 2310.209. CRIMINAL OFFENSES. (a) Makes changes conforming to the transfer made by this section of this Act to this section. Provides that a person commits an offense if the person knowingly violates certain sections or a rule adopted by TCLR, rather than certain sections or a rule adopted by the commissioner, to enforce or implement those sections.

(b) Provides that a person commits an offense if the person knowingly:

(1) refuses to permit an authorized person, rather than a person authorized by Section 17.102 (Testing; Rules Relating to Testing Frequency), Agriculture Code, to test any motor fuel sold or held for sale in this state;

(2) refuses to permit inspection of any document required to be kept or delivered by this subchapter on request of a person authorized to inspect

the documents under Section 2310.2013 or 2310.2014, rather than refuses to permit inspection of any document required to be kept or delivered by Chapter 17, Agriculture Code, on request of a person authorized to inspect the documents under Section 17.053 or 17.054, Agriculture Code; or

(3) mutilates, destroys, secretes, forges, or falsifies any document, record, report, or sign required to be delivered, kept, filed, or posted by this subchapter or any rule adopted by TCLR to enforce this subchapter, rather than by Chapter 17, Agriculture Code, or any rule adopted by the commissioner to enforce Chapter 17, Agriculture Code.

(c) and (d) makes no further changes to these subsections.

(e) Authorizes TDLR or the executive director to request the appropriate prosecuting attorney to prosecute a violation of this chapter, rather than authorizing the commissioner or the authorized representative of the commissioner to request the appropriate prosecuting attorney to prosecute a violation of Chapter 17, Agriculture Code.

SECTION 4. Amends Section 12.020(c), Agriculture Code, to provide that the provisions of law subject to this section (Administrative Penalties) and the applicable penalty amounts are specified in a certain manner and sets forth the applicable penalty amounts.

SECTION 5. Amends Section 13.001, Agriculture Code, by adding Subsection (c) to provide that in this chapter (Weights and Measures), "commodity" does not include motor fuel.

SECTION 6. Amends Section 13.024(b), Agriculture Code, to provide that, except as provided by Subsection (c) (relating to requiring certain mechanisms or machines to indicate the fractional parts of a gallon either in terms of binary submultiple subdivisions or in terms of tenths of a gallon), rather than Subsections (c) and (d) (relating to providing that, for purposes of the retail sale of motor fuel only, the liquid gallon contains 231 cubic inches without adjustment based on the temperature of the liquid), all other measures of capacity for liquids are derived from the gallon by continual division by two, making half gallons, quarts, pints, half pints, and gills.

SECTION 7. Amends Section 13.114, Agriculture Code, to delete existing text providing a certain exception relating to motor fuel metering devices to the requirement that the specifications and tolerances be similar to those recommended by NIST.

SECTION 8. Amends Section 162.009, Tax Code, to authorize employees of certain entities, including TDLR, to take samples of motor fuel from a storage tank or container for certain purposes and to delete existing text that authorizes an employee of TDA to do the same.

SECTION 9. Amends Section 162.403, Tax Code, to provide that, except as provided by Section 162.404 (Criminal Offenses: Special Provisions and Exceptions), a person commits an offense if the person performs certain acts, including refusing to permit certain entities, including an employee of TDLR, rather than an employee of TDA, to perform certain actions relating to motor fuel.

SECTION 10. Repealer: Section 13.001(a)(1-a) (relating to the definition of "motor fuel metering device"), Agriculture Code.

Repealer: Section 13.024(d) (relating to providing, for purposes of the retail sale of motor fuel only, the measurement for a liquid gallon), Agriculture Code.

Repealer: Section 13.029(b) (relating to exempting a motor fuel metering device from the requirements of this chapter if the device is not used for certain purposes), Agriculture Code.

Repealer: Section 13.101(e) (relating to providing that this section (Inspection of Devices) does not apply to a motor fuel metering device), Agriculture Code.

Repealer: Section 13.1011(e) (relating to providing that this section (Required Registration) does not apply to a motor fuel metering device), Agriculture Code.

Repealer: Section 13.1017 (Complaints Regarding Motor Fuel Metering Devices), Agriculture Code.

Repealer: Section 13.1151(b) (relating to prohibiting TDA, notwithstanding any other law, from, in a state fiscal biennium, increasing a certain fee for a motor fuel metering device by a certain amount), Agriculture Code.

Repealer: the heading to Chapter 17 (Sale and Regulation of Certain Fuel Mixtures), Agriculture Code.

Repealer: the heading to Subchapter A (General Provisions), Chapter 17, Agriculture Code.

Repealer: the heading to Subchapter B (Sale or Delivery of Motor Fuel), Chapter 17, Agriculture Code.

Repealer: Section 17.051 (Notice of Sale of Alcohol and Fuel Mixture), Agriculture Code.

Repealer: Subchapter B-1 (Motor Fuel Quality and Testing), Chapter 17, Agriculture Code.

Repealer: Subchapter C (Administrative Provisions), Chapter 17, Agriculture Code.

Repealer: the heading to Subchapter D (Enforcement), Chapter 17, Agriculture Code.

Repealer: Section 17.151 (Contract For Enforcement), Agriculture Code.

Repealer: Section 17.155 (Administrative Penalty), Agriculture Code.

Repealer: Section 17.156 (Toll-Free Number), Agriculture Code.

SECTION 11. (a) Provides that all rules, fees, policies, procedures, decisions, and forms of the commissioner or TDA that relate to a program or activity transferred under this Act and that are in effect on the effective date of the transfer remain in effect until changed by TCLR or TDLR, as appropriate. Prohibits TDA, on or after the effective date of this Act, from changing a rule, fee, policy, procedure, decision, or form that relates to a program or activity transferred under this Act.

(b) Provides that a license, permit, certificate of registration, notice, or other authorization issued by TDA for a program or activity transferred under this Act is continued in effect as a license, permit, certificate, notice, or other authorization of TDLR on and after the effective date of the transfer.

(c) Provides that a complaint, investigation, contested case, or other proceeding before the commissioner, TDA, or the State Office of Administrative Hearings relating to a program or activity transferred under this Act that is pending on the effective date of the transfer is transferred without change in status to TCLR or TDLR, as appropriate. Prohibits TDA, on or after the effective date of this Act, from taking any action on a complaint, investigation, contested case, or other proceeding relating to a program or activity transferred under this Act without the approval of the executive director or a person designated by the executive director.

(d) Provides that all money, contracts, leases, property, software source code and documentation, records, and obligations of TDA relating to a program or activity

transferred under this Act are transferred to TDLR on the effective date of the transfer of the program or activity.

(e) Provides that the unexpended and unobligated balance of any money appropriated by the legislature relating to a program or activity transferred under this Act is transferred to TDLR on the effective date of the transfer of the program or activity.

(f) Provides that, unless the context indicates otherwise, on or after the effective date of the transfer a reference in law or administrative rule to the commissioner or TDA with respect to a program or activity transferred under this Act means TDLR or TDLR, as appropriate.

SECTION 12. (a) Requires TDA and TDLR, as soon as practicable after the effective date of this Act, to adopt a transition plan to provide for the orderly transfer of powers, duties, functions, programs, and activities under this Act. Requires the transition plan to provide for the transfer to be completed not later than September 1, 2020.

(b) Requires TDA to provide TDLR with access to any systems, facilities, or information necessary for TDLR to accept a program or activity transferred under this Act.

(c) Authorizes TDLR to establish and lead a stakeholder workgroup to provide input, advice, and recommendations to TDA and TDLR on the orderly transfer of powers, duties, functions, programs, and activities under this Act. Requires TDLR to establish the size, composition, and scope of the stakeholder workgroup.

(d) Provides that, on the date specified in the transition plan required under Subsection (a) of this section for the transfer of a program or activity transferred by this Act to TDLR, all full-time equivalent employee positions at TDA that directly and indirectly concern the administration or enforcement of the program or activity being transferred become positions at TDLR. Requires TDLR to post the positions for hiring and, when filling the positions, to give consideration to, but provides that TDLR is not required to hire, an applicant who, immediately before the date of the transfer, was an employee at TDA involved in administering or enforcing the transferred program or activity.

(e) Provides that Subsection (c) of this section and this subsection expire on October 1, 2020.

SECTION 13. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2020.

(b) Effective date, Sections 10 and 11 of this Act: upon passage or September 1, 2019.