

By: Goldman

H.B. No. 3408

Substitute the following for H.B. No. 3408:

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C.S.H.B. No. 3408

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the regulation of motor fuel metering devices and motor  
3 fuel quality.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 2310.001(a), Occupations Code, is  
6 amended by amending Subdivisions (1), (3), (6), (7), and (8) and  
7 adding Subdivisions (1-a), (4-a), (5-a), (9-a), and (9-b) to read  
8 as follows:

9 (1) "Automotive fuel rating" has the meaning assigned  
10 by 15 U.S.C. Section 2821.

11 (1-a) "Commercial [~~weighing or~~] measuring device"  
12 means a [~~weighing or~~] measuring device used in a commercial  
13 transaction.

14 (3) "Dealer" means a person who [+  
15 [~~(A)~~] is the operator of a [~~service station or~~  
16 ~~other~~] retail motor fuel facility [~~outlet, and~~  
17 [~~(B) delivers motor fuel into the fuel tanks of~~  
18 ~~motor vehicles or motor boats~~].

19 (4-a) "Distributor" means a person who makes retail or  
20 wholesale sales of motor fuel.

21 (5-a) "Measuring device" means a mechanical or  
22 electronic device used to:

23 (A) dispense or deliver a motor fuel by volume,  
24 flow rate, or other measure; or

1                    (B) compute the charge for a service related to  
2 motor fuel.

3                    (6) "Motor fuel" means gasoline, diesel fuel, gasoline  
4 blended fuel, aviation gasoline, aviation jet fuel, compressed  
5 natural gas, liquefied natural gas, and other products that are  
6 capable of use as fuel for a gasoline-powered engine or a  
7 diesel-powered engine [~~has the meaning assigned by Section 162.001,~~  
8 ~~Tax Code~~].

9                    (7) "Motor fuel metering device" means a commercial  
10 [~~weighing or~~] measuring device used for motor fuel sales.

11                    (8) "Operator" or "user" means a person in possession  
12 or control of a [~~weighing or~~] measuring device, including an owner,  
13 custodian, or seller.

14                    (9-a) "Supplier" has the meaning assigned by Section  
15 162.001, Tax Code.

16                    (9-b) "Wholesaler" means a person who purchases  
17 tax-paid motor fuel for resale or distribution at wholesale.

18                    SECTION 2. Section 2310.002(c), Occupations Code, is  
19 amended to read as follows:

20                    (c) The department may contract with one or more license  
21 holders under Subchapter D [~~of this chapter or Subchapter I,~~  
22 ~~Chapter 13, Agriculture Code,~~] to perform the department's duties  
23 under this chapter related to motor fuel metering devices. A  
24 reference in this chapter to the commission or department in the  
25 context of a contracted service means the contractor.

26                    SECTION 3. Chapter 2310, Occupations Code, is amended by  
27 adding Subchapter A-1 to read as follows:

1                   SUBCHAPTER A-1. ADVISORY BOARD

2           Sec. 2310.031. DEFINITION. In this subchapter, "board"  
3 means the Motor Fuel Metering and Quality Advisory Board.

4           Sec. 2310.032. BOARD MEMBERSHIP. (a) The board consists of  
5 nine members appointed by the presiding officer of the commission,  
6 with the approval of the commission, as follows:

7                   (1) four members who are dealers or representatives  
8 designated by the dealers, including:

9                           (A) one dealer that has fewer than 501 motor fuel  
10 metering devices registered with the department;

11                           (B) one dealer that has more than 1,000 but fewer  
12 than 5,000 motor fuel metering devices registered with the  
13 department;

14                           (C) one dealer that has more than 5,000 motor  
15 fuel metering devices registered with the department; and

16                           (D) one dealer without regard to the dealer's  
17 number of motor fuel metering devices registered with the  
18 department;

19                   (2) two members who represent service companies, as  
20 defined by Section [2310.151](#);

21                   (3) one member who represents a wholesaler or  
22 distributor;

23                   (4) one member who represents a supplier; and

24                   (5) one member of the public.

25           (b) The presiding officer of the commission, with the  
26 approval of the commission, shall appoint two ex officio nonvoting  
27 members of the board. An ex officio member is not counted as a

1 member for purposes of establishing a quorum. The ex officio  
2 members must include:

3 (1) one member who represents:

4 (A) a financial institution, as defined by  
5 Section 277.001, Finance Code; or

6 (B) a credit card issuer other than a financial  
7 institution; and

8 (2) one member who represents a law enforcement  
9 agency.

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

13 Sec. 2310.033. TERMS; VACANCY. (a) Members of the board  
14 serve staggered six-year terms, with the terms of three or four  
15 members expiring on February 1 of each odd-numbered year.

16 (b) If a vacancy occurs during a member's term, the  
17 presiding officer of the commission, with the commission's  
18 approval, shall appoint a replacement to fill the unexpired term.

19 Sec. 2310.034. PRESIDING OFFICER. The presiding officer of  
20 the commission, with the approval of the commission, shall appoint  
21 one of the board members to serve as presiding officer of the board  
22 for a term of one year.

23 Sec. 2310.035. DUTIES. The board may advise the commission  
24 and department on:

25 (1) the adoption of appropriate standards for the  
26 installation, maintenance, calibration, alteration, operation,  
27 testing, or inspection, as applicable, of:

1                   (A) motor fuel dispensing devices;

2                   (B) motor fuel metering devices; and

3                   (C) motor fuel;

4                   (2) education and curricula for applicants for a  
5 license issued under this chapter and license holders;

6                   (3) the content of examinations;

7                   (4) proposed rules and standards on technical issues  
8 related to motor fuel metering and quality and payment card  
9 skimmers; and

10                   (5) other issues affecting motor fuel metering and  
11 quality.

12                   Sec. 2310.036. MEETINGS. The advisory board shall meet at  
13 the call of the executive director or the presiding officer of the  
14 commission.

15                   SECTION 4. The heading to Subchapter B, Chapter 2310,  
16 Occupations Code, is amended to read as follows:

17                   SUBCHAPTER B. STANDARD ~~[WEIGHTS AND]~~ MEASURES FOR MOTOR FUEL

18                   SECTION 5. Sections 2310.051(a), (c), and (d), Occupations  
19 Code, are amended to read as follows:

20                   (a) The legal standard for the ~~[weight or]~~ measure of a  
21 motor fuel in this state is the standard ~~[weight or]~~ measure adopted  
22 and used by the government of the United States for that motor fuel.  
23 If the United States does not provide a standard ~~[weight or]~~ measure  
24 for a motor fuel, the standard for the motor fuel is that  
25 established by this subchapter.

26                   (c) Except as otherwise provided by an express contract, a  
27 contract for work or sales by ~~[weight or]~~ measure of a motor fuel

1 shall be construed in accordance with the standards of this  
2 subchapter.

3 (d) The standards of this subchapter shall be the guide for  
4 making any adjustment of [~~weighing or~~] measuring devices under the  
5 law of this state.

6 SECTION 6. Section 2310.053, Occupations Code, is amended  
7 by adding Subsection (c) to read as follows:

8 (c) Notwithstanding Section 2310.002, this chapter does not  
9 apply to a weighing or measuring device, as defined by Section  
10 13.001, Agriculture Code, that measures liquefied petroleum gas.

11 SECTION 7. Sections 2310.054(a) and (c), Occupations Code,  
12 are amended to read as follows:

13 (a) Motor [~~Except as otherwise provided by this section,~~  
14 ~~motor~~] fuel shall be sold by liquid measure.

15 (c) A person violates this chapter if, in violation of this  
16 section, the person sells motor fuel by other than [~~weight or~~]  
17 liquid measure.

18 SECTION 8. Section 2310.056, Occupations Code, is amended  
19 to read as follows:

20 Sec. 2310.056. FALSE REPRESENTATION OF MOTOR FUEL QUANTITY.  
21 A person violates this chapter if the person or the person's  
22 representative or agent:

23 (1) sells or offers or exposes for sale a quantity of  
24 motor fuel that is less than the quantity the person represents; or

25 (2) as a buyer furnishing the [~~weight or~~] measure of a  
26 motor fuel by which the amount of the motor fuel is determined,  
27 takes or attempts to take more than the quantity the person

1 represents.

2 SECTION 9. Section 2310.057, Occupations Code, is amended  
3 to read as follows:

4 Sec. 2310.057. USE OF INCORRECT MOTOR FUEL METERING DEVICE.

5 (a) A person commits an offense if the person or the person's  
6 representative or agent knowingly uses an incorrect [~~weighing or~~]  
7 measuring device in:

8 (1) buying or selling motor fuel;

9 (2) computing a charge for services rendered on the  
10 basis of [~~weight or~~] measure; or

11 (3) determining the [~~weight or~~] measure of motor fuel,  
12 if a charge is made for the determination.

13 (b) For the purpose of this section, a [~~weighing or~~]  
14 measuring device is incorrect if it:

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

17 (2) is not accurate;

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

21 (4) facilitates the perpetration of fraud; or

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

24 SECTION 10. Sections 2310.059(a) and (c), Occupations Code,  
25 are amended to read as follows:

26 (a) The department shall from time to time [~~weigh or~~]  
27 measure an amount of motor fuel that is kept or offered for sale,

1 sold, or in the process of delivery, in order to determine:

2 (1) if the motor fuel is of the amount or quantity  
3 represented; or

4 (2) if the motor fuel is being offered for sale or sold  
5 in accordance with law.

6 (c) A person commits an offense if the person or the  
7 person's employee or agent refuses to exhibit motor fuel being sold  
8 or offered for sale at a given [~~weight or~~] quantity, or ordinarily  
9 sold in that manner, to the department for testing and proving as to  
10 quantity.

11 SECTION 11. Sections 2310.060(a) and (b), Occupations Code,  
12 are amended to read as follows:

13 (a) If the department has reason to believe that motor fuel  
14 is being sold or kept, offered, or exposed for sale in violation of  
15 this chapter or that motor fuel is being sold or offered for sale by  
16 or through the use of a motor fuel metering device that is in  
17 violation of this chapter, the executive director may issue an  
18 order to stop the sale of the motor fuel. The executive director  
19 shall issue the order to the dealer or operator of the retail motor  
20 fuel facility selling [~~owner or custodian of~~] the motor fuel or  
21 offering the motor fuel for sale [~~or seller of the motor fuel~~]. The  
22 person receiving the order may not sell the motor fuel until  
23 discharged by a court under Subsection (b) or until the executive  
24 director finds that the motor fuel or motor fuel metering device is  
25 in compliance with this chapter.

26 (b) A dealer or operator [~~The owner, custodian, or seller of~~  
27 ~~motor fuel~~] prohibited from selling motor fuel [~~sale~~] by an order of



1 the executive director is entitled to sue in a court where the motor  
2 fuel is found or is being sold or offered for sale for a judgment as  
3 to the justification of the order and for the discharge of the motor  
4 fuel in accordance with the findings of the court.

5 SECTION 12. Section 2310.061(b), Occupations Code, is  
6 amended to read as follows:

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

14 SECTION 13. Section 2310.101(a), Occupations Code, is  
15 amended to read as follows:

16 (a) If the department has reason to believe that a motor  
17 fuel metering device is being used for a commercial transaction and  
18 the device is not registered with the department or is being used to  
19 facilitate the perpetration of fraud, the department may inspect  
20 the device and the records [~~of the owner, operator, or user of the~~  
21 ~~device~~] that relate to use of the device to determine whether the  
22 device is in compliance with this chapter.

23 SECTION 14. Sections 2310.106(b), (c), (f), and (g),  
24 Occupations Code, are amended to read as follows:

25 (b) The commission may adopt rules to regulate the frequency  
26 and place of inspection and correction of the standards for motor  
27 fuel used by an individual or business licensed by the department to

1 perform device maintenance activities under Subchapter D [~~or an~~  
2 ~~individual or business licensed under Subchapter I, Chapter 13,~~  
3 ~~Agriculture Code~~].

4 (c) The department may inspect any standard for motor fuel  
5 used by an individual or business licensed by the department to  
6 perform device maintenance activities described by Subchapter D [~~or~~  
7 ~~an individual or business licensed under Subchapter I, Chapter 13,~~  
8 ~~Agriculture Code~~], if the department has reason to believe a  
9 standard is no longer in compliance with this chapter.

10 (f) The state metrology laboratory, or a metrology  
11 laboratory certified by the National Institute of Standards and  
12 Technology and approved by the department, shall inspect and  
13 correct the standards for motor fuel used by the [a] department or  
14 [~~inspector, another department employee,~~] an individual or  
15 business licensed by the department to perform device maintenance  
16 activities under Subchapter D [~~, or an individual or business~~  
17 ~~licensed under Subchapter I, Chapter 13, Agriculture Code~~].

18 (g) The department and the state metrology laboratory may  
19 [~~shall~~] enter into a memorandum of understanding to implement this  
20 section. The memorandum of understanding must provide department  
21 personnel and persons licensed under Subchapter D with access to  
22 state metrology laboratory services equal to the access provided to  
23 Department of Agriculture personnel and persons licensed under  
24 Subchapter I, Chapter 13, Agriculture Code, and under equivalent  
25 terms and conditions.

26 SECTION 15. Section 2310.110(b), Occupations Code, is  
27 amended to read as follows:

1 (b) A person commits an offense if the person or the  
2 person's representative or agent knowingly:

3 (1) offers or exposes for sale, hire, or award or sells  
4 an incorrect motor fuel metering device;

5 (2) possesses an incorrect motor fuel metering device;  
6 or

7 (3) sells, offers for sale, uses, or possesses for the  
8 purpose of sale or use a device or instrument to be used to falsify  
9 or intended to falsify a [~~weight or~~] measure for motor fuel.

10 SECTION 16. Section 2310.154(a), Occupations Code, is  
11 amended to read as follows:

12 (a) A person is not required to hold a license issued under  
13 this subchapter if the person:

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

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

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

25 (B) notifies the department of the motor fuel  
26 metering device's removal not later than the 10th day after the date  
27 the device was removed in the manner provided by commission rule; or

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

3 (A) exempt from the inspection and registration  
4 requirements of Sections 2310.102 and 2310.103 under commission  
5 rules; and

6 (B) not required to be inspected by other  
7 commission rules[~~, or~~

8 [~~(4) is a license holder under Subchapter I, Chapter~~  
9 ~~13, Agriculture Code~~].

10 SECTION 17. Section 2310.2012(a), Occupations Code, is  
11 amended to read as follows:

12 (a) Except as provided by Subsection (b), a distributor,  
13 supplier, or wholesaler[~~, or jobber~~] of motor fuel may not deliver  
14 to an outlet in this state a motor fuel mixture that contains  
15 ethanol or methanol exceeding one percent by volume of the mixture  
16 unless, at the time of the delivery of the mixture, the person also  
17 delivers to the outlet receiving the delivery a manifest, bill of  
18 sale, bill of lading, or other document evidencing delivery of the  
19 mixture, that includes a statement containing:

20 (1) the percentage of ethanol or methanol contained in  
21 the mixture; and

22 (2) the types and percentages of any associated  
23 cosolvents contained in the mixture.

24 SECTION 18. Sections 2310.2013(b), (c), and (d),  
25 Occupations Code, are amended to read as follows:

26 (b) Each distributor, supplier, and wholesaler[~~, and~~  
27 ~~jobber~~] of motor fuel shall keep a copy of each document required to

1 be delivered to the dealer by Section [2310.2012](#) until the fourth  
2 anniversary of the delivery date.

3 (c) The department or an authorized representative of the  
4 department may inspect documents described by this section. On  
5 written notice issued by the department or an authorized  
6 representative of the department to any employee at a dealer's  
7 ~~[station or]~~ retail motor fuel facility ~~[outlet]~~ or mailed to the  
8 principal place of business of a dealer, distributor, supplier, or  
9 wholesaler, ~~[or jobber]~~ the dealer, distributor, supplier, or  
10 wholesaler~~[, or jobber]~~ shall provide the department or authorized  
11 representative of the department with the documents described by  
12 this section within the period specified in the notice.

13 (d) The commission by rule may:

14 (1) require each dealer, distributor, supplier, and  
15 wholesaler~~[, and jobber]~~ to maintain and make available to the  
16 department:

17 (A) invoices, receipts, or other transmittal  
18 documents or records, including electronically stored information,  
19 showing or describing the purchase, sale, delivery, or distribution  
20 of motor fuel;

21 (B) invoices, receipts, work orders, reports, or  
22 other documents, including electronically stored information,  
23 showing or describing the installation, maintenance, or repair of:

24 (i) motor fuel dispensing devices; and

25 (ii) any equipment used in connection with  
26 motor fuel dispensing devices to record, display, or produce  
27 receipts or audit trails concerning the purchase, sale, delivery,

1 or distribution of motor fuel; and

2 (C) any record or other document related to the  
3 sampling and testing of motor fuel purchased, sold, delivered, or  
4 distributed by the dealer, distributor, supplier, or wholesaler[~~r~~  
5 ~~or jobber~~]; and

6 (2) prescribe:

7 (A) the manner of filing documents or records  
8 required to be kept under this section or by commission rule; and

9 (B) the time, place, and manner of inspection of  
10 the documents or records.

11 SECTION 19. Sections [2310.2014](#)(b) and (c), Occupations  
12 Code, are amended to read as follows:

13 (b) Each distributor, ~~[or]~~ supplier, or wholesaler shall  
14 keep for at least one year at the distributor's, ~~[or]~~ supplier's, or  
15 wholesaler's principal place of business a copy of each delivery  
16 ticket or letter of certification required to be delivered by the  
17 distributor, ~~[or]~~ supplier, or wholesaler to a dealer in this state  
18 under 16 C.F.R. Part 306.

19 (c) The department or an authorized representative of the  
20 department may inspect a document required to be kept under this  
21 section. On written notice issued by the department or an  
22 authorized representative of the department to any employee at a  
23 dealer's [~~station or~~] retail motor fuel facility [~~outlet~~] or mailed  
24 to the dealer's principal place of business, the dealer shall  
25 provide the department or authorized representative of the  
26 department with the documents described by this section within the  
27 period specified in the notice.

1 SECTION 20. Section 2310.2015(b), Occupations Code, is  
2 amended to read as follows:

3 (b) A distributor, wholesaler, or supplier of motor fuel may  
4 not deliver or transfer to a dealer in this state motor fuel that  
5 has an automotive fuel rating lower than the certification of the  
6 rating the distributor, wholesaler, or supplier is required to make  
7 to the dealer under federal law.

8 SECTION 21. Sections 2310.203(a), (c), and (d), Occupations  
9 Code, are amended to read as follows:

10 (a) The department or an authorized [a] representative of  
11 the department may collect samples and conduct testing at any  
12 location where motor fuel is kept, transferred, sold, or offered  
13 for sale to verify that the motor fuel complies with the minimum  
14 standards required by Section 2310.202. A person who holds a  
15 license issued under Subchapter D is considered an authorized  
16 representative of the department for purposes of this section.

17 (c) On arriving at a facility to conduct testing under  
18 Subsection (a), the department or an authorized [a] representative  
19 of the department shall notify the owner or manager of the facility  
20 of the department's or representative's presence and purpose. The  
21 department or representative shall follow the most recent  
22 applicable procedures specified by the American Society for Testing  
23 and Materials (ASTM) International Standard D4057, D4177, D5842, or  
24 D5854 for the collection, sampling, and handling of fuel to prepare  
25 for laboratory analysis.

26 (d) A person commits an offense if the person refuses to  
27 allow the [a] department or an authorized representative of the

1 department to collect samples or conduct motor fuel testing under  
2 Subsection (a).

3 SECTION 22. Sections 2310.207(a) and (b), Occupations Code,  
4 are amended to read as follows:

5 (a) If a dealer or a distributor, supplier, or wholesaler[~~7~~  
6 ~~or jobber~~] of motor fuel violates Section 2310.201, 2310.2012,  
7 2310.2013, 2310.2014, or 2310.2015, a person [~~motor fuel user~~] who  
8 purchased the motor fuel and sustained damages or who has a  
9 complaint about the product may bring an action against the dealer,  
10 distributor, supplier, or wholesaler[~~7~~, ~~or jobber~~].

11 (b) The action may be brought, without regard to the  
12 specific amount of damages, in the district court in any county in  
13 which:

14 (1) the dealer, distributor, supplier, or  
15 wholesaler[~~7~~, ~~or jobber~~] transacts business; or

16 (2) the dealer resides.

17 SECTION 23. Section 2310.208, Occupations Code, is amended  
18 to read as follows:

19 Sec. 2310.208. CIVIL PENALTY. A dealer, distributor,  
20 supplier, or wholesaler[~~7~~, ~~or jobber~~] who violates Section 2310.201,  
21 2310.2012, 2310.2013, 2310.2014, or 2310.2015 is liable to this  
22 state for a civil penalty of not less than \$200 and not more than  
23 \$10,000.

24 SECTION 24. The following provisions of the Occupations  
25 Code are repealed:

26 (1) Sections 2310.001(a)(10), (a)(11), and (b);

27 (2) Section 2310.054(b);



- 1 (3) Section 2310.101(b);
- 2 (4) Section 2310.106(e);
- 3 (5) Section 2310.2001; and
- 4 (6) Section 2310.203(b).

5 SECTION 25. (a) Not later than February 1, 2022, the  
6 presiding officer of the Texas Commission of Licensing and  
7 Regulation shall appoint members to the Motor Fuel Metering and  
8 Quality Advisory Board in accordance with Section 2310.032,  
9 Occupations Code, as added by this Act.

10 (b) Notwithstanding Section 2310.033, Occupations Code, as  
11 added by this Act, in making the initial appointments to the Motor  
12 Fuel Metering and Quality Advisory Board, the presiding officer of  
13 the Texas Commission of Licensing and Regulation shall designate  
14 three members of the advisory board to serve terms expiring  
15 February 1, 2023, four members to serve terms expiring February 1,  
16 2025, and four members to serve terms expiring February 1, 2027.

17 SECTION 26. (a) The changes in law made by this Act to  
18 Chapter 2310, Occupations Code, do not affect the validity of a  
19 proceeding pending before a court or other governmental entity on  
20 the effective date of this Act.

21 (b) An offense or other violation committed before the  
22 effective date of this Act is governed by the law in effect on the  
23 date the offense or violation was committed, and the former law is  
24 continued in effect for that purpose. For purposes of this section,  
25 an offense or violation was committed before the effective date of  
26 this Act if any element of the offense or violation was committed  
27 before that date.

1 SECTION 27. This Act takes effect September 1, 2021.