

By: Goldman

H.B. No. 3408

A BILL TO BE ENTITLED

AN ACT

relating to motor fuel metering and quality.

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

SECTION 1. Section 2310.001 of the Occupations Code is amended as follows:

Sec. 2310.001. DEFINITIONS. (a) In this chapter:

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

(2) ~~[(1)]~~ "Commercial ~~[weighing or]~~ measuring device" means a ~~[weighing or]~~ measuring device used in a commercial transaction.

(3) ~~[(2)]~~ "Commission" means the Texas Commission of Licensing and Regulation.

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

(5) ~~[(4)]~~ "Department" means the Texas Department of Licensing and Regulation.

(6) "Distributor" means a person who makes retail or wholesale sales of motor fuel.

(7) ~~[(5)]~~ "Executive director" means the executive director of the department.

1           (8) [(6)] "Motor fuel" means gasoline, diesel fuel,  
2 gasoline blended fuel, aviation gasoline, aviation jet fuel,  
3 compressed natural gas, liquified natural gas, and other products  
4 that are capable of use as fuel for a gasoline-powered engine or a  
5 diesel-powered engine [~~has the meaning assigned by Section 162.001,~~  
6 ~~Tax Code~~].

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

10           (10) [(8)] "Operator" or "user" means a person in  
11 possession or control of a [~~weighing or~~] measuring device,  
12 including an owner, custodian, and seller.

13           (11) [(9)] "Sell" includes barter or exchange.

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

16           (13) [(10)] "Measuring [~~Weighing or measuring~~]  
17 device" means a [~~scale or a~~] mechanical or electronic device used to  
18 dispense or deliver a motor fuel by [~~weight,~~] volume, flow rate, or  
19 other measure or to compute the charge for a service related to  
20 motor fuel.

21           ~~[(11)] "Weight or measure of a motor fuel" means the~~  
22 ~~weight or measure of a motor fuel as determined by a weighing or~~  
23 ~~measuring device.]~~

24           (14) "Wholesaler" means a person who purchases  
25 tax-paid gasoline for resale or distribution at wholesale.

26           SECTION 2. Section 2310.002(c) of the Occupations Code, is  
27 amended as follows:

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

7 SECTION 3. Section 2310.051 of the Occupations Code is  
8 amended as follows:

9 Sec. 2310.051. LEGAL STANDARDS. (a) The legal standard for  
10 the [~~weight or~~] measure of a motor fuel in this state is the  
11 standard [~~weight or~~] measure adopted and used by the government of  
12 the United States for that motor fuel. If the United States does  
13 not provide a standard [~~weight or~~] measure for a motor fuel, the  
14 standard for the motor fuel is that established by this subchapter.

15 (b) The commission may adopt rules for the purpose of  
16 administering this subchapter and bringing about uniformity  
17 between the standards established under this subchapter and the  
18 standards established by federal law.

19 (c) Except as otherwise provided by an express contract, a  
20 contract for work or sales by [~~weight or~~] measure of a motor fuel  
21 shall be construed in accordance with the standards of this  
22 subchapter.

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

26 SECTION 4. Section 2310.053 of the Occupations Code is  
27 amended by adding subsection (c) as follows:

1        (c) A weighing or measuring device, as described by Chapter  
2 13, Agriculture Code, that measures liquified petroleum gas is  
3 exempt from this chapter.

4        SECTION 5. Sections 2310.054, 2310.057, 2310.059, and  
5 2310.060 of the Occupations Code are amended as follows:

6        Sec. 2310.054. SALE OF MOTOR FUEL BY PROPER MEASURE. (a)  
7 Motor [~~Except as otherwise provided by this section, motor~~] fuel  
8 shall be sold by liquid measure.

9        [~~(b) Compressed natural gas and liquefied natural gas shall~~  
10 ~~be sold by weight~~].

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

14        Sec. 2310.056. FALSE REPRESENTATION OF MOTOR FUEL QUANTITY.  
15 A person violates this chapter if the person or the person's  
16 representative or agent:

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

19            (2) as a buyer furnishing the [~~weight or~~] measure of a  
20 motor fuel by which the amount of the motor fuel is determined,  
21 takes or attempts to take more than the quantity the person  
22 represents.

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

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

27            (1) buying or selling motor fuel; or

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

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

5           Sec. 2310.059. TESTING BY DEPARTMENT. (a) The department  
6 shall from time to time [~~weigh or~~] measure an amount of motor fuel  
7 that is kept or offered for sale, sold, or in the process of  
8 delivery, in order to determine:

9           (1) if the motor fuel is of the amount or quantity  
10 represented; or

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

13           (b) If the department finds that any lot of motor fuel  
14 contains less of the motor fuel than the amount represented, the  
15 department may seize the motor fuel as evidence.

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

21           Sec. 2310.060. STOP-SALE ORDER. (a) If the department has  
22 reason to believe that motor fuel is being sold or kept, offered, or  
23 exposed for sale in violation of this chapter or that motor fuel is  
24 being sold or offered for sale by or through the use of a motor fuel  
25 metering device that is in violation of this chapter, the executive  
26 director may issue an order to stop the sale of the motor fuel. The  
27 executive director shall issue the order to the dealer or operator

1 of the retail motor fuel facility selling or offering ~~[owner or~~  
2 ~~custodian of]~~ the motor fuel for sale ~~[or seller of the motor fuel]~~.  
3 The person receiving the order may not sell the motor fuel until  
4 discharged by a court under Subsection (b) or until the executive  
5 director finds that the motor fuel or motor fuel metering device is  
6 in compliance with this chapter.

7 (b) A dealer or operator ~~[The owner, custodian, or seller of~~  
8 ~~motor fuel]~~ prohibited from selling motor fuel ~~[sale]~~ by an order of  
9 the executive director is entitled to sue in a court where the motor  
10 fuel is found or is being sold or offered for sale for a judgment as  
11 to the justification of the order and for the discharge of the motor  
12 fuel in accordance with the findings of the court.

13 (c) This section does not limit the right of the department  
14 to proceed as authorized by other sections of this code.

15 SECTION 6. Section 2310.061(b) of the Occupations Code is  
16 amended as follows:

17 (b) It is a defense to prosecution or to the imposition of a  
18 civil or administrative penalty for a violation of Section 2310.057  
19 or 2310.059 that a discrepancy between the actual ~~[weight or]~~  
20 volume at the time of sale to a consumer or a discrepancy between  
21 the fill of a container and the capacity of the container is due to  
22 unavoidable leakage, shrinkage, evaporation, waste, or causes  
23 beyond the control of the seller acting in good faith.

24 SECTION 7. Sections 2310.101 and 2310.106 of the  
25 Occupations Code are amended as follows:

26 Sec. 2310.101. AUTHORITY TO INSPECT. ~~[(a)]~~ If the  
27 department has reason to believe that a motor fuel metering device

1 is being used for a commercial transaction, [and] the device is not  
2 registered with the department, or the device is being used to  
3 facilitate the perpetuation of fraud, the department may inspect  
4 the device and the records [~~of the owner, operator, or user of the~~  
5 ~~device~~] that relate to use of the device to determine whether the  
6 device is in compliance with this chapter.

7 [~~(b) The department has reason to believe a motor fuel~~  
8 ~~metering device is being used for a commercial transaction if:~~]

9 [~~(1) the motor fuel metering device is found near~~  
10 ~~motor fuel being sold or offered for sale by weight or measure and~~  
11 ~~the device appears to be under the control or in the possession of~~  
12 ~~the person selling the motor fuel or offering the motor fuel for~~  
13 ~~sale; or]~~

14 [~~(2) other available evidence is sufficient for a~~  
15 ~~prudent person to believe that the motor fuel metering device is~~  
16 ~~being used for a commercial transaction.~~]

17 Sec. 2310.106. INSPECTION OF STANDARDS USED TO PERFORM  
18 DEVICE MAINTENANCE ACTIVITIES. (a) In this section, "state  
19 metrology laboratory" means the metrology laboratory maintained by  
20 the Department of Agriculture under Subchapter C, Chapter 13,  
21 Agriculture Code.

22 (b) The commission may adopt rules to regulate the frequency  
23 and place of inspection and correction of the standards for motor  
24 fuel used by an individual or business licensed by the department to  
25 perform device maintenance activities under Subchapter D [~~or an~~  
26 ~~individual or business licensed under Subchapter I, Chapter 13,~~  
27 ~~Agriculture Code]~~.

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

7 (d) The department shall keep a record of the inspection and  
8 character of standards for motor fuel inspected under this section.

9 [~~(e) The state metrology laboratory shall purchase~~  
10 ~~additional sets of standards as necessary for use by a department~~  
11 ~~inspector or other department personnel.]~~

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

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

1 SECTION 8. Section 2310.110(b) of the Occupations Code is  
2 amended as follows:

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

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

7 (2) possesses an incorrect motor fuel metering device;  
8 or

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

12 SECTION 9. Section 2310.154(a) of the Occupations Code is  
13 amended as follows:

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

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

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

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

27 (B) notifies the department of the motor fuel

1 metering device's removal not later than the 10th day after the date  
2 the device was removed in the manner provided by commission rule;

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

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

8 (B) not required to be inspected by other  
9 commission rules; or

10 [~~(4) is a license holder under Subchapter I, Chapter~~  
11 ~~13, Agriculture Code.~~]

12 SECTION 10. Section 2310.2012(a) of the Occupations Code is  
13 amended as follows:

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

22 (1) the percentage of ethanol or methanol contained in  
23 the mixture; and

24 (2) the types and percentages of any associated  
25 cosolvents contained in the mixture.

26 SECTION 11. Section 2310.2013 of the Occupations Code is  
27 amended as follows:

1           Sec. 2310.2013. RECORD OF DELIVERY DOCUMENTS; INSPECTION  
2 AUTHORIZED. (a) Each dealer shall keep a copy of each document  
3 required to be delivered to the dealer by Section 2310.2012 until  
4 the fourth anniversary of the delivery date.

5           (b) Each distributor, supplier, and wholesaler [~~and~~  
6 ~~jobber~~] of motor fuel shall keep a copy of each document required to  
7 be delivered to the dealer by Section 2310.2012 until the fourth  
8 anniversary of the delivery date.

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

19           (d) The commission by rule may:

20                 (1) require each dealer, distributor, supplier, and  
21 wholesaler [~~and jobber~~] to maintain and make available to the  
22 department:

23                         (A) invoices, receipts, or other transmittal  
24 documents or records, including electronically stored information,  
25 showing or describing the purchase, sale, delivery, or distribution  
26 of motor fuel;

27                         (B) invoices, receipts, work orders, reports, or

1 other documents, including electronically stored information,  
2 showing or describing the installation, maintenance, or repair of:

3 (i) motor fuel dispensing devices; and

4 (ii) any equipment used in connection with  
5 motor fuel dispensing devices to record, display, or produce  
6 receipts or audit trails concerning the purchase, sale, delivery,  
7 or distribution of motor fuel; and

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

12 (2) prescribe:

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

15 (B) the time, place, and manner of inspection of  
16 the documents or records.

17 SECTION 12. Section [2310.2014](#) of the Occupations Code,  
18 subsections (b) and (c) are amended as follows:

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

25 (c) The department or an authorized representative of the  
26 department may inspect a document required to be kept under this  
27 section. On written notice issued by the department or an

1 authorized representative of the department to any employee at a  
2 dealer's retail motor fuel facility [~~station or retail outlet~~] or  
3 mailed to the dealer's principal place of business, the dealer  
4 shall provide the department or authorized representative of the  
5 department with the documents described by this section within the  
6 period specified in the notice.

7 SECTION 13. Section [2310.2015](#)(b) of the Occupations Code,  
8 is amended as follows:

9 (b) A distributor, wholesaler or supplier of motor fuel may  
10 not deliver or transfer to a dealer in this state motor fuel that  
11 has an automotive fuel rating lower than the certification of the  
12 rating the distributor, wholesaler or supplier is required to make  
13 to the dealer under federal law.

14 SECTION 14. Section [2310.203](#) of the Occupations Code, is  
15 amended as follows:

16 Sec. 2310.203. TESTING OF MOTOR FUEL QUALITY. (a) The  
17 department or an authorized [~~a~~] representative of the department  
18 may collect samples and conduct testing at any location where motor  
19 fuel is kept, transferred, sold, or offered for sale to verify that  
20 the motor fuel complies with the minimum standards required by  
21 Section [2310.202](#). A license holder under Subchapter D of this  
22 chapter is considered an authorized representative of the  
23 department for purposes of this section.

24 [~~(b) The collection of samples and conducting of testing at~~  
25 ~~a dealer's location must be performed by a license holder under~~  
26 ~~Subchapter D of this chapter or Subchapter I, Chapter 13,~~  
27 ~~Agriculture Code, under contract with the dealer. The license~~

1 ~~holder is considered a representative of the department for~~  
2 ~~purposes of this section.]~~

3       **(b)** ~~[(c)]~~ On arriving at a facility to conduct testing under  
4 Subsection (a), the department or an authorized ~~[a]~~ representative  
5 of the department shall notify the owner or manager of the facility  
6 of the department's or authorized representative's presence and  
7 purpose. The department or an authorized representative of the  
8 department shall follow the most recent applicable procedures  
9 specified by the American Society for Testing and Materials (ASTM)  
10 International Standard D4057, D4177, D5842, or D5854 for the  
11 collection, sampling, and handling of fuel to prepare for  
12 laboratory analysis.

13       **(c)** ~~[(d)]~~ A person commits an offense if the person refuses  
14 to allow the ~~[a]~~ department or an authorized representative of the  
15 department to collect samples or conduct motor fuel testing under  
16 Subsection (a).

17       **(d)** ~~[(e)]~~ An offense under Subsection **(c)** ~~[(d)]~~ is a Class C  
18 misdemeanor.

19       SECTION 15. Section **2310.207** of the Occupations Code,  
20 subsections (a) and (b), are amended as follows:

21       Sec. 2310.207. CIVIL ACTION. (a) If a dealer or a  
22 distributor, supplier, or wholesaler~~[, or jobber]~~ of motor fuel  
23 violates Section **2310.201**, **2310.2012**, **2310.2013**, **2310.2014**, or  
24 **2310.2015**, a person ~~[motor fuel user]~~ who purchased the motor fuel  
25 and sustained damages or who has a complaint about the product may  
26 bring an action against the dealer, distributor, supplier, or  
27 wholesaler~~[, or jobber]~~.

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

4 (1) the dealer, distributor, supplier, or  
5 wholesaler[~~, or jobber~~] transacts business; or

6 (2) the dealer resides.

7 SECTION 16. Section 2310.208 of the Occupations Code is  
8 amended as follows:

9 Sec. 2310.208. CIVIL PENALTY. A dealer, distributor,  
10 supplier, or wholesaler[~~, or jobber~~] who violates Section 2310.201,  
11 2310.2012, 2310.2013, 2310.2014, or 2310.2015 is liable to this  
12 state for a civil penalty of not less than \$200 and not more than  
13 \$10,000.

14 SECTION 17. Chapter 2310 of the Occupations Code is amended  
15 by adding Subchapter F as follows:

16 SUBCHAPTER F. MOTOR FUEL METERING AND QUALITY ADVISORY BOARD.

17 Sec. 2310.220. Board; Membership. (a) The Motor Fuel  
18 Metering and Quality Advisory Board consists of nine members  
19 appointed by the presiding officer of the commission, with the  
20 commission's approval, as follows:

21 (1) two members who are dealers, or their  
22 representatives:

23 (A) one member with 500 or fewer registered  
24 devices;

25 (B) one member with more than 1,000 registered  
26 devices;

27 (2) one member who represents a service company

1 licensed by the department;

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

4 (4) one member who represents a supplier;

5 (5) one member who represents a financial institution,  
6 as defined by 277.001(3), Financial Code, or credit card issuer;  
7 and

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

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

13 Sec. 2310.221. Terms; Vacancy. (a) Members of the board  
14 serve staggered six-year terms, with the terms of one or two members  
15 expiring on the same date 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. 2310.222. Presiding Officer. The presiding officer of  
20 the commission, with the commission's approval, shall designate one  
21 member of the advisory board as presiding officer to serve in that  
22 capacity for a two-year term.

23 Sec. 2310.223. Board Duties. The board may advise the  
24 commission and department on:

25 (1) the adoption of appropriate standards for the  
26 installation, maintenance, calibration, alteration, operation,  
27 testing, and inspection of motor fuel dispensers, devices, and

1 fuel;

2 (2) education and curricula for applicants and  
3 licensees;

4 (2) the content of examinations;

5 (3) proposed rules and standards on technical issues  
6 related to motor fuel metering and quality and payment card fraud,  
7 including payment card skimmers and shimmers; and

8 (4) other issues affecting motor fuel metering and  
9 quality.

10 (b) The advisory board shall meet at the call of the  
11 executive director or the presiding officer of the commission.

12 SECTION 18. The following provision of the Occupations Code  
13 are repealed:

14 (1) Section 2310.2001.

15 SECTION 19. Not later than December 31, 2021, the Texas  
16 Commission of Licensing and Regulation shall appoint members to the  
17 motor fuel metering and quality advisory board in accordance with  
18 this Act.

19 SECTION 20. This Act takes effect immediately if it  
20 receives a vote of two-thirds of all the members elected to each  
21 house, as provided by Section 39, Article III, Texas Constitution.  
22 If this Act does not receive the vote necessary for immediate  
23 effect, the Act takes effect September 1, 2021.