

BILL ANALYSIS

C.S.H.B. 2925
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Agriculture & Livestock
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2008, the Sunset Advisory Commission recommended that the Texas Department of Agriculture (TDA) be granted authority to conduct fuel compliance inspection activities, according to risk, to ensure that resources are available where most needed and to target violators. TDA currently conducts inspections on such a risk basis in other regulatory program areas including egg quality and nursery and floral products. The historical average of compliance found during fuel pump inspections is 94 percent. The goal of this legislation is to encourage voluntary efforts to maintain compliant devices to achieve a greater level of consumer protection.

C.S.H.B. 2925 enhances consumer protections to be achieved through TDA's weighing and measuring program.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Agriculture in SECTIONS 4, 11, 24, and to the commissioner of agriculture in SECTION 25 of this bill.

ANALYSIS

C.S.H.B. 2925 amends provisions of the Agriculture Code relating to weights and measures to replace a definition of "pump," referring in existing law specifically to a gasoline, kerosene, or diesel fuel measuring or dispensing device, with a definition of "weighing or measuring device," meaning a scale or a mechanical or electronic device used to dispense or deliver a commodity by weight, volume, flow rate, or other measure. The bill removes the definition of "weight or measure" and defines "weight or measure of a commodity" to mean the weight or measure of a commodity as determined by a weighing or measuring device. The bill makes numerous related conforming changes throughout its provisions.

C.S.H.B. 2925 makes other changes of terminology and substance. The bill repeals and eliminates provisions relating to the appointment of officials known as sealers and their testing and inspection of weighing and measuring devices and the placement on them of a seal or mark. The bill refers, rather than to sealing, to the certification of state and local standards of weights and measures consistent with federal standards certified by the National Institute of Standards and Technology. The bill transfers certain functions of sealers to the Texas Department of Agriculture (TDA) or its personnel.

C.S.H.B. 2925 amends provisions relating to licensed inspectors of weights and measures. The bill removes provisions of existing law granting licensed inspectors various powers and duties of sealers. The bill substitutes provisions specifying the amended authority of licensed inspectors. The bill authorizes such inspectors to inspect, test, maintain, and repair a weighing or measuring device, a liquefied petroleum gas meter, or a ranch scale. The bill authorizes such an inspector to condemn and prohibit the further use of an incorrect weighing or measuring device that the inspector determines cannot be repaired, or, with respect to instances in which the inspector determines that a weighing or measuring device can be repaired, authorizes the inspector to

prohibit an incorrect device from being used until it is repaired. The bill authorizes a licensed inspector to return a device to service on its reinspection and release for use by TDA or on its inspection and release for use in any other manner authorized by TDA rule. The bill includes prohibiting and condemning, in addition to inspecting and testing as under existing law, in the list of activities than an inspector is required to conduct in compliance with TDA rules.

C.S.H.B. 2925 authorizes TDA to inspect and correct the standards used by a TDA inspector, another TDA employee, or an individual or business licensed by TDA to perform private maintenance, repairs, or calibration of weighing or measuring devices. The bill requires such inspection and correction at least once every year, rather than once every two years as under existing law.

C.S.H.B. 2925 also removes from the law the use of the defined term "false weight or measure." The bill instead refers to an incorrect weighing or measuring device and makes changes accordingly in provisions that establish an offense for false representation of a commodity quantity, provisions that establish an offense for the use of an incorrect device, and provisions that allow TDA to condemn and prohibit the sale or distribution of an incorrect device and that establish an offense for possessing, selling, offering, or exposing for sale, hire, or award an incorrect device or for certain other actions in support of the falsification or intended falsification of a weight or measure.

C.S.H.B. 2925 removes references to a pump, scale, or bulk or liquefied petroleum gas metering device in provisions that require a person who operates such a device for a commercial transaction to register annually with TDA and in provisions that authorize TDA to charge an owner or operator related fees to recover certain costs. The bill applies the registration requirement to an operator of a weighing and measuring device and applies the fee requirements to an owner or operator of a weighing and measuring device. The bill authorizes TDA to conduct an inspection of a registrant's or registration applicant's repair and calibration records.

C.S.H.B. 2925 amends provisions requiring TDA to inspect and test a weighing or measuring device at least once every four years, or more often as it requires, to authorize TDA to inspect and test a device less frequently than the required schedule to accommodate complaint-based and risk-based inspection schedules or in response to an emergency or a limitation in TDA funding. The bill revises a provision authorizing TDA to periodically monitor, inspect, or test certain weighing and measuring devices, to remove language specifying that TDA adopts by rule a system for such monitoring, inspecting, and testing. The bill modifies provisions relating to the offense of refusal to permit testing to provide that a person commits an offense if the person neglects or refuses to allow a weighing or measuring device under the person's control or in the person's possession to be inspected, tested, or examined by TDA, if the inspection, test, or examination is statutorily required.

C.S.H.B. 2925 authorizes TDA by rule to exempt a weighing or measuring device from a TDA requirement relating to weights and measures if TDA determines that imposing or enforcing the requirement is not cost effective for TDA, is not feasible with current resources or standards, or will not substantially benefit or protect consumers.

C.S.H.B. 2925 makes various other conforming, clarifying, and technical changes with respect to weights and measures.

C.S.H.B. 2925 requires TDA by rule to adopt minimum motor fuel quality and testing standards for motor fuel that is sold or offered for sale in Texas. The bill requires the standards to comply with the nationally recognized minimum standards established by the American Society for Testing and Materials, as those standards existed on September 1, 2009, for motor fuels other than motor fuels blended with ethanol, and the nationally recognized minimum standards of the National Institute of Standards and Technology, as those standards existed on September 1, 2009, for motor fuels blended with ethanol.

C.S.H.B. 2925 authorizes TDA 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 required standards. The bill requires a representative of TDA, on arriving at a facility to conduct testing, to notify the owner or manager of the facility of the representative's presence and purpose. The bill establishes that a person commits an offense if the person refuses to allow a TDA representative to collect samples or conduct motor fuel testing.

C.S.H.B. 2925 authorizes TDA, if it has reason to believe that motor fuel is in violation of code laws relating to the sale and regulation of fuel mixtures, or an associated rule, to issue and enforce a written order to stop the sale of the motor fuel. The bill requires TDA to present the order to the dealer, distributor, jobber, supplier, or wholesaler who is in control of the motor fuel at the time the motor fuel is tested. The bill prohibits the person who receives the order from selling the motor fuel until TDA determines that the motor fuel is in compliance with those laws and rules.

C.S.H.B. 2925 revises rulemaking authority of the agriculture commissioner, with respect to the regulation of motor fuels, to extend that authority to all motor fuels and not just those containing ethanol and methanol as under existing law. The bill expands the commissioner's rulemaking authority regarding the collection of an associated fee, requiring fee collection from each distributor, jobber, supplier, and wholesaler as well as from each existing dealer as under existing law.

C.S.H.B. 2925 revises the law on fuel mixtures to authorize TDA, rather than the commissioner, to impose an administrative penalty for violating that law or related TDA rules. The bill increases the maximum penalty from \$500 to \$5,000 a day for each violation. The bill requires TDA to provide a toll-free telephone number for use by the public in reporting violations.

C.S.H.B. 2925 repeals the following provisions of the Agriculture Code:

- Section 13.004, entitling the agriculture commissioner and chief deputy of weights and measures to travel expense reimbursement
- Section 13.102, relating to the requirement of an inspection seal prior to sale
- Section 13.104, relating to the appointment of deputies as state sealers
- Section 13.108, relating to the powers and duties of sealers
- Section 13.109, relating to rules governing sealers
- Section 13.110, relating to sealer inspection and testing
- Sections 13.111(c) and (d), relating to the offer to repair of an incorrect weight or measure before taking it out of service
- Section 13.116, relating to the use or sale of an unsealed weight or measure

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2925 differs from the original by eliminating, rather than amending, the definitions of "pump" and "weight or measure" and adding definitions of "weight or measure of a commodity" and "weighing or measuring device." The substitute differs from the original by making related conforming changes and by replacing certain references to a pump, scale, or bulk or liquefied petroleum gas metering device with references to a weighing or measuring device. The substitute adds amendatory changes, not in the original, referring to an incorrect weighing or

measuring device rather than a false weight or measure as in existing law.

C.S.H.B. 2925 removes a provision in the original amending the maximum civil penalty for a violation of laws or rules relating to weights and measures. The substitute adds a provision, not in the original, to authorize the Texas Department of Agriculture (TDA) by rule to exempt a weighing or measuring device from a requirement of such laws if TDA makes certain determinations.

C.S.H.B. 2925, rather than amending the law to authorize TDA to appoint inspectors instead of sealers, as in the original, repeals the law containing the appointment provision. The substitute requires TDA, rather than an appointed inspector as in the original, to conduct certain package and commodity testing. The substitute, notwithstanding its repealer, contains other provisions identical to the original and referring to the appointment of an inspector.

C.S.H.B. 2925 differs from the original by requiring an inspector, rather than TDA as in the original, to conduct inspection and testing for correctness at least once every four years. The substitute adds a provision authorizing TDA to inspect and test less frequently for certain reasons.

C.S.H.B. 2925, rather than amending existing law to require registration with TDA of a weight or measure as in the original, repeals the associated law.

C.S.H.B. 2925, rather than amending the law to establish certain powers and duties of inspectors, as in the original, repeals the associated law. The substitute, rather than amending the law to require TDA to issue instructions and adopt rules governing state inspectors as in the original, repeals the associated law. The substitute, rather than amending the law to authorize each inspector to test weights and measures in a locality, repeals the associated law.

C.S.H.B. 2925 differs from the original by authorizing TDA, rather than an inspector as in the original, to condemn, seize, and destroy certain items or to determine them to be capable of being repaired. The substitute differs from the original by including language relating to post-repair release for use rather than post-repair approval. The substitute repeals, rather than amends as in the original, provisions relating to post-repair notification of an inspector and subsequent procedures following such notification.

C.S.H.B. 2925 adds a provision, not in the original, providing that the standards of weights and measures certified by the National Institute of Standards and Technology are the state's standards by which all state and local standards are certified. The substitute differs from the original by authorizing TDA to purchase additional sets of standards for a TDA inspector or other TDA personnel, rather than for state inspectors as in the original. The substitute differs from the original by requiring all standards furnished to or tested for a city to be certified by TDA, rather than retaining current law as in the original. The substitute differs from the original by requiring TDA to inspect and correct the standards used by a TDA inspector or other employee, or an individual or business licensed to perform private maintenance, repairs, or calibration, rather than to inspect and correct the standards used by a local inspector as in the original. The substitute strikes a requirement of existing law that a city pay inspection expenses, whereas the original retains the requirement.

C.S.H.B. 2925 omits a provision in the original that revises provisions of existing law on the offense of using or selling an unregistered weight or measure.

C.S.H.B. 2925 differs from the original by revising an offense in current law making it an offense if a person neglects or refuses to allow a weighing or measuring device to be inspected, tested, or examined by TDA if required by law, whereas the original retains and adds to the current language so that it is an offense if a person neglects or refuses to exhibit a weight or measure to TDA for inspection or examination. The substitute differs from the original by

modifying the offense of hindering TDA personnel to include TDA, a TDA inspector, or other TDA personnel, in the performance of official duties, rather than for hindering TDA or an inspector as in the original.

C.S.H.B. 2925 differs from the original by adding provisions listing specific powers with which a licensed inspector is authorized, whereas the original establishes that such a person has all the powers and duties of an inspector, with certain exceptions.

C.S.H.B. 2925 adds provisions, not in the original, requiring the holder of an inspector's license to conduct prohibiting or condemning activities in compliance with TDA rules.

C.S.H.B. 2925 makes changes, not in the original, relating to TDA's authority to conduct periodic monitoring and inspecting, to delete a provision making such authority dependent on TDA rulemaking.

C.S.H.B. 2925 removes provisions in the original relating to testing frequency with respect to the regulation of certain fuel mixtures.

C.S.H.B. 2925 adds authority for the commissioner of agriculture, also relating to the regulation of fuel mixtures, and not in the original, to impose and collect a fee from a distributor, jobber, supplier, or wholesaler.

C.S.H.B. 2925 differs from the original by requiring TDA by rule to adopt minimum motor fuel quality and testing standards for motor fuel sold or offered for sale in Texas, whereas the original does not include such rulemaking authority but rather provides that a dealer, distributor, jobber, supplier, or wholesaler may only sell or offer for sale motor fuel that complies with minimum standards. The substitute differs from the original, with respect to minimum standards of the American Society for Testing and Materials, by omitting reference to fuel quality and composition standards and by applying the society's standards specifically to motor fuels other than motor fuels blended with ethanol. The substitute differs from the original, with respect to the minimum standards of the National Institute of Standards and Technology, by omitting reference to water content and by applying the institute's standards specifically to motor fuels blended with ethanol.

C.S.H.B. 2925 authorizes TDA to collect samples and conduct testing for verification purposes at any location where motor fuel is kept, transferred, sold, or offered for sale, whereas the original authorizes the commissioner for verification purposes to conduct testing to any location where motor fuel is refined, distributed, or sold. The substitute adds provisions, not in the original, that require a TDA representative, on arriving at a facility to conduct testing, to notify the owner or manager of the facility. The substitute adds provisions, not in the original, to establish an offense if a person refuses to allow a TDA representative to collect samples or conduct motor fuel testing.

C.S.H.B. 2925 removes provisions in the original, with respect to a TDA stop-sale order, entitling a person who is in control of motor fuel prohibited from sale to bring suit against TDA for a judgment as to the justification for the order and for the discharge of the motor fuel from the order in accordance with court findings. The substitute removes an associated provision, contained in the original, specifying that the law on a stop-sale order does not limit the authority of TDA to proceed under certain other law.

C.S.H.B. 2925 adds a provision, not in the original, increasing from \$500 to \$5,000 per day per violation the maximum administrative penalty for a violation relating to fuel mixture regulation, and granting authority to impose such a penalty to TDA.

C.S.H.B. 2925 adds a provision, not in the original, requiring TDA to provide a toll-free number for use by the public in reporting a violation with respect to fuel mixture regulation.

C.S.H.B. 2925 differs from the original by including additional repealers. The substitute differs from the original by omitting transition provisions included in the original relating to Section 13.102, Agriculture Code, a provision amended in the original and repealed in the substitute.