

By: Whitmire

S.B. No. 2089

A BILL TO BE ENTITLED

AN ACT

relating to protections provided by the Department of Agriculture for certain consumers; providing penalties.

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

SECTION 1. Section 13.001(a)(3), Agriculture Code, is amended to read as follows:

(3) "Pump" means a ~~[gasoline, kerosene, or diesel fuel measuring or dispensing]~~ device used to measure or dispense any motor fuel, as defined by Section 162.001, Tax Code.

SECTION 2. Section 13.007(a), Agriculture Code, is amended to read as follows:

(a) A person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty not to exceed \$10,000 ~~[\$500]~~ for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

SECTION 3. Section 13.039, Agriculture Code, is amended to read as follows:

Sec. 13.039. TESTING OF PACKAGE BY INSPECTOR ~~[SEALER]~~. (a) An inspector ~~[A sealer]~~ appointed under Subchapter C of this chapter shall from time to time weigh or measure a package, or an amount of any commodity, that is kept or offered for sale, sold, or in the process of delivery, in order to determine:

(1) if the commodity is of the amount or quantity

1 represented; or

2 (2) if the commodity is being offered for sale or sold
3 in accordance with law.

4 (b) If an inspector [~~a sealer~~] finds that a package or any
5 lot of a commodity contains less of the commodity than the amount
6 represented, the inspector [~~sealer~~] may seize the package or the
7 commodity as evidence.

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

13 SECTION 4. Sections 13.101(a) and (d), Agriculture Code,
14 are amended to read as follows:

15 (a) At least once every four years, or more often as
16 required by the department, a weight or measure shall be inspected
17 and tested for correctness by an inspector [~~a sealer~~] if it:

18 (1) is kept for sale, sold, or used by a proprietor,
19 agent, lessee, or employee in proving the weight or measure,
20 including the size, quantity, extent, or area, of any item; or

21 (2) is purchased, offered, or submitted by a
22 proprietor, agent, lessee, or employee for sale, hire, or award.

23 (d) Unless the department requires an additional
24 inspection, a weight or measure that is inspected and found correct
25 by an inspector [~~a sealer~~] may be kept for use, used, kept or
26 offered for sale, or sold without further testing.

27 SECTION 5. Section 13.1011(a), Agriculture Code, is amended

1 to read as follows:

2 (a) A person who operates a pump, scale, or bulk or
3 liquefied petroleum gas metering device for a commercial
4 transaction shall ~~[must]~~ register annually with the department.

5 SECTION 6. Section 13.1012(e), Agriculture Code, is amended
6 to read as follows:

7 (e) The department may conduct an inspection of an
8 applicant's or registrant's:

- 9 (1) facilities;
- 10 (2) inspecting and testing equipment and procedures;
- 11 (3) repair and calibration equipment, records, and
12 procedures; and
- 13 (4) transportation equipment.

14 SECTION 7. Section 13.102, Agriculture Code, is amended to
15 read as follows:

16 Sec. 13.102. REGISTRATION ~~[INSPECTION—SEAL]~~ REQUIRED
17 ~~[PRIOR TO SALE]~~. (a) A person shall register a weight or measure
18 with the department if the person uses the weight or measure in:

- 19 (1) buying or selling a commodity or item;
- 20 (2) computing a charge for services rendered on the
21 basis of weight or measure; or
- 22 (3) determining a weight or measure, if a charge is
23 made for that determination.

24 (b) Except as provided by Subsection ~~[(b) or]~~ (c) or (d) of
25 this section, a person may not sell a weight or measure unless it
26 bears a valid registration tag issued by the department ~~[inspection~~
27 ~~seal as to its correctness]~~.

1 (c) [~~(b)~~] A weight or measure that has been tested[~~7~~
2 ~~sealed,~~] and certified correct by the National Institute of
3 Standards and Technology may be kept or offered for sale or sold
4 without being registered [~~sealed~~] under this subchapter.

5 (d) [~~(c)~~] A weight or measure that after sale must be
6 assembled before use may be kept or offered for sale or sold without
7 first being registered [~~sealed~~] under this subchapter but, unless
8 otherwise approved by the department, must be tested and
9 registered [~~sealed~~] under this subchapter before use for weighing
10 or measuring.

11 SECTION 8. Section 13.104, Agriculture Code, is amended to
12 read as follows:

13 Sec. 13.104. STATE INSPECTORS [~~SEALERS~~]. (a) The
14 commissioner may appoint employees of the department, or a person
15 licensed by the department under Subchapter H [~~deputies~~], as
16 provided for by appropriation, [~~and inspectors, lecturers, and~~
17 ~~other employees of the department~~] to serve as state inspectors
18 [~~sealers~~] of weights and measures.

19 (b) The jurisdiction of a state inspector [~~sealer~~] is
20 coextensive with the limits of the state. A state inspector
21 [~~sealer~~] is entitled to inspect and test weights and measures in any
22 district or locality designated by the department.

23 (c) A deputy appointed to serve as state sealer is entitled
24 to reimbursement for actual traveling expenses while traveling on
25 the business of the state.

26 SECTION 9. The heading to Section 13.108, Agriculture Code,
27 is amended to read as follows:

1 Sec. 13.108. POWERS AND DUTIES OF INSPECTORS [~~SEALERS~~].

2 SECTION 10. Section 13.108(a), Agriculture Code, is amended
3 to read as follows:

4 (a) In addition to inspecting and [~~7~~] testing[~~7~~, ~~and sealing~~]
5 weights and measures, each inspector [~~sealer~~] and deputy inspector
6 [~~sealer~~] shall:

7 (1) preserve all copies of the standards used in
8 conducting tests and keep the standards in safe and good order when
9 not in use;

10 (2) keep a record of all work performed, including
11 inspections made, and the name and post office address of each
12 party:

13 (A) for whom a measurement, test weight, or
14 inspection is made;

15 (B) whose weight or measure is condemned; or

16 (C) who is prosecuted; and

17 (3) keep a record of all violations of this chapter and
18 report those violations to the department.

19 SECTION 11. Section 13.109, Agriculture Code, is amended to
20 read as follows:

21 Sec. 13.109. RULES GOVERNING INSPECTORS [~~SEALERS~~]. The
22 department shall issue instructions and adopt rules governing state
23 inspectors [~~sealers~~] as necessary to carry out the purposes of this
24 chapter.

25 SECTION 12. The heading to Section 13.110, Agriculture
26 Code, is amended to read as follows:

27 Sec. 13.110. INSPECTING[~~7~~] AND TESTING[~~7~~, ~~AND SEALING~~].

1 SECTION 13. Section 13.110(a), Agriculture Code, is amended
2 to read as follows:

3 (a) In accordance with this subchapter, each inspector
4 [~~sealer~~] may inspect and test all weights and measures used in the
5 locality to which the inspector [~~sealer~~] is assigned.

6 SECTION 14. Sections 13.111(a) and (b), Agriculture Code,
7 are amended to read as follows:

8 (a) If, in the judgment of the inspector [~~sealer~~], a weight
9 or measure found to be incorrect is not capable of being repaired,
10 the inspector [~~sealer~~] may condemn, seize, and destroy the weight
11 or measure.

12 (b) If, in the judgment of the inspector [~~sealer~~], an
13 incorrect weight or measure is capable of being repaired, the
14 inspector [~~sealer~~] shall place on the weight or measure a tag or
15 other mark with the words "Out of Order." The owner or user of the
16 weight or measure may have it repaired within 30 days, but may not
17 use or dispose of it until it is reinspected and approved by an
18 inspector [~~sealed~~]. After repair, the owner or user shall notify
19 the inspector [~~sealer~~] and the inspector [~~sealer~~] shall reinspect
20 the weight or measure. If it is found to be correct, the inspector
21 [~~sealer~~] shall remove the out-of-order tag [~~and seal the weight or~~
22 ~~measure as provided by Section 13.110 of this code~~].

23 SECTION 15. Sections 13.113(a), (c), and (e), Agriculture
24 Code, are amended to read as follows:

25 (a) The standards of weights and measures received from the
26 United States and certified by the National Institute of Standards
27 and Technology are the state's standards by which all state and

1 local standards of weights and measures are tried, authenticated,
2 and proved[, ~~and sealed~~].

3 (c) In addition to the standards kept by the state, the
4 department shall maintain a complete set of copies of the original
5 standards for use in adjusting local standards or in the
6 performance of other official duties. The department may purchase
7 additional sets of standards as necessary for use by state
8 inspectors [~~sealers~~].

9 (e) The department shall inspect and correct the standards
10 used by a local inspector [~~sealer~~] at least once every year [~~two~~
11 ~~years~~]. The department shall keep a record of the inspection and
12 character of weights and measures inspected under this subsection.
13 The city shall pay all expenses incurred in inspections under this
14 subsection.

15 SECTION 16. Section 13.116, Agriculture Code, is amended to
16 read as follows:

17 Sec. 13.116. USE OR SALE OF UNREGISTERED [~~UNSEALED~~] WEIGHT
18 OR MEASURE. (a) A person commits an offense if the person or the
19 person's servant or agent:

20 (1) offers or exposes for sale, hire, or award or sells
21 an unregistered [~~unsealed~~] weight or measure;

22 (2) uses an unregistered [~~unsealed~~] weight or measure
23 in:

24 (A) buying or selling a commodity or item;

25 (B) computing a charge for services rendered on
26 the basis of weight or measure; or

27 (C) determining a weight or measure, if a charge

1 is made for that determination; or

2 (3) possesses an unregistered [~~unsealed~~] weight or
3 measure.

4 (b) In this section, a weight or measure is unregistered
5 [~~unsealed~~] if it has not been registered [~~sealed~~] within the past
6 year in accordance with this subchapter.

7 SECTION 17. Section 13.117, Agriculture Code, is amended to
8 read as follows:

9 Sec. 13.117. REFUSING TO PERMIT TEST OF WEIGHT OR MEASURE. A
10 person commits an offense if the person neglects or refuses to
11 exhibit a weight or measure under the person's control or in the
12 person's possession to the department or an inspector [~~a sealer~~]
13 for inspection or examination as required by law.

14 SECTION 18. Section 13.118, Agriculture Code, is amended to
15 read as follows:

16 Sec. 13.118. HINDERING INSPECTOR [~~SEALER~~]. A person
17 commits an offense if the person hinders or obstructs in any way the
18 department or an inspector [~~a sealer~~] in the performance of
19 official duties.

20 SECTION 19. Section 13.119, Agriculture Code, is amended to
21 read as follows:

22 Sec. 13.119. REMOVAL OF REGISTRATION [~~SEALER'S~~] TAG. A
23 person commits an offense if the person removes or obliterates a tag
24 or device placed on a weight or measure under this chapter [~~Section~~
25 ~~13.110 or 13.111 of this code~~].

26 SECTION 20. Sections 13.401(a), (b), and (d), Agriculture
27 Code, are amended to read as follows:

1 (a) A person who has a license issued under this subchapter
2 has all of the powers and duties of an inspector [~~a sealer~~] under
3 this chapter except for:

- 4 (1) testing of a package under Section 13.039;
5 (2) peace officer status under Section 13.108(b); and
6 (3) entering premises or conducting a stop under
7 Section 13.108(c).

8 (b) It is a defense to prosecution under Section 13.117 or
9 13.118 that the inspector [~~sealer~~] is acting under the authority of
10 a license issued under this subchapter.

11 (d) Unless appointed an inspector [~~a sealer~~] under
12 Subchapter C, a person may not perform the functions of an inspector
13 [~~a sealer~~] without a license issued under this subchapter.

14 SECTION 21. Subchapter B, Chapter 17, Agriculture Code, is
15 amended by adding Section 17.056 to read as follows:

16 Sec. 17.056. MINIMUM MOTOR FUEL QUALITY STANDARDS. A
17 dealer, distributor, jobber, supplier, or wholesaler may only sell
18 or offer for sale motor fuel that complies with:

19 (1) the minimum standards for water content
20 established by the National Institute of Standards and Technology,
21 as those standards existed on September 1, 2009; and

22 (2) the minimum standards for fuel quality and
23 composition established by the American Society for Testing and
24 Materials, as those standards existed on September 1, 2009.

25 SECTION 22. Section 17.102, Agriculture Code, is amended to
26 read as follows:

27 Sec. 17.102. TESTING; RULES RELATING TO TESTING FREQUENCY.

1 To determine compliance with the standards and enforce rules
2 adopted under Sections 17.051, 17.052, 17.053, 17.055, 17.056,
3 [~~and~~] 17.103, and 17.105, the commissioner or an authorized
4 representative of the commissioner may test any motor fuel sold in
5 this state, regardless of the existence of a complaint about the
6 fuel. This section does not prohibit the commissioner from
7 adopting rules relating to the frequency of testing motor fuels. In
8 adopting the rules, the commissioner shall consider:

- 9 (1) the nature of the violation;
- 10 (2) the history of past violations; and
- 11 (3) available funds under Section 17.104(d).

12 SECTION 23. Section 17.104(a), Agriculture Code, is amended
13 to read as follows:

14 (a) The commissioner may adopt rules consistent with this
15 chapter for the regulation of the sale of motor fuels, including
16 motor fuels that contain [~~containing~~] ethanol and methanol.

17 SECTION 24. Subchapter C, Chapter 17, Agriculture Code, is
18 amended by adding Section 17.105 to read as follows:

19 Sec. 17.105. TESTING OF MOTOR FUEL QUALITY. The
20 commissioner may conduct testing, at any location where motor fuel
21 is refined, distributed, or sold, to verify that the motor fuel
22 complies with the minimum standards required by Section 17.056.

23 SECTION 25. Subchapter D, Chapter 17, Agriculture Code, is
24 amended by adding Section 17.156 to read as follows:

25 Sec. 17.156. STOP-SALE ORDER. (a) If the department has
26 reason to believe that motor fuel is in violation of this subchapter
27 or a rule adopted under this subchapter, the department may issue

1 and enforce a written order to stop the sale of the motor fuel. The
2 department shall present the order to the dealer, distributor,
3 jobber, supplier, or wholesaler who is in control of the motor fuel
4 at the time the motor fuel is tested. The person who receives the
5 order may not sell the motor fuel until discharged by a court under
6 Subsection (b) or until the department determines that the motor
7 fuel is in compliance with this subchapter and department rules.

8 (b) The person who is in control of motor fuel prohibited
9 from sale by the order is entitled to bring suit against the
10 department in the county where the motor fuel is located for a
11 judgment as to the justification for the order and for discharge of
12 the motor fuel from the order in accordance with the findings of the
13 court.

14 (c) This section does not limit the authority of the
15 department to proceed under another section of this subchapter.

16 SECTION 26. The following provisions of the Agriculture
17 Code are repealed:

- 18 (1) Section 13.004;
19 (2) Section 13.104(c); and
20 (3) Section 13.110(b).

21 SECTION 27. (a) Not later than January 1, 2010, the
22 Department of Agriculture shall adopt rules, procedures, and forms
23 for the registration of a weight and measure as required by Section
24 13.102, Agriculture Code, as amended by this Act.

25 (b) The department may not enforce Section 13.102,
26 Agriculture Code, as amended by this Act, until the rules,
27 procedures, and forms adopted under Subsection (a) of this section

1 take effect.

2 SECTION 28. This Act takes effect September 1, 2009.