

BILL ANALYSIS

C.S.S.B. 893
By: Whitmire
Agriculture & Livestock
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties observe that the Department of Agriculture (TDA) recently was granted the authority to regulate fuel quality in Texas with a goal of strengthening consumer protection in the state. Interested parties further observe that, since then, the TDA has developed a statewide program to test fuel for certain contaminants. In the course of the implementation of the program, several statutory provisions were identified that would benefit from revision, correction, or clarification. C.S.S.B. 893 seeks to address those matters by making changes related to motor fuel quality and testing.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of agriculture in SECTIONS 3 and 4 of this bill and to the Department of Agriculture in SECTION 5 of this bill.

ANALYSIS

C.S.S.B. 893 amends the Agriculture Code to remove, in the prohibition against a distributor, supplier, wholesaler, or jobber of motor fuel delivering a motor fuel mixture that contains ethanol or methanol to an outlet in Texas unless the person also delivers certain other items to the outlet receiving the delivery, the condition that the person also deliver signs stating that the motor fuel mixture contains ethanol or methanol in a number sufficient for the dealer receiving the mixture to comply with certain notification requirements. The bill requires each motor fuel dealer to keep a copy of each manifest, bill of sale, bill of lading, or other document evidencing delivery of a fuel mixture until the fourth anniversary, rather than the first anniversary, of the delivery date. The bill removes the requirement that a motor fuel dealer, during the first 60 days following delivery of a motor fuel mixture, keep a copy at the station or retail outlet to which the mixture was delivered of any document evidencing delivery of the mixture. The bill removes the specification that the copies of documents each distributor, supplier, wholesaler, and jobber of motor fuel is required to keep be kept at the person's principal place of business and requires those documents to be kept until the fourth anniversary, rather than the first anniversary, of the delivery date.

C.S.S.B. 893 requires a dealer, distributor, supplier, wholesaler, or jobber of motor fuel, on written notice presented by the commissioner of agriculture 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 with the documents evidencing the delivery of a mixture within the period specified in the notice. The bill authorizes the commissioner by rule to require each dealer, distributor, supplier, wholesaler, and jobber to maintain and make available to the Department of Agriculture (TDA) certain documents and records relating to the purchase, sale, delivery, or distribution of motor fuel by those parties. The bill expands the provision authorizing the commissioner by rule to prescribe the manner of filing certain documents to make that provision applicable to documents and records that are required to be kept by

department rule.

C.S.S.B. 893 requires a dealer, on written notice presented by the commissioner or an authorized representative of the commissioner to any employee at the dealer's station or retail outlet or mailed to the dealer's principal place of business, to provide the commissioner or authorized representative with documents relating to the posting or certification of automotive fuel ratings within the period specified in the notice. The bill authorizes the commissioner by rule to require each dealer to maintain and make available to the TDA certain documents and records relating to the purchase, sale, delivery, or distribution of motor fuel by the dealer. The bill authorizes the commissioner by rule to prescribe the manner of filing documents or records required to be kept under provisions of law or by department rule and the time, place, and manner of inspection of those documents or records.

C.S.S.B. 893 removes the requirement that the minimum motor fuel quality and testing standards adopted by the TDA for fuel that is sold or offered for sale in Texas in compliance with the nationally recognized minimum standards established by the American Society for Testing and Materials (ASTM) refer to ASTM standards as they existed on September 1, 2009, and specifying that the ASTM standards are for motor fuels other than those blended with ethanol. The bill removes, from the nationally recognized minimum standards with which the standards adopted by the TDA must comply, the National Institute of Standards and Technology as those standards existed on September 1, 2009, other than the standard vapor to liquid ratio specification for motor fuels blended with ethanol. The bill authorizes the TDA to adopt rules as necessary to bring about uniformity between the standards established under state law and the nationally recognized standards.

C.S.S.B. 893 includes as grounds for the TDA to issue and enforce a written order to stop the sale of motor fuel that the TDA has reason to believe the motor fuel is being sold or offered for sale in a manner that violates state law or a rule adopted under state law. The bill expands the actions the TDA may take if the TDA has reason to believe that motor fuel is in violation of state law or a rule adopted under state law or is being sold or offered for sale in a manner that violates such laws or rules to include placing on a device used to dispense the motor fuel a tag or other mark with the words "Out of Order" and stopping the sale of the motor fuel and marking a device used to dispense the motor fuel as out of order. The bill requires the TDA to present an order issued under provisions of the bill to the dealer, distributor, jobber, supplier, or wholesaler who is in control of the motor fuel at the time the motor fuel or the dealer, distributor, jobber, supplier, or wholesaler is inspected by the commissioner, rather than requiring the TDA to present the order to the dealer, distributor, jobber, supplier, or wholesaler at the time the motor fuel is tested. The bill establishes a maximum penalty of \$5,000 for violating a provision of law relating to the sale and regulation of fuel mixtures. The bill makes conforming and nonsubstantive changes.

C.S.S.B. 893 repeals the following provisions of the Agriculture Code:

- Sections 17.051(c) and (d), relating to required information regarding the alcohol and fuel mixture in motor fuel as provided on a sign on a motor fuel pump and by a dealer on request
- Sections 17.155(b), (c), (d), (e), (f), (g), (h), and (i), relating to the administrative penalty for a violation of provisions of law relating to the sale and regulation of certain fuel mixtures

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 893 contains a provision not included in the original requiring each motor fuel dealer to keep a copy of certain documents relating to the delivery of a motor fuel mixture until the fourth anniversary, rather than the first anniversary, of the delivery date. The substitute differs from the original, in a provision requiring each distributor, supplier, wholesaler, and jobber of motor fuel to keep copies of those documents, by requiring such documents to be kept until the fourth anniversary of the delivery date, rather than the first anniversary of that date, as retained in the original.