86R28659 BEF-F

By:  Alvarado S.B. No. 2119

(Goldman)

Substitute the following for S.B. No. 2119:

By:  Larson C.S.S.B. No. 2119

A BILL TO BE ENTITLED

AN ACT

relating to the transfer of the regulation of motor fuel metering and motor fuel quality from the Department of Agriculture to the Texas Department of Licensing and Regulation; providing civil and administrative penalties; creating criminal offenses; requiring occupational licenses; authorizing fees.

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

SECTION 1.  Subtitle A, Title 14, Occupations Code, is amended by adding Chapter 2310 to read as follows:

CHAPTER 2310. MOTOR FUEL METERING AND QUALITY

SUBCHAPTER A. GENERAL PROVISIONS

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

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

(2)  "Commission" means the Texas Commission of Licensing and Regulation.

(3)  "Dealer" means a person who:

(A)  is the operator of a service station or other retail outlet; and

(B)  delivers motor fuel into the fuel tanks of motor vehicles or motor boats.

(4)  "Department" means the Texas Department of Licensing and Regulation.

(5)  "Executive director" means the executive director of the department.

(6)  "Motor fuel" has the meaning assigned by Section 162.001, Tax Code.

(7)  "Motor fuel metering device" means a commercial weighing or measuring device used for motor fuel sales.

(8)  "Operator" or "user" means a person in possession or control of a weighing or measuring device.

(9)  "Sell" includes barter or exchange.

(10)  "Weighing or measuring device" means a scale or a mechanical or electronic device used to dispense or deliver a motor fuel by weight, volume, flow rate, or other measure or to compute the charge for a service related to motor fuel.

(11)  "Weight or measure of a motor fuel" means the weight or measure of a motor fuel as determined by a weighing or measuring device.

(b)  A reference to the weight of a motor fuel in this chapter is a reference to the net weight of the motor fuel.

Sec. 2310.002.  ENFORCEMENT OF CHAPTER. (a) Notwithstanding any other law, the department shall administer and enforce the provisions of this chapter and shall regulate all motor fuel metering devices sold or offered for sale in this state. The department may purchase apparatus as necessary for the administration of this chapter.

(b)  To the extent this chapter conflicts with Chapter 13, Agriculture Code, with regard to motor fuel metering devices, this chapter controls.

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

Sec. 2310.003.  CIVIL PENALTY; INJUNCTION. (a) A person who violates Subchapter B or C or a rule adopted under Subchapter B or C is liable to the state for a civil penalty not to exceed $500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b)  On request of the executive director, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c)  A civil penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund. A civil penalty recovered in a suit first instituted by one or more local governments under this section shall be equally divided between this state and each local government that first instituted the suit, with 50 percent of the recovery deposited to the credit of the general revenue fund and the other 50 percent distributed equally to each local government.

(d)  The executive director is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the executive director, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

(e)  The department and the attorney general may each recover reasonable expenses incurred in obtaining injunctive relief and civil penalties under this section, including investigative costs, court costs, reasonable attorney's fees, witness fees, and deposition expenses. The expenses recovered by the department may be appropriated only to the department for the administration and enforcement of this chapter. The expenses recovered by the attorney general may be appropriated only to the attorney general.

SUBCHAPTER B. STANDARD WEIGHTS AND MEASURES FOR MOTOR FUEL

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

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

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

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

Sec. 2310.052.  STANDARD FOR LIQUID MOTOR FUEL. (a) This section does not apply to compressed natural gas or liquefied natural gas.

(b)  The standard unit of measure of capacity for liquid motor fuels is the gallon.

(c)  Except as provided by Subsections (d) and (e), all other measures of capacity for liquid motor fuels are derived from the gallon by continual division by two, making half gallons, quarts, pints, half pints, and gills.

(d)  A mechanism or machine that is adapted to measure and deliver liquid motor fuels by volume and that indicates fractional parts of a gallon shall indicate the fractional parts either in terms of binary submultiple subdivisions or in terms of tenths of a gallon.

(e)  For purposes of the retail sale of motor fuel only, the liquid gallon contains 231 cubic inches without adjustment based on the temperature of the liquid.

Sec. 2310.053.  EXEMPTION OF CERTAIN MOTOR FUEL METERING DEVICES. (a) The commission by rule may exempt a motor fuel metering device from a requirement established by this chapter if the commission determines that imposing or enforcing the requirement:

(1)  is not cost-effective for the department;

(2)  is not feasible with current resources or standards; or

(3)  will not substantially benefit or protect consumers.

(b)  A motor fuel metering device is exempt from the requirements of this chapter if the motor fuel metering device is not used to:

(1)  calculate the amount of motor fuel sold in a commercial transaction; or

(2)  compute the charge for service.

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

(b)  Compressed natural gas and liquefied natural gas shall be sold by weight.

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

Sec. 2310.055.  PRICE ADVERTISEMENT; MISREPRESENTATION OF PRICE OR QUANTITY. (a) If a price sign, card, tag, poster, or other advertisement displaying the price of motor fuel includes a whole number and a fraction, the figures in the fraction shall be of proportionate size and legibility to those of the whole number.

(b)  A person violates this chapter if the person:

(1)  misrepresents the price of motor fuel sold or offered or exposed for sale; or

(2)  represents the price or the quantity of motor fuel sold or offered or exposed for sale in a manner intended or tending to mislead or deceive an actual or prospective customer.

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

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

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

Sec. 2310.057.  USE OF INCORRECT MOTOR FUEL METERING DEVICE. (a) A person commits an offense if the person or the person's representative or agent knowingly uses an incorrect weighing or measuring device in:

(1)  buying or selling motor fuel;

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

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

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

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

(2)  is not accurate;

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

(4)  facilitates the perpetration of fraud; or

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

Sec. 2310.058.  SALE OF MOTOR FUEL IN VIOLATION OF SUBCHAPTER. A person violates this chapter if the person or the person's representative or agent sells or keeps, offers, or exposes for sale motor fuel in violation of this subchapter.

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

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

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

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

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

Sec. 2310.060.  STOP-SALE ORDER. (a) If the department has reason to believe that motor fuel is being sold or kept, offered, or exposed for sale in violation of this chapter or that motor fuel is being sold or offered for sale by or through the use of a motor fuel metering device that is in violation of this chapter, the executive director may issue an order to stop the sale of the motor fuel. The executive director shall issue the order to the owner or custodian of the motor fuel or seller of the motor fuel. The person receiving the order may not sell the motor fuel until discharged by a court under Subsection (b) or until the executive director finds that the motor fuel or motor fuel metering device is in compliance with this chapter.

(b)  The owner, custodian, or seller of motor fuel prohibited from sale by an order of the executive director is entitled to sue in a court where the motor fuel is found or is being sold or offered for sale for a judgment as to the justification of the order and for the discharge of the motor fuel in accordance with the findings of the court.

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

Sec. 2310.061.  PENALTIES; DEFENSE. (a) An offense under Section 2310.057 or 2310.059 is a Class C misdemeanor.

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

SUBCHAPTER C. INSPECTION AND REGISTRATION OF MOTOR FUEL METERING DEVICES

Sec. 2310.101.  AUTHORITY TO INSPECT. (a) If the department has reason to believe that a motor fuel metering device is being used for a commercial transaction and the device is not registered with the department, the department may inspect the device and the records of the owner, operator, or user of the device that relate to use of the device to determine whether the device is in compliance with this chapter.

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

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

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

Sec. 2310.104.  COMPLAINTS REGARDING MOTOR FUEL METERING DEVICES. In accordance with Chapter 51, the executive director shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department. The department shall provide to the person filing the complaint and to each person who is a subject of the complaint information about the department's policies and procedures relating to complaint investigation and resolution.

Sec. 2310.105.  REPAIR OR DESTRUCTION OF INCORRECT MOTOR FUEL METERING DEVICES. (a) If, in the judgment of the department, a motor fuel metering device found to be incorrect is not capable of being repaired, the department may condemn, seize, and destroy the device.

(b)  If, in the judgment of the department, an incorrect motor fuel metering device is capable of being repaired, the department shall place on the device a tag or other mark with the words "Out of Order." The owner or user of the motor fuel metering device may not use it until it is reinspected and released for use by the department or inspected and released for use in any other manner authorized by commission rule.

(c)  The owner, operator, or user of a motor fuel metering device may not destroy, replace, or otherwise dispose of a device declared to be incorrect or condemned under this section except as provided by commission rule.

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

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

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

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

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

(f)  The state metrology laboratory shall inspect and correct the standards for motor fuel used by a department inspector, another department employee, an individual or business licensed by the department to perform device maintenance activities under Subchapter D, or an individual or business licensed under Subchapter I, Chapter 13, Agriculture Code.

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

Sec. 2310.107.  TOLERANCES. Specifications and tolerances for motor fuel metering devices shall be the same as those recommended by the National Institute of Standards and Technology.

Sec. 2310.108.  FEES. The commission by rule shall establish fees in amounts reasonable and necessary to cover the cost of administering this chapter.

Sec. 2310.109.  REFUSING TO ALLOW TEST OF MOTOR FUEL METERING DEVICE. (a) A person commits an offense if the person refuses to allow a motor fuel metering device under the person's control or in the person's possession to be inspected, tested, or examined by the department, and the inspection, test, or examination is required or authorized by this chapter.

(b)  A person commits an offense if the person hinders or obstructs in any way the department, a department inspector, or other department employee in the performance of official duties.

(c)  A person commits an offense if the person removes or obliterates a tag or device placed or required by the department to be placed on a motor fuel metering device under this chapter.

Sec. 2310.110.  SALE OR USE OF INCORRECT MOTOR FUEL METERING DEVICE. (a) The department may condemn and prohibit the sale or distribution of any incorrect motor fuel metering device that is sold, offered for sale, or about to be sold in this state.

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

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

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

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

Sec. 2310.111.  DISPOSING OF CONDEMNED MOTOR FUEL METERING DEVICE. A person commits an offense if the person or the person's representative or agent disposes of a motor fuel metering device condemned under Section 2310.105 or 2310.110 in a manner contrary to those sections.

Sec. 2310.112.  PENALTIES. An offense under Section 2310.109, 2310.110, or 2310.111 is a Class C misdemeanor.

SUBCHAPTER D. LICENSING OF MOTOR FUEL METERING DEVICE SERVICE TECHNICIANS AND MOTOR FUEL METERING DEVICE SERVICE COMPANIES

Sec. 2310.151.  DEFINITIONS. In this subchapter:

(1)  "Device maintenance activities" means activities described by Section 2310.152.

(2)  "License holder" means a person who holds a motor fuel metering device service company license or a motor fuel metering device service technician license.

(3)  "Service company" means a person who holds a motor fuel metering device service company license issued by the department under this subchapter.

(4)  "Service technician" means an individual who holds a motor fuel metering device service technician license issued by the department under this subchapter.

Sec. 2310.152.  DEVICE MAINTENANCE ACTIVITIES. A person performs device maintenance activities if the person or the person's employee:

(1)  places a motor fuel metering device in service;

(2)  installs, calibrates, inspects, tests, or repairs a motor fuel metering device; or

(3)  removes an out-of-order tag, stop-sale order, security seal, lock, condemnation notice, or other form of use prohibition placed on a motor fuel metering device by the department.

Sec. 2310.153.  POWERS AND DUTIES OF DEPARTMENT. (a) To verify compliance with licensing requirements, trade practices, commission rules, and this chapter, the department may periodically or in response to a complaint or previous violation inspect an applicant's or license holder's:

(1)  facilities;

(2)  inspecting and testing equipment and procedures;

(3)  repair and calibration equipment, standards, and procedures;

(4)  transportation equipment; and

(5)  invoices, work orders, and other records related to device maintenance activities.

(b)  The department may periodically or in response to a complaint or previous violation monitor and inspect or test motor fuel metering devices that have been inspected and tested by a license holder and any standards used by the license holder during an inspection or test.

(c)  The commission by rule may adopt additional requirements for the issuance of a license and for the denial of an application for a license or renewal of a license. Rules adopted by the commission under this subsection must be designed to protect the public health, safety, and welfare and ensure the proper inspection, testing, and operation of motor fuel metering devices.

(d)  The commission may adopt other rules necessary for the regulation of device maintenance activities, for the proper operation of motor fuel metering devices, and to protect the health, safety, and welfare of the public and license holders.

(e)  The department may specify the date, time, and place for any inspection authorized by this section.

Sec. 2310.154.  EXEMPTIONS FROM LICENSE REQUIREMENTS. (a) A person is not required to hold a license issued under this subchapter if the person:

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

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

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

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

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

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

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

(4)  is a license holder under Subchapter I, Chapter 13, Agriculture Code.

(b)  The department is not required to hold a license issued under this subchapter or Subchapter I, Chapter 13, Agriculture Code.

Sec. 2310.155.  SERVICE TECHNICIAN LICENSE REQUIRED. Unless exempt from the licensing requirement, an individual may not perform or offer to perform device maintenance activities unless the individual holds a service technician license issued by the department under this subchapter.

Sec. 2310.156.  SERVICE COMPANY LICENSE REQUIRED. (a) Unless exempt from the license requirement, a person may not employ or contract with an individual who performs or offers to perform device maintenance activities unless the person holds a service company license issued by the department under this subchapter.

(b)  Unless exempt from the licensing requirement, an individual may not perform or offer to perform device maintenance activities as a sole proprietor unless the individual holds a service technician license and a service company license issued by the department under this subchapter.

Sec. 2310.157.  APPLICATION FOR LICENSE. (a) An applicant for a license under this subchapter must submit to the department:

(1)  an application form prescribed by the department;

(2)  any other information required by the department; and

(3)  a fee in an amount set by the department.

(b)  The department shall conduct a criminal background check on each applicant who submits an application for a license under this subchapter and on any controlling person of the applicant. The department may, as permitted by law:

(1)  examine any criminal conviction, guilty plea, or deferred adjudication of the applicant or controlling person; and

(2)  obtain any criminal history or record of the applicant or controlling person.

Sec. 2310.158.  SERVICE TECHNICIAN LICENSE REQUIREMENTS. (a) The department shall issue a license to each qualified applicant who applies for a service technician license.

(b)  The commission by rule may require an applicant for the issuance or renewal of a service technician license to:

(1)  provide proof that the applicant has completed an academic, trade, or professional course of instruction approved by the department; and

(2)  pass a written test, a practical skills test, or both.

Sec. 2310.159.  SERVICE COMPANY LICENSE REQUIREMENTS. (a) The department shall issue a license to each qualified applicant who applies for a service company license.

(b)  An applicant for the issuance or renewal of a license under this section must:

(1)  submit to the department a certificate of insurance evidencing that the applicant has an insurance policy that meets the requirements of Section 2310.160 effective for the period for which the license is to be issued or renewed; and

(2)  meet any other requirements provided by commission rule.

Sec. 2310.160.  INSURANCE POLICY REQUIRED FOR SERVICE COMPANY. A service company shall maintain a current effective liability insurance policy issued by an insurance company authorized to do business in this state or by a surplus lines insurer that meets the requirements of Chapter 981, Insurance Code, and rules adopted by the commissioner of insurance in an amount set by commission rule and based on the type of licensed activities to be performed.

Sec. 2310.161.  TERM OF LICENSE. A license issued under this subchapter is valid for one or two years as established by commission rule.

Sec. 2310.162.  LICENSE RENEWAL. The commission by rule shall establish the requirements for renewing a license and issuing a renewal license under this chapter, including payment of applicable fees.

Sec. 2310.163.  PRACTICE BY LICENSE HOLDER. (a) A license holder shall perform device maintenance activities in compliance with commission rules.

(b)  A license holder may use only equipment approved by the department, as provided by commission rules, when performing device maintenance activities.

Sec. 2310.164.  CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 2310.155 or 2310.156 or causes another person to violate Section 2310.155 or 2310.156.

(b)  An offense under Subsection (a) is a Class B misdemeanor, unless the person has been previously convicted of an offense under this section, in which case the offense is a Class A misdemeanor.

SUBCHAPTER E. SALE, DELIVERY, AND QUALITY OF MOTOR FUEL

Sec. 2310.201.  NOTICE OF SALE OF ALCOHOL AND FUEL MIXTURE. (a) A dealer may not sell or offer for sale motor fuel from a motor fuel pump supplied by a storage tank into which motor fuel, in a mixture in which at least one percent of the mixture measured by volume is ethanol or methanol, has been delivered within the 60-day period preceding the date of sale or offer of sale unless the dealer prominently displays on the pump from which the mixture is sold a sign that:

(1)  is displayed on each side of the motor fuel pump on which the price of the motor fuel mixture sold from the pump is displayed;

(2)  states "Contains Ethanol" or "Contains Methanol," as applicable;

(3)  appears in contrasting colors with block letters at least one-half inch high and one-fourth inch wide; and

(4)  is displayed in a clear, conspicuous, and prominent manner, visible to customers using either side of the pump.

(b)  This section does not prohibit the posting of any other alcohol or additive information. Other alcohol or additive information and any relevant posting are subject to regulation by the department.

Sec. 2310.202.  MINIMUM MOTOR FUEL QUALITY AND TESTING STANDARDS. (a) The commission by rule shall adopt minimum motor fuel quality and testing standards for motor fuel that is sold or offered for sale in this state. The standards must comply with the nationally recognized minimum standards established by:

(1)  the American Society for Testing and Materials, for motor fuels other than motor fuels blended with ethanol; and

(2)  the National Institute of Standards and Technology, for motor fuels blended with ethanol.

(b)  The commission may adopt rules as necessary to bring about uniformity between the standards established under this subchapter and the nationally recognized standards described by Subsection (a).

Sec. 2310.203.  TESTING OF MOTOR FUEL QUALITY. (a) The department or a representative of the department may 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 standards required by Section 2310.202.

(b)  The collection of samples and conducting of testing at a dealer's location must be performed by a license holder under Subchapter D of this chapter or Subchapter I, Chapter 13, Agriculture Code, under contract with the dealer. The license holder is considered a representative of the department for purposes of this section.

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

(d)  A person commits an offense if the person refuses to allow a department representative to collect samples or conduct motor fuel testing under Subsection (a).

(e)  An offense under Subsection (d) is a Class C misdemeanor.

Sec. 2310.204.  RULES; FEES. (a) The commission may adopt rules consistent with this subchapter for the regulation of the sale of motor fuels, including motor fuels that contain ethanol and methanol.

(b)  The commission by rule may impose a fee for testing, inspection, or the performance of other services provided as determined necessary by the commission in the administration of this subchapter. A fee imposed under this subsection shall be collected from each dealer, distributor, and supplier, as defined by Section 162.001, Tax Code, on a periodic basis determined by the commission without regard to whether the motor fuel is subject to regulation under this subchapter.

(c)  The commission by rule shall prescribe the form for reporting and remitting the fees imposed under this section.

(d)  Fees collected under this section may be used only to administer and enforce this subchapter.

Sec. 2310.205.  CIVIL PENALTY. A person who sells or offers for sale motor fuel in violation of this subchapter or a rule adopted under this subchapter is liable to this state for a civil penalty of not less than $200 and not more than $2,500.

Sec. 2310.206.  ADMINISTRATIVE PENALTY. The commission may impose an administrative penalty on a person under Subchapter F, Chapter 51, if the person sells or offers for sale motor fuel in violation of this subchapter or a rule adopted under this subchapter.

SECTION 2.  Sections 13.1015 and 13.1016, Agriculture Code, are transferred to Subchapter C, Chapter 2310, Occupations Code, as added by this Act, redesignated as Sections 2310.102 and 2310.103, Occupations Code, and amended to read as follows:

Sec. 2310.102 [~~13.1015~~].  INSPECTION OF MOTOR FUEL METERING DEVICES. (a) Unless a motor fuel metering device is exempt from the application of this section by commission [~~department~~] rule, a motor fuel metering device shall be inspected, tested, and calibrated for correctness by a license holder under Subchapter D of this chapter or Subchapter I, Chapter 13, Agriculture Code, at least once every two years if the device is:

(1)  kept for sale, sold, or used by a proprietor, agent, lessee, or employee in proving the measure of motor fuel; or

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

(b)  Inspection, testing, and calibration under this section must be performed by a license holder under Subchapter D of this chapter or Subchapter I, Chapter 13, Agriculture Code, under contract with the operator or user of the motor fuel metering device.

Sec. 2310.103 [~~13.1016~~].  REQUIRED REGISTRATION OF MOTOR FUEL METERING DEVICES. (a) Unless a motor fuel metering device is exempt from the application of this section by commission [~~department~~] rule, a person who owns or operates a motor fuel metering device shall register the device with the department before using the device for a commercial transaction.

(b)  An application for a device registration must:

(1)  be submitted to the department on a form prescribed by the department;

(2)  be accompanied by any other document or form required by the department;

(3)  include any fees [~~the registration fee~~] required under Section 2310.108 [~~13.1151~~]; and

(4)  include documentation of compliance with Section 2310.102 [~~13.1015~~].

(c)  A registration under this section is valid for one or two years as [~~year unless a different period is~~] established by commission [~~department~~] rule. The registration must be renewed at or before the end of each registration period and the application for renewal must include documentation of compliance with Section 2310.102 [~~13.1015~~].

(d)  If a person fails to register or renew a registration as required by this section, the department may not issue a certificate to operate the motor fuel metering device. The department shall issue the certificate when the operator submits to the department the items required by Subsection (b).

(e)  The department may assess a late fee if the registration of one or more devices located on a premises is renewed after the end of the registration period because of a registration error, including one or more devices not properly registered, failure to register the correct type of device, or failure to timely register a previously registered device. The amount of the late fee [~~penalty~~] may not exceed $50 per device, with a maximum penalty amount of $500 per year for the premises.

SECTION 3.  Section 12.020(c), Agriculture Code, is amended to read as follows:

(c)  The provisions of law subject to this section and the applicable penalty amounts are as follows:

|  |
| --- |
|  |
| Provision |  | Amount of Penalty |
|  |
| Chapters 13, 14A, [~~17,~~] 18, 19, 41, 46, 61, 72, 73, 74, 76, 94, 95, 101, 102, 103, 125, 132, |
| and 134 |  | not more than $5,000 |
|  |
|  |
|  |
| Subchapters A, B, and C, Chapter 71 |  | not more than $5,000 |
| Chapter 14 |  | not more than $10,000 |
| Chapter 1951, Occupations Code |  | not more than $5,000 |
| Chapter 153, Natural Resources |
| Code |  | not more than $5,000 |
| Section 91.009 |  | not more than $5,000. |

SECTION 4.  Section 13.001, Agriculture Code, is amended by adding Subsection (c) to read as follows:

(c)  In this chapter, "commodity" does not include motor fuel.

SECTION 5.  Section 13.024(b), Agriculture Code, is amended to read as follows:

(b)  Except as provided by Subsection [~~Subsections~~] (c) [~~and (d)~~], all other measures of capacity for liquids are derived from the gallon by continual division by two, making half gallons, quarts, pints, half pints, and gills.

SECTION 6.  Section 13.114, Agriculture Code, is amended to read as follows:

Sec. 13.114.  TOLERANCES. The department shall establish specifications and tolerances for commercial weighing or measuring devices used in this state. The specifications and tolerances shall be similar to those recommended by the National Institute of Standards and Technology[~~, except that the specifications and tolerances for motor fuel metering devices shall be the same as those recommended by the National Institute of Standards and Technology~~].

SECTION 7.  Section 162.009, Tax Code, is amended to read as follows:

Sec. 162.009.  AUTHORITY TO STOP AND EXAMINE. To enforce this chapter, the comptroller or a peace officer may stop a motor vehicle that appears to be operating with or transporting motor fuel to examine the shipping document, cargo manifest, or invoices required to be carried, examine a license or copy of a license that may be required to be carried, take samples from the fuel supply or cargo tanks, and make any other investigation that could reasonably be made to determine whether the taxes have been paid or accounted for by a license holder or a person required to be licensed. The comptroller, a peace officer, an employee of the attorney general's office, an employee of the Texas Commission on Environmental Quality, or an employee of the Texas Department of Licensing and Regulation [~~Agriculture~~] may take samples of motor fuel from a storage tank or container to:

(1)  determine if the fuel contains hazardous waste or is adulterated; or

(2)  allow the comptroller to determine whether taxes on the fuel have been paid or accounted for to this state.

SECTION 8.  Section 162.403, Tax Code, is amended to read as follows:

Sec. 162.403.  CRIMINAL OFFENSES. Except as provided by Section 162.404, a person commits an offense if the person:

(1)  refuses to stop and permit the inspection and examination of a motor vehicle transporting or using motor fuel on the demand of a peace officer or the comptroller;

(2)  is required to hold a valid trip permit or interstate trucker's license, but operates a motor vehicle in this state without a valid trip permit or interstate trucker's license;

(3)  transports gasoline or diesel fuel in any cargo tank that has a connection by pipe, tube, valve, or otherwise with the fuel injector or carburetor or with the fuel supply tank feeding the fuel injector or carburetor of the motor vehicle transporting the product;

(4)  sells or delivers gasoline or diesel fuel from a fuel supply tank that is connected with the fuel injector or carburetor of a motor vehicle;

(5)  owns or operates a motor vehicle for which reports or mileage records are required by this chapter without an operating odometer or other device in good working condition to record accurately the miles traveled;

(6)  sells or delivers dyed diesel fuel for the operation of a motor vehicle on a public highway;

(7)  uses dyed diesel fuel for the operation of a motor vehicle on a public highway except as allowed under Section 162.235;

(8)  refuses to permit the comptroller or the attorney general to inspect, examine, or audit a book or record required to be kept by a license holder, other user, or any person required to hold a license under this chapter;

(9)  refuses to permit the comptroller or the attorney general to inspect or examine any plant, equipment, materials, or premises where motor fuel is produced, processed, blended, stored, sold, delivered, or used;

(10)  refuses to permit the comptroller, the attorney general, an employee of either of those officials, a peace officer, an employee of the Texas Commission on Environmental Quality, or an employee of the Texas Department of Licensing and Regulation [~~Agriculture~~] to measure or gauge the contents of or take samples from a storage tank or container on premises where motor fuel is produced, processed, blended, stored, sold, delivered, or used;

(11)  is a license holder, a person required to be licensed, or another user and fails or refuses to make or deliver to the comptroller a report required by this chapter to be made and delivered to the comptroller;

(12)  is an importer who does not obtain an import verification number when required by this chapter;

(13)  purchases motor fuel for export, on which the tax imposed by this chapter has not been paid, and subsequently diverts or causes the motor fuel to be diverted to a destination in this state or any other state or country other than the originally designated state or country without first obtaining a diversion number;

(14)  conceals motor fuel with the intent of engaging in any conduct proscribed by this chapter or refuses to make sales of motor fuel on the volume-corrected basis prescribed by this chapter;

(15)  refuses, while transporting motor fuel, to stop the motor vehicle the person is operating when called on to do so by a person authorized to stop the motor vehicle;

(16)  refuses to surrender a motor vehicle and cargo for impoundment after being ordered to do so by a person authorized to impound the motor vehicle and cargo;

(17)  mutilates, destroys, or secretes a book or record required by this chapter to be kept by a license holder, other user, or person required to hold a license under this chapter;

(18)  is a license holder, other user, or other person required to hold a license under this chapter, or the agent or employee of one of those persons, and makes a false entry or fails to make an entry in the books and records required under this chapter to be made by the person or fails to retain a document as required by this chapter;

(19)  transports in any manner motor fuel under a false cargo manifest or shipping document, or transports in any manner motor fuel to a location without delivering at the same time a shipping document relating to that shipment;

(20)  engages in a motor fuel transaction that requires that the person have a license under this chapter without then and there holding the required license;

(21)  makes and delivers to the comptroller a report required under this chapter to be made and delivered to the comptroller, if the report contains false information;

(22)  forges, falsifies, or alters an invoice or shipping document prescribed by law;

(23)  makes any statement, knowing said statement to be false, in a claim for a tax refund filed with the comptroller;

(24)  furnishes to a licensed supplier or distributor a signed statement for purchasing diesel fuel tax-free and then uses the tax-free diesel fuel to operate a diesel-powered motor vehicle on a public highway;

(25)  holds an aviation fuel dealer's license and makes a taxable sale or use of any gasoline or diesel fuel;

(26)  fails to remit any tax funds collected or required to be collected by a license holder, another user, or any other person required to hold a license under this chapter;

(27)  makes a sale of dyed diesel fuel tax-free into a storage facility of a person who:

(A)  is not licensed as a distributor, as an aviation fuel dealer, or as a dyed diesel fuel bonded user; or

(B)  does not furnish to the licensed supplier or distributor a signed statement prescribed in Section 162.206;

(28)  makes a sale of gasoline tax-free to any person who is not licensed as an aviation fuel dealer;

(29)  purchases any motor fuel tax-free when not authorized to make a tax-free purchase under this chapter;

(30)  purchases motor fuel with the intent to evade any tax imposed by this chapter or accepts a delivery of motor fuel by any means and does not at the same time accept or receive a shipping document relating to the delivery;

(31)  transports motor fuel for which a cargo manifest or shipping document is required to be carried without possessing or exhibiting on demand by an officer authorized to make the demand a cargo manifest or shipping document containing the information required to be shown on the manifest or shipping document;

(32)  imports, sells, uses, blends, distributes, or stores motor fuel within this state on which the taxes imposed by this chapter are owed but have not been first paid to or reported by a license holder, another user, or any other person required to hold a license under this chapter;

(33)  blends products together to produce a blended fuel that is offered for sale, sold, or used and that expands the volume of the original product to evade paying applicable motor fuel taxes;

(34)  evades or attempts to evade in any manner a tax imposed on motor fuel by this chapter;

(35)  delivers compressed natural gas or liquefied natural gas into the fuel supply tank of a motor vehicle and the person does not hold a valid compressed natural gas and liquefied natural gas dealer's license; or

(36)  makes a tax-free delivery of compressed natural gas or liquefied natural gas into the fuel supply tank of a motor vehicle, unless the delivery is exempt from tax under Section 162.356.

SECTION 9.  The following provisions of the Agriculture Code are repealed:

(1)  Section 13.001(a)(1-a);

(2)  Section 13.024(d);

(3)  Section 13.029(b);

(4)  Section 13.101(e);

(5)  Section 13.1011(e);

(6)  Section 13.1017;

(7)  Section 13.1151(b); and

(8)  Chapter 17.

SECTION 10.  (a)  All rules, fees, policies, procedures, decisions, and forms of the commissioner of agriculture or the Department of Agriculture that relate to a program or activity transferred under this Act and that are in effect on the effective date of the transfer remain in effect until changed by the Texas Commission of Licensing and Regulation or Texas Department of Licensing and Regulation, as appropriate.

(b)  A license, permit, certificate of registration, notice, or other authorization issued by the Department of Agriculture for a program or activity transferred under this Act is continued in effect as a license, permit, certificate, notice, or other authorization of the Texas Department of Licensing and Regulation on and after the effective date of the transfer.

(c)  A complaint, investigation, contested case, or other proceeding before the commissioner of agriculture, the Department of Agriculture, or the State Office of Administrative Hearings relating to a program or activity transferred under this Act that is pending on the effective date of the transfer is transferred without change in status to the Texas Commission of Licensing and Regulation or Texas Department of Licensing and Regulation, as appropriate.

(d)  All money, contracts, leases, property, software source code and documentation, records, and obligations of the Department of Agriculture relating to a program or activity transferred under this Act are transferred to the Texas Department of Licensing and Regulation on the effective date of the transfer of the program or activity.

(e)  The unexpended and unobligated balance of any money appropriated by the legislature relating to a program or activity transferred under this Act is transferred to the Texas Department of Licensing and Regulation on the effective date of the transfer of the program or activity.

(f)  Unless the context indicates otherwise, on or after the effective date of the transfer a reference in law or administrative rule to the commissioner of agriculture or the Department of Agriculture with respect to a program or activity transferred under this Act means the Texas Commission of Licensing and Regulation or Texas Department of Licensing and Regulation, as appropriate.

SECTION 11.  (a)  As soon as practicable after the effective date of this Act, the Department of Agriculture and the Texas Department of Licensing and Regulation shall adopt a transition plan to provide for the orderly transfer of powers, duties, functions, programs, and activities under this Act. The transition plan must provide for the transfer to be completed not later than September 1, 2020.

(b)  The Department of Agriculture shall provide the Texas Department of Licensing and Regulation with access to any systems, facilities, or information necessary for the Texas Department of Licensing and Regulation to accept a program or activity transferred under this Act.

(c)  The Texas Department of Licensing and Regulation may establish and lead a stakeholder workgroup to provide input, advice, and recommendations to the Department of Agriculture and Texas Department of Licensing and Regulation on the orderly transfer of powers, duties, functions, programs, and activities under this Act. The Texas Department of Licensing and Regulation shall establish the size, composition, and scope of the stakeholder workgroup.

(d)  On the date specified in the transition plan required under Subsection (a) of this section for the transfer of a program or activity transferred by this Act to the Texas Department of Licensing and Regulation, all full-time equivalent employee positions at the Department of Agriculture that directly and indirectly concern the administration or enforcement of the program or activity being transferred become positions at the Texas Department of Licensing and Regulation. The Texas Department of Licensing and Regulation shall post the positions for hiring and, when filling the positions, shall give consideration to, but is not required to hire, an applicant who, immediately before the date of the transfer, was an employee at the Department of Agriculture involved in administering or enforcing the transferred program or activity.

(e)  Subsection (c) of this section and this subsection expire October 1, 2020.

SECTION 12.  (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2020.

(b)  Sections 10 and 11 of this Act take effect September 1, 2019.