

By: Goldman

H.B. No. 1695

Substitute the following for H.B. No. 1695:

By: Larson

C.S.H.B. No. 1695

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the transfer of the regulation of motor fuel metering
3 and motor fuel quality from the Department of Agriculture to the
4 Texas Department of Licensing and Regulation; providing civil and
5 administrative penalties; creating criminal offenses; requiring
6 occupational licenses; authorizing fees.

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

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

10 CHAPTER 2310. MOTOR FUEL METERING AND QUALITY

11 SUBCHAPTER A. GENERAL PROVISIONS

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

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

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

17 (3) "Dealer" means a person who:
18 (A) is the operator of a service station or other
19 retail outlet; and

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

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

24 (5) "Motor fuel" has the meaning assigned by Section

1 162.001, Tax Code.

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

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

6 (8) "Sell" includes barter or exchange.

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

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

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

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

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

25 (c) The department may contract with one or more license
26 holders under Subchapter D of this chapter or Subchapter I, Chapter
27 13, Agriculture Code, to perform the department's duties under this

1 chapter related to motor fuel metering devices. A reference in this
2 chapter to the commission or department in the context of a
3 contracted service means the contractor.

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

9 (b) On request of the department, the attorney general or
10 the county attorney or district attorney of the county in which the
11 violation is alleged to have occurred shall file suit to collect the
12 penalty.

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

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

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

9 SUBCHAPTER B. STANDARD WEIGHTS AND MEASURES FOR MOTOR FUEL

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

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

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

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

27 Sec. 2310.052. STANDARD FOR LIQUID MOTOR FUEL. (a) This

1 section does not apply to compressed natural gas or liquefied
2 natural gas.

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

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

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

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

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

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

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

25 (3) will not substantially benefit or protect
26 consumers.

27 (b) A motor fuel metering device is exempt from the

1 requirements of this chapter if the motor fuel metering device is
2 not used to:

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

5 (2) compute the charge for service.

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

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

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

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

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

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

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

25 Sec. 2310.056. FALSE REPRESENTATION OF MOTOR FUEL QUANTITY.

26 A person violates this chapter if the person or the person's
27 representative or agent:

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

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

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

8 (a) A person commits an offense if the person or the person's
9 representative or agent knowingly uses an incorrect weighing or
10 measuring device in:

11 (1) buying or selling motor fuel;

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

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

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

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

20 (2) is not accurate;

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

24 (4) facilitates the perpetration of fraud; or

25 (5) does not conform to the specifications and
26 tolerances established by the department under Section 2310.108.

27 Sec. 2310.058. SALE OF MOTOR FUEL IN VIOLATION OF

1 SUBCHAPTER. A person violates this chapter if the person or the
2 person's representative or agent sells or keeps, offers, or exposes
3 for sale motor fuel in violation of this subchapter.

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

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

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

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

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

20 Sec. 2310.060. STOP-SALE ORDER. (a) If the department has
21 reason to believe that motor fuel is being sold or kept, offered, or
22 exposed for sale in violation of this chapter or that motor fuel is
23 being sold or offered for sale by or through the use of a motor fuel
24 metering device that is in violation of this chapter, the
25 department may issue and enforce a written or printed order to stop
26 the sale of the motor fuel. The department shall present the order
27 to the owner or custodian of the motor fuel or seller of the motor

1 fuel. The person receiving the order may not sell the motor fuel or
2 provide the service until discharged by a court under Subsection
3 (b) or until the commission finds that the motor fuel or motor fuel
4 metering device is in compliance with this chapter.

5 (b) The owner or custodian of motor fuel or a person selling
6 or offering for sale a service prohibited from sale by an order of
7 the department is entitled to sue in a court where the motor fuel is
8 found or the service is being sold or offered for sale for a
9 judgment as to the justification of the order and for the discharge
10 of the motor fuel in accordance with the findings of the court.

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

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

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

22 SUBCHAPTER C. INSPECTION AND REGISTRATION OF MOTOR FUEL METERING
23 DEVICES

24 Sec. 2310.101. AUTHORITY TO INSPECT. (a) If the department
25 has reason to believe that a motor fuel metering device is being
26 used for a commercial transaction and the device is not registered
27 with the department, the department may inspect the device and the

1 records of the owner, operator, or user of the device that relate to
2 use of the device to determine whether the device is in compliance
3 with this chapter.

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

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

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

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

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

26 (c) The owner, operator, or user of a motor fuel metering
27 device may not destroy, replace, or otherwise dispose of a device

1 declared to be incorrect or condemned under this section except as
2 provided by department rule.

3 Sec. 2310.106. TESTS FOR STATE INSTITUTIONS. As requested
4 by the comptroller or the governing body of a state institution, the
5 department shall test each motor fuel metering device used by a
6 state institution for any purpose, including a motor fuel metering
7 device used in checking the receipt and distribution of supplies.
8 The department shall report results of the test to the chair of the
9 governing body of the institution.

10 Sec. 2310.107. STANDARDS USED IN INSPECTION. (a) The
11 standards of weights and measures maintained by the department and
12 certified by the National Institute of Standards and Technology or
13 a metrology laboratory certified by the National Institute of
14 Standards and Technology are the state's standards by which all
15 state and local standards of weights and measures for motor fuel are
16 tried, authenticated, proved, and certified.

17 (b) The department shall maintain the primary standards for
18 motor fuel in a safe and suitable place in the offices of the
19 department. The standards may not be moved except for repairs or
20 certification. The department shall maintain the standards in good
21 order and shall submit them to the National Institute of Standards
22 and Technology or to a laboratory approved by the National
23 Institute of Standards and Technology for certification at least
24 once each 10 years.

25 (c) In addition to the standards for motor fuel kept by the
26 state, the department shall maintain a complete set of copies of the
27 original standards for use in adjusting local standards or in the

1 performance of other official duties. The department may purchase
2 additional sets of standards as necessary for use by a department
3 inspector or other department personnel.

4 (d) At the request of a municipality, the department shall
5 furnish the municipality with copies of the state's standards for
6 motor fuel or test and approve other standards acquired by the
7 municipality. The municipality shall reimburse the state for the
8 actual cost of the standards furnished, plus the costs of freight
9 and certification. All standards furnished to or tested for a
10 municipality shall be true and correct and certified by the
11 department. The copies used by a municipality may be of any
12 suitable material or construction that the municipality requests,
13 subject to approval by the department.

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

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

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

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

9 Sec. 2310.108. TOLERANCES. Specifications and tolerances
10 for motor fuel metering devices shall be the same as those
11 recommended by the National Institute of Standards and Technology.

12 Sec. 2310.109. FEES. (a) The commission by rule shall
13 establish fees in amounts reasonable and necessary to cover the
14 cost of administering this chapter.

15 (b) Notwithstanding any other law, the commission may not in
16 a state fiscal biennium increase a fee under Subsection (a) for a
17 motor fuel metering device by an amount that exceeds 10 percent of
18 the amount of the fee at the end of the preceding state fiscal
19 biennium.

20 Sec. 2310.110. REFUSING TO ALLOW TEST OF MOTOR FUEL
21 METERING DEVICE. (a) A person commits an offense if the person
22 refuses to allow a motor fuel metering device under the person's
23 control or in the person's possession to be inspected, tested, or
24 examined by the department, and the inspection, test, or
25 examination is required or authorized by this chapter.

26 (b) A person commits an offense if the person hinders or
27 obstructs in any way the department, a department inspector, or

1 other department employee in the performance of official duties.

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

5 Sec. 2310.111. SALE OR USE OF INCORRECT MOTOR FUEL METERING
6 DEVICE. (a) The department may condemn and prohibit the sale or
7 distribution of any incorrect motor fuel metering device that is
8 sold, offered for sale, or about to be sold in this state.

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

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

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

14 or

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

18 Sec. 2310.112. DISPOSING OF CONDEMNED MOTOR FUEL METERING
19 DEVICE. A person commits an offense if the person or the person's
20 representative or agent disposes of a motor fuel metering device
21 condemned under Section 2310.105 or 2310.111 in a manner contrary
22 to those sections.

23 Sec. 2310.113. PENALTIES. An offense under Section
24 2310.110, 2310.111, or 2310.112 is a Class C misdemeanor.

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

27 Sec. 2310.151. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

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

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

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

27 (1) facilities;

- 1 (2) inspecting and testing equipment and procedures;
2 (3) repair and calibration equipment, standards, and
3 procedures;
4 (4) transportation equipment; and
5 (5) invoices, work orders, and other records related
6 to device maintenance activities.

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

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

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

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

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

- 27 (1) is a department employee who is performing device

1 maintenance activities in the scope of the person's duties for the
2 department;

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

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

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

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

16 (A) exempt from the registration requirements of
17 Section 2310.103 under department rules;

18 (B) exempt from the inspection requirements of
19 Section 2310.102 under department rules; and

20 (C) not required to be inspected by other
21 department rules; or

22 (4) is a license holder under Subchapter I, Chapter
23 13, Agriculture Code.

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

27 Sec. 2310.155. SERVICE TECHNICIAN LICENSE REQUIRED. Unless

1 the individual is exempt from the licensing requirement, an
2 individual may not perform or offer to perform device maintenance
3 activities unless the individual holds a service technician license
4 issued by the department under this subchapter.

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

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

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

- 17 (1) an application form prescribed by the department;
18 (2) any other information required by the department;

19 and

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

21 Sec. 2310.158. SERVICE TECHNICIAN LICENSE REQUIREMENTS.

22 (a) The department shall issue a license to each qualified
23 applicant who applies for a service technician license.

24 (b) The commission by rule may require an applicant for the
25 issuance or renewal of a service technician license to meet one or
26 more of the following requirements:

- 27 (1) provide to the department proof that the applicant

1 has completed an academic, trade, or professional course of
2 instruction approved by the department;

3 (2) pass a written test; or

4 (3) pass a practical skills test.

5 Sec. 2310.159. SERVICE COMPANY LICENSE REQUIREMENTS. (a)

6 The department shall issue a license to each qualified applicant
7 who applies for a service company license.

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

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

14 (2) meet any other requirements provided by department
15 rule.

16 Sec. 2310.160. INSURANCE POLICY REQUIRED FOR SERVICE
17 COMPANY. A service company shall maintain at all times while the
18 service company performs device maintenance activities a current
19 effective operations liability insurance policy issued by an
20 insurance company authorized to do business in this state or by a
21 surplus lines insurer that meets the requirements of Chapter 981,
22 Insurance Code, and rules adopted by the commissioner of insurance
23 in an amount set by the department and based on the type of licensed
24 activities to be performed.

25 Sec. 2310.161. TERM OF LICENSE. A license issued under this
26 subchapter is valid for one year unless a different term is
27 established by department rule.

1 Sec. 2310.162. LICENSE RENEWAL. A person licensed under
2 this subchapter must periodically renew the person's license. The
3 license expires unless the license holder submits an application
4 for renewal accompanied by the renewal fee set by the department or
5 by the late fee set by the department and meets the requirements for
6 renewal.

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

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

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

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

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

21 Sec. 2310.201. NOTICE OF SALE OF ALCOHOL AND FUEL MIXTURE.

22 (a) A dealer may not sell or offer for sale motor fuel from a motor
23 fuel pump supplied by a storage tank into which motor fuel, in a
24 mixture in which at least one percent of the mixture measured by
25 volume is ethanol or methanol, has been delivered within the 60-day
26 period preceding the date of sale or offer of sale unless the dealer
27 prominently displays on the pump from which the mixture is sold a

1 sign that complies with Subsection (b).

2 (b) A sign required by Subsection (a) must:

3 (1) be displayed on each face of the motor fuel pump on
4 which the price of the motor fuel mixture sold from the pump is
5 displayed;

6 (2) state "Contains Ethanol" or "Contains Methanol,"
7 as applicable;

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

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

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

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

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

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

26 (b) The commission may adopt rules as necessary to bring
27 about uniformity between the standards established under this

1 subchapter and the nationally recognized standards described by
2 Subsection (a).

3 Sec. 2310.203. TESTING OF MOTOR FUEL QUALITY. (a) The
4 department or a representative of the department may collect
5 samples and conduct testing at any location where motor fuel is
6 kept, transferred, sold, or offered for sale to verify that the
7 motor fuel complies with the minimum standards required by Section
8 2310.202.

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

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

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

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

27 Sec. 2310.204. RULES; FEES. (a) The commission may adopt

1 rules consistent with this subchapter for the regulation of the
2 sale of motor fuels, including motor fuels that contain ethanol and
3 methanol.

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

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

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

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

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

25 SECTION 2. Sections 13.1015, 13.1016, and 13.1017,
26 Agriculture Code, are transferred to Subchapter C, Chapter 2310,
27 Occupations Code, as added by this Act, redesignated as Sections

1 2310.102, 2310.103, and 2310.104, Occupations Code, and amended to
2 read as follows:

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

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

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

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

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

25 (b) An application for a device registration must:

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

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

3 (3) include any fees [~~the registration fee~~] required
4 under Section 2310.109 [~~13.1151~~]; and

5 (4) include documentation of compliance with Section
6 2310.102 [~~13.1015~~].

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

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

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

25 Sec. 2310.104 [~~13.1017~~]. COMPLAINTS REGARDING MOTOR FUEL
26 METERING DEVICES. (a) The department shall receive complaints
27 regarding motor fuel metering devices.

1 (b) After receiving a complaint regarding a motor fuel
2 metering device, the department shall determine the date the device
3 was last inspected under Section 2310.102 [~~13.1015~~] and the number
4 of complaints received by the department in the previous 12 months
5 regarding motor fuel metering devices at the premises where the
6 device subject to the complaint is located.

7 (c) The department shall notify the person who last
8 registered the motor fuel metering device and take no further
9 action on the complaint if:

10 (1) the motor fuel metering device was last inspected
11 not more than 18 months before the date the complaint is received;
12 and

13 (2) the department received not more than two
14 complaints in the previous 12 months regarding motor fuel metering
15 devices at the premises where the device is located.

16 (d) The department shall notify the person who last
17 registered the motor fuel metering device and require the device to
18 be inspected by a license holder under Section 2310.102 [~~13.1015~~]
19 not later than one month after the notification date if:

20 (1) the motor fuel metering device was last inspected
21 more than 18 months before the date the complaint is received; or

22 (2) the department received at least three complaints
23 in the previous 12 months regarding motor fuel metering devices at
24 the premises where the device is located.

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

27 (c) The provisions of law subject to this section and the

1 applicable penalty amounts are as follows:

2 3 Provision	Amount of Penalty
4 5 Chapters 13, 14A, [17] 18, 19, 41, 6 46, 61, 72, 73, 74, 76, 94, 95, 101, 7 102, 103, 125, 132, 8 and 134	not more than \$5,000
9 10 11 Subchapters A, B, and C, Chapter 71	not more than \$5,000
12 Chapter 14	not more than \$10,000
13 Chapter 1951, Occupations Code	not more than \$5,000
14 Chapter 153, Natural Resources 15 Code	not more than \$5,000
16 Section 91.009	not more than \$5,000.

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

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

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

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

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

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

1 ~~those recommended by the National Institute of Standards and~~
2 ~~Technology]~~.

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

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

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

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

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

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

27 (1) refuses to stop and permit the inspection and

1 examination of a motor vehicle transporting or using motor fuel on
2 the demand of a peace officer or the comptroller;

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

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

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

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

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

20 (7) uses dyed diesel fuel for the operation of a motor
21 vehicle on a public highway except as allowed under Section
22 162.235;

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

27 (9) refuses to permit the comptroller or the attorney

1 general to inspect or examine any plant, equipment, materials, or
2 premises where motor fuel is produced, processed, blended, stored,
3 sold, delivered, or used;

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

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

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

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

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

27 (15) refuses, while transporting motor fuel, to stop

1 the motor vehicle the person is operating when called on to do so by
2 a person authorized to stop the motor vehicle;

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

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

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

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

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

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

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

27 (23) makes any statement, knowing said statement to be

1 false, in a claim for a tax refund filed with the comptroller;

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

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

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

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

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

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

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

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

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

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

1 a cargo manifest or shipping document containing the information
2 required to be shown on the manifest or shipping document;

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

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

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

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

18 (36) makes a tax-free delivery of compressed natural
19 gas or liquefied natural gas into the fuel supply tank of a motor
20 vehicle, unless the delivery is exempt from tax under Section
21 162.356.

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

24 (1) Section 13.001(a)(1-a);

25 (2) Section 13.024(d);

26 (3) Section 13.029(b);

27 (4) Section 13.101(e);

- 1 (5) Section 13.1011(e);
- 2 (6) Section 13.1151(b); and
- 3 (7) Chapter 17.

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

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

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

24 (d) All money, contracts, leases, property, records, and
25 obligations of the Department of Agriculture relating to a program
26 or activity transferred under this Act are transferred to the Texas
27 Department of Licensing and Regulation.

1 (e) The unexpended and unobligated balance of any money
2 appropriated by the legislature relating to a program or activity
3 transferred under this Act is transferred to the Texas Department
4 of Licensing and Regulation.

5 (f) Unless the context indicates otherwise, a reference in
6 law or administrative rule to the commissioner of agriculture or
7 the Department of Agriculture with respect to a program or activity
8 transferred under this Act means the Texas Commission of Licensing
9 and Regulation or Texas Department of Licensing and Regulation, as
10 appropriate.

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

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

23 (c) The Texas Department of Licensing and Regulation may
24 establish and lead a stakeholder workgroup to provide input,
25 advice, and recommendations to the Department of Agriculture and
26 Texas Department of Licensing and Regulation on the orderly
27 transfer of powers, duties, functions, programs, and activities

1 under this Act. The Texas Department of Licensing and Regulation
2 shall establish the size, composition, and scope of the stakeholder
3 workgroup.

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

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

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

22 (b) Section 11 of this Act takes effect September 1, 2019.