

By: Goldman

H.B. No. 1695

A BILL TO BE ENTITLED

AN ACT

relating to the transfer of the regulation of motor fuel metering and motor fuel quality from the Texas Department of Agriculture to the Texas Department of Licensing and Regulation.

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 AND METERING AND QUALITY

SUBCHAPTER A. GENERAL PROVISIONS

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

(1) "Commission" means the Texas Commission of Licensing and Regulation

(2) "Department" means Texas Department of Licensing and Regulation

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

(4) "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.

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

(6) "Motor fuel metering device" means a commercial

1 weighing or measuring device used for motor fuel sales.

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

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

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

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

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

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

20 (b) To the extent that this chapter conflicts with Chapter
21 13, Agriculture Code, with regard to motor fuel metering devices,
22 this chapter controls.

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

1 means the contractor.

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

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

11 (c) A civil penalty collected under this section shall be
12 deposited in the state treasury to the credit of the general revenue
13 fund. All civil penalties recovered in suits first instituted by a
14 local government or governments under this section shall be equally
15 divided between the State of Texas and the local government or
16 governments with 50 percent of the recovery to be paid to the
17 general revenue fund and the other 50 percent equally to the local
18 government or governments first instituting the suit.

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

26 (e) The department and the attorney general may each recover
27 reasonable expenses incurred in obtaining injunctive relief and

1 civil penalties under this section, including investigative costs,
2 court costs, reasonable attorney's fees, witness fees, and
3 deposition expenses. The expenses recovered by the department may
4 be appropriated only to the department for the administration and
5 enforcement of this chapter. The expenses recovered by the
6 attorney general may be appropriated only to the attorney general.

7 SUBCHAPTER B. STANDARD WEIGHTS AND MEASURES FOR MOTOR FUEL

8 METERING DEVICES

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

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

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

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

25 Sec. 2310.052. STANDARD FOR LIQUID CAPACITY. (a) The
26 standard unit of measure of capacity for liquids is the gallon.

27 (b) Except as provided by Subsections (c) and (d), all other

1 measures of capacity for liquids are derived from the gallon by
2 continual division by two, making half gallons, quarts, pints, half
3 pints, and gills.

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

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

11 Sec. 2310.053. EXEMPTION OF WEIGHING OR MEASURING DEVICES.

12 (a) The commission by rule may exempt a motor fuel metering device
13 from a requirement established by this chapter if the commission
14 determines that imposing or enforcing the requirement:

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

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

18 (3) will not substantially benefit or protect
19 consumers.

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

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

25 (2) compute the charge for service.

26 Sec. 2310.054. SALE OF MOTOR FUEL BY PROPER MEASURE. (a)

27 Except as otherwise provided by this section, motor fuel shall be

1 sold by liquid measure.

2 (b) A person violates this chapter if, in violation of this
3 section, the person sells motor fuel by other than liquid measure.

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

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

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

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

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

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

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

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

25 (a) A person commits an offense if the person or the person's
26 representative or agent knowingly uses an incorrect measuring
27 device in:

1 (1) buying or selling motor fuel;

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

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

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

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

10 (2) is not accurate;

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

14 (4) facilitates the perpetration of fraud; or

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

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

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

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

27 (2) if the motor fuel is being offered for sale or sold

1 in accordance with law.

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

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

10 Sec. 2310.060. STOP-SALE ORDER. (a) If the department has
11 reason to believe that motor fuel is being sold or kept, offered, or
12 exposed for sale in violation of this chapter or that motor fuel is
13 being sold or offered for sale by or through the use of a motor fuel
14 metering device that is in violation of this chapter, the
15 department may issue and enforce a written or printed order to stop
16 the sale of the motor fuel. The department shall present the order
17 to the owner or custodian of the motor fuel or seller of the motor
18 fuel. The person receiving the order may not sell the motor fuel or
19 provide the service until discharged by a court under Subsection
20 (b) or until the commission finds that the motor fuel or motor fuel
21 metering device is in compliance with this chapter.

22 (b) The owner or custodian of motor fuel or a person selling
23 or offering for sale a service prohibited from sale by an order of
24 the department is entitled to sue in a court of competent
25 jurisdiction where the motor fuel is found or the service is being
26 sold or offered for sale for a judgment as to the justification of
27 the order and for the discharge of the motor fuel in accordance with

1 the findings of the court.

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

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

6 (b) It is a defense to prosecution or to the imposition of a
7 civil or administrative penalty for a violation of Sections 2310.11
8 or 2310.059 that a discrepancy between the actual volume at the time
9 of sale to a consumer or a discrepancy between the fill of a
10 container and the capacity of the container is due to unavoidable
11 leakage, shrinkage, evaporation, waste, or causes beyond the
12 control of the seller acting in good faith.

13 SUBCHAPTER C. INSPECTION AND REGISTRATION OF MOTOR FUEL METERING
14 DEVICES

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

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

24 (1) the motor fuel metering device is found in close
25 proximity to motor fuel being sold or offered for sale by measure
26 and the device appears to be under the control or in the possession
27 of the person selling the motor fuel or offering the motor fuel for

1 sale; or

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

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

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

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

21 Sec. 2310.106. TESTS FOR STATE INSTITUTIONS. As requested
22 by the comptroller or the governing body of a state institution, the
23 department shall test each motor fuel metering device used by a
24 state institution for any purpose, including a motor fuel metering
25 device used in checking the receipt and distribution of supplies.
26 The department shall report results of the test to the chairman of
27 the governing body of the institution.

1 Sec. 2310.107. STANDARDS USED IN INSPECTION. (a) The
2 standards of weights and measures maintained by the department and
3 certified by the National Institute of Standards and Technology or
4 a metrology laboratory certified by the National Institute of
5 Standards and Technology are the state's standards by which all
6 state and local standards of weights and measures are tried,
7 authenticated, proved, and certified.

8 (b) The department shall maintain the primary standards in a
9 safe and suitable place in the offices of the department. The
10 standards may not be moved except for repairs or certification. The
11 department shall maintain the standards in good order and shall
12 submit them to the National Institute of Standards and Technology
13 or to a laboratory approved by the National Institute of Standards
14 and Technology for certification at least once each 10 years.

15 (c) In addition to the standards kept by the state, the
16 department shall maintain a complete set of copies of the original
17 standards for use in adjusting local standards or in the
18 performance of other official duties. The department may purchase
19 additional sets of standards as necessary for use by a department
20 inspector or other department personnel.

21 (d) At the request of a city, the department shall furnish
22 the city with copies of the state's standards or test and approve
23 other standards acquired by the city. The city shall reimburse the
24 state for the actual cost of the standards furnished, plus the costs
25 of freight and certification. All standards furnished to or tested
26 for a city shall be true and correct and certified by the
27 department. The copies used by a city may be of any suitable

1 material or construction that the city requests, subject to
2 approval by the department.

3 (e) The department, or a metrology laboratory certified by
4 the National Institute of Standards and Technology and approved by
5 the department, shall inspect and correct the standards used by a
6 department inspector, other department employee, or individual or
7 business licensed by the department to perform device maintenance
8 activities under Subchapter D, or an individual or business
9 licensed under Subchapter I, Chapter 13, Agriculture Code.

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

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

21 (h) The department shall keep a record of the inspection and
22 character of standards inspected under this section.

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

26 Sec. 2310.109. FEES. The commission by rule shall
27 establish fees in amounts reasonable and necessary to cover the

1 cost of administering this chapter.

2 (b) Notwithstanding any other law, the department may not in
3 a state fiscal biennium increase a fee under Subsection (a) for a
4 motor fuel metering device by an amount that exceeds 10 percent of
5 the amount of the fee at the end of the preceding state fiscal

6 Sec. 2310.110. REFUSING TO ALLOW TEST OF MOTOR FUEL
7 METERING DEVICE.

8 (a) A person commits an offense if the person refuses to
9 allow a motor fuel metering device under the person's control or in
10 the person's possession to be inspected, tested, or examined by the
11 department, and the inspection, test, or examination is required or
12 authorized by this chapter.

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

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

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

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

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

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

1 or

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

5 Sec. 2310.112. DISPOSING OF CONDEMNED MOTOR FUEL METERING
6 DEVICE. A person commits an offense if the person or the person's
7 servant or agent disposes of a motor fuel metering device condemned
8 under Section 2310.105 or 2310.110 in a manner contrary to those
9 sections.

10 Sec. 2310.113. PENALTIES. An offense under each of
11 Sections 2310.110 through 2310.112 is a Class C misdemeanor.

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

14 Sec. 2310.201. DEFINITIONS. In this subchapter:

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

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

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

24 Sec. 2310.202. DEVICE MAINTENANCE ACTIVITIES. A person
25 performs device maintenance activities if the person or the
26 person's employee:

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

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

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

7 Sec. 2310.203. POWERS AND DUTIES OF DEPARTMENT. (a) To
8 verify compliance with licensing requirements, trade practices,
9 department rules, and this chapter, the department may periodically
10 or in response to a complaint or previous violation inspect an
11 applicant's or license holder's:

- 12 (1) facilities;
13 (2) inspecting and testing equipment and procedures;
14 (3) repair and calibration equipment, standards, and
15 procedures;
16 (4) transportation equipment; and
17 (5) invoices, work orders, and other records related
18 to device maintenance activities.

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

24 (c) The commission by rule may adopt additional
25 requirements for the issuance of a license and for the denial of an
26 application for a license or renewal of a license. Rules adopted by
27 the commission under this subsection must be designed to protect

1 the public health, safety, and welfare and the proper inspection,
2 testing, and operation of commercial motor fuel metering devices.

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

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

9 Sec. 2310.204. EXEMPTIONS FROM LICENSE REQUIREMENTS. (a)
10 A person is not required to hold a license issued under this
11 subchapter if the person:

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

15 (2) is the owner or operator of a commercial weighing
16 or measuring motor fuel metering device or an employee of the owner
17 or operator of a commercial weighing or measuring motor fuel
18 metering device and the person:

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

25 (B) notifies the department of the device's
26 removal not later than the 10th day after the date the device was
27 removed in the manner provided by department rule; or

1 (3) performs device maintenance activities only on a
2 device that is:

3 (A) exempt from the registration requirements of
4 Section 2310.103 under commission rules;

5 (B) exempt from the inspection requirements of
6 Section 2310.102 under commission rules; and

7 (C) not required to be inspected by other
8 commission rules; or

9 (4) is a license holder under Subchapter I, Chapter
10 13, Agriculture Code.

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

14 Sec. 2310.205. SERVICE TECHNICIAN LICENSE REQUIRED. Unless
15 the individual is exempt from the licensing requirement, an
16 individual may not perform or offer to perform device maintenance
17 activities unless the individual holds a service technician license
18 issued by the department under this subchapter.

19 Sec. 2310.206. SERVICE COMPANY LICENSE REQUIRED. (a)
20 Unless the person is exempt from the license requirement, a person
21 may not employ an individual who performs or offers to perform
22 device maintenance activities unless the person holds a service
23 company license issued by the department under this subchapter.

24 (b) Unless the individual is exempt from the licensing
25 requirement, an individual may not perform or offer to perform
26 device maintenance activities as a sole proprietor unless the
27 individual holds a service technician license and a service company

1 license issued by the department under this subchapter.

2 Sec. 2310.207. APPLICATION FOR LICENSE. An applicant for a
3 license under this subchapter must submit to the department:

- 4 (1) an application form prescribed by the department;
5 (2) any other information required by the department;
6 and
7 (3) a fee in an amount set by the department.

8 Sec. 2310.208. SERVICE TECHNICIAN LICENSE REQUIREMENTS.

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

11 (b) The department by rule may require an applicant for the
12 issuance or renewal of a service technician license to meet one or
13 more of the following requirements:

- 14 (1) provide to the department proof that the applicant
15 has completed an academic, trade, or professional course of
16 instruction approved by the department;
17 (2) pass a written test; or
18 (3) pass a practical skills test.

19 Sec. 2310.209. SERVICE COMPANY LICENSE REQUIREMENTS. (a)
20 The department shall issue a license to each qualified applicant
21 who applies for a service company license.

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

- 24 (1) submit to the department a certificate of
25 insurance evidencing that the applicant has an insurance policy
26 that meets the requirements of Section 2310.210 effective for the
27 period for which the license is to be issued or renewed; and

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

3 Sec. 2310.210. INSURANCE POLICY REQUIRED FOR SERVICE
4 COMPANY. A service company shall maintain at all times while the
5 service company performs device maintenance activities a current
6 effective operations liability insurance policy issued by an
7 insurance company authorized to do business in this state or by a
8 surplus lines insurer that meets the requirements of Chapter 981,
9 Insurance Code, and rules adopted by the commissioner of insurance
10 in an amount set by the department and based on the type of licensed
11 activities to be performed.

12 Sec. 2310.211. TERM OF LICENSE. A license issued under this
13 subchapter is valid for one year unless a different term is
14 established by commission rule.

15 Sec. 2310.212. LICENSE RENEWAL. A person licensed under
16 this subchapter must periodically renew the person's license. The
17 license expires unless the license holder submits an application
18 for renewal accompanied by the renewal fee set by the department or
19 by the late fee set by the department and meets the requirements for
20 renewal.

21 Sec. 2310.213. PRACTICE BY LICENSE HOLDER. (a) A license
22 holder shall perform device maintenance activities in compliance
23 with commission rules.

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

27 Sec. 2310.214. CRIMINAL PENALTY. (a) A person commits an

1 offense if the person violates Section 2310.205 or 2310.206 or
2 causes another person to violate Section 2310.205 or 2310.206.

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

7 SECTION 2. Section 13.1015, Agriculture Code, is
8 transferred to Subchapter C, Chapter 2310, Occupations Code,
9 redesignated as Section 2310.102, Occupations Code, and amended to
10 read as follows:

11 Sec. 2310.102 [~~13.1015~~]. INSPECTION OF MOTOR FUEL METERING
12 DEVICES. Unless a motor fuel metering device is exempt from the
13 application of this section by department rule, a motor fuel
14 metering device shall be inspected, tested, and calibrated for
15 correctness by a license holder under Subchapter D [~~±~~] at least once
16 every two years if:

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

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

22 (b) Inspection, testing, and calibration under this section
23 must be performed by a license holder under Subchapter D [~~±~~] under
24 contract with the operator or user of the motor fuel metering
25 device.

26 SECTION 3. Section 13.1016, Agriculture Code, is
27 transferred to Subchapter C, Chapter 2310, Occupations Code, as

1 added by this act, redesignated as Section 2310.103, Occupations
2 Code, and amended to read as follows:

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

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

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

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

14 (3) include any fees required under Section 2310.109
15 [~~13.1151~~]; and

16 (4) include documentation of compliance with Section
17 2310.102 [~~13.1015~~].

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

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

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

9 SECTION 4. Section [13.1017](#), Agriculture Code, is
10 transferred to Subchapter C, Chapter 2310, Occupations Code, as
11 added by this act, redesignated as Section 2310.104, Occupations
12 Code, and amended to read as follows:

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

16 (b) After receiving a complaint regarding a motor fuel
17 metering device, the department shall determine the date the device
18 was last inspected under Section 2310.102 [~~13.1015~~] and the number
19 of complaints received by the department in the previous 12 months
20 regarding motor fuel metering devices at the premises where the
21 device subject to the complaint is located.

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

25 (1) the motor fuel metering device was last inspected
26 not more than 18 months before the date the complaint is received;
27 and

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

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

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

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

13 SECTION 5. Sections 17.051, 17.071, and 17.072, Agriculture
14 Code, are transferred to Chapter 2310, Occupations Code, as added
15 by this Act, redesignated as Subchapter F, and amended to read as
16 follows:

17 SUBCHAPTER F. SALE, DELIVERY, AND QUALITY OF MOTOR FEUL

18 Sec. 2310.251 [~~17.051~~]. NOTICE OF SALE OF ALCOHOL AND FUEL
19 MIXTURE. (a) A dealer may not sell or offer for sale motor fuel
20 from a motor fuel pump supplied by a storage tank into which motor
21 fuel, in a mixture in which at least one percent of the mixture
22 measured by volume is ethanol or methanol, has been delivered
23 within the 60-day period preceding the date of sale or offer of sale
24 unless the dealer prominently displays on the pump from which the
25 mixture is sold a sign that complies with Subsection (b).

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

27 (1) be displayed on each face of the motor fuel pump on

1 which the price of the motor fuel mixture sold from the pump is
2 displayed;

3 (2) state "Contains Ethanol" or "Contains Methanol,"
4 as applicable;

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

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

10 (c) [~~(e)~~] This section does not prohibit the posting of any
11 other alcohol or additive information. Other alcohol or additive
12 information and any relevant posting are subject to regulation by
13 the department [~~commissioner~~].

14 Sec. 2310.252 [~~17.071~~]. MINIMUM MOTOR FUEL QUALITY AND
15 TESTING STANDARDS. (a) The department by rule shall adopt minimum
16 motor fuel quality and testing standards for motor fuel that is sold
17 or offered for sale in this state. The standards must comply with
18 the nationally recognized minimum standards established by:

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

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

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

27 Sec. 2310.253 [~~17.072~~]. TESTING OF MOTOR FUEL QUALITY. (a)

1 The department or a representative of the department may collect
2 samples and conduct testing at any location where motor fuel is
3 kept, transferred, sold, or offered for sale, to verify that the
4 motor fuel complies with the minimum standards required by Section
5 2310.252 [~~17.071~~].

6 (a-1) The collection of samples and conducting of testing at
7 a dealer's location must be performed by a license holder under
8 Subchapter D of this chapter or Subchapter I, Chapter 13,
9 Agriculture Code under contract with the dealer. The license
10 holder is considered a representative of the department for
11 purposes of this section.

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

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

22 SECTION 6. Section 13.001, Agriculture Code, is amended by
23 adding a new Subsection (c) to read as follows:

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

26 SECTION 7. Section 13.114, Agriculture Code, is amended to
27 read as follows:

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

9 SECTION 8. Section 162.009, Tax Code, is amended to read as
10 follows:

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

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

27 (2) allow the comptroller to determine whether taxes

1 on the fuel have been paid or accounted for to this state.

2 SECTION 9. Section 162.403, Tax Code, is amended to read as
3 follows:

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

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

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

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

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

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

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

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

1 162.235;

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

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

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

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

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

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

1 number;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (30) purchases motor fuel with the intent to evade any

1 tax imposed by this chapter or accepts a delivery of motor fuel by
2 any means and does not at the same time accept or receive a shipping
3 document relating to the delivery;

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

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

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

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

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

24 (36) makes a tax-free delivery of compressed natural
25 gas or liquefied natural gas into the fuel supply tank of a motor
26 vehicle, unless the delivery is exempt from tax under Section
27 [162.356](#).

1 SECTION 10. The following provisions of the Agriculture
2 Code are repealed:

- 3 (1) Section 13.001(a)(1-a);
- 4 (2) Section 13.024(d);
- 5 (3) Section 13.029(b);
- 6 (4) Section 13.101(e);
- 7 (5) Section 13.1011(e); and
- 8 (9) Section 13.1151(b).

9 SECTION 11. (a) All rules, fees, policies, procedures,
10 decisions, and forms of the Department of Agriculture that relate
11 to a program or activity transferred under this Act and that are in
12 effect on the effective date of the transfer remain in effect until
13 changed by the Texas Commission of Licensing and Regulation.

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

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

26 (d) all money, contracts, leases, property, records, and
27 obligations of the Department of Agriculture relating to a program

1 or activity transferred under this Act are transferred to the Texas
2 Department of Licensing and Regulation.

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

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

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

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

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

1 transfer of powers, duties, functions, programs, and activities
2 under this act. The Texas Department of Licensing and Regulation
3 shall establish the size, composition, and scope of the stakeholder
4 workgroup.

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

19 (e) Subsection (c) under this section expires on October
20 1, 2020.

21 SECTION 13. This Act takes effect immediately if it
22 receives a vote of two-thirds of all the members elected to each
23 house, as provided by Section 39, Article III, Texas Constitution.
24 If this Act does not receive the vote necessary for immediate
25 effect, this Act takes effect September 1, 2019.