

By: Alvarado
(Goldman)

S.B. No. 2119

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

By: Larson

C.S.S.B. No. 2119

A BILL TO BE ENTITLED

AN ACT

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

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

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

CHAPTER 2310. MOTOR FUEL METERING AND QUALITY

SUBCHAPTER A. GENERAL PROVISIONS

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

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

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

(3) "Dealer" means a person who:

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

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

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

(5) "Executive director" means the executive director

1 of the department.

2 (6) "Motor fuel" has the meaning assigned by Section
3 162.001, Tax Code.

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

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

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

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

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

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

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

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

27 (c) The department may contract with one or more license

1 holders under Subchapter D of this chapter or Subchapter I, Chapter
2 13, Agriculture Code, to perform the department's duties under this
3 chapter related to motor fuel metering devices. A reference in this
4 chapter to the commission or department in the context of a
5 contracted service means the contractor.

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

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

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

23 (d) The executive director is entitled to appropriate
24 injunctive relief to prevent or abate a violation of this chapter or
25 a rule adopted under this chapter. On request of the executive
26 director, the attorney general or the county or district attorney
27 of the county in which the alleged violation is threatened or is

1 occurring shall file suit for the injunctive relief. Venue is in
2 the county in which the alleged violation is threatened or is
3 occurring.

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

12 SUBCHAPTER B. STANDARD WEIGHTS AND MEASURES FOR MOTOR FUEL

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

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

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

27 (d) The standards of this subchapter shall be the guide for

1 making any adjustment of weighing or measuring devices under the
2 law of this state.

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

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

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

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

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

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

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

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

1 (3) will not substantially benefit or protect
2 consumers.

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

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

8 (2) compute the charge for service.

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

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

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

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

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

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

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

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

2 A person violates this chapter if the person or the person's
3 representative or agent:

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

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

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

11 (a) A person commits an offense if the person or the person's
12 representative or agent knowingly uses an incorrect weighing or
13 measuring device in:

14 (1) buying or selling motor fuel;

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

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

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

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

23 (2) is not accurate;

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

27 (4) facilitates the perpetration of fraud; or

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

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

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

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

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

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

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

23 Sec. 2310.060. STOP-SALE ORDER. (a) If the department has
24 reason to believe that motor fuel is being sold or kept, offered, or
25 exposed for sale in violation of this chapter or that motor fuel is
26 being sold or offered for sale by or through the use of a motor fuel
27 metering device that is in violation of this chapter, the executive

1 director may issue an order to stop the sale of the motor fuel. The
2 executive director shall issue the order to the owner or custodian
3 of the motor fuel or seller of the motor fuel. The person receiving
4 the order may not sell the motor fuel until discharged by a court
5 under Subsection (b) or until the executive director finds that the
6 motor fuel or motor fuel metering device is in compliance with this
7 chapter.

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

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

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

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

25 SUBCHAPTER C. INSPECTION AND REGISTRATION OF MOTOR FUEL METERING
26 DEVICES

27 Sec. 2310.101. AUTHORITY TO INSPECT. (a) If the department

1 has reason to believe that a motor fuel metering device is being
2 used for a commercial transaction and the device is not registered
3 with the department, the department may inspect the device and the
4 records of the owner, operator, or user of the device that relate to
5 use of the device to determine whether the device is in compliance
6 with this chapter.

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

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

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

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

26 Sec. 2310.105. REPAIR OR DESTRUCTION OF INCORRECT MOTOR
27 FUEL METERING DEVICES. (a) If, in the judgment of the department,

1 a motor fuel metering device found to be incorrect is not capable of
2 being repaired, the department may condemn, seize, and destroy the
3 device.

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

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

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

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

26 (c) The department may inspect any standard for motor fuel
27 used by an individual or business licensed by the department to

1 perform device maintenance activities described by Subchapter D or
2 an individual or business licensed under Subchapter I, Chapter 13,
3 Agriculture Code, if the department has reason to believe a
4 standard is no longer in compliance with this chapter.

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

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

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

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

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

27 Sec. 2310.108. FEES. The commission by rule shall

1 establish fees in amounts reasonable and necessary to cover the
2 cost of administering this chapter.

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

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

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

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

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

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

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

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

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

6 Sec. 2310.112. PENALTIES. An offense under Section
7 2310.109, 2310.110, or 2310.111 is a Class C misdemeanor.

8 SUBCHAPTER D. LICENSING OF MOTOR FUEL METERING DEVICE SERVICE

9 TECHNICIANS AND MOTOR FUEL METERING DEVICE SERVICE COMPANIES

10 Sec. 2310.151. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 rules; and

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

4 (4) is a license holder under Subchapter I, Chapter
5 13, Agriculture Code.

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

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

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

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

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

26 (1) an application form prescribed by the department;

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

1 and

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

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

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

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

11 Sec. 2310.158. SERVICE TECHNICIAN LICENSE REQUIREMENTS.

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

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

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

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

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

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

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

26 (1) submit to the department a certificate of
27 insurance evidencing that the applicant has an insurance policy

1 that meets the requirements of Section 2310.160 effective for the
2 period for which the license is to be issued or renewed; and

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

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

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

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

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

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

26 Sec. 2310.164. CRIMINAL PENALTY. (a) A person commits an
27 offense if the person violates Section 2310.155 or 2310.156 or

1 causes another person to violate Section 2310.155 or 2310.156.

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

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

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

8 (a) A dealer may not sell or offer for sale motor fuel from a motor
9 fuel pump supplied by a storage tank into which motor fuel, in a
10 mixture in which at least one percent of the mixture measured by
11 volume is ethanol or methanol, has been delivered within the 60-day
12 period preceding the date of sale or offer of sale unless the dealer
13 prominently displays on the pump from which the mixture is sold a
14 sign that:

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

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

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

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

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

1 the department.

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

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

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

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

15 Sec. 2310.203. TESTING OF MOTOR FUEL QUALITY. (a) The
16 department or a representative of the department may collect
17 samples and conduct testing at any location where motor fuel is
18 kept, transferred, sold, or offered for sale to verify that the
19 motor fuel complies with the minimum standards required by Section
20 2310.202.

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

27 (c) On arriving at a facility to conduct testing under

1 Subsection (a), a representative of the department shall notify the
2 owner or manager of the facility of the representative's presence
3 and purpose. The department representative shall follow the most
4 recent applicable procedures specified by the American Society for
5 Testing and Materials (ASTM) International Standard D4057, D4177,
6 D5842, or D5854 for the collection, sampling, and handling of fuel
7 to prepare for laboratory analysis.

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

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

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

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

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

27 (d) Fees collected under this section may be used only to

1 administer and enforce this subchapter.

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

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

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

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

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

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

26 (b) Inspection, testing, and calibration under this section
27 must be performed by a license holder under Subchapter D of this

1 chapter or Subchapter I, Chapter 13, Agriculture Code, under
2 contract with the operator or user of the motor fuel metering
3 device.

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

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

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

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

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

17 (4) include documentation of compliance with Section
18 2310.102 [~~13.1015~~].

19 (c) A registration under this section is valid for one or
20 two years as [~~year unless a different period is~~] established by
21 commission [~~department~~] rule. The registration must be renewed at
22 or before the end of each registration period and the application
23 for renewal must include documentation of compliance with Section
24 2310.102 [~~13.1015~~].

25 (d) If a person fails to register or renew a registration as
26 required by this section, the department may not issue a
27 certificate to operate the motor fuel metering device. The

1 department shall issue the certificate when the operator submits to
2 the department the items required by Subsection (b).

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

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

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

Provision	Amount of Penalty
15 Chapters 13, 14A, [17] 18, 19, 41, 16 46, 61, 72, 73, 74, 76, 94, 95, 101, 17 102, 103, 125, 132, 18 and 134	not more than \$5,000
19 Subchapters A, B, and C, Chapter 71	not more than \$5,000
20 Chapter 14	not more than \$10,000
21 Chapter 1951, Occupations Code	not more than \$5,000
22 Chapter 153, Natural Resources 23 Code	not more than \$5,000
24 Section 91.009	not more than \$5,000.

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

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

29 SECTION 5. Section 13.024(b), Agriculture Code, is amended

1 to read as follows:

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

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

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

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

18 Sec. 162.009. AUTHORITY TO STOP AND EXAMINE. To enforce
19 this chapter, the comptroller or a peace officer may stop a motor
20 vehicle that appears to be operating with or transporting motor
21 fuel to examine the shipping document, cargo manifest, or invoices
22 required to be carried, examine a license or copy of a license that
23 may be required to be carried, take samples from the fuel supply or
24 cargo tanks, and make any other investigation that could reasonably
25 be made to determine whether the taxes have been paid or accounted
26 for by a license holder or a person required to be licensed. The
27 comptroller, a peace officer, an employee of the attorney general's

1 office, an employee of the Texas Commission on Environmental
2 Quality, or an employee of the Texas Department of Licensing and
3 Regulation [~~Agriculture~~] may take samples of motor fuel from a
4 storage tank or container to:

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

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

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

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

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

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

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

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

27 (5) owns or operates a motor vehicle for which reports

1 or mileage records are required by this chapter without an
2 operating odometer or other device in good working condition to
3 record accurately the miles traveled;

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

6 (7) uses dyed diesel fuel for the operation of a motor
7 vehicle on a public highway except as allowed under Section
8 162.235;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (35) delivers compressed natural gas or liquefied

1 natural gas into the fuel supply tank of a motor vehicle and the
2 person does not hold a valid compressed natural gas and liquefied
3 natural gas dealer's license; or

4 (36) makes a tax-free delivery of compressed natural
5 gas or liquefied natural gas into the fuel supply tank of a motor
6 vehicle, unless the delivery is exempt from tax under Section
7 162.356.

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

- 10 (1) Section 13.001(a)(1-a);
- 11 (2) Section 13.024(d);
- 12 (3) Section 13.029(b);
- 13 (4) Section 13.101(e);
- 14 (5) Section 13.1011(e);
- 15 (6) Section 13.1017;
- 16 (7) Section 13.1151(b); and
- 17 (8) Chapter 17.

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

25 (b) A license, permit, certificate of registration, notice,
26 or other authorization issued by the Department of Agriculture for
27 a program or activity transferred under this Act is continued in

1 effect as a license, permit, certificate, notice, or other
2 authorization of the Texas Department of Licensing and Regulation
3 on and after the effective date of the transfer.

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

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

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

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

1 Texas Department of Licensing and Regulation, as appropriate.

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

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

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

22 (d) On the date specified in the transition plan required
23 under Subsection (a) of this section for the transfer of a program
24 or activity transferred by this Act to the Texas Department of
25 Licensing and Regulation, all full-time equivalent employee
26 positions at the Department of Agriculture that directly and
27 indirectly concern the administration or enforcement of the program

1 or activity being transferred become positions at the Texas
2 Department of Licensing and Regulation. The Texas Department of
3 Licensing and Regulation shall post the positions for hiring and,
4 when filling the positions, shall give consideration to, but is not
5 required to hire, an applicant who, immediately before the date of
6 the transfer, was an employee at the Department of Agriculture
7 involved in administering or enforcing the transferred program or
8 activity.

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

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

13 (b) Sections 10 and 11 of this Act take effect September 1,
14 2019.