

By: Alvarado

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 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 the 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.

15 (a) Notwithstanding any other law, the department shall enforce
16 the 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 of this chapter or Subchapter I, Chapter
25 13, Agriculture Code, to perform the department's duties under this
26 chapter related to motor fuel metering devices. A reference in this
27 chapter to the commission or department in the context of a

1 contracted service means the contractor.

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

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

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

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

27 (e) The department and the attorney general may each recover

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

8 SUBCHAPTER B. STANDARD WEIGHTS AND MEASURES FOR MOTOR FUEL

9 METERING DEVICES

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

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

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

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

27 Sec. 2310.052. STANDARD FOR LIQUID CAPACITY. (a) The

1 standard unit of measure of capacity for liquids is the gallon.

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

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

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

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

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

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

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

20 (3) will not substantially benefit or protect
21 consumers.

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

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

27 (2) compute the charge for service.

1 Sec. 2310.054. SALE OF MOTOR FUEL BY PROPER MEASURE.

2 (a) Except as otherwise provided by this section, motor fuel shall
3 be sold by liquid measure.

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

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

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

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

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

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

18 A person violates this chapter if the person or the person's servant
19 or agent:

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

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

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

27 (a) A person commits an offense if the person or the person's

1 representative or agent knowingly uses an incorrect measuring
2 device in:

3 (1) buying or selling motor fuel;

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

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

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

10 (1) does not conform as closely as practicable to the
11 official standard;

12 (2) is not accurate;

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

16 (4) facilitates the perpetration of fraud; or

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

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

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

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

1 represented; or

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

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

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

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

24 (b) The owner or custodian of motor fuel or a person selling
25 or offering for sale a service prohibited from sale by an order of
26 the department is entitled to sue in a court of competent
27 jurisdiction where the motor fuel is found or the service is being

1 sold or offered for sale for a judgment as to the justification of
2 the order and for the discharge of the motor fuel in accordance with
3 the findings of the court.

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

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

8 (b) It is a defense to prosecution or to the imposition of a
9 civil or administrative penalty for a violation of Section 2310.111
10 or 2310.056 that a discrepancy between the actual volume at the time
11 of sale to a consumer or a discrepancy between the fill of a
12 container and the capacity of the container is due to unavoidable
13 leakage, shrinkage, evaporation, waste, or causes beyond the
14 control of the seller acting in good faith.

15 SUBCHAPTER C. INSPECTION AND REGISTRATION OF MOTOR FUEL METERING
16 DEVICES

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

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

26 (1) the motor fuel metering device is found in close
27 proximity to motor fuel being sold or offered for sale by measure

1 and the device appears to be under the control or in the possession
2 of the person selling the motor fuel or offering the motor fuel for
3 sale; or

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

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

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

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

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

1 The department shall report results of the test to the chairman of
2 the governing body of the institution.

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

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

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

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

1 for a city shall be true and correct and certified by the
2 department. The copies used by a city may be of any suitable
3 material or construction that the city requests, subject to
4 approval by the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 or

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

6 Sec. 2310.112. DISPOSING OF CONDEMNED MOTOR FUEL METERING
7 DEVICE. A person commits an offense if the person or the person's
8 servant or agent disposes of a motor fuel metering device condemned
9 under Section 2310.105 or 2310.111 in a manner contrary to those
10 sections.

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

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

15 Sec. 2310.201. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

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

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

13 (1) facilities;

14 (2) inspecting and testing equipment and procedures;

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

17 (4) transportation equipment; and

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

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

25 (c) The commission by rule may adopt additional
26 requirements for the issuance of a license and for the denial of an
27 application for a license or renewal of a license. Rules adopted by

1 the commission under this subsection must be designed to protect
2 the public health, safety, and welfare and the proper inspection,
3 testing, and operation of commercial motor fuel metering devices.

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

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

10 Sec. 2310.204. EXEMPTIONS FROM LICENSE REQUIREMENTS.

11 (a) A person is not required to hold a license issued under this
12 subchapter if the person:

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

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

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

26 (B) notifies the department of the device's
27 removal not later than the 10th day after the date the device was

1 removed in the manner provided by department rule;

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

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

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

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

10 (4) is a license holder under Subchapter I, Chapter
11 13, Agriculture Code.

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

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

20 Sec. 2310.206. SERVICE COMPANY LICENSE REQUIRED.

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

26 (b) Unless the individual is exempt from the licensing
27 requirement, an individual may not perform or offer to perform

1 device maintenance activities as a sole proprietor unless the
2 individual holds a service technician license and a service company
3 license issued by the department under this subchapter.

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

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

10 Sec. 2310.208. SERVICE TECHNICIAN LICENSE REQUIREMENTS.

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

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

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

21 Sec. 2310.209. SERVICE COMPANY LICENSE REQUIREMENTS.

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

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

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

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

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

1 maintenance activities.

2 Sec. 2310.214. CRIMINAL PENALTY. (a) A person commits an
3 offense if the person violates Section 2310.205 or 2310.206 or
4 causes another person to violate Section 2310.205 or 2310.206.

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

9 SECTION 2. Section 13.1015, Agriculture Code, is
10 transferred to Subchapter C, Chapter 2310, Occupations Code, as
11 added by this Act, redesignated as Section 2310.102, Occupations
12 Code, and amended to read as follows:

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

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

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

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

1 SECTION 3. Section [13.1016](#), Agriculture Code, is
2 transferred to Subchapter C, Chapter 2310, Occupations Code, as
3 added by this Act, redesignated as Section 2310.103, Occupations
4 Code, and amended to read as follows:

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

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

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

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

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

18 (4) include documentation of compliance with Section
19 2310.102 [~~13.1015~~].

20 (c) A registration under this section is valid for one year
21 unless a different period is established by department rule. The
22 registration must be renewed at or before the end of each
23 registration period and the application for renewal must include
24 documentation of compliance with Section 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 penalty may not
9 exceed \$50 per device, with a maximum penalty amount of \$500 per
10 year for the premises.

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

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

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

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

27 (1) the motor fuel metering device was last inspected

1 not more than 18 months before the date the complaint is received;
2 and

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

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

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

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

15 SECTION 5. Chapter 2310, Occupations Code, as added by this
16 Act, is amended by adding Subchapter F and adding a subchapter
17 heading to read as follows:

18 SUBCHAPTER F. SALE, DELIVERY, AND QUALITY OF MOTOR FUEL

19 SECTION 6. Sections 17.051, 17.071, and 17.072, Agriculture
20 Code, are transferred to Subchapter F, Chapter 2310, Occupations
21 Code, as added by this Act, redesignated as Sections 2310.251,
22 2310.252, and 2310.253, respectively, and amended to read as
23 follows:

24 Sec. 2310.251 [~~17.051~~]. NOTICE OF SALE OF ALCOHOL AND FUEL
25 MIXTURE. (a) A dealer may not sell or offer for sale motor fuel
26 from a motor fuel pump supplied by a storage tank into which motor
27 fuel, in a mixture in which at least one percent of the mixture

1 measured by volume is ethanol or methanol, has been delivered
2 within the 60-day period preceding the date of sale or offer of sale
3 unless the dealer prominently displays on the pump from which the
4 mixture is sold a sign that complies with Subsection (b).

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

6 (1) be displayed on each face of the motor fuel pump on
7 which the price of the motor fuel mixture sold from the pump is
8 displayed;

9 (2) state "Contains Ethanol" or "Contains Methanol,"
10 as applicable;

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

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

16 (c) [~~(c)~~] This section does not prohibit the posting of any
17 other alcohol or additive information. Other alcohol or additive
18 information and any relevant posting are subject to regulation by
19 the department [~~commissioner~~].

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

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

27 (2) the National Institute of Standards and

1 Technology, for motor fuels blended with ethanol.

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

6 Sec. 2310.253 [~~17.072~~]. TESTING OF MOTOR FUEL QUALITY.

7 (a) The department or a representative of the department may
8 collect samples and conduct testing at any location where motor
9 fuel is kept, transferred, sold, or offered for sale, to verify that
10 the motor fuel complies with the minimum standards required by
11 Section 2310.252 [~~17.071~~].

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

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

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

1 SECTION 7. Section 13.001, Agriculture Code, is amended by
2 adding Subsection (c) to read as follows:

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

5 SECTION 8. Section 13.114, Agriculture Code, is amended to
6 read as follows:

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

15 SECTION 9. Section 162.009, Tax Code, is amended to read as
16 follows:

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

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

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

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

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

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

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

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

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

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

26 (5) owns or operates a motor vehicle for which reports
27 or mileage records are required by this chapter without an

1 operating odometer or other device in good working condition to
2 record accurately the miles traveled;

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

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

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

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

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

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

27 (12) is an importer who does not obtain an import

1 verification number when required by this chapter;

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

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

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

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

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

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

27 (19) transports in any manner motor fuel under a false

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

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

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

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

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

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

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

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

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

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

27 (B) does not furnish to the licensed supplier or

1 distributor a signed statement prescribed in Section [162.206](#);

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

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

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

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

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

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

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

26 (35) delivers compressed natural gas or liquefied
27 natural gas into the fuel supply tank of a motor vehicle and the

1 person does not hold a valid compressed natural gas and liquefied
2 natural gas dealer's license; or

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

7 SECTION 11. The following provisions of the Agriculture
8 Code are repealed:

- 9 (1) Section 13.001(a)(1-a);
- 10 (2) Section 13.024(d);
- 11 (3) Section 13.029(b);
- 12 (4) Section 13.101(e);
- 13 (5) Section 13.1011(e); and
- 14 (6) Section 13.1151(b).

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

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

26 (c) A complaint, investigation, contested case, or other
27 proceeding before the Department of Agriculture relating to a

1 program or activity transferred under this Act that is pending on
2 the effective date of the transfer is transferred without change in
3 status to the Texas Commission of Licensing and Regulation or Texas
4 Department of Licensing and Regulation, as appropriate.

5 (d) All money, contracts, leases, property, records, and
6 obligations of the Department of Agriculture relating to a program
7 or activity transferred under this Act are transferred to the Texas
8 Department of Licensing and Regulation.

9 (e) The unexpended and unobligated balance of any money
10 appropriated by the legislature relating to a program or activity
11 transferred under this Act is transferred to the Texas Department
12 of Licensing and Regulation.

13 (f) Unless the context indicates otherwise, a reference in
14 law or administrative rule to the Department of Agriculture with
15 respect to a program or activity transferred under this Act means
16 the Texas Commission of Licensing and Regulation or Texas
17 Department of Licensing and Regulation, as appropriate.

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

25 (b) The Department of Agriculture shall provide the Texas
26 Department of Licensing and Regulation with access to any systems,
27 facilities, or information necessary for the Texas Department of

1 Licensing and Regulation to accept a program or activity
2 transferred under this Act.

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

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

25 (e) Subsection (c) of this section expires on October 1,
26 2020.

27 SECTION 14. This Act takes effect immediately if it

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1 receives a vote of two-thirds of all the members elected to each
2 house, as provided by Section 39, Article III, Texas Constitution.
3 If this Act does not receive the vote necessary for immediate
4 effect, this Act takes effect September 1, 2019.