

## **BILL ANALYSIS**

Senate Research Center  
87R25985 JES-F

C.S.H.B. 3408  
By: Goldman (Alvarado)  
Business & Commerce  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

During the 86th Regular Session, S.B. 2119 transferred the motor fuel metering and quality (motor fuel) program to the Texas Department of Licensing and Regulation (TDLR) from the Texas Department of Agriculture (TDA). It has been noted that even though TDLR is now responsible for the regulation of fuel quality and quantity, motor fuel metering devices, service companies, and service technicians, TDLR is not responsible for the measuring and regulation of propane. H.B. 3408, in addition to creating the Motor Fuel Metering and Quality Advisory Board, seeks to make needed revisions and updates following the transfer of the motor fuel program, including clarifying that provisions relating to the regulation of motor fuel metering and motor fuel quality do not apply to a weighing or measuring device that measures liquefied petroleum gas.

(Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 3408 amends current law relating to the regulation of motor fuel metering devices and motor fuel quality.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Commission of Licensing and Regulation is modified in SECTION 14 (Section 2310.106, Occupations Code) and SECTION 18 (Section 2310.2013, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 2310.001(a), Occupations Code, by amending Subdivisions (1), (3), (6), (7), and (8) and adding Subdivisions (1-a), (4-a), (5-a), (9-a), and (9-b), as follows:

- (1) Defines "automotive fuel rating" for purposes of Chapter 2310 (Motor Fuel Metering and Quality).
- (1-a) Defines "commercial measuring device" and deletes existing text defining "commercial weighing or measuring device" for purposes of Chapter 2310.
- (3) Redefines "dealer" for purposes of Chapter 2310.
- (4-a) Defines "distributor" for purposes of Chapter 2310.
- (5-a) Defines "measuring device" for purposes of Chapter 2310.
- (6) Redefines "motor fuel" for purposes of Chapter 2310.
- (7) Redefines "motor fuel metering device" for purposes of Chapter 2310.
- (8) Redefines "operator" or "user" for purposes of Chapter 2310.
- (9-a) Defines "supplier" for purposes of Chapter 2310.

(9-b) Defines "wholesaler" for purposes of Chapter 2310.

SECTION 2. Amends Section 2310.002(c), Occupations Code, to authorize the Texas Department of Licensing and Regulation (TDLR) to contract with one or more license holders under Subchapter D (Licensing of Motor Fuel Metering Device Service Technicians and Motor Fuel Metering Device Service Companies), rather than Subchapter D of Chapter 2310 or Subchapter I (Licensing of Service Technicians and Service Companies), Chapter 13 (Weights and Measures), Agriculture Code, to perform TDLR's duties under Chapter 2310 related to motor fuel metering devices.

SECTION 3. Amends Chapter 2310, Occupations Code, by adding Subchapter A-1, as follows:

#### SUBCHAPTER A-1. ADVISORY BOARD

Sec. 2310.031. DEFINITION. Defines "board."

Sec. 2310.032. BOARD MEMBERSHIP. (a) Provides that the Motor Fuel Metering and Quality Advisory Board (board) consists of nine members appointed by the presiding officer of the Texas Commission of Licensing and Regulation (TCLR), with the approval of TCLR, as follows:

(1) four members who are dealers or representatives designated by the dealers, including:

(A) one dealer that has fewer than 501 motor fuel metering devices registered with TDLR;

(B) one dealer that has more than 1,000 but fewer than 5,000 motor fuel metering devices registered with TDLR;

(C) one dealer that has more than 5,000 motor fuel metering devices registered with TDLR; and

(D) one dealer without regard to the dealer's number of motor fuel metering devices registered with TDLR;

(2) two members who represent service companies, as defined by Section 2310.151 (Definitions);

(3) one member who represents a wholesaler or distributor;

(4) one member who represents a supplier; and

(5) one member of the public.

(b) Requires the presiding officer of TCLR, with the approval of TCLR, to appoint two ex officio nonvoting members of the board. Provides that an ex officio member is not counted as a member for purposes of establishing a quorum. Requires the ex officio members to include:

(1) one member who represents a financial institution, as defined by Section 277.001 (Definitions), Finance Code, or a credit card issuer other than a financial institution; and

(2) one member who represents a law enforcement agency.

(c) Requires that appointments to the board be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Sec. 2310.033. TERMS; VACANCY. (a) Provides that members of the board serve staggered six-year terms, with the terms of three or four members expiring on February 1 of each odd-numbered year.

(b) Requires the presiding officer of TCLR, with TCLR's approval, if a vacancy occurs during a member's term, to appoint a replacement to fill the unexpired term.

Sec. 2310.034. PRESIDING OFFICER. Requires the presiding officer of TCLR, with the approval of TCLR, to appoint one of the board members to serve as presiding officer of the board for a term of one year.

Sec. 2310.035. DUTIES. Authorizes the board to advise TCLR and TDLR on:

(1) the adoption of appropriate standards for the installation, maintenance, calibration, alteration, operation, testing, or inspection, as applicable, of motor fuel dispensing devices, motor fuel metering devices, and motor fuel;

(2) education and curricula for applicants for a license issued under this chapter and license holders;

(3) the content of examinations;

(4) proposed rules and standards on technical issues related to motor fuel metering and quality and payment card skimmers; and

(5) other issues affecting motor fuel metering and quality.

Sec. 2310.036. MEETINGS. Requires the advisory board to meet at the call of the executive director of TDLR (executive director) or the presiding officer of TCLR.

SECTION 4. Amends the heading to Subchapter B, Chapter 2310, Occupations Code, to read as follows:

#### SUBCHAPTER B. STANDARD MEASURES FOR MOTOR FUEL

SECTION 5. Amends Sections 2310.051(a), (c), and (d), Occupations Code, as follows:

(a) Provides that the legal standard for the measure, rather than the weight or measure, of a motor fuel in this state is the standard measure, rather than standard weight or measure, adopted and used by the government of the United States for that motor fuel. Makes a conforming change.

(c) and (d) Makes conforming changes to these subsections.

SECTION 6. Amends Section 2310.053, Occupations Code, by adding Subsection (c), to provide that, notwithstanding Section 2310.002 (Enforcement of Chapter), Chapter 2310 does not apply to a weighing or measuring device, as defined by Section 13.001, Agriculture Code, that measures liquefied petroleum gas.

SECTION 7. Amends Sections 2310.054, Occupations Code, as follows:

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

(b) Requires that compressed natural gas and liquefied natural gas be sold by gallon equivalent, rather than sold by weight.

(c) Provides that a person violates Chapter 2310 if the person sells fuel in a manner other than the manner required by this section, rather than a person

violates Chapter 2310 if, in violation of this section, the person sells motor fuel by other than weight or liquid measure.

SECTION 8. Amends Section 2310.056, Occupations Code, to make a conforming change.

SECTION 9. Amends Section 2310.057, Occupations Code, to make conforming changes.

SECTION 10. Amends Sections 2310.059(a) and (c), Occupations Code, to make conforming changes.

SECTION 11. Amends Sections 2310.060(a) and (b), Occupations Code, as follows:

(a) Requires the executive director to issue the order to the dealer or operator of the retail motor fuel facility selling the motor fuel or offering the motor fuel for sale, rather than issue the order to the owner or custodian of the motor fuel or seller of the motor fuel.

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

SECTION 12. Amends Section 2310.061(b), Occupations Code, as follows:

(b) Provides that it is a defense to prosecution or to the imposition of a civil or administrative penalty for a violation of Section 2310.057 (Use of Incorrect Motor Fuel Metering Device) or 2310.059 (Testing by Department) that a discrepancy between the actual volume, rather than weight or volume, at the time of sale to a consumer or a discrepancy between the fill of a container and the capacity of the container is due to unavoidable leakage, shrinkage, evaporation, waste, or causes beyond the control of the seller acting in good faith.

SECTION 13. Amends Section 2310.101(a), Occupations Code, as follows:

(a) Authorizes TDLR, if TDLR has reason to believe that a motor fuel metering device is being used for a commercial transaction and the device is not registered with TDLR or is being used to facilitate the perpetration of fraud, to inspect the device and the records, rather than records of the owner, operator, or user of the device, that relate to use of the device to determine whether the device is in compliance with Chapter 2310.

SECTION 14. Amends Sections 2310.106(b), (c), (f), and (g), Occupations Code, as follows:

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

(c) Makes a conforming change to this subsection.

(f) Requires the state metrology laboratory, or a metrology laboratory certified by the National Institute of Standards and Technology and approved by TDLR, to inspect and correct the standards for motor fuel used by TDLR or, rather than a TDLR inspector, another TDLR employee, an individual or business licensed by TDLR to perform device maintenance activities under Subchapter D, rather than Subchapter D or an individual or business licensed under Subchapter I, Chapter 13, Agriculture Code. Makes nonsubstantive changes.

(g) Requires, rather than authorizes, TDLR and the state metrology laboratory to enter into a memorandum of understanding to implement Section 2310.106 (Inspection of Standards Used to Perform Device Maintenance Activities).

SECTION 15. Amends Section 2310.110(b), Occupations Code, to make a conforming change.

SECTION 16. Amends Section 2310.154(a), Occupations Code, to delete existing text providing that a person is not required to hold a license issued under Subchapter D if the person is a license holder under Subchapter I, Chapter 13, Agriculture Code. Makes a nonsubstantive change.

SECTION 17. Amends Section 2310.2012(a), Occupations Code, as follows:

(a) Prohibits a distributor, supplier, or wholesaler, rather than distributor, supplier, wholesaler, or jobber, of motor fuel, except as provided by Subsection (b) (relating to providing that Subsection (a) does not apply to a delivery made into the fuel supply tanks of a motor vehicle), from delivering to an outlet in this state a motor fuel mixture that contains ethanol or methanol exceeding one percent by volume of the mixture unless, at the time of the delivery of the mixture, the person also delivers to the outlet receiving the delivery a manifest, bill of sale, bill of lading, or other document evidencing delivery of the mixture, that includes a statement containing certain information about the mixtures. Makes a nonsubstantive change.

SECTION 18. Amends Sections 2310.2013(b), (c), and (d), Occupations Code, as follows:

(b) Requires each distributor, supplier, and wholesaler, rather than distributor, supplier, wholesaler, and jobber, of motor fuel to keep a copy of each document required to be delivered to the dealer by Section 2310.2012 (Documentation of Motor Fuel Mixture Sales) until the fourth anniversary of the delivery date.

(c) Requires the dealer, distributor, supplier, or wholesaler, rather than the dealer, distributor, supplier, wholesaler or jobber, on written notice issued by TDLR or an authorized representative of TDLR to any employee at a dealer's retail motor fuel facility, rather than at a dealer's station or retail outlet, or mailed to the principal place of business of a dealer, distributor, supplier, or wholesaler, rather than dealer, distributor, supplier, wholesaler, or jobber, to provide TDLR or the authorized representative of TDLR with the documents described by Section 2310.2013 (Record of Delivery Documents; Inspection Authorized) within the period specified in the notice. Makes conforming and nonsubstantive changes.

(d) Makes conforming changes to this subsection.

SECTION 19. Amends Sections 2310.2014(b) and (c), Occupations Code, as follows:

(b) Requires each distributor, supplier, or wholesaler to keep for at least one year at the distributor's, supplier's, or wholesaler's principal place of business a copy of each delivery ticket or letter of certification required to be delivered by the distributor, supplier, or wholesaler to a dealer in this state under 16 C.F.R. Part 306. Makes conforming and nonsubstantive changes.

(c) Requires the dealer, on written notice issued by TDLR or an authorized representative of TDLR to any employee at a dealer's retail motor fuel facility, rather than dealer's station or retail outlet, or mailed to the dealer's principal place of business, to provide TDLR or the authorized representative of TDLR with the documents described by Section 2310.2014 (Documents Relating to Posting or Certification of Automotive Fuel Ratings) within the period specified in the notice.

SECTION 20. Amends Section 2310.2015(b), Occupations Code, as follows:

(b) Prohibits a distributor, wholesaler, or supplier of motor fuel from delivering or transferring to a dealer in this state motor fuel that has an automotive fuel rating lower

than the certification of the rating the distributor, wholesaler, or supplier is required to make to the dealer under federal law.

SECTION 21. Amends Sections 2310.203(a), (c), and (d), Occupations Code, as follows:

(a) Authorizes TDLR or an authorized representative of TDLR to collect samples and conduct testing at any location where motor fuel is kept, transferred, sold, or offered for sale to verify that the motor fuel complies with the minimum standards required by Section 2310.202 (Minimum Motor Fuel Quality and Testing Standards). Provides that a person who holds a license issued under Subchapter D is considered an authorized representative of TDLR for purposes of Section 2310.203 (Testing of Motor Fuel Quality). Makes a nonsubstantive change.

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

(d) Provides that a person commits an offense if the person refuses to allow TDLR or an authorized representative of TDLR to collect samples or conduct motor fuel testing under Subsection (a). Makes a nonsubstantive change.

SECTION 22. Amends Sections 2310.207(a) and (b), Occupations Code, to make conforming changes.

SECTION 23. Amends Section 2310.208, Occupations Code, to make conforming changes.

SECTION 24. Repealer: Section 2310.001(a)(10) (relating to defining "weighing or measuring device"), Occupations Code.

Repealer: Section 2310.001(a)(11) (relating to defining "weight or measure of a motor fuel"), Occupations Code.

Repealer: Section 2310.001(b) (relating to providing that a reference to the weight of a motor fuel is a reference to the net weight of the motor fuel), Occupations Code.

Repealer: Section 2310.101(b) (relating to providing that TDLR has reason to believe a motor fuel metering device is being used for a commercial transaction if certain evidence exists), Occupations Code.

Repealer: Section 2310.106(e) (relating to requiring the state metrology laboratory to purchase additional sets of standards as necessary for use by a TDLR inspector or other TDLR personnel), Occupations Code.

Repealer: Section 2310.2001 (Definitions), Occupations Code.

Repealer: Section 2310.203(b) (relating to requiring that the collection of samples and conducting of testing at a dealer's location be performed by a license holder under contract with the dealer), Occupations Code.

SECTION 25. (a) Requires the presiding officer of TCLR, not later than February 1, 2022, to appoint members to the Motor Fuel Metering and Quality Advisory Board in accordance with Section 2310.032, Occupations Code, as added by this Act.

(b) Requires the presiding officer of TCLR, notwithstanding Section 2310.033, Occupations Code, as added by this Act, in making the initial appointments to the Motor Fuel Metering and Quality Advisory Board, to designate three members of the advisory

board to serve terms expiring February 1, 2023, four members to serve terms expiring February 1, 2025, and four members to serve terms expiring February 1, 2027.

SECTION 26. (a) Provides that the changes in law made by this Act to Chapter 2310, Occupations Code, do not affect the validity of a proceeding pending before a court or other governmental entity on the effective date of this Act.

(b) Provides that an offense or other violation committed before the effective date of this Act is governed by the law in effect on the date the offense or violation was committed, and the former law is continued in effect for that purpose. Provides that, for purposes of this section, an offense or violation was committed before the effective date of this Act if any element of the offense or violation was committed before that date.

SECTION 27. Effective date: September 1, 2021.