

## **BILL ANALYSIS**

Senate Research Center

S.B. 246  
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Enrolled

### **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 from Texas Department of Agriculture to Texas Department of Licensing and Regulation (TDLR). This transfer gave TDLR responsibility over the regulation of fuel quality and quantity, motor fuel metering devices, service companies and service technicians in Texas. Prior to the transfer to TDLR, the program was regulated under two chapters: the Agriculture Code, Chapter 17, fuel quality (repealed), and Chapter 13, weights and measures (amended). S.B. 2119 transferred portions of the Texas Agriculture Code to the newly created Chapter 2310 of the Occupations Code with modifications while some sections were transferred in their entirety. Unfortunately, this transfer created redundancies and the potential for unnecessary regulations within the code specifically regarding TDLR's role over the regulation of liquid petroleum gas.

S.B. 246 amends the current language within the Occupations Code relating to motor fuel metering and quality to clarify TDLR's regulatory authority over motor fuel metering and quality. Within Chapter 2310 of the Occupations Code, the bill amends definitions and terms, ensures industry terminology is used consistently throughout the chapter, removes TDLR's role in conducting investigations of fuel theft by consumers, eliminates references to weight as a method of measure as this is not the measure for motor fuel, authorizes TDLR to issue an immediate stop sale order if there is a visible problem with the motor fuel being sold, removes the requirement for the state metrology laboratory to purchase standards on behalf of TDLR, allows TDLR to directly collect fuel samples as a result of a complaint, authorizes TDLR to inspect a device it believes is being used to perpetuate fraud and removes TDLR's regulation over liquid petroleum gas.

S.B. 246 amends current law relating to the regulation of motor fuel metering devices and motor fuel quality.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 12 (Section 2310.060, Occupations Code) and SECTION 22 (Section 2310.203, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Commission of Licensing and Regulation is modified in SECTION 15 (Section 2310.106, Occupations Code) and SECTION 19 (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), (7), and (8) and adding Subdivisions (4-a), (5-a), (9-a), and (9-b) to define "automotive fuel rating," "distributor," "measuring device," "supplier," and "wholesaler," to redefine "dealer," "motor fuel metering device," "operator," and "user" and to delete existing text defining "commercial weighing or measuring device."

SECTION 2. Amends Section 2310.002(c), Occupations Code, as follows:

(c) Authorizes 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) to perform TDLR's duties under Chapter 2310 (Motor Fuel Metering and Quality) related to motor fuel metering devices. Deletes existing text providing that TDLR is authorized to contract with one or more license holders under Subchapter I (Licensing of Service Technicians and Service Companies), Chapter 13, Agriculture Code, to perform certain duties of TDLR.

SECTION 3. Amends Section 2310.031, Occupations Code, as follows:

Sec. 2310.031. New heading: DEFINITION. Deletes existing text defining "distributor," "supplier," and "wholesaler" and makes nonsubstantive changes.

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 adopted and used by the government of the United States for that motor fuel. Makes conforming changes.

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

SECTION 6. Amends Section 2310.053, Occupations Code, by adding Subsection (c), as follows:

(c) Provides that this chapter, notwithstanding Section 2310.002 (Enforcement of Chapter), does not apply to a weighing or measuring device, as defined by Section 13.001 (Definitions), Agriculture Code, that measures liquefied petroleum gas.

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

Sec. 2310.054. SALE OF MOTOR FUEL BY PROPER MEASURE. (a) Makes no changes to this subsection.

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

(c) Provides that a person violates this chapter if the person sells motor fuel in a manner other than the manner required by this section. Deletes existing text providing that a person violates this chapter 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, as follows:

Sec. 2310.056. FALSE REPRESENTATION OF MOTOR FUEL QUANTITY. Provides that a person violates this chapter if the person or the person's representative or agent sells or offers or exposes for sale a quantity of motor fuel that is less than the quantity the person represents. Deletes existing text providing that a person violates this chapter if the person or the person's representative or agent, as a buyer furnishing the weight or measure of a motor fuel by which the amount of the meter fuel is determined, takes or attempts to take more than the quantity the person represents. Makes nonsubstantive changes.

SECTION 9. Amends Section 2310.057, Occupations Code, as follows:

Sec. 2310.057. USE OF INCORRECT MOTOR FUEL METERING DEVICE. (a) Provides that a person commits an offense if the person or the person's representative or agent knowingly uses an incorrect measuring, rather than weighing or measuring, device in:

- (1) makes no changes to this subdivision;
- (2) computing a charge for services rendered based on measure, rather than rendered on the basis of weight or measure; or
- (3) makes a conforming change to this subdivision.

(b) Makes a conforming change to this subsection.

SECTION 10. Amends Sections 2310.059(a) and (c), Occupations Code, as follows:

(a) Requires TDLR to from time to time measure, rather than weigh or measure, an amount of motor fuel that is kept or offered for sale, sold, or in the process of delivery, to determine certain information. Makes a nonsubstantive change.

(c) Makes a conforming change to this subsection.

SECTION 11. Amends the heading to Section 2310.060, Occupations Code, to read as follows:

Sec. 2310.060. STOP-SALE ORDER; APPEAL.

SECTION 12. Amends Section 2310.060, Occupations Code, by amending Subsections (a) and (b) and adding Subsections (a-1), (a-2), (b-1), and (b-2), as follows:

(a) Authorizes TDLR, rather than the executive director of TDLR (executive director), to issue an order to stop the sale of the motor fuel to the dealer or operator of the retail motor fuel facility selling the motor fuel or offering the motor fuel for sale, if TDLR has reason to believe that motor fuel is being sold or kept, offered, or exposed for sale in violation of this chapter, including a rule adopted under this chapter, or that motor fuel is being sold or offered for sale by or through the use of a motor fuel metering device that is in violation of this chapter, including a rule adopted under this chapter. Prohibits the dealer or operator receiving the order from selling the motor fuel or offering the motor fuel for sale until:

- (1) TDLR finds that the motor fuel or motor fuel metering device is in compliance with this chapter; or
- (2) the dealer or operator prevails in an appeal of TDLR's order under Subsection (b).

Deletes existing text requiring the executive director to issue the order to the owner or custodian of the motor fuel or seller of the motor fuel. Deletes existing text prohibiting the person receiving the order from selling the motor fuel until discharged by a court under Subsection (b) or until the executive director finds that the motor fuel or motor fuel metering device is in compliance with this chapter.

(a-1) Requires TDLR or an authorized representative of TDLR, in implementing this section, to:

- (1) follow the procedures adopted by TDLR for collecting, sampling, and handling motor fuel;
- (2) obtain the approval of the executive director or the executive director's designee before taking any action under this section; and

(3) place a tag or other notice on each motor fuel dispensing device subject to an order issued by TDLR under this section.

(a-2) Provides that a person is an authorized representative of TDLR, for purposes of this section, if the person holds a license under Subchapter D and is acting on behalf of TDLR under this section.

(b) Provides that a dealer or operator prohibited from selling motor fuel by an order of TDLR issued under this section is entitled to appeal the order to the State Office of Administrative Hearings (SOAH). Deletes existing text providing that 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.

(b-1) Requires the executive director, if a dealer or operator appeals an order issued by TDLR under this section, to set the time and place for a hearing conducted by SOAH to affirm, modify, or set aside the order not later than the 10th day after the date TDLR receives notice of the appeal. Requires that the order be affirmed to the extent that reasonable cause existed to issue the order. Provides that a proceeding under this subsection is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

(b-2) Requires the Texas Commission of Licensing and Regulation (TCLR) to adopt rules necessary to implement this section.

SECTION 13. Amends Section 2310.061(b), Occupations Code, to make a conforming change.

SECTION 14. 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 that relate to use of the device to determine whether the device is in compliance with this chapter, rather than inspect the device and the 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 this chapter.

SECTION 15. Amends Sections 2310.106(b), (c), and (f), Occupations Code, as follows:

(b)-(c) Makes conforming changes to these subsections.

(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 an individual or business licensed by TDLR to perform device maintenance activities under Subchapter D. Makes conforming changes and a nonsubstantive change.

SECTION 16. Amends Section 2310.110(b), Occupations Code, to make a conforming change.

SECTION 17. Amends Section 2310.154(a), Occupations Code, to make a nonsubstantive change and a conforming change.

SECTION 18. Amends Section 2310.2012(a), Occupations Code, as follows:

(a) Deletes existing text prohibiting a 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.

SECTION 19. Amends Section 2310.2013, Occupations Code, by amending Subsections (b), (c), and (d) and adding Subsection (c-1), as follows:

(b) Makes a conforming change to this subsection.

(c) Requires a dealer, distributor, supplier, or wholesaler, on written notice issued by TDLR or an authorized representative of TDLR to any employee at a dealer's retail motor fuel facility or mailed to the principal place of business of a dealer, distributor, supplier, or wholesaler, to provide TDLR or 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 changes.

(c-1) Provides that a person is an authorized representative of TDLR, for purposes of this section, if the person holds a license issued under Subchapter D and is conducting an inspection on behalf of TDLR under this section.

(d) Makes nonsubstantive and conforming changes to this subsection.

SECTION 20. Amends Section 2310.2014, Occupations Code, by amending Subsections (b) and (c) and adding Subsection (c-1), 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.

(c) Makes conforming changes to this subsection.

(c-1) Provides that a person is an authorized representative of TDLR, for purposes of Section 2310.2014 (Documents Relating to Posting or Certification of Automotive Fuel Ratings), if the person holds a license issued under Subchapter D and is conducting an inspection on behalf of TDLR under this section.

SECTION 21. Amends Section 2310.2015(b), Occupations Code, to make nonsubstantive and conforming changes

SECTION 22. Amends Section 2310.203, Occupations Code, by amending Subsections (a), (c), and (d) and adding Subsections (a-1) and (c-1), 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).

(a-1) Provides that a person is an authorized representative of TDLR, for purposes of Section 2310.203 (Testing of Motor Fuel Quality), if the person holds a license issued under Subchapter D and is conducting testing on behalf of TDLR under this section.

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

(c-1) Requires TCLR to adopt rules regulating the methods and procedures applicable to motor fuel testing under this section.

(d) Makes a nonsubstantive change and conforming change to this subsection.

SECTION 23. Amends Sections 2310.207(a) and (b), Occupations Code, as follows:

(a) Authorizes a person, rather than a motor fuel user, who purchased the motor fuel and sustained damages or who has a complaint about the product, if a dealer or a distributor, supplier, or wholesaler of motor fuel violates certain sections, to bring an action against the dealer, distributor, supplier, or wholesaler. Makes conforming changes.

(b) Makes a conforming change and a nonsubstantive change to this subsection.

SECTION 24. Amends Section 2310.208, Occupations Code, as follows:

Sec. 2310.208. CIVIL PENALTY. Makes a nonsubstantive and a conforming change to this section.

SECTION 25. Repealers: Sections 2310.001(a)(10) (relating to the definition of "weighing or measuring device") and (a)(11) (relating to the definition of "weight or measure of a motor fuel"), Occupations Code.

Repealer: Section 2310.001(b) (relating to certain references to weight of a motor fuel), Occupations Code.

Repealer: Section 2310.036 (Meetings), Occupations Code.

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

Repealers: Sections 2310.106(e) (relating to requiring the state metrology laboratory to purchase additional sets of standards for use by TDLR) and (g) (relating to requiring 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)), Occupations Code.

Repealer: Section 2310.2001 (Definitions), Occupations Code.

Repealer: Section 2310.203(b) (relating to requiring the collection of samples and conducting of testing of motor fuel to be done by a license holder hired by the dealer of motor fuel), Occupations Code.

Repealer: Section 2310.204(d) (relating to requiring that fees collected under Section 2310.204 (Rules; Fees) are only authorized to be used for administration and enforcement of Subchapter E (Sale, Delivery, and Quality of Motor Fuel)), Occupations Code.

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 an offense or violation, for purposes of this section, 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, 2023.