

By: Alvarado

S.B. No. 246

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the regulation of motor fuel metering devices and motor
3 fuel quality.

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

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

8 (1) "Automotive fuel rating" has the meaning assigned
9 by 15 U.S.C. Section 2821 [~~"Commercial weighing or measuring~~
10 ~~device" means a weighing or measuring device used in a commercial~~
11 ~~transaction~~].

12 (3) "Dealer" means a person who [+
13 [(A)] is the operator of a [~~service station or~~
14 ~~other~~] retail motor fuel facility [~~outlet, and~~
15 [~~(B) delivers motor fuel into the fuel tanks of~~
16 ~~motor vehicles or motor boats~~].

17 (4-a) "Distributor" means a person who makes retail or
18 wholesale sales of motor fuel.

19 (5-a) "Measuring device" means a mechanical or
20 electronic device used to:

21 (A) dispense or deliver a motor fuel by volume,
22 flow rate, or other measure; or

23 (B) compute the charge for a service related to
24 motor fuel.

1 (7) "Motor fuel metering device" means a [~~commercial~~
2 ~~weighing or~~] measuring device used for commercial motor fuel sales.

3 (8) "Operator" or "user" means a person in possession
4 or control of a [~~weighing or~~] measuring device, including an owner,
5 custodian, or seller.

6 (9-a) "Supplier" has the meaning assigned by Section
7 162.001, Tax Code.

8 (9-b) "Wholesaler" means a person who purchases
9 tax-paid motor fuel for resale or distribution at wholesale.

10 SECTION 2. Section 2310.002(c), Occupations Code, is
11 amended to read as follows:

12 (c) The department may contract with one or more license
13 holders under Subchapter D [~~of this chapter or Subchapter I,~~
14 ~~Chapter 13, Agriculture Code,~~] to perform the department's duties
15 under this chapter related to motor fuel metering devices. A
16 reference in this chapter to the commission or department in the
17 context of a contracted service means the contractor.

18 SECTION 3. Section 2310.031, Occupations Code, is amended
19 to read as follows:

20 Sec. 2310.031. DEFINITION [~~DEFINITIONS~~]. In this
21 subchapter, "board" [+

22 [~~(1) "Board"~~] means the Motor Fuel Metering and
23 Quality Advisory Board.

24 [~~(2) "Distributor," "supplier," and "wholesaler" have~~
25 ~~the meanings assigned by Section 2310.2001.~~]

26 SECTION 4. The heading to Subchapter B, Chapter 2310,
27 Occupations Code, is amended to read as follows:

1 SUBCHAPTER B. STANDARD ~~[WEIGHTS AND]~~ MEASURES FOR MOTOR FUEL

2 SECTION 5. Sections [2310.051](#)(a), (c), and (d), Occupations
3 Code, are amended to read as follows:

4 (a) The legal standard for the ~~[weight or]~~ measure of a
5 motor fuel in this state is the standard ~~[weight or]~~ measure adopted
6 and used by the government of the United States for that motor fuel.
7 If the United States does not provide a standard ~~[weight or]~~ measure
8 for a motor fuel, the standard for the motor fuel is that
9 established by this subchapter.

10 (c) Except as otherwise provided by an express contract, a
11 contract for work or sales by ~~[weight or]~~ measure of a motor fuel
12 shall be construed in accordance with the standards of this
13 subchapter.

14 (d) The standards of this subchapter shall be the guide for
15 making any adjustment of ~~[weighing or]~~ measuring devices under the
16 law of this state.

17 SECTION 6. Section [2310.053](#), Occupations Code, is amended
18 by adding Subsection (c) to read as follows:

19 (c) Notwithstanding Section [2310.002](#), this chapter does not
20 apply to a weighing or measuring device, as defined by Section
21 [13.001](#), Agriculture Code, that measures liquefied petroleum gas.

22 SECTION 7. Section [2310.054](#), Occupations Code, is amended
23 to read as follows:

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

27 (b) Compressed natural gas and liquefied natural gas shall

1 be sold by gallon equivalent [~~weight~~].

2 (c) A person violates this chapter if [~~, in violation of this~~
3 ~~section,~~] the person sells motor fuel in a manner [~~by~~] other than
4 the manner required by this section [~~weight or liquid measure~~].

5 SECTION 8. Section 2310.056, Occupations Code, is amended
6 to read as follows:

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

8 A person violates this chapter if the person or the person's
9 representative or agent [~~+~~

10 [~~(1)~~] sells or offers or exposes for sale a quantity of
11 motor fuel that is less than the quantity the person represents [~~, or~~

12 [~~(2) as a buyer furnishing the weight or measure of a~~
13 ~~motor fuel by which the amount of the motor fuel is determined,~~
14 ~~takes or attempts to take more than the quantity the person~~
15 ~~represents~~].

16 SECTION 9. Section 2310.057, Occupations Code, is amended
17 to read as follows:

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

19 (a) A person commits an offense if the person or the person's
20 representative or agent knowingly uses an incorrect [~~weighing or~~]
21 measuring device in:

22 (1) buying or selling motor fuel;

23 (2) computing a charge for services rendered based on
24 [~~the basis of weight or~~] measure; or

25 (3) determining the [~~weight or~~] measure of motor fuel,
26 if a charge is made for the determination.

27 (b) For the purpose of this section, a [~~weighing or~~]

1 measuring device is incorrect if it:

2 (1) does not conform as closely as practicable to the
3 official standards;

4 (2) is not accurate;

5 (3) is of a construction that is not reasonably
6 permanent in adjustment or does not correctly repeat its
7 indications;

8 (4) facilitates the perpetration of fraud; or

9 (5) does not conform to the specifications and
10 tolerances under Section 2310.107.

11 SECTION 10. Sections 2310.059(a) and (c), Occupations Code,
12 are amended to read as follows:

13 (a) The department shall from time to time [~~weigh or~~]
14 measure an amount of motor fuel that is kept or offered for sale,
15 sold, or in the process of delivery, [~~in order~~] to determine:

16 (1) if the motor fuel is of the amount or quantity
17 represented; or

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

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

25 SECTION 11. The heading to Section 2310.060, Occupations
26 Code, is amended to read as follows:

27 Sec. 2310.060. STOP-SALE ORDER; APPEAL.

1 SECTION 12. Section 2310.060, Occupations Code, is amended
2 by amending Subsections (a) and (b) and adding Subsections (a-1),
3 (a-2), (b-1), and (b-2) to read as follows:

4 (a) If the department has reason to believe that motor fuel
5 is being sold or kept, offered, or exposed for sale in violation of
6 this chapter, including a rule adopted under this chapter, or that
7 motor fuel is being sold or offered for sale by or through the use of
8 a motor fuel metering device that is in violation of this chapter,
9 including a rule adopted under this chapter, the department
10 ~~[executive director]~~ may issue an order to stop the sale of the
11 motor fuel~~[. The executive director shall issue the order]~~ to the
12 dealer or operator of the retail motor fuel facility selling ~~[owner~~
13 ~~or custodian of]~~ the motor fuel or offering the motor fuel for sale
14 ~~[or seller of the motor fuel]~~. The dealer or operator ~~[person]~~
15 receiving the order may not sell the motor fuel or offer the motor
16 fuel for sale until:

17 (1) ~~[discharged by a court under Subsection (b) or~~
18 ~~until]~~ the department ~~[executive director]~~ finds that the motor
19 fuel or motor fuel metering device is in compliance with this
20 chapter; or

21 (2) the dealer or operator prevails in an appeal of the
22 department's order under Subsection (b).

23 (a-1) In implementing this section, the department or an
24 authorized representative of the department shall:

25 (1) follow the procedures adopted by the department
26 for collecting, sampling, and handling motor fuel;

27 (2) obtain the approval of the executive director or

1 the executive director's designee before taking any action under
2 this section; and

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

6 (a-2) For purposes of this section, a person is an
7 authorized representative of the department if the person:

8 (1) holds a license under Subchapter D; and

9 (2) is acting on behalf of the department under this
10 section.

11 (b) A dealer or operator [~~The owner, custodian, or seller of~~
12 ~~motor fuel~~] prohibited from selling motor fuel [~~sale~~] by an order of
13 the department issued under this section [~~executive director~~] is
14 entitled to appeal the order to the State Office of Administrative
15 Hearings [~~sue in a court where the motor fuel is found or is being~~
16 ~~sold or offered for sale for a judgment as to the justification of~~
17 ~~the order and for the discharge of the motor fuel in accordance with~~
18 ~~the findings of the court~~].

19 (b-1) If a dealer or operator appeals an order issued by the
20 department under this section, the executive director shall set the
21 time and place for a hearing conducted by the State Office of
22 Administrative Hearings to affirm, modify, or set aside the order
23 not later than the 10th day after the date the department receives
24 notice of the appeal. The order shall be affirmed to the extent
25 that reasonable cause existed to issue the order. A proceeding
26 under this subsection is a contested case under Chapter 2001,
27 Government Code.

1 (b-2) The commission shall adopt rules necessary to
2 implement this section.

3 SECTION 13. Section 2310.061(b), Occupations Code, is
4 amended to read as follows:

5 (b) It is a defense to prosecution or to the imposition of a
6 civil or administrative penalty for a violation of Section 2310.057
7 or 2310.059 that a discrepancy between the actual [~~weight or~~
8 volume at the time of sale to a consumer or a discrepancy between
9 the fill of a container and the capacity of the container is due to
10 unavoidable leakage, shrinkage, evaporation, waste, or causes
11 beyond the control of the seller acting in good faith.

12 SECTION 14. Section 2310.101(a), Occupations Code, is
13 amended to read as follows:

14 (a) If the department has reason to believe that a motor
15 fuel metering device is being used for a commercial transaction and
16 the device is not registered with the department or is being used to
17 facilitate the perpetration of fraud, the department may inspect
18 the device and the records [~~of the owner, operator, or user of the~~
19 ~~device~~] that relate to use of the device to determine whether the
20 device is in compliance with this chapter.

21 SECTION 15. Sections 2310.106(b), (c), and (f), Occupations
22 Code, are amended to read as follows:

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

1 ~~Agriculture Code~~].

2 (c) The department may inspect any standard for motor fuel
3 used by an individual or business licensed by the department to
4 perform device maintenance activities described by Subchapter D [~~or~~
5 ~~an individual or business licensed under Subchapter I, Chapter 13,~~
6 ~~Agriculture Code,~~] if the department has reason to believe a
7 standard is no longer in compliance with this chapter.

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

16 SECTION 16. Section 2310.110(b), Occupations Code, is
17 amended to read as follows:

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

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

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

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

27 SECTION 17. Section 2310.154(a), Occupations Code, is

1 amended to read as follows:

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

4 (1) is a department employee who is performing device
5 maintenance activities in the scope of the person's duties for the
6 department;

7 (2) is the owner or operator of a motor fuel metering
8 device or an employee of the owner or operator of a motor fuel
9 metering device and the person:

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

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

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

20 (A) exempt from the inspection and registration
21 requirements of Sections 2310.102 and 2310.103 under commission
22 rules; and

23 (B) not required to be inspected by other
24 commission rules[~~, or~~

25 [~~(4) is a license holder under Subchapter I, Chapter~~
26 ~~13, Agriculture Code].~~

27 SECTION 18. Section 2310.2012(a), Occupations Code, is

1 amended to read as follows:

2 (a) Except as provided by Subsection (b), a distributor,
3 supplier, or wholesaler [~~, or jobber~~] of motor fuel may not deliver
4 to an outlet in this state a motor fuel mixture that contains
5 ethanol or methanol exceeding one percent by volume of the mixture
6 unless, at the time of the delivery of the mixture, the person also
7 delivers to the outlet receiving the delivery a manifest, bill of
8 sale, bill of lading, or other document evidencing delivery of the
9 mixture, that includes a statement containing:

10 (1) the percentage of ethanol or methanol contained in
11 the mixture; and

12 (2) the types and percentages of any associated
13 cosolvents contained in the mixture.

14 SECTION 19. Section [2310.2013](#), Occupations Code, is amended
15 by amending Subsections (b), (c), and (d) and adding Subsection
16 (c-1) to read as follows:

17 (b) Each distributor, supplier, and wholesaler [~~, and~~
18 ~~jobber~~] of motor fuel shall keep a copy of each document required to
19 be delivered to the dealer by Section [2310.2012](#) until the fourth
20 anniversary of the delivery date.

21 (c) The department or an authorized representative of the
22 department may inspect documents described by this section. On
23 written notice issued by the department or an authorized
24 representative of the department to any employee at a dealer's
25 [~~station or~~] retail motor fuel facility [~~outlet~~] or mailed to the
26 principal place of business of a dealer, distributor, supplier, or
27 wholesaler, [~~or jobber,~~] the dealer, distributor, supplier, or

1 wholesaler[~~, or jobber~~] shall provide the department or authorized
2 representative of the department with the documents described by
3 this section within the period specified in the notice.

4 (c-1) For purposes of this section, a person is an
5 authorized representative of the department if the person:

6 (1) holds a license issued under Subchapter D; and

7 (2) is conducting an inspection on behalf of the
8 department under this section.

9 (d) The commission by rule may:

10 (1) require each dealer, distributor, supplier, and
11 wholesaler[~~, and jobber~~] to maintain and make available to the
12 department:

13 (A) invoices, receipts, or other transmittal
14 documents or records, including electronically stored information,
15 showing or describing the purchase, sale, delivery, or distribution
16 of motor fuel;

17 (B) invoices, receipts, work orders, reports, or
18 other documents, including electronically stored information,
19 showing or describing the installation, maintenance, or repair of:

20 (i) motor fuel dispensing devices; and

21 (ii) any equipment used in connection with
22 motor fuel dispensing devices to record, display, or produce
23 receipts or audit trails concerning the purchase, sale, delivery,
24 or distribution of motor fuel; and

25 (C) any record or other document related to the
26 sampling and testing of motor fuel purchased, sold, delivered, or
27 distributed by the dealer, distributor, supplier, or wholesaler[~~,~~

1 ~~or jobber~~]; and

2 (2) prescribe:

3 (A) the manner of filing documents or records
4 required to be kept under this section or by commission rule; and

5 (B) the time, place, and manner of inspection of
6 the documents or records.

7 SECTION 20. Section 2310.2014, Occupations Code, is amended
8 by amending Subsections (b) and (c) and adding Subsection (c-1) to
9 read as follows:

10 (b) Each distributor, ~~[or]~~ supplier, or wholesaler shall
11 keep for at least one year at the distributor's, ~~[or]~~ supplier's, or
12 wholesaler's principal place of business a copy of each delivery
13 ticket or letter of certification required to be delivered by the
14 distributor, ~~[or]~~ supplier, or wholesaler to a dealer in this state
15 under 16 C.F.R. Part 306.

16 (c) The department or an authorized representative of the
17 department may inspect a document required to be kept under this
18 section. On written notice issued by the department or an
19 authorized representative of the department to any employee at a
20 dealer's ~~[station or]~~ retail motor fuel facility ~~[outlet]~~ or mailed
21 to the dealer's principal place of business, the dealer shall
22 provide the department or authorized representative of the
23 department with the documents described by this section within the
24 period specified in the notice.

25 (c-1) For purposes of this section, a person is an
26 authorized representative of the department if the person:

27 (1) holds a license issued under Subchapter D; and

1 (2) is conducting an inspection on behalf of the
2 department under this section.

3 SECTION 21. Section 2310.2015(b), Occupations Code, is
4 amended to read as follows:

5 (b) A distributor, ~~[or]~~ supplier, or wholesaler of motor
6 fuel may not deliver or transfer to a dealer in this state motor
7 fuel that has an automotive fuel rating lower than the
8 certification of the rating the distributor, ~~[or]~~ supplier, or
9 wholesaler is required to make to the dealer under federal law.

10 SECTION 22. Section 2310.203, Occupations Code, is amended
11 by amending Subsections (a), (c), and (d) and adding Subsections
12 (a-1) and (c-1) to read as follows:

13 (a) The department or an authorized ~~[a]~~ representative of
14 the department may collect samples and conduct testing at any
15 location where motor fuel is kept, transferred, sold, or offered
16 for sale to verify that the motor fuel complies with the minimum
17 standards required by Section 2310.202.

18 (a-1) For purposes of this section, a person is an
19 authorized representative of the department if the person:

- 20 (1) holds a license issued under Subchapter D; and
21 (2) is conducting testing on behalf of the department
22 under this section.

23 (c) On arriving at a facility to conduct testing under
24 Subsection (a), the department or an authorized ~~[a]~~ representative
25 of the department shall notify an employee ~~[the owner or manager]~~ of
26 the facility of the department's or representative's presence and
27 purpose. ~~[The department representative shall follow the most~~

1 ~~recent applicable procedures specified by the American Society for~~
2 ~~Testing and Materials (ASTM) International Standard D4057, D4177,~~
3 ~~D5842, or D5854 for the collection, sampling, and handling of fuel~~
4 ~~to prepare for laboratory analysis.]~~

5 (c-1) The commission shall adopt rules regulating the
6 methods and procedures applicable to motor fuel testing under this
7 section.

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

12 SECTION 23. Sections 2310.207(a) and (b), Occupations Code,
13 are amended to read as follows:

14 (a) If a dealer or a distributor, supplier, or wholesaler[~~r~~
15 ~~or jobber~~] of motor fuel violates Section 2310.201, 2310.2012,
16 2310.2013, 2310.2014, or 2310.2015, a person [~~motor fuel user~~] who
17 purchased the motor fuel and sustained damages or who has a
18 complaint about the product may bring an action against the dealer,
19 distributor, supplier, or wholesaler[~~r~~ ~~or jobber~~].

20 (b) The action may be brought, without regard to the
21 specific amount of damages, in the district court in any county in
22 which:

23 (1) the dealer, distributor, supplier, or
24 wholesaler[~~r~~ ~~or jobber~~] transacts business; or

25 (2) the dealer resides.

26 SECTION 24. Section 2310.208, Occupations Code, is amended
27 to read as follows:

1 Sec. 2310.208. CIVIL PENALTY. A dealer, distributor,
2 supplier, or wholesaler [~~, or jobber~~] who violates Section 2310.201,
3 2310.2012, 2310.2013, 2310.2014, or 2310.2015 is liable to this
4 state for a civil penalty of not less than \$200 and not more than
5 \$10,000.

6 SECTION 25. The following provisions of the Occupations
7 Code are repealed:

- 8 (1) Sections 2310.001(a)(10), (a)(11), and (b);
- 9 (2) Section 2310.036;
- 10 (3) Section 2310.101(b);
- 11 (4) Sections 2310.106(e) and (g);
- 12 (5) Section 2310.2001;
- 13 (6) Section 2310.203(b); and
- 14 (7) Section 2310.204(d).

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

19 (b) An offense or other violation committed before the
20 effective date of this Act is governed by the law in effect on the
21 date the offense or violation was committed, and the former law is
22 continued in effect for that purpose. For purposes of this section,
23 an offense or violation was committed before the effective date of
24 this Act if any element of the offense or violation was committed
25 before that date.

26 SECTION 27. This Act takes effect September 1, 2023.