

SUBJECT: Capping penalties relating to motor fuel quality and metering devices

COMMITTEE: International Relations and Economic Development — committee substitute recommended

VOTE: 8 ayes — Anchia, Frullo, Blanco, Cain, Larson, Perez, Raney, Romero

0 nays

1 absent — Metcalf

WITNESSES: For — Paul Hardin, Texas Food and Fuel Association; (*Registered, but did not testify*: Lance Davis, Kwik Chek; Jim Sheer, Texas Retailers Association)

Against — Michael Skrobarcek, Guadalupe County Precinct 3 Constable; Sidney Miller; (*Registered, but did not testify*: Todd Smith, Texas Conservative Tea Party Coalition; Sid Miller, Texas Department of Agriculture; Fred Funderburgh; Stan Kitzman; Donald A Loucks; Chris Parachini)

On — Jessica Escobar, Texas Department of Agriculture

BACKGROUND: Agriculture Code ch. 13 provides for the regulation of motor fuel metering devices and establishes civil and administrative penalties for offenses relating to the registration of metering devices, use of an inaccurate device, and false representation of a commodity quantity.

Agriculture Code ch. 17 provides for the regulation of certain fuel mixtures and establishes civil and administrative penalties for offenses relating to quality standards of motor fuel mixtures, testing, inaccurate fuel ratings, and documentation of fuel deliveries and sales.

DIGEST: CSHB 2366 would cap or reduce certain fees relating to the regulation of motor fuel metering devices and motor fuel quality, restrict how the Texas Department of Agriculture (TDA) used certain fee revenues, and amend

the complaints process relating to metering devices.

Penalties. The bill would lower the cap on the administrative penalty for a violation of certain laws, rules, or orders relating to the sale and regulation of fuel mixtures from \$5,000 to \$2,500.

The bill also would cap the total civil penalty for a continuous violation of statutory provisions relating to motor fuel metering devices at \$2,500, if the violation related to one or more devices.

The bill would reduce from \$10,000 to \$2,500 the maximum civil penalty for a dealer, distributor, supplier, wholesaler, or jobber who violated statutory provisions relating to certain notice and documentation requirements regarding motor fuel mixtures and ratings.

Complaints. The bill would require a complaint to TDA regarding motor fuel metering devices or fuel quality to include a proof of purchase for the transaction that led to the complaint. TDA would be required to notify the dealer by email within 24 hours of receiving the complaint and to identify the specific motor fuel metering device or pump that led to the complaint.

Testing. The bill would limit the authority of an authorized representative of the commissioner of agriculture to test motor fuel quality, allowing testing only in response to a complaint about the fuel.

The bill would require TDA to pay all costs associated with motor fuel quality testing, including sampling costs, transportation costs, and shipping costs, using fees collected for such purposes.

TDA would be required to contract with at least five laboratories in Texas to conduct such testing. When adopting rules relating to fuel testing, the commissioner would be required to consider the distance to the nearest testing laboratory and the octane of the fuel.

The bill would prohibit TDA from testing motor fuel based on a complaint about fuel with an octane rating less than 88 under ASTM standards.

Tags. The bill would establish that it was not an offense to remove or obliterate a registration tag on a motor fuel metering device if the person who removed or obliterated the tag owned or operated the metering device and did not intentionally remove or obliterate the tag. The bill would require TDA to replace such tags.

Other provisions. The bill would:

- prohibit TDA from increasing a dealer's fee for motor fuel quality testing by more than 10 percent per biennium;
- extend the registration period for a motor fuel metering device from one year to two years, unless a different period of more than two years was established by department rule;
- prohibit TDA from issuing a stop-sale order for a violation of motor fuel quality standards without having laboratory results confirming that violation; and
- restrict the use of registration and inspection fees for motor fuel metering devices to the administration and enforcement of motor fuel metering device inspections.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

**SUPPORTERS
SAY:**

CSHB 2366 would ensure that the Texas Department of Agriculture (TDA) applied clear and reasonable enforcement methods for the motor fuel metering and fuel quality programs that it administers.

The bill would address concerns with TDA's implementation of HB 2174 by Darby, enacted by the 85th Legislature, which aimed to make the inspection process more efficient. The bill would ensure TDA's enforcement practices were aligned with legislative intent.

The fiscal note for the bill highlights that the department currently takes in too much in fee revenue for the duties that it performs. The fuel industry

has an excellent record of compliance, and less than 10 percent of consumer complaints result in corrective action against a dealer.

By requiring TDA to notify a dealer within 24 hours of receiving a complaint, the bill would allow dealers to know sooner that their equipment could be broken. The 24-hour notice requirement would provide better consumer protection, giving dealers the ability to take corrective action as soon as possible, rather than waiting until the fuel in question was gone.

TDA previously has used an out-of-state contractor to test fuel samples. The bill would require in-state testing of fuel quality because fuel samples degrade with time and a quick turnaround would ensure that fuel did not degrade in the time that it took to pull a sample and send it to a laboratory for analysis. Using multiple laboratories in different regions of the state would better ensure that testing results were accurate.

OPPONENTS
SAY:

CSHB 2366 would make it more difficult for consumers to file a complaint, more difficult for TDA to act on a complaint, and more expensive for the state to administer its regulatory program.

By requiring TDA to send a notice by email to dealers within 24 hours, the bill could result in tipping off bad actors that an inspection was coming, allowing them to reset a pump before inspectors arrived.

Requiring TDA to contract with five or more laboratories would drive up cost for testing fuel quality samples, losing the current efficiency of scale.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of \$874,000 to general revenue related funds through fiscal 2020-21.