

BILL ANALYSIS

Senate Research Center

S.B. 1355
By: Brown
Natural Resources
4-1-97
As Filed

DIGEST

Currently, while Texas has regulated some aspects of grocery store operations for more than half a century, the 1991 Legislature established the state's general licensing program for retailers. This program is administered by the Texas Department of Health (TDH) in conjunction with its network of local health departments. All food retailers must be licensed by either TDH or a local health department and meet state food-safety inspection standards. This license, however, represents only a small part of the total regulatory process many grocery stores go through. Food retailers are subject to as many as nine regulatory agencies, 17 different types of state licenses, and various statewide inspection processes, both scheduled and unannounced. Permits expire on different dates, require different forms, and involve different fees. Enforcement procedures vary from agency to agency. S.B. 1355 would streamline state regulation of food retailers to reduce government costs and administrative burdens on industry without decreasing consumer protection.

PURPOSE

As proposed, S.B. 1355 outlines provisions regarding the regulation of retail stores.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the commissioner of agriculture under SECTION 8, 10, and 16 (Sections 2, 4(c), and 9(a), Article 8614, V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 403, Government Code, by adding Subchapter N, as follows:

SUBCHAPTER N. MISCELLANEOUS DUTIES OF COMPTROLLER

Sec. 403.321. INTERAGENCY TASK FORCE ON TEXAS RETAIL FOOD STORE REGULATION. Provides that an interagency task force (committee) is created to advise and assist the comptroller of public accounts on coordinating state agency regulation of retail food stores. Provides that the Texas Department of Health (department) is designated as the lead agency for the task force and is required to administer the activities of the task force. Sets forth the composition of the task force. Requires a licensing and regulatory agency to make available to the task force information considered necessary by the task force. Authorizes the task force to invite representatives of state agencies, consumer groups, or business groups to participate in the activities of the committee. Sets forth requirements of the task force. Sets forth certain recommendations the task force is required to consider and include in the report required by Subsection (f)(3). Provides that this section expires June 1, 1999.

SECTION 2. Amends Section 13.002, Agriculture Code, by amending Subsection (a) and adding Subsection (c), to require the Department of Agriculture (DOA) to enforce the provisions of this chapter and to supervise all weights and measures sold or offered for sale in this state except as provided by Subsection (c). Requires the Texas State Board of Pharmacy to enforce the provisions of this chapter relating to the compounding of drugs in pharmacies and to supervise all weights and measures sold, offered for sale, or used in this state for the compounding of drugs in pharmacies.

SECTION 3. Amends Section 132.003(a), Agriculture Code, to require the DOA to administer this

chapter and adopt and enforce necessary rules.

SECTION 4. Amends Section 132.003(b), Agriculture Code, to delete text authorizing the DOA to enter during ordinary hours a retail place of business where eggs are offered for sale to the ultimate consumer.

SECTION 5. Amends Section 132.044(a), Agriculture Code, to require a container in which eggs for human consumption are offered for wholesale, rather than retail or wholesale, to be legibly labeled with a statement showing certain information.

SECTION 6. Amends Chapter 47A, Parks and Wildlife Code, by adding Section 47.0113, as follows:

Sec. 47.0113. MEMORANDUM OF AGREEMENT. Sets forth requirements and outlines provisions regarding a memorandum of agreement. Requires the Parks and Wildlife Department (department) and the Texas Department of Health (TDH) to agree, subject to conditions that will improve the efficiency of each department's operations, that TDH shall collect information to identify each retail food store that sells aquatic products as a part of a food retailing business and provide that information to the department and perform routine inspections regarding the source of aquatic products.

SECTION 7. Amends Section 1, Article 8614, V.T.C.S., to define "automotive fuel rating" and make conforming changes.

SECTION 8. Amends Section 2, Article 8614, V.T.C.S., to authorize the commissioner of agriculture (commissioner), rather than the comptroller of public accounts, or an authorized representative of the commissioner, rather than the comptroller, any law enforcement officer at the direction of a prosecuting attorney, or the attorney general, to test any motor fuel sold in this state in order to determine compliance with the standards and for the enforcement of rules adopted under Section 3, 3A, 3B, 4, and 5 of this Act. Requires nothing under this section to prohibit the commissioner from adopting rules relating to the frequency of testing motor fuels. Requires the commissioner to consider the nature of the violation, history of past violations, and funds available as provided by Section 9(e) of this Act in adopting such rules.

SECTION 9. Amends Article 8614, V.T.C.S., by adding Sections 3A and 3B, as follows:

Sec. 3A. SALE OF MOTOR FUEL WITH AUTOMOTIVE FUEL RATING LOWER THAN RATING POSTED ON PUMP LABEL. Prohibits a motor dealer in this state from selling or offering for sale fuel from a motor fuel pump if the motor fuel contains an automotive fuel rating that is lower than the automotive fuel rating for that motor fuel posted on the pump.

Sec. 3B. DELIVERY OF MOTOR FUEL WITH AUTOMOTIVE FUEL RATING LOWER THAN RATING CERTIFIED BY TRANSFER. Prohibits a distributor or supplier of motor fuel, as those persons are defined by Section 153.001, Tax Code, from delivering or transferring motor fuel to a motor fuel dealer in this state if the fuel contains an automotive fuel rating that is lower than the certification of the automotive fuel rating the distributor or supplier is required to make to the motor fuel dealer under federal law.

SECTION 10. Amends Section 4(c)-(e), Article 8614, V.T.C.S., to authorize the commissioner, rather than the comptroller, by rule, to prescribe the form of the statement required by Subsection (a) of this section. Authorizes the commissioner to limit the application of Section 3 of this Act and this section to motor fuels sold in sufficient quantity to warrant regulation if the commissioner determined that certain types of motor fuel, such as diesel or liquified petroleum gas are not sold in this state as mixtures with alcohol in sufficient quantities to warrant regulation of those deliveries under this Act. Makes conforming changes.

SECTION 11. Amends Section 5, Article 8614, V.T.C.S., to require each motor fuel dealer in this state to keep for one year, rather than four years, a copy of certain documents required to be

delivered to the dealer by Section 4 of this Act. Makes conforming changes.

SECTION 12. Amends Article 8614, V.T.C.S., by adding Section 5A, as follows:

Sec. 5A. DOCUMENTS RELATING TO POSTINGS OR CERTIFICATION OF AUTOMOTIVE FUEL RATINGS. Sets forth items of which each motor fuel dealer in this state is required to keep a copy for at least one year. Sets forth certain items of which each distributor or supplier is required to keep a copy for at least one year at the principal place of business. Provides that a document required to be kept under this section is subject to inspection by the commissioner or an authorized representative of the commissioner.

SECTION 13. Amends Section 6, Article 8614, V.T.C.S., to require the trier of fact to award not more than three times the amount of actual damages if the trier of fact finds that a violation of Section 3, 4, or 5 of this Act was committed willfully or knowingly by the defendant. Makes conforming and nonsubstantive changes.

SECTION 14. Amends Section 7, Article 8614, V.T.C.S., to provide that a motor fuel dealer or a distributor, supplier, wholesaler, or jobber of motor fuel who violates a provision of Section 3, 3A, 3B, 4, 5, or 5A of this Act forfeits to the state a civil penalty of not less than \$200, rather than \$25, nor more than \$10,000, rather than \$200.

SECTION 15. Amends Sections 8 (a), (b), and (e), Article 8614, V.T.C.S., to authorize the commissioner or the authorized representative of the commissioner to request the appropriate prosecuting attorney to prosecute a violation of a provision of this Act. Makes conforming and nonsubstantive changes.

SECTION 16. Amends Section 9(a)-(c), (e) and (f), Article 8614, V.T.C.S., to authorize the comptroller, by rule, to impose fees for the performance of certain services provided as determined necessary by the commissioner in the administration of this Act. Sets forth instances in which fees collected under this section may be used. Makes conforming changes.

SECTION 17. Amends Section 10, Article 8614, V.T.C.S., to make a conforming change.

SECTION 18. Amends Article 8614, V.T.C.S., by adding Section 11, as follows:

DELIVERY OF DOCUMENTS TO FEDERAL GOVERNMENT. Outlines provisions regarding the delivery of certain documents to the federal government.

SECTION 19. Amends Section 12.020(c), Agriculture Code, to outline provisions of this code subject to this section and the applicable penalty amounts.

SECTION 20. Makes application of this Act prospective.

SECTION 21. Makes application of this Act prospective.

SECTION 22. Effective date: September 1, 1997.

SECTION 23. Emergency clause.

SECTION 24. Amends Article 8614, V.T.C.S., by adding Section 12, as follows:

Sec. 12. Requires 50 percent of all inspections or tests of weighing or measuring devices and automotive fuel rating to be shifted from a state administered program to state licensed private inspectors by September 1, 1999. Requires the remaining 50 percent to be shifted from a state administered program to to state licensed private inspectors by September 1, 2001. Requires all enforcement authority to remain with the Texas Department of Agriculture. Authorizes the Texas Department of Agriculture to sell equipment purchased

for the purposes of this subchapter to recover costs incurred in complying with this subchapter. Requires the Texas Department of Commerce to make available information regarding new business opportunities in performing tests of weighing or measuring devices and automotive fuel rating.

SECTION 25. Amends Section 10.03, Chapter 419, Acts of the 74th Legislature, Regular Session, 1995, to provide that Chapter 13H, Agriculture Code, relating to inspecting or testing a weighing or measuring device, applies to a person beginning September 1, 1999. Deletes text providing that Chapter 13H, Agriculture Code, applies to a person only after the Department of Agriculture demonstrates to the Legislative Budget Board (LBB) that certain licensing programs of the department will attain the performance goals established by the LBB.

SECTION 14. (a) Effective date: September 1, 1997.

(b) Makes application of this Act prospective.

(c) Requires each agency named in Section 12.0325, Agriculture Code, as added by this Act, to appoint a representative to serve as a member of the Texas Retail Food Store Regulatory Committee before December 1, 1997.

(d) Requires the Parks and Wildlife Department and the Texas Department of Health to enter into the memoranda of agreement under Section 47.0113, Parks and Wildlife Code, as added by this Act, and to assume their responsibilities as provided by this Act and those agreements before January 1, 1999, rather than 1998.

(e) Requires the Texas Retail Food Store Regulatory Committee to report to the legislature under Section 12.0325, Agriculture Code, as added by this Act, before January 1, 1999.

SECTION 27. Emergency clause.