

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1355  
By: Brown  
Natural Resources  
4-9-97  
Committee Report (Substituted)

### **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. C.S.S.B. 1355 would streamline retail grocery store regulation by eliminating duplication in licensing and inspections. The bill would create an Interagency Task Force on Texas Retail Food Store Regulation to further study regulation and report to the legislature.

### **PURPOSE**

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

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the commissioner of agriculture under SECTION 9 (Sections 2, 4, and 9, 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 Chapter 13H, Agriculture Code, by adding Section 13.4041, as follows:

Sec. 13.4041. BUSINESS OPPORTUNITY INFORMATION. Requires the Texas Department of Commerce to cooperate with the department to disseminate information regarding business opportunities available to a person who performs tests of the accuracy of weighing or measuring devices and develop markets for providers of testing services that test the accuracy of weighing or measuring devices.

SECTION 4. Amends Chapter 13H, Agriculture Code, by adding Section 13.4042, effective September 1, 1999, as follows:

Sec. 13.4042. PRIVATE TESTING REQUIREMENT. Prohibits employees of the department or interagency contract employees of other state agencies acting on behalf of the department from performing more than 50 percent of inspections or tests required by law of the accuracy of weighing or measuring devices in this state. Provides that Subsection (a) does not prohibit an agent of the department from performing an inspection or a test of the accuracy of a weighing or measuring device in this state. Provides that this section expires September 1, 2001.

SECTION 5. Amends Chapter 13H, Agriculture Code, by adding Section 13.4043, effective September 1, 1999, as follows:

Sec. 13.4043. PRIVATE TESTING REQUIREMENT. Prohibits employees of the department or interagency contract employees of other state agencies acting on behalf of the department from performing more than 25 percent of inspections or tests required by law of the accuracy of weighing or measuring devices in this state. Provides that Subsection (a) does not prohibit an agent of the department from performing an inspection or a test of the accuracy of a weighing or measuring device in this state.

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.

SECTION 7. Amends Article 8614, V.T.C.S., as follows:

Sec. 1. DEFINITIONS. Defines "automotive fuel rating," "distributor," and "supplier" and redefine "dealer," and "motor fuel."

Sec. 2. TESTING. Authorizes the commissioner of agriculture (commissioner), rather than the comptroller of public accounts or an authorized representative of 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 with or without a complaint about the fuel. Authorizes the commissioner to adopt 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 rules relating to the frequency of testing of motor fuels.

Sec. 3. POSTING NOTICE OF SALE OF ALCOHOL AND MOTOR FUEL MIXTURE. Makes a conforming change.

Sec. 3A. SALE OF MOTOR FUEL WITH AUTOMOTIVE FUEL RATING LOWER THAN RATING POSTED ON PUMP LABEL. Prohibits a dealer in this state from selling or offering for sale fuel from a motor fuel pump if the motor fuel has 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 from

delivering or transferring motor fuel to a dealer in this state if the fuel has 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.

Sec. 4. DOCUMENTATION OF MOTOR FUEL MIXTURE SALES. Authorizes the commissioner, rather than the comptroller, by rule, to prescribe the form of the statement required by Subsection (a) of this section. Provides that the signs required to be posted by a dealer, rather than a motor fuel dealer, under Section 3 of this Act and delivered to a dealer, rather than a motor fuel dealer, under this section shall be obtained from the commissioner, rather than the comptroller. Makes conforming changes.

Sec. 5. DEALER AND DELIVERY DOCUMENTS. Requires 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.

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.

Sec. 6. CIVIL ACTION. 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.

Sec. 7. CIVIL PENALTY. Provides 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.

Sec. 7A. ADMINISTRATIVE PENALTY. Sets forth requirements and procedures for an administrative penalty.

Sec. 8. CRIMINAL OFFENSES AND PENALTIES. Authorizes 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.

Sec. 9. RULES AND FEES. Authorizes 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.

Sec. 10. CONTRACTING FOR ENFORCEMENT. Makes a conforming change.

Sec. 11. DELIVERY OF DOCUMENTS TO FEDERAL GOVERNMENT. Outlines provisions regarding the delivery of certain documents to the federal government.

Sec. 12. BUSINESS OPPORTUNITY INFORMATION. Requires the Department of Commerce with the Department of Agriculture to take certain actions with regard to dissemination of information.

SECTION 8. Amends Article 8614, V.T.C.S., effective September 1, 1999, by adding Section 13, to make conforming changes.

SECTION 9. Amends Article 8614, V.T.C.S., effective September 1, 2001, by adding Section 13A, to make conforming changes.

SECTION 10. Amends Section 10.03, Chapter 419, Acts of the 74th Legislature Regular Session, 1995, to provide that inspection or testing of a weighing or measuring device applies to a person on or after September 1, 1997.

SECTION 11. (a) Effective date: September 1, 1997.

(b) and (c) Makes application of this Act prospective.

(d) Requires each entity named in Section 403.321, Government Code, to appoint a representative to serve as a member of the Interagency Task Force on Texas Retail Food Store Regulation, before December 1, 1997.

(e) 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 the agreement before January 1,

(f) Requires the Interagency Task Force on Texas Retail Food Store Regulation to report to the legislature under Section 403.321, Government Code, before January 1, 1999.

(g) Makes application of this Act prospective.

SECTION 12. Emergency clause.

### **SUMMARY OF COMMITTEE CHANGES**

#### SECTION 1.

Amends Section 403.321, Government Code, regarding the Interagency Task Force on Texas Retail Food regulation.

#### SECTION 2.

Amends Section 13.002, Agriculture Code, regarding enforcement of provisions of this chapter.

#### SECTION 3.

Amends Chapter 13H, Agriculture Code, by adding Section 13.4041, regarding business opportunity information.

#### SECTION 4.

Adds Section 13.4042, Agriculture Code, regarding private testing requirements.

#### SECTION 5.

Adds Section 13.4043, Agriculture Code, to make conforming changes.

#### SECTIONS 6 and 7.

Deletes proposed SECTIONS 6 and 7. Redesignates SECTIONS 8-14 as SECTIONS 6-12.

#### SECTION 6.

Deletes proposed SECTION 8. Amends SECTION 8 by adding Section 47.0113, Agriculture Code, regarding a memorandum of agreement.

#### SECTION 7.

Amends Chapter 1033, Article 8614, V.T.C.S., to redefine "dealer" and define "distributor" and "supplier." Adds Section 7A regarding administrative penalties. Makes conforming changes.

SECTION 8.

Adds Section 13, Article 8614, V.T.C.S., to make conforming changes.

SECTION 9.

Adds Section 13A, Article 8614, V.T.C.S., to make conforming changes.

SECTION 10.

Amends Section 10.03, Chapter 419, Acts of the 74th Legislature, Regular Session, 1995, to make conforming changes.

SECTION 11.

Changes the prospective clause from September 1, 1997 to September 1, 1999.

SECTION 12.

Adds the emergency clause.