

BILL ANALYSIS

Senate Research Center

C.S.S.B. 2089
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Natural Resources
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Department of Agriculture (TDA) administers a wide range of consumer protection programs to safeguard the interests of consumers and to ensure fairness and equity in the marketplace. The objective of TDA's weights and measures consumer protection program is to assure that consumer goods are properly measured, weighed, labeled, and priced. Regulatory activities in the program include inspection and compliance verification of weights and measures devices (fuel pumps, scales, bulk meters, and truck scales), octane testing, price verification, and random and standard package inspections.

A recent TDA investigation, called Operation Spotlight, revealed a significant violation pattern leading to concerns of consumer fraud and deceptive trade practices by a regulated entity. In light of the operation, TDA has identified imperative modifications that should be made in the weights and measures program to improve consumer protection, and has developed an approach focusing the state's resources on the most egregious and high-risk violations. TDA proposes a three-tiered approach to weights and measures regulation by conducting routine inspections/audits using risk-assessed data, conducting inspections based upon consumer complaints, and conducting blitz operations (such as Operation Spotlight) based upon trend analysis.

Additionally, there is no state agency designated and authorized to regulate fuel quality in Texas. The level of fuel quality problem in Texas is unknown at this point. Although the fuel industry performs extensive quality testing, consumers have expressed an interest in a state agency being involved in this area. This bill would authorize TDA to implement a risk-based weights and measures inspection schedule and a fuel quality regulatory program.

C.S.S.B. 2089 amends current law relating to protections provided by TDA for certain consumers and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Agriculture (TDA) in SECTION 4 (Section 13.029, Agriculture Code) and SECTION 24 (Section 17.071, Agriculture Code) of this bill.

Rulemaking authority previously granted to TDA is modified in SECTION 11 (Section 13.111, Agriculture Code) and SECTION 16 (Section 13.1151, Agriculture Code) of this bill.

Rulemaking authority previously granted to TDA is rescinded in SECTION 23 (Section 13.404, Agriculture Code) of this bill.

Rulemaking authority previously granted to the commissioner of agriculture is modified in SECTION 25 (Section 17.104, Agriculture Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 13.001(a), Agriculture Code, to redefine "weight or measure of a commodity" and "weighing or measuring device."

SECTION 2. Amends Section 13.002(a), Agriculture Code, to require the Texas Department of Agriculture (TDA) to enforce the provisions of this chapter and supervise all weighing or

measuring devices, rather than weights and measures, sold or offered for sale in this state. Authorizes TDA to purchase apparatus as necessary for the administration of this chapter.

SECTION 3. Amends Sections 13.021(a), (c), and (d), Agriculture Code, as follows:

(a) Provides that the legal standard for the weight or measure of a commodity, rather than of weights and measures, in this state is the standard weight or measure, rather than of weights and measures, adopted and used by the government of the United States for that commodity. Makes conforming changes.

(c) Requires that a contract for work or sales by weight or measure of a commodity, except as otherwise provided by an express contract, be construed in accordance with the standards of this subchapter.

(d) Requires that the standards of this subchapter be the guide for making any adjustment of weighing, rather than weights, or measuring devices, rather than measures, under the law of this state.

SECTION 4. Amends Subchapter B, Chapter 13, Agriculture Code, by adding Section 13.029, as follows:

Sec. 13.029. EXEMPTION OF WEIGHING OR MEASURING DEVICES. Authorizes TDA by rule to exempt a weighing or measuring device from a requirement established by this chapter if TDA determines that imposing or enforcing the requirement is not cost effective for TDA, is not feasible with current resources or standards, or will not substantially benefit or protect consumers.

SECTION 5. Amends Sections 13.036, 13.037, and 13.039, Agriculture code, as follows:

Sec. 13.036. FALSE REPRESENTATION OF COMMODITY QUANTITY. Provides that a person commits an offense if the person or the person's servant or agent, as a buyer furnishing the weight or measure of a commodity or service by which the amount of the commodity or service is determined, takes or attempts to take more than the quantity the person represents. Makes a nonsubstantive change.

Sec. 13.037. New heading: USE OF INCORRECT WEIGHING OR MEASURING DEVICE. (a) Provides that a person commits an offense if the person or the person's servant or agent uses an incorrect weighing, rather than a false weight, or measuring device, rather than measure, in buying or selling a commodity, computing a charge for services rendered on the basis of weight or measure, or determining the weight or measure of a commodity, if a charge is made for the determination.

(b) Makes conforming and nonsubstantive changes.

Sec. 13.039. New heading: TESTING OF PACKAGE BY DEPARTMENT. (a) Requires TDA, rather than a sealer appointed under Subchapter C (Inspection and Registration of Weights and Measures) of this chapter, to from time to time weigh or measure a package or an amount of any commodity that is kept or offered for sale, sold, or in the process of delivery, in order to determine certain information about the commodity.

(b) and (c) Makes conforming changes.

SECTION 6. Amends the heading to Subchapter C, Chapter 13, Agriculture Code, to read as follows:

SUBCHAPTER C. INSPECTION AND REGISTRATION OF WEIGHING OR
MEASURING DEVICES

SECTION 7. Amends Sections 13.101, Agriculture Code, as follows:

Sec. 13.101. REQUIRED INSPECTION. (a)-(d) Makes conforming changes.

(e) Authorizes TDA to inspect and test a weighing or measuring device less frequently than required by Subsection (a) to accommodate complaint-based and risk-based inspection schedules, or in response to an emergency or a limitation in TDA funding.

SECTION 8. Amends Sections 13.1011(a) and (c), Agriculture Code, as follows:

(a) Requires a person who operates a weighing or measuring device, rather than a pump, scale, or bulk or liquefied petroleum gas metering device, for a commercial transaction to register annually with TDA. Makes a nonsubstantive change.

(c) Makes conforming and nonsubstantive changes.

SECTION 9. Amends Section 13.1012(e), Agriculture Code, to authorize TDA to conduct an inspection of an applicant's or registrant's repair and calibration equipment, records, and procedures.

SECTION 10. Amends the heading to Section 13.111, Agriculture Code, to read as follows:

Sec. 13.111. REPAIR OR DESTRUCTION OF INCORRECT WEIGHING OR MEASURING DEVICES.

SECTION 11. Amends Sections 13.111(a) and (b), Agriculture Code, as follows:

(a) Makes conforming changes.

(b) Authorizes the owner or user of the weighing or measuring device to have it repaired within 30 days, but is prohibited from using or disposing of it until it is reinspected and released for use by TDA or inspected and released for use in any other manner authorized by TDA rule. Deletes existing text requiring the owner or user, after repair, to notify the sealer and the sealer is required to reinspect the weight or measure. Deletes existing text requiring the sealer, if it is found to be incorrect, to remove the out of order tag and seal the weight or measure as provided by Section 13.110 (Inspecting, Testing, and Sealing) of this code. Makes conforming changes.

SECTION 12. Amends Section 13.112, Agriculture Code, to make conforming changes.

SECTION 13. Amends Sections 13.113(a), (c), (d), and (e), Agriculture Code, as follows:

(a) Provides that the standards of weights and measures received from the United States and certified by the National Institute of Standards and Technology are the state's standards by which all state and local standards of weights and measures are tried, authenticated, provided, and certified, rather than sealed.

(c) Authorizes TDA to purchase additional sets of standards as necessary for use by a TDA inspector or other TDA personnel, rather than state sealers.

(d) Requires that all standards furnished to or tested for a city be true and correct, certified, rather than sealed, by TDA, rather than the commissioner of agriculture (commissioner), and stamped with the letter "C".

(e) Requires TDA to inspect and correct the standards used by a TDA inspector, other TDA employee, or individual or business licensed by TDA to perform private maintenance, repairs, or calibration of weighing or measuring devices, rather than a local sealer, at least once every year, rather than every two years. Deletes existing text requiring the city to pay all expenses incurred in inspections under this subsection.

SECTION 14. Amends Section 13.114(a), Agriculture Code, to require TDA to establish tolerances and specifications for commercial weighing or measuring devices, rather than apparatus, used in this state. Makes a nonsubstantive change.

SECTION 15. Amends Sections 13.115(a) and (f), Agriculture Code, to make conforming changes.

SECTION 16. Amends Sections 13.1151, 13.117, 13.118, and 13.119, Agriculture Code, as follows:

Sec. 13.1151. FEES FOR REGISTRATION AND INSPECTION. Authorizes TDA to charge the owner or operation of a weighing or measuring device a fee, as provided by TDA rule, to recover the costs of registration and inspection of a weighing or measuring, rather than dispensing, device required to be registered or inspected under this chapter. Makes conforming changes.

Sec. 13.117. New heading: REFUSING TO ALLOW TEST OF WEIGHING OR MEASURING DEVICE. Provides that a person commits an offense if the person neglects or refuses to allow a weighing or measuring device under the person's control or in the person's possession to be inspected, tested, or examined by TDA, and the inspection, test, or examination is required by this chapter, rather than refuses to exhibit a measure under the person's control or in the person's possession to TDA or a sealer for inspection or examination as required by law. Makes conforming changes.

Sec. 13.118. New heading: HINDERING DEPARTMENT PERSONNEL. Provides that a person commits an offense if the person hinders or obstructs in any way TDA, a TDA inspector or other TDA personnel in the performance of official duties. Makes a conforming change.

Sec. 13.119. New heading: REMOVAL OF REGISTRATION TAG. Provides that a person commits an offense if the person removes or obliterates a tag or device placed on a weighing or measuring device under this chapter, rather than Section 13.110 or 13.111 (Repair or Destruction of Incorrect Weights or Measures) of this code. Makes conforming changes.

SECTION 17. Amends Sections 13.120 and 13.121, Agriculture Code, as follows:

Sec. 13.120. New heading: SALE OR USE OF INCORRECT WEIGHING OR MEASURING DEVICE. (a) Authorizes TDA to condemn and prohibit the sale or distribution of any incorrect weighing or measuring device that is sold, offered for sale, or about to be sold in this state. Makes conforming changes.

(b) Makes conforming changes. Deletes existing Subsection (c), defining "false weight or measure."

Sec. 13.121. New heading: DISPOSING OF CONDEMNED WEIGHING OR MEASURING DEVICE. Makes conforming changes.

SECTION 18. Amends Section 13.253(b), Agriculture Code, to require an elected county public weigher to obtain a certificate of authority as provided by Section 13.255, rather than of this code, and is required to execute a bond as provided by Section 13.256, rather than of this code, before issuing an official certificate of weight or measure of a commodity.

SECTION 19. Amends Section 13.257(a), Agriculture Code, to make conforming changes.

SECTION 20. Amends Section 13.259(a), Agriculture Code, to make conforming and nonsubstantive changes.

SECTION 21. Amends Section 13.260(a), Agriculture Code, to provide that a person who intentionally or knowingly issues an official certificate of weight or measure of commodity, rather than for any commodity, without first obtaining a certificate of authority under Section

13.255, who issues an official certificate of weight or measure of a commodity after revocation of the person's certificate of authority, or who issues an official certificate of weight or measure of a commodity without executing a bond as required under Section 13.256 commits an offense. Makes conforming changes.

SECTION 22. Amends Sections 13.401(a), (b), (d), and (f), Agriculture Code, as follows:

(a) Authorizes a person who has a license issued under this subchapter to:

- (1) inspect, test, maintain, and repair a weighing or measuring device; a liquefied petroleum gas meter under Subchapter F (Inspection and Testing of Liquefied Petroleum Gas Meters); or a ranch scale under Subchapter G (Inspection and Testing of Ranch Scales);
- (2) return an incorrect weighing or measuring device to service under Section 13.111 (Repair or Destruction of Incorrect Weights or Measures);
- (3) prohibit an incorrect weighing or measuring device from being used until the device is repaired, if the inspector determines that the device can be repaired; and
- (4) condemn and prohibit the further use of an incorrect weighing or measuring device that the inspector determines cannot be repaired, rather than has all of the powers and duties of a sealer under this chapter except for testing of a package under Section 13.039; peace officer status under Section 13.108(b); and entering premises or conducting a stop under Section 13.108(c).

(b) Makes a conforming change.

(d) Makes conforming changes.

(f) Requires a license holder under this subchapter to conduct inspecting, testing, prohibiting, or condemning activities in compliance with the rules of TDA. Makes a nonsubstantive change.

SECTION 23. Amends Section 13.404(a), Agriculture Code, to authorize TDA to periodically monitor and inspect or test weighing or measuring devices that have been inspected and tested by a license holder and any standards used by the license holder during an inspection or test, rather than authorizing TDA by rule to adopt a system to periodically monitor and inspect or test scales inspected and tested by the license holder.

SECTION 24. Amends Chapter 17, Agriculture Code, by adding Subchapter B-1, as follows:

SUBCHAPTER B-1. MOTOR FUEL QUALITY AND TESTING

Sec. 17.071. MINIMUM MOTOR FUEL QUALITY AND TESTING STANDARDS. Requires TDA by rule to adopt minimum motor fuel quality and testing standards for motor fuel that is sold or offered for sale in this state. Requires that the standards comply with the nationally recognized minimum standards established by the American Society for Testing and Materials, as those standards existed on September 1, 2009, for motor fuels other than motor fuels blended with ethanol, and the National Institute of Standards and Technology, as those standards existed on September 1, 2009, for motor fuels blended with ethanol.

Sec. 17.072. TESTING OF MOTOR FUEL QUALITY. (a) Authorizes TDA 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 17.071.

(b) Requires a representative of TDA, on arriving at a facility to conduct testing under Subsection (a), to notify the owner or manager of the facility of the representative's presence and purpose.

- (c) Provides that a person commits an offense if the person refuses to allow a TDA representative to collect samples or conduct motor fuel testing under Subsection (a).

Sec. 17.073. STOP-SALE ORDER. Authorizes TDA, if TDA has reason to believe that motor fuel is in violation of this chapter or a rule adopted under this chapter, to issue and enforce a written order to stop the sale of the motor fuel. Requires TDA to present the order to the dealer, distributor, jobber, supplier, or wholesaler who is in control of the motor fuel at the time of the motor fuel is tested. Prohibits the person who receives the order from selling the motor fuel until TDA determines that the motor fuel is in compliance with this chapter and TDA rules.

SECTION 25. Amends Sections 17.104(a) and (b), Agriculture Code, as follows:

- (a) Authorizes the commissioner to adopt rules consistent with this chapter for the regulation of the sale of motor fuels, including motor fuels that contain, rather than motor fuels containing, ethanol and methanol.
- (b) Requires that a fee imposed under this subsection be collected from each dealer, distributor, jobber, supplier, and wholesaler on a periodic basis determined by the commissioner without regard to whether the motor fuel is subject to regulation under this chapter.

SECTION 26. Amends Sections 17.155(a) and (b), Agriculture Code, as follows:

- (a) Authorizes TDA, rather than the commissioner, to impose an administrative penalty against a person regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.
- (b) Prohibits the penalty for a violation of this chapter or a rule or order adopted under this chapter from exceeding \$5,000, rather than \$500, a day for each violation.

SECTION 27. Amends Subchapter D, Chapter 17, Agriculture Code, by adding Section 17.156, as follows:

Sec. 17.156. TOLL-FREE NUMBER. Requires TDA to provide a toll-free telephone number for use by the public in reporting violations of this subchapter.

SECTION 28. Repealers: (1) Section 13.004 (Expenses), Agriculture Code;

- (2) Section 13.102 (Inspection Seal Required Prior to Sale), Agriculture Code;
- (3) Section 13.104 (State Sealers), Agriculture Code;
- (4) Section 13.108 (Powers and Duties of Sealers), Agriculture Code;
- (5) Section 13.109 (Rules Governing Sealers), Agriculture Code;
- (6) Section 13.110 (Inspecting, Testing, and Sealing), Agriculture Code;
- (7) Sections 13.111(c) (relating to a person licensed under Subchapter H (Licensed Inspectors of Weighing and Measuring Devices) being required to offer to repair an incorrect weight or measure before taking the device out of service) and (d) (relating to certain actions a person licensed under Subchapter F, G, or H is required to follow regarding the inspection and repair a weight or measure device), Agriculture Code; and
- (8) Section 13.116 (Use or Sale of Unsealed Weight or Measure), Agriculture Code.

SECTION 29. Effective date: September 1, 2009.