

SUBJECT: Enforcing motor fuel rating requirements

COMMITTEE: Energy Resources — favorable, with amendment

VOTE: 5 ayes — Holzheuser, Hawley, Driver, Merritt, Torres
0 nays
4 absent — Davis, Moffat, Smithee, Wilson

SENATE VOTE: On final passage, April 8 — voice vote

WITNESSES: For — Merlin Maxey, Texas Petroleum and Convenience Stores Association
Against — None
On — Larry Soward, Texas Department of Agriculture

DIGEST: SB 665, as amended, would revise regulations pertaining to enforcement of motor fuel octane ratings. The bill would:

- transfer enforcement and administration of rules on testing motor fuel for octane levels from the comptroller to the agriculture commissioner. The commissioner would be allowed to adopt rules relating to the frequency of testing motor fuels.
- change the requirement for motor fuel dealers, distributors, suppliers, wholesalers and jobbers of motor fuel to keep bills of sale and lading and other documents from four years to one year, subject to inspection by the agriculture commissioner.
- prohibit dealers from selling motor fuel with a fuel rating that was lower than the rating posted on the motor fuel pump. Fuel distributors and suppliers also would be prohibited from delivering or transferring fuel with a rating lower than the certification of rating required by federal law to be delivered to the dealer.

- require motor fuel dealers, distributors and suppliers to keep copies of each delivery ticket or letter of certification and records of any fuel rating determination required under federal regulations for at least one year. These documents would be subject to inspection by the agriculture commissioner. The commissioner would be allowed to copy any document — including a manifest, bill of sale or lading, delivery ticket or letter of certification — and deliver it to the federal government to help prosecute violators of the federal octane ratings law.
- increase the civil penalty for violations from the current range of \$25 to \$200 to a range of \$200 to \$10,000. The bill also would provide that fees collected could only be used to defray the cost of collecting fees and penalties but could not exceed \$25,000 annually.
- allow the commissioner to levy an administrative penalty of up to \$500 against a person licensed or regulated to sell motor fuel for violations of the law or orders or rules. Each day a violation occurred would be a separate violation; the amount of the penalty would be based on the seriousness of the violation, the economic harm caused, the history of previous violations, the amount necessary to deter future violations, and any other matter required by justice. All penalties collected would be deposited in the general revenue fund.
- provide for notice, administrative hearings and judicial review by a court in cases of administrative penalties. The commissioner would be able to change a finding of fact or conclusion of law made by an administrative law judge (ALJ) if the ALJ did not properly apply or interpret applicable law, rules, policies or prior administrative decisions or if the ALJ issued a finding not supported by a preponderance of the evidence. The commissioner would have to state in writing the specific reason and legal basis for a determination to change a finding or conclusion.

The bill would take immediate effect if finally approved by a two-thirds majority vote of the membership in each house.

**SUPPORTERS
SAY:**

SB 665 would provide for better enforcement of state motor fuel laws designed to protect Texas citizens by ensuring that the octane levels posted on gas pumps are true and accurate. Octane ratings are a measure of a fuel's performance, and gasoline prices rise as the ratings increase. This creates an incentive for shady station owners to mislabel octane gasoline and sell it at a higher price. This bill would protect consumers and honest station owners alike, both of whom are hurt by the dishonest dealers and owners.

Currently the Federal Trade Commission (FTC) has authority to test fuel for octane content and to bring enforcement actions against those retailers selling sub-octane fuel. However, because of budgetary constraints, the FTC rarely tests fuel and limits its enforcement to investigations of complaints. The Department of Agriculture's administrative process is well suited for octane testing, and the department anticipates no problems in carrying out the provisions of this bill. The fee provisions are expected to adequately cover the program's costs.

The administrative penalty provision of the bill would allow the Department of Agriculture to have a final review in the administrative hearing process to ensure consistency in interpretation and enforcement of the agricultural code. The Texas Natural Resource Conservation Commission and the Public Utility Commission have similar final review authority.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The committee amendment would authorize the imposition of administrative penalties not to exceed \$500 a day and provided for notice, hearing and judicial review.

A similar bill, HB 2520 by Horn, passed the House during the 74th legislative session but died in the Senate.