

BILL ANALYSIS

Senate Research Center
81R5683 TRH-D

S.B. 2089
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Natural Resources
4/27/2009
As Filed

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.

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

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the commissioner of agriculture is modified in SECTION 23 (Section 17.104, Agriculture Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Agriculture (TDA) is modified in SECTION 11 (Section 13.109, Agriculture Code) of this bill.

Rulemaking authority is expressly granted to TDA in SECTION 25 (Section 17.156, Agriculture Code) and SECTION 27 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 13.001(a)(3), Agriculture Code, to redefine "pump."

SECTION 2. Amends Section 13.007(a), Agriculture Code, to provide that a person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty not to exceed \$10,000, rather than \$500, for each violation.

SECTION 3. Amends Section 13.039, Agriculture Code, as follows:

Sec. 13.039. New heading: TESTING OF PACKAGE BY INSPECTOR. (a) Requires an inspector, 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 4. Amends Sections 13.101(a) and (d), Agriculture Code, to make conforming changes.

SECTION 5. Amends Section 13.1011(a), Agriculture Code, to make a nonsubstantive change.

SECTION 6. Amends Section 13.1012(e), Agriculture Code, to authorize the Texas Department of Agriculture (TDA) to conduct an inspection of an applicant's or registrant's repair and calibration equipment, records, and procedures.

SECTION 7. Amends Section 13.102, Agriculture Code, as follows:

Sec. 13.102. New heading: REGISTRATION REQUIRED. (a) Requires a person to register a weight or measure with TDA if the person uses the weight or measure in buying or selling a commodity or item, computing a charge for services rendered on the basis of weight or measure, or determining a weight or measure, if a charge is made for that determination.

(b) Creates this subsection from existing text. Prohibits a person, except as provided by Subsection (c) or (d), rather than Subsection (b) or (c), of this section, from selling a weight or measure unless it bears a valid registration tag issued by TDA, rather than a valid inspection seal as to its correctness.

(c) Redesignates Subsection (b) as Subsection (c). Authorizes a weight or measure that has been tested and certified correct, rather than tested, sealed, and certified correct, by the National Institute of Standards and Technology to be kept or offered for sale or sold without being registered, rather than sealed, under this subchapter.

(d) Redesignates Subsection (c) as Subsection (d). Makes conforming changes.

SECTION 8. Amends Section 13.104, Agriculture Code, as follows:

Sec. 13.104. New heading: STATE INSPECTORS. (a) Authorizes the commissioner of agriculture (commissioner) to appoint employees of TDA, or a person licensed by TDA under Subchapter H (Licensed Inspectors of Weighing and Measuring Devices), as provided for by appropriation, to serve as state inspectors of weights and measures. Deletes existing text authorizing the commissioner to appoint deputies, as provided for by appropriation, and inspectors, lecturers, and other employees of TDA to serve as state sealers of weights and measures.

(b) Makes conforming changes.

(c) Makes no changes to this subsection.

SECTION 9. Amends the heading to Section 13.108, Agriculture Code, to read as follows:

Sec. 13.108. POWERS AND DUTIES OF INSPECTORS.

SECTION 10. Amends Section 13.108(a), Agriculture Code, to make conforming and nonsubstantive changes.

SECTION 11. Amends Section 13.109, Agriculture Code, as follows:

Sec. 13.109. New heading: RULES GOVERNING INSPECTORS. Makes a conforming change.

SECTION 12. Amends the heading to Section 13.110, Agriculture Code, to read as follows:

Sec. 13.110. INSPECTING AND TESTING.

SECTION 13. Amends Section 13.110(a), Agriculture Code, to make conforming changes.

SECTION 14. Amends Sections 13.111(a) and (b), Agriculture Code, as follows:

(a) Makes conforming changes.

(b) Authorizes the owner or user of the weight or measure found to be incorrect and capable of being repaired to have it repaired within 30 days, but is prohibited from using or disposing of it until it is reinspected and approved by an inspector. Requires the inspector, if it is found to be correct, to remove the out-of-order tag, rather than 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 15. Amends Sections 13.113(a), (c), and (e), Agriculture Code, as follows:

(a) and (c) Makes conforming changes.

(e) Requires TDA to inspect and correct the standards used by a local inspector at least once every year, rather than once every two years.

SECTION 16. Amends Section 13.116, Agriculture Code, as follows:

Sec. 13.116. New heading: USE OR SALE OF UNREGISTERED WEIGHT OR MEASURE. (a) Provides that a person commits an offense if the person or the person's servant or agent offers or exposes for sale, hire, or award or sells an unregistered weight or measure, rather than unsealed weight or measure; uses an unregistered weight or measure for certain reasons; or possesses an unregistered weight or measure. Makes conforming changes.

(b) Makes conforming changes.

SECTION 17. Amends Section 13.117, Agriculture Code, to make a conforming change.

SECTION 18. Amends Section 13.118, Agriculture Code, as follows:

Sec. 13.118. New heading: HINDERING INSPECTOR. Makes a conforming change.

SECTION 19. Amends Section 13.119, Agriculture Code, as follows:

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 weight or measure under this chapter, rather than under Section 13.110 or 13.111 (Repair or Destruction of Incorrect Weights or Measures) of this code.

SECTION 20. Amends Sections 13.401(a), (b), and (d), Agriculture Code, to make conforming changes.

SECTION 21. Amends Subchapter B, Chapter 17, Agriculture Code, by adding Section 17.056, as follows:

Sec. 17.056. MINIMUM MOTOR FUEL QUALITY STANDARDS. Authorizes a dealer, distributor, jobber, supplier, or wholesaler to only sell or offer for sale motor fuel that complies with certain standards.

SECTION 22. Amends Section 17.102, Agriculture Code, to authorize the commissioner or an authorized representative of the commissioner, to determine compliance with the standards and enforce rules adopted under certain sections, including Sections 17.056 and 17.105, to test any motor fuel sold in this state, regardless of the existence of a complaint about the fuel.

SECTION 23. Amends Section 17.104(a), Agriculture Code, to authorize 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.

SECTION 24. Amends Subchapter C, Chapter 17, Agriculture Code, by adding Section 17.105, as follows:

Sec. 17.105. TESTING OF MOTOR FUEL QUALITY. Authorizes the commissioner to conduct testing, at any location where motor fuel is refined, distributed, or sold, to verify that the motor fuel complies with the minimum standards required by Section 17.056.

SECTION 25. Amends Subchapter D, Chapter 17, Agriculture Code, by adding Section 17.156, as follows:

Sec. 17.156. STOP-SALE ORDER. (a) Authorizes TDA, if TDA has reason to believe that motor fuel is in violation of this subchapter or a rule adopted under this subchapter, 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 the motor fuel is tested. Prohibits the person who receives the order from selling the motor fuel until discharged by a court under Subsection (b) or until TDA determines that the motor fuel is in compliance with this subchapter and department rules.

(b) Entitles a person who is in control of motor fuel prohibited from sale by the order to bring suit against TDA in the county where the motor fuel is located for a judgment as to the justification for the order and for discharge of the motor fuel from the order in accordance with the findings of the court.

(c) Provides that this section does not limit the authority of TDA to proceed under another section of this subchapter.

SECTION 26. Repealers: Sections 13.004 (Expenses), 13.104(c) (relating to entitlement of a deputy appointed to serve as state sealer to reimbursement for actual traveling expenses), and 13.110(b) (relating to requirement of a sealer to place a seal or mark of inspection on the weight or measure), Agriculture Code.

SECTION 27. (a) Requires TDA, not later than January 1, 2010, to adopt rules, procedures, and forms for the registration of a weight and measure as required by Section 13.102, Agriculture Code, as amended by this Act.

(b) Prohibits TDA from enforcing Section 13.102, Agriculture Code, as amended by this Act, until the rules, procedures, and forms adopted under Subsection (a) of this section take effect.

SECTION 28. Effective date: September 1, 2009.