Senate Engrossed House Bill

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KEN BENNETT
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CHAPTER 181

HOUSE BILL 2580

AN ACT

AMENDING SECTIONS 41-2065 AND 41-2132, ARIZONA REVISED STATUTES; RELATING TO GASOLINE VAPOR RECOVERY SYSTEMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 41-2065, Arizona Revised Statutes, is amended to read:

41-2065. Powers and duties; definition

A. The department shall:

1. Maintain custody of the state reference standards of weights and measures that are traceable to the United States prototype standards and that are supplied to the states by the federal government or that are otherwise approved as being satisfactory by the national institute of standards and technology.

2. Keep the state reference standards in a safe and suitable place in the metrology laboratory of the department and ensure that they shall not be removed from the laboratory except for repairs or for calibration as may be prescribed by the national institute of standards and technology.

3. Keep accurate records of all standards and equipment.

4. Adopt any rules necessary to carry out this chapter and adopt reasonable rules for the enforcement of this chapter. These rules have the force and effect of law and shall be adopted pursuant to chapter 6 of this title. In adopting these rules, the director shall consider, as far as is practicable, the requirements established by other states and by authority of the United States, except that rules shall not be made in conflict with this chapter.

5. Publish rules adopted pursuant to this chapter and issue appropriate copies at no cost to all new applicants for licensure and certification. Updated copies of the rules shall be distributed, on request, at no cost to the public.

6. Investigate complaints made to the department concerning violations of this chapter and, on its own initiative, conduct investigations it deems appropriate to develop information relating to prevailing procedures in commercial quantity determination and relating to possible violations of this chapter, and in order to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

7. Establish labeling standards, establish standards of weight, measure or count and establish reasonable standards of fill for any packaged commodity, and may establish standards for open dating information.

8. Grant, pursuant to this chapter, exemptions from the licensing provisions of this chapter for weighing and measuring instruments, standards or devices when the ownership or use of the instrument or device is limited to federal, state or local government agencies in the performance of official functions. On request, the department may conduct inspections of the instruments, standards or devices and shall charge a fee pursuant to section 41-2092, subsection B.

9. Delegate to appropriate personnel any of the responsibilities of the director for the proper administration of this chapter.

10. Inspect and test weights and measures kept, offered or exposed for sale.

11. Inspect and test, to ascertain if they are correct, weights and measures commercially used either:

(a) In determining the weight, measure or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure or count.

(b) In computing the basic charge or payment for services rendered on the basis of weight, measure or count.

12. Test, at random, commodities, weights and measures used in public institutions for which monies are appropriated by the legislature. The testing of commodities, weights and measures in public institutions shall include, but not be limited to, items:

(a) That have historically been of short weight, measure or count.

(b) Found to be of short weight, measure or count by other jurisdictions.

(c) To be tested as part of a regional or national survey.

13. Test, approve for use and affix a seal of approval for use of all weights, measures and commercial devices manufactured in or brought into this state as it finds to be correct and shall reject and mark as rejected weights, measures and devices it finds to be incorrect. Weights, measures and devices that have been rejected may be seized by the department if not corrected within the time specified or if used or disposed of in a manner not specifically authorized. The department shall condemn and may seize weights, measures and devices that are found to be incorrect and that are not capable of being made correct.

14. Sample and test motor fuel that is stored, sold or exposed or offered for sale or that is stored for use by a fleet owner to determine whether the motor fuel meets the standards for motor fuel set forth in section 41-2083 and article 6 of this chapter and in any rule adopted by the director pursuant to this chapter. For the purposes of this paragraph, "fleet owner" has the same meaning prescribed in section 41-2121.

15. ~~Test~~ RANDOMLY WITNESS TESTS ON all mandated stage I and stage II vapor recovery systems that are installed or operated in this state not less than annually and if the systems are determined to be in compliance with the law approve those systems for use and reject, mark as rejected and stop the use of those systems determined not to be in compliance with the law.

16. Inspect facilities at which motor fuel is stored, sold or exposed or offered for sale to determine whether dispensing devices are properly labeled.

17. Publish and distribute to consumers weighing and measuring information.

18. Weigh, measure or inspect commodities kept, offered or exposed for sale, sold or in the process of delivery to determine whether they contain the amounts represented and whether they are kept, offered or exposed for

sale in accordance with this chapter or rules adopted pursuant to this chapter. In carrying out the provisions of this section, the director shall employ recognized sampling procedures, such as are designated in appropriate national institute of standards and technology handbooks and supplements to those handbooks, except as modified or rejected by rule.

19. Allow reasonable variations from the stated quantity of contents only after a commodity has entered intrastate commerce. These variations shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice.

20. Prescribe the standards of weight and measure and additional equipment methods of test and inspection to be employed in the enforcement of this chapter. The director may prescribe or provide the official test and inspection forms to be used in the enforcement of this chapter.

21. Apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating this chapter.

22. Report to the governor on August 1 each year and at such other times as may be required on the work accomplished under this chapter.

23. Employ such personnel as needed to assist in administering this chapter.

24. Ensure that any information that is required to be filed with the department, that relates to the contents of motor fuels that are sold in this state and that is a trade secret as defined in section 49-201 is not disclosed.

25. Establish by rule labeling standards for tanks and containers of motor fuels.

B. The director may provide for the periodic examination and inspection of metering devices, including but not limited to devices utilized to measure usage of electricity, natural gas or water by a consumer. Examination and inspection authority shall not apply to metering devices owned by federal, state or local government agencies unless requested by the government agency that owns the metering devices.

C. The director may establish standards for the presentation of cost-per-unit information. Nothing in this subsection shall be construed to mandate the use of cost-per-unit information in connection with the sale of any standard packed commodity.

D. The director, when necessary to carry out this chapter, may adopt and enforce rules relating to quality standards for motor fuel, kerosene, oil, except used oil fuel, and hazardous waste fuel, lubricating oils, lubricants, antifreeze and other liquid or gaseous fuels. The director shall adopt rules to assure that oxygenated fuels, as described in article 6 of this chapter, stored, used, sold or exposed or offered for use or sale are blended and stored, sold, exposed or offered in such a manner as to assure that the oxygenated fuels are properly blended, that they meet the standards set forth in section 41-2083 and article 6 of this chapter, and in rules

adopted pursuant to this chapter, and that dispensers at which the oxygenated fuels are dispensed are labeled as defined by rule of the department in such a manner as to notify persons of the type of oxygenated fuel being dispensed and the maximum percentage of oxygenate by volume contained in the oxygenated fuel. The director of the department of weights and measures shall consult with the director of the department of environmental quality in adopting rules pursuant to this subsection.

E. Testing and inspection conducted pursuant to this chapter shall be done, to the extent practicable, without prior notice, by a random systematic method determined by the director or in response to a complaint by the public. The testing and inspection may be done by private persons and firms pursuant to contracts entered into by the director in accordance with chapter 23 of this title or by a registered service agency or registered service representative licensed pursuant to section 41-2094. The director shall establish qualifications of persons and firms for selection for purposes of this subsection. The persons or firms conducting the testing and inspection shall immediately report to the department any violations of this chapter and incorrect weights, measures, devices, vapor recovery systems or vapor recovery components for investigation and enforcement by the department. A person or firm that tests or inspects a weight, measure, device, vapor recovery system or vapor recovery component that is rejected shall not correct the defect causing the rejection without the permission of the department.

F. During the course of an investigation or an enforcement action by the department, information regarding the complainant is confidential and is exempt from title 39, chapter 1, unless the complainant authorizes the information to be public.

G. For the purposes of the labeling requirements prescribed in this section, "oxygenated fuel" means a motor fuel blend containing 1.5 per cent or more by weight of oxygen.

Sec. 2. Section 41-2132, Arizona Revised Statutes, is amended to read:

41-2132. <u>Stage I and stage II vapor recovery systems</u>

A. A person shall not offer for sale, sell, install or use a new gasoline vapor recovery system, or any new or rebuilt component parts of the system, unless the system or component part has been certified by the California air resources board as of March 31, 2001 or after that date, OR HAS BEEN APPROVED BY A THIRD PARTY ACCREDITED TO TEST EQUIPMENT AND RECOGNIZED BY INDUSTRY AND THE DEPARTMENT, and has not been rejected by the department. The department shall maintain and keep current a list of stage I and stage II vapor recovery systems and component parts that are approved by the department. Only those systems that are approved shall be used in this state. All certified vapor recovery components must be clearly identified by a permanent identification affixed by the certified manufacturer or rebuilder.

B. For gasoline dispensing sites with a throughput of over ten thousand gallons per month in area A or area B as defined in section 49-541, and beginning on January 1, 2001 for gasoline dispensing sites with a throughput of over ten thousand gallons per month in area A but outside of the Phoenix area Maricopa county ozone nonattainment area as prescribed in 40 Code of Federal Regulations section 81.303, a person shall not transfer or allow the transfer of gasoline into storage tanks at gasoline dispensing sites unless the storage tank is equipped with either of the following:

1. A stage I vapor collection system consisting of a vapor-tight return line from the storage tank or its vent to the gasoline transport vehicle.

2. A properly installed on-site vapor control system connected to a vapor collection system.

C. In an ozone nonattainment area designated as moderate, serious, severe or extreme by the United States environmental protection agency under section 107(d) of the clean air act, area A or other geographical area as provided in subsection I of this section, an owner or operator of a gasoline dispensing site shall not transfer or allow the transfer of gasoline into a motor vehicle fuel tank at a gasoline dispensing site unless the gasoline dispensing site is equipped with a stage II vapor collection system. This subsection does not apply to gasoline dispensing sites with a throughput of less than ten thousand gallons per month, or to a gasoline dispensing site with a throughput of less than fifty thousand gallons per month in the case of an independent small business marketer of gasoline as defined in section 324 of the clean air act or to a gasoline dispensing site that is located on a manufacturer's proving ground. Beginning on January 1, 2001, this subsection applies to gasoline dispensing sites that are located within area A but outside the Phoenix area Maricopa county ozone nonattainment area as defined in 40 Code of Federal Regulations section 81.303.

D. An owner or operator of a gasoline storage tank, gasoline transport vehicle or gasoline dispensing site subject to stage I or stage II vapor collection requirements shall comply with the following:

1. Install all necessary stage I and stage II vapor collection and control systems and make any modifications necessary to comply with the requirements.

2. Provide adequate training and written instructions to the operator of the affected gasoline dispensing site and the gasoline transport vehicle.

3. Replace, repair or modify any worn or ineffective component or design element to ensure the vapor-tight integrity and efficiency of the stage I and stage II vapor collection systems.

4. Connect and ensure proper operation of the stage I and stage II vapor collection systems whenever gasoline is being loaded, unloaded or dispensed.

5. HAVE THE STAGE II VAPOR RECOVERY SYSTEM TESTED ANNUALLY BY A REGISTERED SERVICE REPRESENTATIVE LICENSED BY THE DEPARTMENT.

E. Before the initial installation or modification of any stage I or stage II recovery system, the owner or operator of a gasoline storage tank, gasoline transport vehicle or gasoline dispensing site shall obtain a plan review and approval from the department. Application for the plan review and approval shall be on forms prescribed and provided by the department.

F. The operator of each gasoline dispensing site using a stage II vapor recovery system shall conspicuously post operating instructions for the system in the gasoline or oxygenated fuel dispensing area. The instructions shall clearly describe how to fuel vehicles correctly with the vapor recovery nozzles used at the station and shall include a warning that topping off may result in spillage or recirculation of gasoline or oxygenated fuel and is prohibited.

G. The department of weights and measures in consultation with the department of environmental quality and the state fire marshal shall establish by rule standards for the installation and operation of stage I and stage II vapor recovery systems. The department of weights and measures shall establish by rule plan review and approval fees. In establishing those rules and standards, the director shall consider requirements in other states to assure that only state of the art technology is used.

H. Approval of a stage I or stage II vapor collection system by the department does not relieve the owner or operator of the responsibility to comply with other applicable statutes, codes and rules pertaining to fire prevention, environmental quality and safety matters.

I. Any county, city or town outside an ozone nonattainment area designated as moderate, serious or severe by the environmental protection agency under section 107(d) of the clean air act or outside of area A as defined in section 49-541 may require gasoline dispensing sites with a throughput greater than ten thousand gallons per month or fifty thousand gallons per month in the case of an independent small business marketer of gasoline as defined in section 324 of the clean air act to install, operate and maintain stage II vapor collection systems in accordance with this section. For a county, city or town considering the adoption of a resolution to require stage II vapor collection systems within its jurisdiction and on request, the department of environmental quality shall provide technical assistance in evaluating the air quality in that county, city or town and shall provide final review and approval of an adopted resolution.

J. A county board of supervisors or governing body of a city or town shall submit a resolution approved by the department of environmental quality to the director of the department of weights and measures requesting the imposition of the requirements for stage II vapor collection systems within its jurisdiction.

K. The director shall adopt, by rule, compliance schedules for gasoline dispensing sites located within the jurisdiction requesting stage II vapor collection system requirements no later than twelve months after receipt of the resolution from the county board of supervisors or governing

board of a city or town. All gasoline dispensing sites other than those that are exempt pursuant to subsection C of this section shall be required to comply with stage II vapor collection system rules within twenty-four months after the rules have been filed with the secretary of state.

L. A county board of supervisors or governing body of a city or town that adopts the requirements for stage II vapor collection systems may repeal those requirements by adopting a resolution to remove the imposition of those requirements within its jurisdiction unless the county, city or town is in an ozone nonattainment area that has since been designated as moderate, serious or severe by the United States environmental protection agency under section 107(d) of the clean air act. On receipt of the resolution, the director of the department of weights and measures shall consult with the director of the department of environmental quality to verify that a county, city or town is outside of an ozone nonattainment area designated as moderate, serious or severe by the United States environmental protection agency under section 107(d) of the clean air act. After consultation with the department of environmental quality, the director of the department of weights and measures shall revise the rules to repeal the requirements for stage II vapor collection systems within that jurisdiction as soon as practicable.

APPROVED BY THE GOVERNOR APRIL 27, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 28, 2010.