

**TPCA  
2009 LEGISLATIVE  
REVIEW**





*This summary of the 2009 session of the Texas Legislature will shed some light on how the session impacted the petroleum marketing and convenience store industries. In it you will find key statutory changes and their effective dates to ensure your operations are prepared for these new laws. We've also provided information about some of the bills TPCA opposed this session to give you a sense of the legislature's interest in our industry.*

The breadth of the issues TPCA is involved in is sometimes surprising to many of our members. After all, the majority of our members are independently owned and operated businesses with a regional scope of operations. We market products that are instantly recognizable to almost all consumers. Our customers include every demographic group. We also choose high visibility, high traffic points to locate our businesses in order to make a consumer's purchase as convenient as possible. What interest would government have in a convenience store? As you'll see in the following pages, quite a bit of interest.

Government's interest in our industry is not just limited to convenience stores however. No matter how fuel is sold, who sells it, or for what purpose it was sold, the tax collected on that sale is used to fund two of the highest priority functions of state government: transportation and education. Proposals to increase,

decrease or broaden the base of fuels taxation will be considered in every session of the legislature as long as the state is responsible for funding transportation and education. Consequently, our members' collection and remittance of fuel taxes will always be a part of these discussions. Authorizing local option fuel taxes, increasing the state fuels tax or reducing the collection allowance for fuels taxes are all part of this debate and will surely continue in future legislative sessions.

TPCA's accomplishments during the 2009 session are many and reflect the hard work and commitment of our members and staff. Our members' participation in TPCA's Legislative Day as well as individual relationships with elected officials are key elements of our success at the capitol. We appreciate your continued support of TPCA and interest in our role at the Texas Legislature.

# LEGISLATION PASSED BY THE 2009 TEXAS LEGISLATURE

## ALCOHOLIC BEVERAGES

### HB 2594 – Delivery Hours

Authorizes the holder of a general, local, or branch distributor's license to sell, offer for sale, or deliver beer 24 hours a day Monday through Saturday and between midnight and 1 a.m. and between noon and midnight on Sunday. *Effective Date - 5/5/2009*

### SB 693 – Underage Purchase of Alcoholic Beverages

SB 693 amends the offense of selling alcoholic beverages to a minor by permitting a seller to demonstrate that the minor used improper identification issued by the Department of Public Safety, a passport or military identification card. Current law permits sellers to claim this defense only if the minor attempts to use a Texas drivers license or identification card issued by the Department of Public Safety.

SB 693 also strikes the requirement that the minor use the false identification “for the purpose of inducing the person to sell him an alcoholic beverage”. *Effective Date - 9/1/2009*

## FOOD HANDLERS

### HB 3012

HB 3012 requires all food establishment employees who handle food to complete a brief food handler training course. The bill requires that a person handling food or unsealed food containers not contact with bare hands exposed ready-to-eat food unless documentation is maintained at the food establishment listing the foods and food handling activities that involve bare-hand contact, and the food service establishment uses certain contamination control measures. *Effective Date - 9/1/2009*

## FUELS

### HB 2925 – Fuel Dispenser Calibration Testing & Fuel Quality Inspections

HB 2925 permits the Texas Department of Agriculture (TDA) to adopt a three-tiered approach to inspections of fuel dispensers. The three inspection tiers will include (a) routine inspections/audits using risk-assessed data, (b) inspections based upon consumer complaints, and (c) conducting blitz operations based upon trend analysis.

HB 2925 also authorizes TDA to conduct inspections of fuel at refineries, terminals, bulk plants and retail facilities to ensure the fuel meets ASTM standards. Although the fuel industry performs extensive quality testing, consumers have expressed an interest in a state agency being involved in this area. *Effective Date - 9/1/2009*

### HB 2318 – Renewable Methane

HB 2318 amends the Agriculture Code to add renewable methane to the types of fuels eligible for renewable energy incentives through the Texas Department of Agriculture. The bill requires producers to pay a fee of 3.2 cents per gallon and TDA to pay producers 20 cents for each Million British thermal units (MMBtu) of renewable methane produced. The bill also reduces the amount of incentive money paid to biodiesel producers to 10 cents per gallon of biodiesel produced.

*Effective Date - 6/19/2009*

## HB 2582 – Renewal Diesel Fuel

In 2003, the Texas Legislature created a producer incentive program to assist and encourage fuel ethanol and biodiesel plants in the state. Under current law, biodiesel is defined as a diesel equivalent which is processed fuel derived from biological sources (vegetable oils, rendered animal fats, or renewable lipids). Since the adoption of this definition, new processes have led to the creation of non-oxygenated biobased hydrocarbon fuels.

HB 2582 defines the term “renewable diesel” in both the Agriculture and Tax Codes to make its production and use eligible for tax exemptions and incentives currently provided for biodiesel.

**Effective Date - 6/19/2009**

## FUELS TAX

### SB 254 – Fuels Tax Exemption for Volunteer Fire Departments

SB 254 provides a state tax exemption for gasoline and diesel fuel sold to a volunteer fire department for its exclusive use. The department may purchase fuel tax free from a licensed distributor or pay tax to the distributor and file a refund claim with the comptroller’s office. If a distributor wishes to sell fuel tax free to a volunteer fire department, the distributor may take a credit on their monthly fuels tax return filed with the comptroller’s office.

**Effective date - 7/1/2009**

### SB 1495 – Fuels Tax Cleanup Legislation

SB 1495 amended the definition of the term “motor fuel transporter” to clarify that certain persons do not need to file quarterly motor fuels transporter reports with the comptroller’s office. In order to cease filing these reports, a license holder must meet the following two conditions:

- (a) The person is licensed as a supplier, permissive supplier or distributor; and
- (b) The person exclusively transports motor fuel for which the person retains ownership while the fuel is being transported.

Under the new law, only persons who do not take title to fuel they are transporting will be obligated to file quarterly motor fuel transporter reports. This change

eliminates duplicative reporting requirements for distributors, suppliers and permissive suppliers already reporting their sales and purchases on their monthly fuels tax returns.

SB 1495 also repeals the requirement that tax-free sales of diesel fuel may not exceed more than 7,400 gallons in a single delivery to a person using a signed statement. However, the monthly total limitation still applies: 10,000 gallons of dyed diesel fuel for end-users and 25,000 a month for agricultural end-users. If multiple deliveries are made, then the last delivery in a calendar month that causes the purchaser to exceed either the 10,000 or 25,000 gallon limitation is considered a tax-free delivery. Any subsequent deliveries made in the same calendar month would be taxable. These issues were addressed more thoroughly in TPCA Regulatory Alert No. 458, which was issued August 4, 2009. **Effective Date - 9/1/2009**

### SB 1782 – Supplier Liability for Distributor Fuel Taxes

SB 1782 amended current law to clarify that suppliers are entitled to receive a tax credit for all taxes owed by their distributors. Under current law, suppliers are allowed to take an accelerated tax credit on their monthly fuels tax returns should a distributor default on a payment of state motor fuels tax. However, the comptroller’s office has interpreted this provision to also require that the amount of the credit taken by a supplier be pro-rated to take into account any payments made by the distributor to the supplier prior to the distributor’s failure to pay their fuels tax.

SB 1782 amended Section 162.113 and 162.214, Tax Code, to require suppliers to terminate a distributor’s right to defer the payment of state motor fuels tax for one year if the supplier requests an accelerated tax credit following a distributor’s default of state fuels tax. Under current law, the supplier has the option of deciding whether or not to terminate the distributor’s right to defer state fuels tax. If the comptroller determines the supplier erroneously terminated a distributor’s right to defer the payment of tax or the distributor’s failure to timely pay their tax was due to circumstances outside of the distributor’s control, the comptroller may order the supplier to reinstate the distributor’s right to defer tax.

An amendment to Section 162.116(c) and 162.217(c) Tax Code requires suppliers to notify the comptroller's office of a distributor's default within 15 days after the default. Current law provides suppliers with 60 days to notify the comptroller's office.

SB 1782 repealed Sections 162.116(d) and 162.217(d), Tax Code, which required suppliers to reduce the amount of an accelerated tax credit by any funds received from a distributor prior to the distributor's default on their fuels tax.

**Effective Date - 9/1/2009**

## HURRICANE RESPONSE

### HB 1831 – Emergency Response Planning

HB 1831 amends current law relating to disaster preparedness and emergency management. The bill requires the Governor's Division of Emergency Management to create an annex to the state emergency management plan to address initial response planning for the first five days following a disaster. The plan must include measures for the continued operation of service stations to provide fuel to disaster victims and emergency responders. TPCA was engaged in the drafting of HB 1831 and will be working with staff from the Division of Emergency Management to offer input for their plan. HB 1831 was passed in response to coastal legislators' call for retail fuel facilities to be equipped with alternative power generators. **Effective Date - 6/19/09**

Language was also added to HB 1831 related to 9-1-1 emergency services. The amendment requires retailers selling pre-paid wireless services, including pre-paid cell phones and airtime cards, to collect a 9-1-1 service fee on all products sold. The fee was negotiated to be 2% of the retail price of the products with retailers receiving a 2% collection allowance for collecting the fee. **Effective Date - 6/1/2010**

*HB 1831 is effective at the date of passage - 6/19/09, but the 9-1-1 service fee section is not effective until 6/1/10.*

## HUMAN RESOURCES

### HB 2360 - Employer Mandate – Delivery of Federal Earned Income Tax Credit Info

HB 2360 amends the Labor Code to require employers to provide their employees with information regarding eligibility for the federal earned income tax credit.

The bill prohibits an employer from satisfying the bill requirements solely by posting information in the place of employment. The employer must provide the required information to the employee in person; electronically at the employee's last known e-mail address; through a flyer, included, in writing or electronically, as a payroll stuffer; or by mailing the information to the employee at the employee's last known address by United States first class mail. The notification must be provided to the employee by March 1st of each year. **Effective Date - 9/1/09.** Employers will be required to provide their employees with this new information by 3/1/2010.

Information about the federal earned income tax credit may be found at the following web address: <http://www.window.state.tx.us/taxinfo/eitc/>.



## REAL ESTATE

### SB 1609 – Access to Businesses from Roadways

SB 1609 amends current law relating to the control of access to state highways by TxDOT. Access management is a process governing how private property owners may gain access to roads and highways from their homes or businesses. Access to and from roadways is critically important to retail businesses, especially convenience stores.

**Effective Date - 6/19/09**

#### SB 1609 will:

- ❖ Establish standards to provide a consistent approach to resolving disputes between property owners and TxDOT,
- ❖ Establish timelines for approval and appeals of access issues,
- ❖ Provide limited “grandfathering” of previously platted access points and
- ❖ Stipulate remodeling or demolition of an existing building does not trigger new access management standards, if the flow of traffic is not significantly impacted.

## TOBACCO

### HB 2154 – Weight Based Tax for Moist Smokeless Tobacco (MST)

Excise tax for MST is currently based upon the product’s sales price. Effective September 1, 2009, this tax will be assessed based upon the product’s weight. Cans of MST weighing 1.2 ounces or less will be taxed at \$1.10 per ounce and a proportionate rate on all fractional parts of an ounce, meaning the tax on a 1.2 oz can of MST is \$1.32. The tax will increase \$.03 each year through 2013 when it will reach the maximum of \$1.22 per ounce. Staff from the Texas Comptroller of Public Accounts have confirmed there will be no floor stocks tax on inventory as of August 31, 2009. The tax will continue to be imposed at the wholesale level of the distribution chain.



# LEGISLATION FAILING TO BE PASSED BY THE 2009 TEXAS LEGISLATURE

## TRANSPORTATION

### HB 9/SB 855 Local Option Transportation Funding Act

Originally conceived as a funding tool for the Dallas/Fort Worth area to provide additional transportation funding, HB 9 and SB 855 were later expanded to include most urban areas within Texas. Although both measures failed due to concerns about raising fuel taxes during an economic recession, TPCA was engaged in negotiations with the comptroller's office and the major oil companies regarding how local fuel taxes would be collected and enforced. Local option fuel taxes will probably be studied by both House and Senate committees during the interim between legislative sessions. It is almost certain that legislation will be filed during the 2011 session to authorize local option fuel taxes. The 2011 session may also see a renewed initiative to increase the state fuels tax which has remained unchanged since 1991.

## ENVIRONMENT

### HB 1867/SB 338 Plastic Bag Recycling

HB 1867/SB 338 would have imposed new mandates for the use of plastic bags at retail facilities. TPCA was successful in amending both bills to exempt convenience stores from these new requirements. Although SB 338 was passed by the Senate, it ran out of time to be considered by the House of Representatives. HB 1867 also fell victim to the session deadlines. TPCA is expecting a similar measure to be filed during the 2011 legislative session.

## FUEL

### HB 3827 - UST Fuel Delivery Regulations

HB 3827 would have re-instated former state laws which imposed liability upon persons delivering fuel into a UST which did not have a valid TCEQ-issued delivery certificate. Motor fuel transporters were successful in removing themselves from liability for these deliveries during the 2003 session of the legislature. However, EPA's new UST regulations require state laws to include liability for deliveries into non-compliant UST's. HB 3827 failed on the last day of the legislative session when the bill was amended by the major oil companies to include a provision exempting fuel manufacturers from product liability lawsuits alleging a fuel's composition led to damages (Example – MTBE). TCEQ will re-file this legislation during the 2011 session of the legislature.



**T**he Texas Petroleum Marketers and Convenience Store Association (TPCA) was formed in 1949. As one of the largest state trade associations of its kind, this 400+ member organization represents petroleum marketers and convenience store owners who own, operate, or supply approximately 10,000 convenience stores, service stations, and other retail motor fuel outlets in Texas and the Southwest. These businesses supply nearly nine billion gallons of fuel annually to Texas motorists, while also serving the vast majority of commercial end users, including farmers, construction firms, and local and state governments.

**TPCA is The Organization** which represents the needs and interests of the petroleum marketing and convenience store industries in Texas.



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