

## **BILL ANALYSIS**

Senate Research Center  
79R6160 PB-D

S.B. 1312  
By: Gallegos  
State Affairs  
3/29/2005  
As Filed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Under current Texas law, there is no state agency charged with occupational health and safety, which are regulated and enforced at the federal level. This arrangement does not allow for the unique workforce of Texas to be taken into consideration for enforcement. Under a plan developed by the United States Department of Labor Occupational Safety and Health Administration (OSHA), a state is authorized to adopt legislation to enforce occupational health and safety at the state level.

As proposed, S.B. 1312 directs the Texas Workers' Compensation Commission (commission) to establish a state plan for the enforcement of occupational health and safety standards similar to what is done in 26 other states. It allows the commission to conduct inspections and collect data in order to enforce occupational health and safety standards. S.B. 1312 requires the commission to classify hazardous employers and provide consultations to improve worker safety. The bill establishes an annual maintenance tax on insurers writing workers' compensation insurance in the state to fund the functions of the occupational health and safety division of the commission. This tax would be in addition to all other workers' compensation taxes and would be paid to the Department of Insurance (TDI) at the same time insurers pay the workers' compensation maintenance tax used to fund TDI operations.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Texas Workers' Compensation Commission in SECTION 1 (Section 411.153, Labor Code) of the bill.

Rulemaking authority is granted to the commissioner of insurance in SECTION 1 (Section 411.155, Labor Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 411, Labor Code, by adding Subchapter I, as follows:

#### **SUBCHAPTER I. STATE OCCUPATIONAL HEALTH AND SAFETY PLAN**

Sec. 411.151. DEFINITIONS. Defines "employee" and "employer."

Sec. 411.152. STATE PLAN. Requires the Texas Workers' Compensation Commission (commission) to develop a state plan relating to state enforcement of occupational health and safety standards. Requires the state plan to comply with federal approval requirements under Section 18, Occupational Health and Safety Act of 1970 (29 U.S.C. Sec. 667). Prohibits standards adopted by the commission under the state plan from being more stringent than the standards adopted by the United States Department of Labor.

Sec. 411.153. GENERAL POWERS AND DUTIES OF COMMISSION AND DIVISION. (a) Provides that the commission is the state agency generally charged with implementation and enforcement of state laws and administrative rules relating to the protection of the life, health, and safety of persons at their places of employment. Authorizes the commission to obtain information from any appropriate source, including employers, that relates to occupational health and safety issues.

(b) Authorizes the commission's division of worker's health and safety (division) to conduct inspections of places of employment at reasonable times as necessary to implement this Act.

(c) Requires the division to gather, maintain, and publish certain statistical information, design and conduct specific research, publish research results, consult with employers regarding certain issues, develop specific programs, and collect specific information.

(d) Authorizes the commission to adopt rules and prescribe forms as necessary to implement this subchapter.

(e) Authorizes the division to charge fees for its publications and for seminars and training programs offered by the division. Requires the commission to set the fees in amounts reasonable and necessary to cover administrative costs.

Sec. 411.154. EMPLOYER CLASSIFICATIONS; CONSULTATIONS. (a) Requires the division to collect and compile specific information relating to the job-related accident experience of each employer.

(b) Requires the division, based on the compiled information, to classify employers as necessary and appropriate to assist employers in providing safe and healthful conditions of employment and identify hazardous occupations.

(c) Authorizes the division, on the written request of an employer, to consult with and advise the employer or the employer's representative regarding the improvement of the employer's accident frequency rate and the elimination or reduction of impediments to occupational health and safety at the employer's place of business.

Sec. 411.155. FUNDING; MAINTENANCE TAX. (a) Provides that the occupational health and safety plan adopted under this subchapter is funded through the assessment of an annual maintenance tax collected from each stock company, mutual company, reciprocal or interinsurance exchange, and Lloyd's association that writes workers' compensation insurance in this state. Requires the commissioner of insurance to set the rate of the maintenance tax in an amount not to exceed one percent of the correctly reported gross workers' compensation insurance premiums of those insurers as reported to the Texas Department of Insurance under Subchapter D, Chapter 5 (Rating and Policy Forms), Insurance Code. Requires the commissioner of insurance to set the rate of assessment each year to produce the amount of funds that the commissioner estimates will be necessary to operate the occupational health and safety plan. Requires the tax assessed under this section is in addition to all other taxes imposed on those insurers for workers' compensation purposes to be paid to the Texas Department of Insurance at the same time that the insurers pay the maintenance tax imposed under Chapter 255 (Workers' Compensation Insurance), Insurance Code.

(b) Authorizes the commissioner of insurance to adopt rules as necessary relating to the assessment and collection of the maintenance tax imposed under Subsection (a).

(c) Requires the Texas Department of Insurance to remit all funds received under this section to the comptroller of public accounts for deposit in the state treasury to the credit of the general revenue fund.

Sec. 411.156. EMPLOYER DUTIES. (a) Requires each employer to furnish and maintain a safe and healthful employee work environment. Requires the employer to install, maintain, and use those methods, processes, devices, and safeguards as are necessary to protect the life, health, and safety of employees.

(b) Requires each employer to report to the division in the manner prescribed by the rules of the commission information relating to personal injuries, fatalities,

accidents, and other occupational health and safety issues related to the employer's place of business. Requires the employer to report on forms prescribed by and covering time periods designated by the commission.

SECTION 2. Amends Section 502.003, Health and Safety Code, by adding Subdivision (4-a) to define "commission" and amending Subdivision (8) to define "division" and delete the definition of "director."

SECTION 3. Amends Chapter 502, Health and Safety Code, by adding Section 502.0035, as follows:

Sec. 502.0035. ADMINISTRATION BY COMMISSION; REFERENCES. (a) Provides that notwithstanding any other provision of this chapter, this chapter is administered by the commission.

(b) Provides that a reference in this chapter to the Texas Board of Health, the Texas Department of Health (TDH), a successor agency to that board or department, or to the director of TDH means the commission or the division, or a successor agency to the commission or division, as appropriate.

SECTION 4. Repealer: Section 411.018 (Federal OSHA Compliance), Labor Code.

SECTION 5. Requires the Texas Workers' Compensation Commission, except as provided by Section 6 of this Act, to adopt rules as necessary to implement Subchapter I, Chapter 411, Labor Code, as added by this Act, no later than January 1, 2006, and requires the implementation of the state occupational health and safety plan no later than September 1, 2006.

SECTION 6. Provides that if an Act of the 79th Legislature, Regular Session, 2005, transfers the powers and duties of the Texas Workers' Compensation Commission to another the state agency, the powers and duties assigned to that commission are transferred to the state agency responsible for employee health and safety programs, and the governing body of that state agency is required to adopt rules no later than January 1, 2006, and implement the state occupational health and safety plan no later than September 1, 2006.

SECTION 7. Effective date: September 1, 2005.