

By: West

H.B. No. 2172

Substitute the following for H.B. No. 2172:

By: Crabb

C.S.H.B. No. 2172

A BILL TO BE ENTITLED

AN ACT

1
2 relating to eligibility for a license or registration for an
3 exemption to engage in liquefied petroleum gas-related activities
4 and to disciplinary action against licensees and registrants.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 113.092(a), Natural Resources Code, is
7 amended to read as follows:

8 (a) The commission shall issue the appropriate license to an
9 applicant who has satisfied the licensing procedures and
10 requirements set out in this chapter and in the rules of the
11 commission, except as otherwise [~~where a prior license has been~~
12 ~~revoked as~~] provided for in [~~Subsection (a) of~~] Section 113.163 [~~of~~
13 ~~this code~~].

14 SECTION 2. The heading to Subchapter F, Chapter 113,
15 Natural Resources Code, is amended to read as follows:

16 SUBCHAPTER F. LICENSE AND REGISTRATION FOR AN EXEMPTION:

17 DENIAL AND DISCIPLINARY ACTION

18 SECTION 3. Section 113.163, Natural Resources Code, is
19 amended to read as follows:

20 Sec. 113.163. DENIAL, REFUSAL TO RENEW, OR REVOCATION OF
21 LICENSE OR REGISTRATION FOR AN EXEMPTION IN EVENT OF VIOLATION
22 [~~FINDINGS AND JUDGMENT~~]. (a) Except as provided by Subsections (d)
23 and (f), the commission may not approve an application for a license
24 under this chapter or approve a registration for an exemption under

1 Section 113.081(d) or (e) if:

2 (1) the applicant or registrant for an exemption has
3 violated a statute or commission rule, order, license, permit, or
4 certificate that relates to safety; or

5 (2) a person who holds a position of ownership or
6 control in the applicant or registrant for an exemption has held a
7 position of ownership or control in another person during the seven
8 years preceding the date on which the application or registration
9 for an exemption is filed and during that period of ownership or
10 control the other person violated a statute or commission rule,
11 order, license, permit, or certificate that relates to safety.

12 (b) An applicant, registrant for an exemption, or other
13 person has committed a violation described by Subsection (a) if:

14 (1) a final judgment or final administrative order
15 finding the violation has been entered against the applicant,
16 registrant for an exemption, or other person and all appeals have
17 been exhausted; or

18 (2) the commission and the applicant, registrant for
19 an exemption, or other person have entered into an agreed order
20 relating to the alleged violation.

21 (c) Regardless of whether the person's name appears or is
22 required to appear on an application or registration for an
23 exemption, a person holds a position of ownership or control in an
24 applicant, registrant for an exemption, or other person if:

25 (1) the person is:

26 (A) an officer or director of the applicant,
27 registrant for an exemption, or other person;

1 (B) a general partner of the applicant,
2 registrant for an exemption, or other person;

3 (C) the owner of a sole proprietorship applicant,
4 registrant for an exemption, or other person;

5 (D) the owner of at least 25 percent of the
6 beneficial interest in the applicant, registrant for an exemption,
7 or other person; or

8 (E) a trustee of the applicant, registrant for an
9 exemption, or other person; or

10 (2) the applicant, registrant for an exemption, or
11 other person has been determined by a final judgment or final
12 administrative order to have exerted actual control over the
13 applicant, registrant for an exemption, or other person.

14 (d) The commission shall approve an application for a
15 license under this chapter or for a registration for an exemption
16 under Section 113.081(d) or (e) if:

17 (1) the conditions that constituted the violation are
18 corrected or are being corrected in accordance with a schedule to
19 which the commission and the applicant, registrant for an
20 exemption, or other person have agreed;

21 (2) all administrative, civil, and criminal penalties
22 are paid or are being paid in accordance with a payment schedule to
23 which the commission and the applicant, registrant for an
24 exemption, or other person have agreed; and

25 (3) the application or registration for an exemption
26 is in compliance with all other requirements of law and commission
27 rules.

1 (e) If an application or registration for an exemption is
2 denied under this section, the commission shall provide the
3 applicant or registrant for an exemption with a written statement
4 explaining the reason for the denial.

5 (f) Notwithstanding Subsection (a), the commission may
6 issue a license to an applicant described by Subsection (a) or
7 approve a registration for an exemption for a registrant for an
8 exemption described by that subsection for a term specified by the
9 commission if the license or registration for an exemption is
10 necessary to remedy a violation of law or commission rules.

11 (g) A fee tendered in connection with an application or
12 registration for an exemption that is denied under this section is
13 nonrefundable.

14 (h) If the commission is prohibited by Subsection (a) from
15 approving an application for a license or a registration for an
16 exemption or would be prohibited from doing so by that subsection if
17 the applicant, licensee, or registrant for an exemption submitted
18 an application or registration for an exemption, the commission,
19 after notice and opportunity for a hearing, by order may refuse to
20 renew or may revoke a license or registration for an exemption
21 issued to the applicant, licensee, or registrant for an exemption
22 under this chapter. The commission may not revoke or refuse to
23 renew a license or registration for an exemption under this
24 subsection if the commission finds that the applicant, licensee, or
25 registrant for an exemption has fulfilled the conditions set out in
26 Subsection (d).

27 (i) An order issued under Subsection (h) must provide the

1 applicant, licensee, or registrant for an exemption a reasonable
2 period to comply with the judgment or order finding the violation
3 before the order takes effect.

4 (j) On refusal to renew or revocation of a person's license
5 or registration for an exemption under Subsection (h), the person
6 may not perform any activities under the jurisdiction of the
7 commission under this chapter, except as necessary to remedy a
8 violation of law or commission rules and as authorized by the
9 commission under a license or registration for an exemption issued
10 under Subsection (f).

11 (k) In determining whether to refuse to renew or to revoke a
12 person's license or registration for an exemption under Subsection
13 (h), the commission shall consider the person's history of previous
14 violations, the seriousness of previous violations, any hazard to
15 the health or safety of the public, and the demonstrated good faith
16 of the person.

17 (l) Refusal to renew or revocation of a person's license or
18 registration for an exemption under Subsection (h) does not relieve
19 the person of any existing or future duty under law, rules, or
20 license or registration conditions [~~The commission shall revoke,~~
21 ~~suspend, or refuse to renew a license or registration or shall~~
22 ~~reprimand a licensee or registrant if the commission finds that the~~
23 ~~licensee or registrant has violated or failed to comply with or is~~
24 ~~violating or failing to comply with this chapter or a rule or~~
25 ~~standard promulgated and adopted under this chapter].~~

26 [~~(b) The commission may place on probation a person whose~~
27 ~~license or registration is suspended. If a license or registration~~

1 ~~suspension is probated, the commission may require the person:~~

2 ~~[(1) to report regularly to the commission on matters~~
3 ~~that are the basis of the probation,~~

4 ~~[(2) to limit practice to the areas prescribed by the~~
5 ~~commission; or~~

6 ~~[(3) to continue or review professional education~~
7 ~~until the person attains a degree of skill satisfactory to the~~
8 ~~commission in those areas that are the basis of the probation.]~~

9 SECTION 4. (a) The change in law made by this Act relating
10 to a violation that is grounds for denial of a license or
11 registration for an exemption or for disciplinary action applies
12 only to a violation that occurs on or after the effective date of
13 this Act. For purposes of this section, a violation occurs before
14 the effective date of this Act if any element of the violation
15 occurs before that date.

16 (b) A violation that occurs before the effective date of
17 this Act is covered by the law in effect on the date the violation
18 occurred, and the former law is continued in effect for that
19 purpose.

20 SECTION 5. This Act takes effect September 1, 2005.