

By: West

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 has violated a statute  
3 or commission rule, order, license, permit, or certificate that  
4 relates to safety; or

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

12 (b) An applicant, registrant, or other person has committed  
13 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, or other person and all appeals have been exhausted; or

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

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

24 (1) the person is:

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

27 (B) a general partner of the applicant,

1 registrant, or other person;

2 (C) the owner of a sole proprietorship applicant,  
3 registrant, or other person;

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

7 (E) a trustee of the applicant, registrant, or  
8 other person; or

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

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

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

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

24 (3) the application or registration is in compliance  
25 with all other requirements of law and commission rules.

26 (e) If an application or registration is denied under this  
27 section, the commission shall provide the applicant or registrant

1 with a written statement explaining the reason for the denial.

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

8 (g) A fee tendered in connection with an application or  
9 registration that is denied under this section is nonrefundable.

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

22 (i) An order issued under Subsection (h) must provide the  
23 applicant, licensee, or registrant a reasonable period to comply  
24 with the judgment or order finding the violation before the order  
25 takes effect.

26 (j) On refusal to renew or revocation of a person's license  
27 or registration for an exemption under Subsection (h), the person

1 may not perform any activities under the jurisdiction of the  
2 commission under this chapter, except as necessary to remedy a  
3 violation of law or commission rules and as authorized by the  
4 commission under a license or registration for an exemption issued  
5 under Subsection (f).

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

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

21 [~~(b) The commission may place on probation a person whose~~  
22 ~~license or registration is suspended. If a license or registration~~  
23 ~~suspension is probated, the commission may require the person:~~

24 [~~(1) to report regularly to the commission on matters~~  
25 ~~that are the basis of the probation;~~

26 [~~(2) to limit practice to the areas prescribed by the~~  
27 ~~commission; or~~

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

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

11           (b) A violation that occurs before the effective date of  
12 this Act is covered by the law in effect on the date the violation  
13 occurred, and the former law is continued in effect for that  
14 purpose.

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