

1-1 By: West (Senate Sponsor - Seliger) H.B. No. 2172
1-2 (In the Senate - Received from the House April 25, 2005;
1-3 April 26, 2005, read first time and referred to Committee on
1-4 Natural Resources; May 13, 2005, reported favorably by the
1-5 following vote: Yeas 8, Nays 0; May 13, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to eligibility for a license or registration for an
1-9 exemption to engage in liquefied petroleum gas-related activities
1-10 and to disciplinary action against licensees and registrants.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 113.092(a), Natural Resources Code, is
1-13 amended to read as follows:

1-14 (a) The commission shall issue the appropriate license to an
1-15 applicant who has satisfied the licensing procedures and
1-16 requirements set out in this chapter and in the rules of the
1-17 commission, except as otherwise ~~[where a prior license has been~~
1-18 ~~revoked as]~~ provided for in ~~[Subsection (a) of]~~ Section 113.163 ~~[of~~
1-19 ~~this code]~~.

1-20 SECTION 2. The heading to Subchapter F, Chapter 113,
1-21 Natural Resources Code, is amended to read as follows:

1-22 SUBCHAPTER F. LICENSE AND REGISTRATION FOR AN EXEMPTION:
1-23 DENIAL AND DISCIPLINARY ACTION

1-24 SECTION 3. Section 113.163, Natural Resources Code, is
1-25 amended to read as follows:

1-26 Sec. 113.163. DENIAL, REFUSAL TO RENEW, OR REVOCATION OF
1-27 LICENSE OR REGISTRATION FOR AN EXEMPTION IN EVENT OF VIOLATION
1-28 [FINDINGS AND JUDGMENT]. (a) Except as provided by Subsections (d)
1-29 and (f), the commission may not approve an application for a license
1-30 under this chapter or approve a registration for an exemption under
1-31 Section 113.081(d) or (e) if:

1-32 (1) the applicant or registrant for an exemption has
1-33 violated a statute or commission rule, order, license, permit, or
1-34 certificate that relates to safety; or

1-35 (2) a person who holds a position of ownership or
1-36 control in the applicant or registrant for an exemption has held a
1-37 position of ownership or control in another person during the seven
1-38 years preceding the date on which the application or registration
1-39 for an exemption is filed and during that period of ownership or
1-40 control the other person violated a statute or commission rule,
1-41 order, license, permit, or certificate that relates to safety.

1-42 (b) An applicant, registrant for an exemption, or other
1-43 person has committed a violation described by Subsection (a) if:

1-44 (1) a final judgment or final administrative order
1-45 finding the violation has been entered against the applicant,
1-46 registrant for an exemption, or other person and all appeals have
1-47 been exhausted; or

1-48 (2) the commission and the applicant, registrant for
1-49 an exemption, or other person have entered into an agreed order
1-50 relating to the alleged violation.

1-51 (c) Regardless of whether the person's name appears or is
1-52 required to appear on an application or registration for an
1-53 exemption, a person holds a position of ownership or control in an
1-54 applicant, registrant for an exemption, or other person if:

1-55 (1) the person is:

1-56 (A) an officer or director of the applicant,
1-57 registrant for an exemption, or other person;

1-58 (B) a general partner of the applicant,
1-59 registrant for an exemption, or other person;

1-60 (C) the owner of a sole proprietorship applicant,
1-61 registrant for an exemption, or other person;

1-62 (D) the owner of at least 25 percent of the
1-63 beneficial interest in the applicant, registrant for an exemption,
1-64 or other person; or

2-1 (E) a trustee of the applicant, registrant for an
 2-2 exemption, or other person; or

2-3 (2) the applicant, registrant for an exemption, or
 2-4 other person has been determined by a final judgment or final
 2-5 administrative order to have exerted actual control over the
 2-6 applicant, registrant for an exemption, or other person.

2-7 (d) The commission shall approve an application for a
 2-8 license under this chapter or for a registration for an exemption
 2-9 under Section 113.081(d) or (e) if:

2-10 (1) the conditions that constituted the violation are
 2-11 corrected or are being corrected in accordance with a schedule to
 2-12 which the commission and the applicant, registrant for an
 2-13 exemption, or other person have agreed;

2-14 (2) all administrative, civil, and criminal penalties
 2-15 are paid or are being paid in accordance with a payment schedule to
 2-16 which the commission and the applicant, registrant for an
 2-17 exemption, or other person have agreed; and

2-18 (3) the application or registration for an exemption
 2-19 is in compliance with all other requirements of law and commission
 2-20 rules.

2-21 (e) If an application or registration for an exemption is
 2-22 denied under this section, the commission shall provide the
 2-23 applicant or registrant for an exemption with a written statement
 2-24 explaining the reason for the denial.

2-25 (f) Notwithstanding Subsection (a), the commission may
 2-26 issue a license to an applicant described by Subsection (a) or
 2-27 approve a registration for an exemption for a registrant for an
 2-28 exemption described by that subsection for a term specified by the
 2-29 commission if the license or registration for an exemption is
 2-30 necessary to remedy a violation of law or commission rules.

2-31 (g) A fee tendered in connection with an application or
 2-32 registration for an exemption that is denied under this section is
 2-33 nonrefundable.

2-34 (h) If the commission is prohibited by Subsection (a) from
 2-35 approving an application for a license or a registration for an
 2-36 exemption or would be prohibited from doing so by that subsection if
 2-37 the applicant, licensee, or registrant for an exemption submitted
 2-38 an application or registration for an exemption, the commission,
 2-39 after notice and opportunity for a hearing, by order may refuse to
 2-40 renew or may revoke a license or registration for an exemption
 2-41 issued to the applicant, licensee, or registrant for an exemption
 2-42 under this chapter. The commission may not revoke or refuse to
 2-43 renew a license or registration for an exemption under this
 2-44 subsection if the commission finds that the applicant, licensee, or
 2-45 registrant for an exemption has fulfilled the conditions set out in
 2-46 Subsection (d).

2-47 (i) An order issued under Subsection (h) must provide the
 2-48 applicant, licensee, or registrant for an exemption a reasonable
 2-49 period to comply with the judgment or order finding the violation
 2-50 before the order takes effect.

2-51 (j) On refusal to renew or revocation of a person's license
 2-52 or registration for an exemption under Subsection (h), the person
 2-53 may not perform any activities under the jurisdiction of the
 2-54 commission under this chapter, except as necessary to remedy a
 2-55 violation of law or commission rules and as authorized by the
 2-56 commission under a license or registration for an exemption issued
 2-57 under Subsection (f).

2-58 (k) In determining whether to refuse to renew or to revoke a
 2-59 person's license or registration for an exemption under Subsection
 2-60 (h), the commission shall consider the person's history of previous
 2-61 violations, the seriousness of previous violations, any hazard to
 2-62 the health or safety of the public, and the demonstrated good faith
 2-63 of the person.

2-64 (l) Refusal to renew or revocation of a person's license or
 2-65 registration for an exemption under Subsection (h) does not relieve
 2-66 the person of any existing or future duty under law, rules, or
 2-67 license or registration conditions [The commission shall revoke,
 2-68 suspend, or refuse to renew a license or registration or shall
 2-69 reprimand a licensee or registrant if the commission finds that the

~~licensee or registrant has violated or failed to comply with or is violating or failing to comply with this chapter or a rule or standard promulgated and adopted under this chapter].~~

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

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

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

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

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

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

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

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