

By: Giddings

H.B. No. 1807

Substitute the following for H.B. No. 1807:

By: Kuempel

C.S.H.B. No. 1807

A BILL TO BE ENTITLED

AN ACT

relating to regulation of cranes and registration and regulation of crane operators; providing penalties.

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

SECTION 1. Title 8, Occupations Code, is amended by adding Chapter 1306 to read as follows:

CHAPTER 1306. REGULATION OF CRANES AND CRANE OPERATORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1306.001. DEFINITIONS. In this chapter:

(1) "ANSI" means the American National Standards Institute.

(2) "ASME" means the American Society of Mechanical Engineers.

(3) "Commission" means the Texas Commission of Licensing and Regulation.

(4) "Crane" means a tower crane that is a nonmobile, power-operated hoisting machine used in construction, maintenance, demolition, or excavation work that has a power-operated winch, load-line, and boom moving laterally. A tower crane is a temporary structure and is not subject to building codes or other provisions of law, rule, or ordinance applicable to permanent structures.

(5) "Crane inspector" means an individual who inspects cranes to determine whether the cranes may be operated safely.

(6) "Crane operator" means an individual who operates

1 a crane.

2 (7) "Crane owner" means a person who owns a crane.

3 (8) "Department" means the Texas Department of
4 Licensing and Regulation.

5 Sec. 1306.002. EXEMPTIONS. This chapter does not apply to a
6 person who:

7 (1) is a member of the armed forces of the United
8 States and who is operating, assembling, or disassembling a crane
9 in the scope of the member's official duties;

10 (2) is a crane operator apprentice or trainee who is:

11 (A) enrolled or participating in a structured
12 crane operator training program that is developed and documented by
13 the employer and is registered with the Office of Apprenticeship of
14 the United States Department of Labor; and

15 (B) under the direct supervision of a crane
16 operator registered under this chapter;

17 (3) is directly employed by a railroad and is
18 qualified by the employing railroad as a crane operator or boom
19 truck operator while performing work on property owned, leased, or
20 controlled by the employing railroad;

21 (4) is employed by or performing work for a public
22 utility, rural electric cooperative, municipality, telephone
23 company, or industrial manufacturing plant;

24 (5) is subject to inspection and regulation under the
25 Federal Mine Safety and Health Act of 1977 (30 U.S.C. Section 801 et
26 seq.);

27 (6) is engaged in boating, fishing, agriculture, or

arboriculture;

(7) is operating a crane for personal use on premises owned or leased by an individual;

(8) is operating a crane in a disaster declared under Chapter 418, Government Code;

(9) is a tow truck operator;

(10) is a mechanic truck operator;

(11) is performing work on a highway, road, street, bridge, utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or similar project associated with civil engineering construction; or

(12) is a side boom operator or pipe layer.

Sec. 1306.003. EFFECT ON LOCAL LAW. This chapter preempts and supersedes a local ordinance, rule, or regulation adopted by a political subdivision of this state relating to the registration and regulation of cranes, crane operators, and crane inspectors.

[Sections 1306.004-1306.050 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT

Sec. 1306.051. GENERAL POWERS AND DUTIES. The commission and department shall administer and enforce this chapter.

Sec. 1306.052. ADOPTION OF RULES. The commission shall adopt rules consistent with this chapter as necessary to administer this chapter.

Sec. 1306.053. FEES. The department shall set fees as necessary in amounts reasonable and necessary to cover the cost of administering this chapter.

1 Sec. 1306.054. CRANE OPERATOR SAFETY ADVISORY BOARD. (a)
2 The commission shall establish the crane operator safety advisory
3 board. The board consists of the following seven members appointed
4 by the presiding officer of the commission with the approval of the
5 commission:

- 6 (1) three registered crane operators;
7 (2) one person who employs or contracts to hire
8 individuals registered under this chapter;
9 (3) one public member;
10 (4) one crane manufacturer; and
11 (5) three crane owners.

12 (b) An appointment to the advisory board shall be made
13 without regard to the race, color, disability, sex, religion, age,
14 or national origin of the appointee.

15 (c) Advisory board members serve six-year terms, with the
16 terms of two or three members, as appropriate, expiring on February
17 1 of each odd-numbered year. A member may not serve more than two
18 full consecutive terms.

19 (d) If a vacancy occurs during a term, the presiding officer
20 of the commission shall appoint a replacement who meets the
21 qualifications of the vacated position to serve for the remainder
22 of the term.

23 (e) The presiding officer of the commission shall appoint
24 one of the advisory board members to serve as presiding officer of
25 the advisory board for a term of one year. The presiding officer of
26 the advisory board may vote on any matter before the advisory board.

27 (f) Advisory board members may not receive compensation,

1 but are entitled to reimbursement for actual and necessary expenses
2 incurred in performing the functions of the advisory board, subject
3 to the General Appropriations Act.

4 (g) The advisory board shall meet twice annually and may
5 meet at other times at the call of the presiding officer of the
6 commission or the executive director of the department.

7 (h) The advisory board shall provide advice and
8 recommendations to the department on technical matters relevant to
9 the administration and enforcement of this chapter and rules
10 adopted under this chapter, including advice and recommendations
11 regarding examination content, registration standards, and crane
12 operator standards.

13 (i) Chapter 2110, Government Code, does not apply to the
14 advisory board.

15 [Sections 1306.055-1306.100 reserved for expansion]

16 SUBCHAPTER C. REGISTRATION

17 Sec. 1306.101. CRANE OPERATOR REGISTRATION REQUIRED. (a)
18 A person may not act as a crane operator unless the person holds a
19 crane operator registration issued by the department under this
20 chapter.

21 (b) An employer or contractor may not employ or use an
22 individual to act as a crane operator unless the individual holds a
23 crane operator registration issued by the department under this
24 chapter.

25 Sec. 1306.102. CRANE OPERATOR ELIGIBILITY REQUIREMENTS.

26 (a) To protect the public health and safety, the commission by rule
27 shall establish eligibility criteria for a person to hold a crane

operator registration under this chapter and shall adopt revised ANSI personnel accreditation standards, as appropriate.

(b) The rules must require a crane operator to hold a crane operator certification issued by:

(1) the National Commission for the Certification of Crane Operators; or

(2) an equivalent crane operator certification program approved by the department that:

(A) has personnel accreditation standards at least as stringent as the most recent ANSI standards adopted by the commission;

(B) has safety standards at least as stringent as the most recent revisions of the ASME B30.3 Construction Tower Cranes and ASME B30.5 Mobile and Locomotive Cranes standards as adopted by commission rule; and

(C) demonstrates the person has acquired the necessary knowledge, skill, and ability to operate the type of crane for which certification is sought.

[Sections 1306.103-1306.150 reserved for expansion]

SUBCHAPTER D. REGULATION AND ENFORCEMENT

Sec. 1306.151. INSPECTIONS. (a) A crane owner may not allow the operation of a crane in this state unless the crane is annually inspected by a department crane inspector. The crane inspector must be registered with the department or be a third-party inspector of the department and hold a certification issued by:

(1) the National Commission for the Certification of

1 Crane Operators; or

2 (2) an equivalent inspector certification program
3 approved or developed by the department that:

4 (A) has personnel accreditation standards at
5 least as stringent as the most recent ANSI standards adopted by the
6 commission; and

7 (B) demonstrates the inspector has acquired the
8 necessary knowledge, skill, and ability to act as a crane
9 inspector.

10 (b) A crane inspector shall ensure the crane complies with
11 the periodic inspection requirements established by the most recent
12 revisions of ASME B30.3 Construction Tower Cranes and ASME B30.5
13 Mobile and Locomotive Cranes or other requirements as provided by
14 commission rule.

15 (c) For each crane in operation in this state, the crane
16 owner shall ensure a competent person performs daily inspections of
17 the crane in accordance with the specifications of the manufacturer
18 and the American Society of Mechanical Engineers as adopted by the
19 commission. An owner's compliance with this statute establishes an
20 affirmative defense.

21 (d) The department shall establish the procedures,
22 qualifications, and fees necessary for the registration of crane
23 inspectors as required by this section.

24 Sec. 1306.152. DRUG AND ALCOHOL TESTING. A person who holds
25 a certificate of registration issued under this chapter shall
26 periodically undergo drug and alcohol testing in accordance with
27 commission rules. In adopting rules under this section, the

commission shall consider the drug and alcohol testing requirements of the federal Occupational Safety and Health Administration.

[Sections 1306.153-1306.200 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT

Sec. 1306.201. DISCIPLINARY ACTION. A person is subject to disciplinary action under Subchapter G, Chapter 51, if the person violates this chapter or a rule adopted under this chapter.

Sec. 1306.202. ADMINISTRATIVE PENALTY; HEARINGS. The department may impose an administrative penalty in the manner provided by Subchapter F, Chapter 51, on a person if the person violates this chapter or a rule adopted under this chapter.

Sec. 1306.203. CEASE AND DESIST; CIVIL PENALTY; INJUNCTION.

(a) The department may issue a cease and desist order if the department determines that an order is necessary to:

(1) prevent a violation of this chapter; or

(2) protect the public health and safety.

(b) The attorney general or the department under this chapter may institute an action for an injunction or a civil penalty as provided by Section 51.352.

(c) The department may immediately stop or prevent the operation of a crane in an emergency.

Sec. 1306.204. CIVIL PENALTY. (a) A person who violates this chapter or a rule adopted under this chapter is liable to this state for a civil penalty not to exceed \$1,000 for each violation. Each day a violation continues constitutes a separate violation.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation;

1 (2) the history of previous violations;

2 (3) the amount necessary to deter a future violation;

3 and

4 (4) any other matter that justice may require.

5 (c) The department or the attorney general may sue to
6 collect a civil penalty under this section. In the suit the state
7 may recover the reasonable expenses incurred in obtaining the
8 penalty, including investigation and court costs, reasonable
9 attorney's fees, witness fees, and other expenses.

10 SECTION 2. (a) Not later than April 30, 2010, the Texas
11 Commission of Licensing and Regulation shall adopt rules required
12 by Chapter 1306, Occupations Code, as added by this Act.

13 (b) Notwithstanding Chapter 1306, Occupations Code, as
14 added by this Act:

15 (1) a crane operator is not required to hold a
16 registration under that chapter until September 1, 2010; and

17 (2) a crane is not required to be registered under
18 that chapter until September 1, 2011.

19 SECTION 3. (a) Except as provided by Subsections (b) and
20 (c) of this section, this Act takes effect September 1, 2009.

21 (b) Section 1306.101, Occupations Code, as added by this
22 Act, takes effect September 1, 2010.

23 (c) Section 1306.103, Occupations Code, as added by this
24 Act, takes effect January 1, 2011.