

By: Gallegos

S.B. No. 180

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a state occupational health and safety plan; establishing a maintenance tax.

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

SECTION 1. Chapter 411, Labor Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. STATE OCCUPATIONAL HEALTH AND SAFETY PLAN

Sec. 411.151. DEFINITIONS. In this subchapter:

(1) "Employee" means an individual employed by an employer.

(2) "Employer" means a person that employs one or more individuals. The term does not include the state, a political subdivision of the state, or another governmental entity in this state.

Sec. 411.152. STATE PLAN. The commissioner shall develop a state plan relating to state enforcement of occupational health and safety standards. The state plan must comply with federal approval requirements under Section 18, Occupational Safety and Health Act of 1970 (29 U.S.C. Section 667). Standards adopted by the commissioner under the state plan may not be more stringent than the standards adopted by the United States Department of Labor.

Sec. 411.153. GENERAL POWERS AND DUTIES OF COMMISSIONER AND DIVISION. (a) The department, through the division, is the state agency generally charged with implementation and enforcement of

1 state laws and administrative rules relating to the protection of  
2 the life, health, and safety of persons at their places of  
3 employment. The division may obtain information from any  
4 appropriate source, including employers, that relates to  
5 occupational health and safety issues.

6 (b) The division may conduct inspections of places of  
7 employment at reasonable times as necessary to implement this  
8 subchapter.

9 (c) The division shall:

10 (1) gather, maintain, and publish statistical  
11 information relating to occupational health and safety programs  
12 operated by other states in order to obtain data for an ongoing  
13 comparative evaluation of the effectiveness of the programs  
14 operated in this state;

15 (2) design and conduct research relating to the  
16 prevention of job-related injuries and occupational disease;

17 (3) publish the results of its research;

18 (4) consult with employers regarding compliance with  
19 state or federal occupational safety laws, rules, or agreements;

20 (5) develop programs designed to reduce job-related  
21 injuries and occupational disease for use by employers, employees,  
22 and other interested parties; and

23 (6) collect information relating to occupational  
24 safety as required by state or federal laws, rules, or agreements.

25 (d) The commissioner may adopt rules and prescribe forms as  
26 necessary to implement this subchapter.

27 (e) The division may charge fees for its publications and

1 for seminars and training programs offered by the division. The  
2 commissioner shall set the fees in amounts reasonable and necessary  
3 to cover administrative costs.

4 Sec. 411.154. EMPLOYER CLASSIFICATIONS; CONSULTATIONS.

5 (a) The division shall collect and compile information relating to  
6 the job-related accident experience of each employer, including:

7 (1) the frequency of accidents;

8 (2) the existence and implementation of private safety  
9 programs by the employer;

10 (3) man-hour losses due to employee injuries; and

11 (4) other factors considered relevant by the division.

12 (b) Based on the compiled information, the division shall:

13 (1) classify employers as necessary and appropriate to  
14 assist employers in providing safe and healthful conditions of  
15 employment; and

16 (2) identify hazardous occupations.

17 (c) On the written request of an employer, the division may  
18 consult with and advise the employer or the employer's  
19 representative regarding the improvement of the employer's  
20 accident frequency rate and the elimination or reduction of  
21 impediments to occupational health and safety at the employer's  
22 place of business.

23 Sec. 411.155. TASK FORCE ON CERTAIN HIGH-RISK WORKSITES.

24 (a) The commissioner shall establish within the division a task  
25 force to inspect high-risk worksites at facilities primarily  
26 engaged in the manufacture or distribution of products or  
27 materials:

1           (1) identified as known or probable carcinogens; or  
2           (2) with known or recognizable flammable or explosive  
3 properties.

4           (b) The task force shall inspect facilities described by  
5 Subsection (a) as necessary to determine that the facilities:

6           (1) comply with process safety standards;  
7           (2) conform to established safety standards in the  
8 applicable industry; and

9           (3) operate within all guidelines, rules, and  
10 regulations established by the Texas Commission on Environmental  
11 Quality, the Environmental Protection Agency, and any other state  
12 or federal agency involved in the monitoring or regulation of  
13 environmental standards.

14           (c) The task force shall oversee monitoring programs  
15 established to require facilities described by Subsection (a) to be  
16 inspected with proper detection devices for any leaks of materials  
17 described by Subsection (a)(1) or (2).

18           Sec. 411.156. FUNDING; MAINTENANCE TAX. (a) The  
19 occupational health and safety plan adopted under this subchapter  
20 is funded through the assessment of an annual maintenance tax  
21 collected from each stock insurance company, mutual insurance  
22 company, reciprocal or interinsurance exchange, and Lloyd's plan  
23 that writes workers' compensation insurance in this state. The  
24 commissioner of insurance shall set the rate of the maintenance tax  
25 in an amount not to exceed one percent of the correctly reported  
26 gross workers' compensation insurance premiums of those insurers as  
27 reported to the department under Subtitle E, Title 10, Insurance

1 Code. The commissioner of insurance shall set the rate of  
2 assessment each year to produce the amount of funds that the  
3 commissioner estimates will be necessary to operate the  
4 occupational health and safety plan. The tax assessed under this  
5 section is in addition to all other taxes imposed on those insurers  
6 for workers' compensation purposes and shall be paid to the  
7 department at the same time that the insurers pay the maintenance  
8 tax imposed under Chapter 255, Insurance Code.

9 (b) The commissioner of insurance may adopt rules as  
10 necessary relating to the assessment and collection of the  
11 maintenance tax imposed under Subsection (a).

12 (c) The department shall remit all funds received under this  
13 section to the comptroller for deposit in the state treasury to the  
14 credit of the general revenue fund.

15 Sec. 411.157. DUTIES OF EMPLOYER AND WORKSITE OWNER. (a)  
16 Each employer shall furnish and maintain a safe and healthful  
17 employee work environment. The employer shall install, maintain,  
18 and use those methods, processes, devices, and safeguards as are  
19 necessary to protect the life, health, and safety of employees.

20 (b) Each employer and worksite owner shall report to the  
21 division in the manner prescribed by the rules of the commissioner  
22 information relating to personal injuries, fatalities, accidents,  
23 and other occupational health and safety issues related to the  
24 employer's place of business or the worksite, as applicable. The  
25 employer and worksite owner shall report on forms prescribed by and  
26 covering time periods designated by the commissioner.

27 SECTION 2. Section 502.003, Health and Safety Code, is

1 amended by adding Subdivision (4-a) and by amending Subdivision (8)  
2 to read as follows:

3 (4-a) "Commissioner" means the commissioner of  
4 workers' compensation.

5 (8) "Division" means the division of workers'  
6 compensation of the Texas Department of Insurance [~~"Director" means~~  
7 ~~the director of the Texas Department of Health~~].

8 SECTION 3. Chapter 502, Health and Safety Code, is amended  
9 by adding Section 502.0035 to read as follows:

10 Sec. 502.0035. ADMINISTRATION; REFERENCES. (a)  
11 Notwithstanding any other provision of this chapter, this chapter  
12 is administered by the commissioner.

13 (b) A reference in this chapter to the Texas Board of  
14 Health, the Texas Department of Health, a successor agency to that  
15 board or department, or to the director means the commissioner or  
16 the division, or a successor officer or agency to the commissioner  
17 or division, as appropriate.

18 SECTION 4. Section 411.018, Labor Code, is repealed.

19 SECTION 5. The commissioner of workers' compensation shall  
20 adopt rules as necessary to implement Subchapter I, Chapter 411,  
21 Labor Code, as added by this Act, not later than January 1, 2010,  
22 and shall implement the state occupational health and safety plan  
23 not later than September 1, 2010.

24 SECTION 6. This Act takes effect September 1, 2009.