

THE EVA BILL  
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 1 to read as follows:

**SUBCHAPTER 1. 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 terms does not include the state, a political subdivision of the state, or another governmental entity in this state.

**Sec. 411.152. STATE PLAN.** The commission 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 Health and Safety Act of 1970 (29 U.S.C. Sec. 667). Standards adopted by the commission 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 COMMISSION AND DIVISION.**

(a) The commission is the state agency generally charged with implementation and enforcement of state laws and administrative rules relating to the protection of the life, health, and safety of persons at their places of employment. The commission may

obtain information from any appropriate source, including employers, that relates to occupational health and safety issues.

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

(c) The division shall:

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

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

(3) publish the results of its research;

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

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

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

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

(e) The division may charge fees for its publications and for seminars and training programs offered by the division. The commission shall set the fees in the amounts reasonable and necessary to cover administrative costs.

**Sec. 411.154. EMPLOYER CLASSIFICATIONS; CONSULTATIONS.**

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

- (1) the frequency of accidents;
- (2) the existence and implementation of private safety programs by the employer;
- (3) man-hour losses due to employee injuries; and
- (4) other factors considered relevant by the division.

(b) Based on the compiled information, the division shall;

- (1) classify employers as necessary and appropriate to assist employers in providing safe and healthful conditions of employment; and
- (2) identify hazardous occupations.

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

**(d) This division shall further create a task force to inspect facilities primarily engaged in the manufacture or distribution of products or materials identified as known or probable carcinogens or with known or recognizable flammable or explosive properties (hereinafter referenced as high risk worksites).**

**This task force is charged with the inspection of all such facilities to assign process safety standards conform to established industry standards and operate within all guidelines or regulations as established by the TNRCC, the EPA and any other states or federal agency involved in the monitoring or regulation of environmental standards.**

**Sec. 411.155. FUNDING; MAINTENANCE TAX.**

(a) The occupational health and safety plan adopted under this subchapter is funded through the assessment of an annual maintenance tax collected from each stock company, mutual company, reciprocal or inter-insurance exchange, and Lloyd's association that writes workers' compensation insurance in this state. The commissioner of insurance shall set the rate of the maintenance tax in an amount not to exceed one percent of the correctly reported gross workers' compensation insurance premiums of those insurers as reported to the Texas Department of Insurance under Subchapter D, Chapter 5, Insurance Code. The commissioner of insurance shall set the rate of assessment each year to produce the amount of funds that the commissioner estimates will be necessary to operate the occupational health and safety plan. The tax assessed under this section is in addition to all other taxes imposed on those insurers for workers' compensation purposes and shall be paid to the Texas Department of Insurance at the same time that the insurers pay the maintenance tax imposed under Chapter 255, Insurance Code.

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

(c) The Texas Department of Insurance shall remit all funds received under this section to the comptroller of public accounts for deposit in the state treasury to the credit of the general revenue fund.

**Sec. 411.156. EMPLOYER DUTIES.**

(a) Each employer shall furnish and maintain a safe and healthful employee work environment. The employer shall install, maintain, and use those methods, processes, devices, and safeguards as are necessary to protect the life, health, and safety of employees.

(b) Each employer and worksite owner shall report to the division in the manner prescribed by the rules of the commission information relating to personal injuries, fatalities, accidents, and other occupational health and safety issues related to the employer's place of business and/or worksite involved. The employer shall report on forms prescribed by and covering time periods designated by the commission.

(c) Each employer and/or worksite owner involving high risk facilities shall report to the commission for permits for the installation of any temporary housing to be located on the premises engaged in the manufacture, production or distribution of products identified at Sec. 411.154 (d).

No such temporary buildings are to be allowed on the premises of any such facility without a permit approving the structure and location. No such permits shall be approved by this commission or approved to locate any such temporary structures within 1000 feet of process units or storage facilities containing flammable or explosive materials with the intent of utilizing such facilities for occupancy by personnel.

(d) The task force is charged with the oversight of monitoring programs to be established which will require facilities subject to the task force to inspect facilities with proper detection devices for any leaks of materials described in the section. Each facility is also to report the number of open vent systems, whether open to the atmosphere relief valves or other open vent systems, such as blowdown drums. All such relief systems involving heavier than air emissions will be modified within a five year phasing in process to a closed system or located in such manners as the task force approves of such systems in consideration of proximity to the workforce and equipment.

**(e) Refinery/Chemical Facility Start Ups/Shutdowns: Refinery or chemical facility unit startups and planned shutdowns shall be initiated only upon 48 hour advance written notice to this agency and to all personnel working within 1000 feet of the unit. Employers are expressly prohibited from allowing any non-essential personnel within 1000 feet at any time during the startup process of a unit.**

**(f) Standardized Testing/Training: All employers in the refinery or chemical manufacturing sections of industry are required to implement standardized competency testing of all employees charged with control operations or immediate oversight of such operations. Such competency testing shall be remitted no later than on an annualized basis and copies of such testing shall be retained by the employer for the duration of each such employee's employment.**

**SECTION 2. Sec. 502.003.** Health and Safety Code, is amended by adding Subdivision (4-a) and by amending Subdivision (8) to read as follows:

(4-a) "Commission" means the Texas Workers' Compensation Commission

(8) "Division" means the division of workers' health and safety of the Texas Workers' Compensation Commission.

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

**Sec. 502.0035. ADMINISTRATIVE BY COMMISSION; REFERENCES.**

(a) Notwithstanding any other provision of this chapter, this chapter is administered by the commission.

(b) A reference in this chapter to the Texas Board of Health, the Texas Department of health, a successor agency to that board or department, or to the director

means the commission or the division, or a successor agency to the commission or division, as appropriate.

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

**SECTION 5.** Except as provided by Section 6 of this Act, the Texas Workers' Compensation Commission shall adopt rules as necessary to implement Subchapter 1, Chapter 411, Labor Code, as added by this Act, not later than January 1, 2008, and shall implement the state occupational health and safety plan not later than September 1, 2008.

**SECTION 6.** If an act of the 80<sup>th</sup> Legislature, Regular Session, 2007, transfers the powers and duties of the Texas Workers' Compensation Commission to another state agency, the powers and duties assigned to the Texas Workers' Compensation Commission under Subchapter 1, Chapter 411, Labor Code, as added by this Act, are transferred to the state agency responsible for employee health and safety programs, and the governing body of that state agency shall adopt rules as required by that subchapter not later than January 1, 2008, and shall implement the state occupational health and safety plan not later than September 1, 2008.

**SECTION 7.** This Act takes effective September 1, 2007.