

By: \_\_\_\_\_ .B. No. \_\_\_\_\_

Substitute the following for .B. No. \_\_\_\_\_:

By: \_\_\_\_\_ C.S..B. No. \_\_\_\_\_

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

7 SUBCHAPTER I. STATE OCCUPATIONAL HEALTH AND SAFETY PLAN

8 Sec. 411.151. DEFINITIONS. In this subchapter:

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

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

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

1        Sec. 411.153. GENERAL POWERS AND DUTIES OF COMMISSIONER AND  
2 DIVISION. (a) The department, through the division, is the state  
3 agency generally charged with implementation and enforcement of  
4 state laws and administrative rules relating to the protection of  
5 the life, health, and safety of persons at their places of  
6 employment. The division may obtain information from any  
7 appropriate source, including employers, that relates to  
8 occupational health and safety issues.

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

12        (c) The division shall:

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

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

20            (3) publish the results of its research;

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

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

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

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

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

9           Sec. 411.154. EMPLOYER CLASSIFICATIONS; CONSULTATIONS. (a)  
10 The division shall collect and compile information relating to the  
11 job-related accident experience of each employer, including:

12           (1) the frequency of accidents;

13           (2) the existence and implementation of private safety  
14 programs by the employer;

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

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

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

18           (1) classify employers as necessary and appropriate to  
19 assist employers in providing safe and healthful conditions of  
20 employment; and

21           (2) identify hazardous occupations.

22           (c) On the written request of an employer, the division may  
23 consult with and advise the employer or the employer's  
24 representative regarding the improvement of the employer's accident  
25 frequency rate and the elimination or reduction of impediments to

1 occupational health and safety at the employer's place of business.

2 Sec. 411.155. TASK FORCE ON CERTAIN HIGH-RISK WORKSITES. (a)

3 The commissioner shall establish within the division a task force  
4 to identify and inspect high-risk worksites at facilities primarily  
5 engaged in the manufacture or distribution of products or  
6 materials:

7 (1) identified as known or probable carcinogens; or

8 (2) with known or recognizable flammable or explosive  
9 properties.

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

12 (1) comply with process safety standards;

13 (2) conform to established safety standards in the  
14 applicable industry; and

15 (3) operate within all guidelines, rules, and  
16 regulations established by the Texas Commission on Environmental  
17 Quality, the Environmental Protection Agency, and any other state  
18 or federal agency involved in the monitoring or regulation of  
19 environmental standards.

20 (c) The task force shall oversee monitoring programs  
21 established to require facilities described by Subsection (a) to be  
22 inspected with proper detection devices for any leaks of materials  
23 described by Subsection (a)(1) or (2). Each facility shall report  
24 to the task force the number of open vent systems, whether open-to-  
25 the-atmosphere relief valves or other open vent systems, such as

1 blow down drums. The task force may require that all relief  
2 systems involving heavier-than-air emissions be:

3 (1) modified over a five-year phasing-in period to a  
4 closed system; or

5 (2) located in a manner approved by the task force that  
6 considers the proximity of the system to the workforce and  
7 equipment.

8 Sec. 411.156. FUNDING; MAINTENANCE TAX. (a) The  
9 occupational health and safety plan adopted under this subchapter  
10 is funded through the assessment of an annual maintenance tax  
11 collected from each stock insurance company, mutual insurance  
12 company, reciprocal or interinsurance exchange, and Lloyd's plan  
13 that writes workers' compensation insurance in this state. The  
14 commissioner of insurance shall set the rate of the maintenance tax  
15 in an amount not to exceed one percent of the correctly reported  
16 gross workers' compensation insurance premiums of those insurers as  
17 reported to the department under Subtitle E, Title 10, Insurance  
18 Code. The commissioner of insurance shall set the rate of  
19 assessment each year to produce the amount of funds that the  
20 commissioner estimates will be necessary to operate the  
21 occupational health and safety plan. The tax assessed under this  
22 section is in addition to all other taxes imposed on those insurers  
23 for workers' compensation purposes and shall be paid to the  
24 department at the same time that the insurers pay the maintenance  
25 tax imposed under Chapter 255, Insurance Code.

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

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

7       Sec. 411.157. GENERAL DUTIES OF EMPLOYER AND WORKSITE OWNER.

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

12       (b) Each employer and worksite owner shall report to the  
13 division in the manner prescribed by the rules of the commissioner  
14 information relating to personal injuries, fatalities, accidents,  
15 and other occupational health and safety issues related to the  
16 employer's place of business or the worksite, as applicable. The  
17 employer and worksite owner shall report on forms prescribed by and  
18 covering time periods designated by the commissioner.

19       Sec. 411.158. REQUIREMENTS FOR EMPLOYERS OR WORKSITE OWNERS  
20 THAT OPERATE REFINERIES OR CHEMICAL MANUFACTURING FACILITIES. (a)

21       A refinery or chemical facility unit startup or planned shutdown  
22 may be initiated only after provision of 48 hours' advance written  
23 notice to the division and to all employees working within 1,000  
24 feet of the unit. An employer may not allow any nonessential  
25 employees within 1,000 feet of a unit at any time during the

1 startup process of the unit.

2 (b) The division shall require each employer in the refinery  
3 or chemical manufacturing industry to implement standardized  
4 competency testing of all employees charged with control operations  
5 or immediate oversight of those operations. The competency testing  
6 shall be performed at least annually, and copies of the tests shall  
7 be retained by the employer for the duration of the employee's  
8 employment.

9 Sec. 411.159. REQUIRED PERMITS FOR CERTAIN TEMPORARY  
10 STRUCTURES. (a) Temporary housing or other temporary buildings to  
11 be located on premises identified as a high-risk worksite under  
12 Section 411.155 may not be constructed or erected without a permit  
13 issued by the division approving the structure and location.

14 (b) An employer or worksite owner that operates a facility  
15 identified as a high-risk worksite must apply to the division for  
16 the necessary permit. The division may not approve a permit for a  
17 structure intended to be used as temporary housing for occupancy by  
18 employees that is to be located within 1,000 feet of a process unit  
19 or storage facility that contains flammable or explosive materials.

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

23 (4-a) "Commissioner" means the commissioner of workers'  
24 compensation.

25 (8) "Division" means the division of workers'

1 compensation of the Texas Department of Insurance [~~"Director" means~~  
2 ~~the director of the Texas Department of Health~~].

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

5 Sec. 502.0035. ADMINISTRATION; REFERENCES. (a)  
6 Notwithstanding any other provision of this chapter, this chapter  
7 is administered by the commissioner.

8 (b) A reference in this chapter to the Texas Board of Health,  
9 the Texas Department of Health, a successor agency to that board or  
10 department, or to the director means the commissioner or the  
11 division, or a successor officer or agency to the commissioner or  
12 division, as appropriate.

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

14 SECTION 5. The commissioner of workers' compensation shall  
15 adopt rules as necessary to implement Subchapter I, Chapter 411,  
16 Labor Code, as added by this Act, not later than January 1, 2008,  
17 and shall implement the state occupational health and safety plan  
18 not later than September 1, 2008.

19 SECTION 6. This Act takes effect September 1, 2007.