

CHAPTER 339

H.B. No. 278

AN ACT

relating to the regulation of fire protection personnel; providing administrative and civil penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Chapter 668, Acts of the 61st Legislature, Regular Session, 1969 (Article 4413(35), Vernon's Texas Civil Statutes), is amended by adding Section 1b to read as follows:

Sec. 1b. DEFINITIONS. In this Act:

(1) "Aircraft crash and rescue fire protection personnel" means a permanent, fully paid, full-time local governmental employee who, as a permanent duty assignment, fights aircraft fires at airports, stands by for potential crash landings, and performs aircraft crash rescue.

(2) "Fire department" means a department of a local government with permanent, fully paid, full-time employees organized to prevent or suppress fires.

(3) "Fire protection personnel" means:

(A) a permanent, fully paid, full-time law enforcement officer designated as a fire and arson investigator by an appropriate local authority;

(B) an aircraft crash and rescue fire protection personnel; or

(C) a permanent, fully paid, full-time fire department employee who is not a secretary, stenographer, clerk, budget analyst, or similar support staff person or other administrative employee, and who is assigned duties in one or more of the following categories:

(i) fire suppression;

- (ii) *fire inspection;*
- (iii) *fire and arson investigation;*
- (iv) *marine fire fighting;*
- (v) *aircraft crash fire fighting and rescue;*
- (vi) *fire training;*
- (vii) *fire education;*
- (viii) *fire administration; and*
- (ix) *any other position necessarily or customarily related to fire prevention and suppression.*

(4) "Local government" means an incorporated city, town, or village, a county, a special-purpose district or authority, or any other political subdivision of the state.

(5) "Marine fire protection personnel" means a permanent, fully paid, full-time local governmental employee who works aboard a fireboat and fights fires that occur on or adjacent to a waterway, waterfront, channel, or turning basin.

(6) "Protective clothing" means garments, including turnout coats, bunker coats, boots, gloves, trousers, helmets, and protective hoods worn by fire protection personnel in the course of performing fire-fighting operations.

SECTION 2. Section 2, Chapter 668, Acts of the 61st Legislature, Regular Session, 1969 (Article 4413(35), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. **POWERS AND DUTIES.** The commission shall have the authority and power to:

(1) promulgate rules and regulations for the administration of this Act including the authority to require the submission of reports and information by any state or local governmental[, county, or municipal] agency within this State which employs fire protection personnel;

(2) establish minimum educational, training, physical, mental, and moral standards for admission to employment as fire protection personnel in permanent positions or in temporary or probationary status and for advanced or specialized fire protection personnel positions;

(3) certify persons as being qualified under the provisions of this Act to be fire protection personnel;

(4) certify persons as having qualified as fire protection personnel instructors under such conditions as the commission may prescribe;

(5) *revoke the certification of fire protection personnel and fire protection personnel instructors;*

(6) [(5)] establish minimum curriculum requirements for preparatory, in-service and advance courses and programs for schools or academies operated by or for the State or any local government [political subdivisions thereof] for the specific purpose of training fire protection personnel or recruits for the position of fire protection personnel;

(7) [(6)] consult and cooperate with local governmental [counties, municipalities,] agencies of this State, other governmental agencies, and with universities, colleges, junior colleges, and other institutions concerning the development of fire protection personnel training schools and programs of courses of instruction, including the preparation or implementation of continuing education or training programs for fire protection personnel;

(8) [(7)] approve, or revoke the approval of, institutions and facilities for schools operated by or for the State or any local government [political subdivision thereof] for the specific purpose of training fire protection personnel or recruits for the position of fire protection personnel, and issue certificates of approval to such institutions and revoke such certificates of approval;

(9) [(8)] operate schools and facilities thereof and conduct courses therein, both preparatory, in-service, basic, and advanced courses, for fire protection personnel and recruits for the position of fire protection personnel as the commission may determine;

(10) [(9)] contract with other agencies, public or private, or persons, as the commission deems necessary for the rendition and affording of such services, facilities, studies, and reports as it may require to cooperate with *local governmental* [~~municipal, county~~], state, and federal agencies in training programs, and to otherwise perform its functions;

(11) [(10)] make or encourage studies of any aspect of fire protection, including fire administration;

(12) [(11)] conduct and stimulate research by public and private agencies which shall be designed to improve fire protection and fire administration;

(13) [(12)] employ an executive director and such other personnel as may be necessary in the performance of its functions;

(14) [(13)] visit and inspect all institutions and facilities conducting courses for the training of fire protection personnel and recruits for the position of fire protection personnel and make evaluations as may be necessary to determine if they are complying with the provisions of this Act and the commission's rules and regulations;

(15) [(14)] adopt and amend rules and regulations, consistent with state law, for its internal management and control;

(16) [(15)] accept any donations, contributions, grants, or gifts from private individuals or foundations or the federal government;

(17) [(16)] report annually to the Governor and to the Legislature at each regular session on its activities, with its recommendations relating to any matter within its purview, and make such other reports as it deems desirable;

(18) [(17)] meet at such times and places in the State of Texas as it deems proper, meetings to be called by the chairman upon his own motion, or upon the written request of five members; and

(19) [(18)] consistent with the provisions of Section 8A of this Act, publish minimum standards for protective clothing and self-contained breathing apparatus for [~~full-time, paid~~] fire protection personnel.

SECTION 3. Sections 6(b), (c), (e), (h), (i), (j), and (k), Chapter 668, Acts of the 61st Legislature, Regular Session, 1969 (Article 4413(35), Vernon's Texas Civil Statutes), are amended to read as follows:

(b) No person [~~after September 1, 1972,~~] shall be appointed to a [~~municipal~~] fire department, except on a temporary or probationary basis, unless such person has satisfactorily completed a preparatory program of training in fire protection at a school approved or operated by the commission. Fire protection personnel who have received a temporary or probationary appointment [~~as such on September 1, 1972, or thereafter,~~] and who fail to satisfactorily complete a basic course in fire protection as prescribed by the commission, within a one-year period from the date of his original appointment, shall forfeit his position and shall be removed therefrom; and may not have his temporary or probationary employment extended beyond one year by renewal of appointment or otherwise; except that after the lapse of one year from the date of his forfeiture and removal, a [~~municipal~~] fire department [~~agency~~] may petition the commission for reinstatement of temporary or probationary employment of such individual, such reinstatement resting within the sole discretion of the commission.

(c) In addition to the requirements of Subsection (b) of this section, the commission, by rules and regulations, may establish other qualifications for the employment of fire protection personnel, including minimum age, education, physical and mental standards, citizenship, good moral character, *basic certification tests, continuing education or training programs* [~~experience~~], and such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of fire protection personnel, and the commission shall prescribe the means of presenting evidence of fulfillment of these requirements. No person shall be appointed unless he fulfills such requirements.

(e) Any person who accepts appointment to a [~~municipal~~] fire department, or any person who appoints or retains such individual, in violation of Subsections (b) or (c) of this

section shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$100 nor more than \$1,000.

(h) The commission shall formulate and publish the requirements for certification for ~~[as a]~~ marine fire protection personnel ~~[fireman]~~ by September 1, 1978. After September 1, 1978, no person may be appointed to ~~[as]~~ a marine fire protection personnel position ~~[fireman]~~ except on a probationary basis unless the person has completed training prescribed by the commission. *Marine fire protection personnel who are* ~~[A marine fireman who is]~~ appointed on a probationary basis after September 1, 1978, must complete the prescribed training within a two-year period from the date of appointment. *Marine fire protection personnel* ~~[firemen]~~ serving under permanent appointment and with five or more years of service on September 1, 1978, have satisfied the training requirements by their experience. *Marine fire protection personnel* ~~[A marine fireman]~~ serving under permanent appointment and with less than five years of experience on September 1, 1978, must complete the prescribed training by September 1, 1980. ~~[For the purposes of this Act, a marine fireman is one who works for a fire department and aboard fireboats and fights fires which occur on or adjacent to a waterway, waterfront, channel, or turning basin.]~~

(i) A person who accepts appointment to a marine fire protection personnel position ~~[as a marine fireman]~~ or a person who appoints marine fire protection personnel ~~[a marine fireman]~~ in violation of Subsection (h) of this section shall be guilty of a misdemeanor and on conviction shall be fined not less than \$100 nor more than \$1,000.

(j) Before September 1, 1984, the commission shall establish requirements for certification of ~~[as an]~~ aircraft crash and rescue fire protection personnel ~~[fighter]~~. After September 1, 1984, no person may be appointed to ~~[as]~~ an aircraft crash and rescue fire protection personnel position ~~[fighter]~~, except on a probationary basis, unless the person has completed training prescribed by the commission. After September 1, 1984, ~~[an]~~ aircraft crash and rescue fire protection personnel who are ~~[fighter who is]~~ appointed on a probationary basis must complete the prescribed training before two years after the date of appointment. *Aircraft* ~~[An aircraft]~~ crash and rescue fire protection personnel who are ~~[fighter who is]~~ serving under permanent appointment on September 1, 1984, and who have ~~[has]~~ two or more years of service as ~~[an]~~ aircraft crash and rescue fire protection personnel have ~~[fighter has]~~ satisfied the training requirements. *Aircraft* ~~[An aircraft]~~ crash and rescue fire protection personnel ~~[fighter]~~ serving under permanent appointment on September 1, 1984, who have ~~[has]~~ less than two years of service as ~~[an]~~ aircraft crash and rescue fire protection personnel ~~[fighter]~~ must complete the prescribed training before September 1, 1986, to remain qualified for service. ~~[For purposes of this Act, an aircraft crash and rescue fire fighter is one who works for a municipality and who, as a permanent duty assignment, fights aircraft fires at airports, stands by for potential crash landings, and performs aircraft crash rescue.]~~

(k) A person who ~~[knowingly]~~ accepts appointment to ~~[as]~~ an aircraft crash and rescue fire protection personnel position ~~[fighter]~~ or a person who appoints ~~[an]~~ aircraft crash and rescue fire protection personnel ~~[fighter]~~ in violation of Subsection (j) of this section commits a misdemeanor and if convicted shall be fined not less than \$100 nor more than \$1,000.

SECTION 4. Section 6A, Chapter 668, Acts of the 61st Legislature, Regular Session, 1969 (Article 4413(35), Vernon's Texas Civil Statutes), is amended by amending Subsections (a) and (b) and by adding Subsection (e) to read as follows:

(a) The commission shall ~~[may]~~ set and collect a fee for a manual ~~[distributed to fire fighters and trainees by the commission]~~ stating rules, regulations, and minimum standards for fire protection personnel. *The fee shall be in an amount not to exceed the cost of preparing, printing, and distributing the manual.*

(b) The commission shall ~~[may]~~ set and collect a fee for each examination given to fire protection personnel for the purpose of basic certification under this Act. *The fee may be in any amount not to exceed the cost of preparing, printing, administering, and grading the examination* ~~[intermediate, advanced, and master certificate issued by the commission].~~

(e) *The commission may revoke, refuse to issue, or refuse to renew the certificate of a fire protection personnel for failure to pay a fee required under Subsection (c) of this section.*

SECTION 5. Section 7(b), Chapter 668, Acts of the 61st Legislature, Regular Session, 1969 (Article 4413(35), Vernon's Texas Civil Statutes), is amended to read as follows:

(b) *The commission may authorize reimbursement for each local governmental or [political subdivision and each] state agency for expenses in attending such training programs as authorized by the Legislature.*

SECTION 6. Chapter 668, Acts of the 61st Legislature, Regular Session, 1969 (Article 4413(35), Vernon's Texas Civil Statutes), is amended by adding Section 7A to read as follows:

Sec. 7A. PENALTIES; SUIT; VENUE. (a) In addition to any other penalty imposed by law, a person who or an entity that violates this Act, or a rule or regulation adopted under this Act, is subject to an administrative penalty in an amount set by the commission not to exceed \$1,000 for each violation. In addition to an administrative penalty, the person must also pay any costs incurred by the attorney general's office under this subsection. The administrative penalty shall be assessed in a proceeding conducted in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) The attorney general or the commission may institute a suit for an injunction to enforce this Act. Venue for the suit is in a district court in Travis County. The court may also award the commission a civil penalty not to exceed \$1,000 for each violation of this Act or a rule or regulation adopted under this Act, plus court costs, reasonable attorney's fees, and any costs incurred by the commission or the attorney general's office under this subsection.

SECTION 7. Section 8, Chapter 668, Acts of the 61st Legislature, Regular Session, 1969 (Article 4413(35), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. POWERS AND DUTIES OF LOCAL [MUNICIPAL OR COUNTY] GOVERNMENTS. Except as expressly provided in this Act, nothing herein contained shall be deemed to limit the powers, rights, duties, and responsibilities of local [municipal or county] governments, nor to affect provisions of Chapter 325, Acts of the 50th Legislature, 1947 (Article 1269m, Vernon's Texas Civil Statutes), Firemen's and Policemen's Civil Service Act.

SECTION 8. Section 8A, Chapter 668, Acts of the 61st Legislature, Regular Session, 1969 (Article 4413(35), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8A. PROTECTIVE CLOTHING MEETING MINIMUM STANDARDS; SELF-CONTAINED BREATHING APPARATUS. (a) *Each [Effective January 1, 1984, every] state and each local governmental[, county, and municipal] agency providing fire protection shall furnish all [full-time, paid] fire protection personnel employed by the agency who engage in fire fighting with protective clothing which complies with minimum standards promulgated by the National Fire Protection Association or its successor. ["Protective clothing" means garments, including turnout coats, bunker coats, boots, gloves, trousers, and helmets, worn by fire fighters in the course of performing fire fighting operations.] An agency complies with the requirements of this section by:*

(1) *providing and maintaining the prescribed protective clothing; or*

(2) *providing an allowance to fire protection personnel to cover the purchase and maintenance of the prescribed protective clothing and by requiring each employee to maintain the clothing to meet the prescribed standards.*

(b) If the National Fire Protection Association or its successor revises a standard for an item of protective clothing and an agency covered by this section has furnished protective clothing that complies with the original standard, the revised standard applies only to protective clothing contracted for on or after the effective date of the revised standard.

(c) Protective clothing in use or contracted for before the effective date of the revised standard may continue to be used unless the commission determines that

continued use constitutes an undue risk to the wearer. If the commission makes that determination, the commission shall order that use of the clothing be discontinued and shall set an appropriate date for full compliance with the revised standard.

(d) The commission shall enforce the requirements of this section.

(e) Each state or local governmental agency providing fire protection shall furnish all fire protection personnel employed by the agency who engage in fire fighting with self-contained breathing apparatus that complies with the minimum approval and certification requirements of the National Institute For Occupational Safety and Health (or its successor) with respect to self-contained breathing apparatus for use by fire protection personnel.

(f) Each state or local governmental agency shall provide for complete tests of all self-contained breathing apparatus utilized by the agency in conformance with testing procedures recommended by the National Institute For Occupational Safety and Health or American National Standards Institute, Inc. The tests required under this section shall be performed on each self-contained breathing apparatus at least once each 30 days.

(g) If a fire department uses compressed breathing air compressors or any other breathing air systems, including air purchased from private enterprise, to refill self-contained breathing apparatus air bottles used by fire protection personnel, the department shall have samples of compressed air from those systems tested at least twice annually by a competent testing laboratory or facility that has equipment designed to test compressed breathing air. The tests must include a check of the percentages of oxygen, water, hydrocarbons, carbon monoxide, carbon dioxide, and gaseous hydrocarbons in the compressed breathing air. The quality of the compressed breathing air and the tests of the compressed breathing air quality must conform with the quality and testing procedures recommended by the American National Standards Institute [Effective January 1, 1982, every self-contained breathing apparatus purchased by a state, county, or municipal agency must comply with the minimum approval and certification requirements of the National Institute For Occupational Safety and Health (or its successor) with respect to self-contained breathing apparatus for use by fire fighters.

~~[(e) Effective January 1, 1982, every state, county, or municipal agency shall provide for complete tests of all self-contained breathing apparatus utilized in such agency in conformance with testing procedures recommended by the National Institute For Occupational Safety and Health or American National Standards Institute, Inc. The tests required under this section shall be performed on each self-contained breathing apparatus at least once each 30 days.~~

~~[(d) If the National Fire Protection Association or its successor revises a standard for an item of protective clothing and an agency covered by this section has furnished protective clothing that complies with the original standard, the revised standard applies only to protective clothing contracted for on or after the effective date of the revised standard.~~

~~[(e) The commission shall enforce the requirements of this section.~~

~~[(f) Protective clothing in use or contracted for before the effective date of the revised standard may continue to be used unless the commission determines that continued use constitutes an undue risk to the wearer. If the commission makes that determination, the commission shall order that use of the clothing be discontinued and shall set an appropriate date for full compliance with the revised standard.~~

~~[(g) Notwithstanding Subsections (a) and (d) of this section, if the commission determines that protective clothing containing cotton provides substantially equal protection, the commission shall permit the state, county, and municipal agencies to use cotton protective clothing that the commission has determined to be acceptable instead of the protective clothing prescribed by the National Fire Protection Association].~~

SECTION 9. Sections 9A and 10, Chapter 668, Acts of the 61st Legislature, Regular Session, 1969 (Article 4413(35), Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 9A. APPEAL FROM ACTION OF COMMISSION; PROCEDURE. (a) Any person dissatisfied with the action of the commission may appeal the action of the commission *in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)* [~~by filing a petition within 30 days thereafter in the district court in the county where the person resides or in the district court of Travis County, and the court is vested with jurisdiction, and it shall be the duty of the court, to set the matter for hearing upon 10 days' written notice to the commission and the attorney representing the commission. The court in which the petition of appeal is filed shall determine whether any action of the commission shall be suspended pending hearing, and enter its order accordingly, which shall be operative when served upon the commission, and the commission shall provide the attorney representing the commission with a copy of the petition and order.~~].

(b) The commission shall be represented in *an appeal under this section* [~~such appeals~~] by the district or county attorney of the county, or the attorney general, or any of their assistants.

Sec. 10. APPLICATION OF ACT. This Act *applies* [~~shall apply only~~] to *fire protection personnel as defined by Section 1b of this Act* [~~fully paid firemen~~].

SECTION 10. This Act takes effect September 1, 1987.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 12, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 278 on May 27, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 23, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 11, 1987.

Effective Sept. 1, 1987.