

Texas

January 2019

MERIT SHOP

Defending the Rights of Merit Shop Contractors

Journal



2019 Legislative
Priorities

Problems with
Current Mechanics
Lien Law

ABC Chapter
Initiatives Across
the State

TEXAS SENATOR

Pete Flores

Representing Senate District 19, Pete Flores discusses his priorities going into the 86th Texas Legislature


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Texas
MERIT SHOP
Journal
Defending the Rights of Merit Shop Contractors

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LETTER from the Chairman



WESTCOTT

Looking back on 2018, we have been blessed with a strong economy, low unemployment and continued gains in the construction industry, particularly in federal and state funding for public works. These positives certainly don't mean that our association should become complacent. Every New Year, many of us start personal resolutions. Let's all make a New Year's resolution to get involved in the legislative process. Now's your chance. The 86th Legislature convenes for the first time on January 8, 2019.

ABC of Texas' legislative priorities, including liability for design defects, right of repair, neutrality in state government contracting, lien law modernization, e-verify (safe harbor) and other topics impacting our industry, are coming into tighter focus as the start of the legislative session begins. We need witnesses and content experts who can attend hearings and support these priorities; and, where needed, oppose legislation that hurts the construction industry and businesses as a whole. Our Legislative Review Committee will start meeting regularly to review and assess new bills as they are filed.

A legislative liaison has been selected for most Texas Chapters including: Darlene East, Jack Baxley, Scott Lewis, Bob Parker, Lawrence Wilcox, Steven Schultz and myself. I want to thank each of these men and women who have agreed to assist and participate, and also welcome other leaders in our field who want to join our group and ensure that Texas contractors have a strong, unified voice. Contact your local ABC Chapter President or send me an email at bwestcott@andrewsmyers.com to get involved.

I am truly thankful to be a part of this great organization and to serve in this role. May each you all have a healthy and prosperous New Year.

A handwritten signature in blue ink that reads "Ben Westcott". The signature is stylized with a long, sweeping horizontal line extending to the right.

Ben Westcott

2017 - 2019 ABC of Texas Chairman
Andrews Myers, P.C.

LETTER from the President



FISHER

Last November, considerable anxiety suddenly vanished with the announcement that State Representative Dennis Bonnen had secured enough commitments to be elected Speaker of the Texas House. That was confirmed by a vote of the House Republican Caucus on December 1 in a meeting that reportedly took only 10 minutes.

This is a very positive outcome because knowing who will lead the House allows for the House to get organized sooner. A lot more gets done when both chambers are up and running when the Legislature convenes.

Some of us conservatives really don't want to see much done because stability is helpful to business, but we keep identifying things that do need to be enacted. The House has indicated it wants to deal with Public Education, which will consume a lot of oxygen. Couple that with the Appropriations Bill and the Sunset Bills and there will be little time left to deal with our priorities—and some of them are important to get addressed.

I also need to mention that the next House Speaker is a long-time member of our Texas Gulf Coast Chapter. We are proud to have an ABC member as Speaker.

As I have previously shared, I keep checking boxes of things I have done for the last time in my career. I have coordinated primary, general election and post-election PAC contributions for the last time. Additionally, I have completed my last extensive PAC report to the Ethics Commission! I will have more reports, but the big ones are gone.

I am in the process of working with David Smith and the rest of the Executive Committee to prepare a timeline for succession as well as a job description for my successor. The Board will begin looking at these in January. We do not plan to seek candidates until the Texas Legislature adjourns its Regular Session since some of the best candidates will likely be working for others.

But, we still have a lot of work to do. Our Legislative Day is February 6 with a State Board Meeting, Young Professionals Event, Legislative Reception and PAC Dinner starting February 5. Check with your Chapter if you are interested in attending.

Hope to see you in February!

A handwritten signature in black ink, appearing to read 'Jon Fisher', with a long horizontal line extending to the right.

Jon Fisher
ABC of Texas
President



2019 Legislative Priorities for ABC of Texas

BY JON FISHER

At the direction of the ABC of Texas Board, we are listing priorities in alphabetical order. The reason is that some priorities might rise or fall based on circumstances beyond our control. This article attempts to briefly explain the initiatives approved by the ABC of Texas Board over the last three Board meetings.

DESIGN DEFECTS

A recent court case has prevented contractors from suing architects and engineers with whom they do not have a contractual relationship for design defects for which the contractor has been held responsible. This is not fair when the contractor has no responsibility for the design and the contractor did not uncover the defect. A court case in the earlier part of last century (when circumstances were different) placed responsibility for the design with the contractor. Until this recent decision, contractors were able to sue the design professional. This bill would place responsibility for design defects where it belongs—the designer. Of course, this is the law in other states.

E-VERIFY (SAFE HARBOR)

While ABC of Texas believes immigration enforcement is a federal responsibility, we also recognize that the federal government is not doing its job. Thus, ABC of Texas can only agree to support E-Verify legislation if it has a safe harbor for false positives (protection from penalties) AND false negatives (protection from liability). The only bill that moved last session had our language.

LIEN LAW MODERNIZATION

The current lien law is confusing and cumbersome. It is full of tripwires and requirements that, if not followed to the letter, result in a loss of lien rights. ABC of Texas believes we can do better by designing a system that results in more certainty for payment which would actually reduce lien filings. This would be an early

notice system (instead of debt notice) where owners, banks, and general contractors would know who is on the job in order to make sure those parties (who would be the only parties with lien rights) are paid. ABC of Texas also believes we should move into this century by encouraging the use of internet filings for these early notices. See related sidebar showing problems with current system.

NEUTRALITY IN STATE GOVERNMENT CONTRACTING

This bill would prevent any governmental entity that uses state funds or credit from prohibiting or requiring a pre-hire collective bargaining agreement (project labor agreement or PLA). Although federal law allows these, courts have ruled that those with a proprietary interest in the project can restrict the use of PLAs. This bill would not prohibit PLAs—a contractor could still choose to use one—but it would keep some governmental entities from making that decision when state money or state credit is used. That would include state buildings, university buildings and many school buildings because frequently state credit is used to reduce the interest on bonds

PREEMPTION

Recently, Austin and San Antonio have adopted Paid Sick Leave Ordinances without any meaningful input from employers. Other cities have also considered this at the request of outside groups. Although a recent court decision may pave the way for ruling these to be contrary to statute and the constitution, other initiatives regulating employer/employee relations have been floated. Local governments in Texas have not traditionally regulated labor practices, leaving that up to the federal and state governments so businesses operating in multiple areas do not have to keep multiple sets of books. Under our constitution, the state may preempt local governments from engaging in regulations that are more appropriate at the state and federal level.

PROBLEMS WITH CURRENT MECHANICS LIEN LAW

BY BEN WESTCOTT

PUBLIC EMPLOYEE DUES DEDUCTION

Currently, governmental entities can legally collect dues from their employees for labor unions and employee associations. ABC of Texas believes that governmental entities should not be engaging in this practice which, in some instances, means the collectors are funding entities which have funded the campaigns of members of the governing body. In many cases, the funds collected are used to fund campaigns against businesses. This means that governmental entities are indirectly helping fund anti-business activities.

RIGHT TO REPAIR

Current law allows a lawsuit to be filed for a construction defect without giving the responsible contractor the opportunity to make the repair. This bill would require that the contractor have an opportunity to make the repair before a lawsuit asking for monetary damages could be filed. Since the majority of abuses occur when governmental entities, including school districts, are approached by predatory plaintiff attorneys, there has been some talk of restricting this to governmental entities.

STATUTE OF REPOSE

In Texas, contractors are liable for construction defects for 10 years. This is out of line with other states and lends itself to predatory practices by plaintiff attorneys (waiting until year 9 and contracting with a governmental entity to perform an inspection, splitting anything recovered with the governmental entity). Texas should be in line with other states and provide a Statute of Repose closer to 5 years. 🇹🇽

1

Owners, banks, title companies, general contractors and higher tier subcontractors may not even know who is on the job that has lien rights. There is no statutory mechanism for identifying the universe of potential lien claimants. As a result, the owner, bank, and title company may be subjected to "surprise" liens at the end of the project by a previously unknown claimant.

2

Subcontractors and suppliers may not be able to even get the proper information (name of owner, description of property, etc.) to be able to assert lien rights if not paid.

3

The current scheme puts banks in a bad position if site work begins before loan origination.

4

The current scheme requires multiple unnecessary and duplicative monthly filings to preserve rights if a subcontractor or supplier is not paid.

5

Deadlines for filing paperwork when a subcontractor or supplier is not paid are confusing and often preclude preservation of lien rights. Some deadlines to preserve lien rights can fall before the normal payment schedule forcing subcontractors or suppliers to preserve lien rights and anger others on the project or forgo their rights to get paid.

6

Owners, general contractors and higher tier subcontractors may be subject to double payments to vendors if they are called on to settle a potential lien claim before closing.

7

Texas has the most confusing lien laws in the nation which means small businesses frequently have trouble preserving their rights if they are not paid.

8

The current scheme requires a 40-120 day delay to close out a project and make final payments to allow for the filing of potential lien claims.

9

The current law is out of step with numerous other business statutes that handle registration and filing by electronic means.



Best of Houston Award Winners, Manhattan Construction Company, accepting their award onstage at the 2018 Excellence in Construction Awards with 2019 ABC Greater Houston Chair, Brandon Mabile and Event Emcee, Jim "Mattress Mack" McIngvale.

GREATER HOUSTON CHAPTER

Twice this year, ABC held The Road to World Class Safety, a safety course designed to help attendees understand the importance of leadership commitment, cultural transformation and safety management processes to achieve a zero-incident jobsite. Over twenty-four safety professionals explored emotional and behavioral components to transform their safety culture and mindset. Company leaders and influencers were able to reduce their TRIR and DART rate by up to 54 percent, according to the 2017 Safety Performance Report.

In October, ABC Greater Houston held its annual Excellence in Construction Awards (EIC), which showcased forty-four projects built by ABC Greater Houston members that were rigorously judged on an array of criteria, including jobsite performance and safety. This event, established in 2000, recognizes outstanding projects in the commercial and industrial construction industry. Categories included general contractor and specialty contractor projects, and the selected projects excelled in safety, quality, ingenuity, and workmanship. With twenty-three categories, and two major awards, the Merit Award and the Ice Award, the selected entries are considered among the best of merit shop construction.

Additionally, the chapter has reached 62 percent Safety Training Evaluation Process (STEP) participation, which is a new record for the chapter. Houston is one of the highest STEP participants in the country, and is getting closer to achieving its goal of one-hundred percent membership participation.

CENTRAL TEXAS CHAPTER

On October 10, members of ABC Central Texas gathered at Austin's Fairmont Hotel to celebrate and recognize their exemplary safety and project quality performance in 2018.

The evening kicked off with ABC's focus on safety and training, honoring several members who received the local and national STEP awards for 2018. Eight ABC Central Texas members were recognized as "Best of the Best" in safety: Harvey-Cleary Builders, Baker Triangle, Beckett Electrical, Flintco LLC, DPR Construction, Lasco Acoustics & Drywall, White Construction, and Slater Painting.

The annual Excellence in Construction awards banquet honors and recognizes ABC member companies who exemplify the highest quality of workmanship in their projects, while upholding a dedication to building projects safely, on time and on budget. This year, eighteen member firms, representing 33 projects totaling over \$800 million received the association's prestigious EIC Merit and Eagle Awards. Two projects received "Best of the Best" level recognition for surpassing the judging threshold with the two highest scoring projects. Those were American Constructors Austin Community College San Gabriel Campus and Chamberlin Roofing & Waterproofing's Methodist TNI Parking Garage Repairs.

In November, the chapter held its 5th annual OSHA Partnership Safety Rodeo, a unique event that trains workers in 5 areas of safety in both English and Spanish. This year, over 200 workers

(Continued on Page 12)



2018 PLATINUM PARTNERS

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ONE-ON-ONE



TEXAS SENATOR

Pete Flores

Please describe your background.

Senator Pete Flores (R-Pleasanton) is a Texas Senator from District 19, the largest Senate district in Texas. Senator Flores was born in Minot, North Dakota and was raised in South Texas. After graduating from Laredo Martin High School, Senator Flores attended Laredo Junior College and later transferred to Texas A&M University. In addition to holding a Bachelor's degree, Senator Flores also holds a Texas Master Peace Officer certificate and is a proud graduate of the Governors Executive Development School from the LBJ School of Government at the University of Texas. Additionally, he is also a Fellow of the National Conservation Leadership Institute.

Senator Flores spent most of his career as a Texas Game Warden, serving the State for 27 years and achieving the rank of Colonel. In this capacity, he was responsible for a 60 million dollar budget, 27 field offices, 127 civilian employees and 532 Commissioned Texas Game Wardens with a Statewide operational scope and patrol out to 9 nautical miles into the Gulf of Mexico. He was the first Hispanic Texas Game Warden Colonel in history.

In 2012, the Senator retired from State service and is now an Executive Coach for the National Association of Conservation Law Enforcement Chiefs Leadership Academy. In September 2018, Senator Flores was elected to be the first Hispanic Republican in the Texas Senate and the first Republican to represent Senate District 19 in over 139 years.

The senator lives in Pleasanton with his wife Elizabeth and has two daughters and two grandsons.

You are the first Hispanic Republican State Senator in the history of Texas. How does it feel to have made history?

It feels incredible. It is an absolute honor to represent the people of Senate District 19. I am humbled every time I think about it -- sometimes it still does not feel real. I am proud of my Hispanic heritage and happy that that heritage is being represented by a conservative Texas Senator.

I am proud of my campaign and folks that helped. The historic result only happened with countless hard-working people all across this district. We ran a grassroots campaign that focused on basic, "meat and potato" issues including property taxes, education, energy, and infrastructure. These are issues that people deal with on daily basis and I hope to address in the upcoming legislative session.

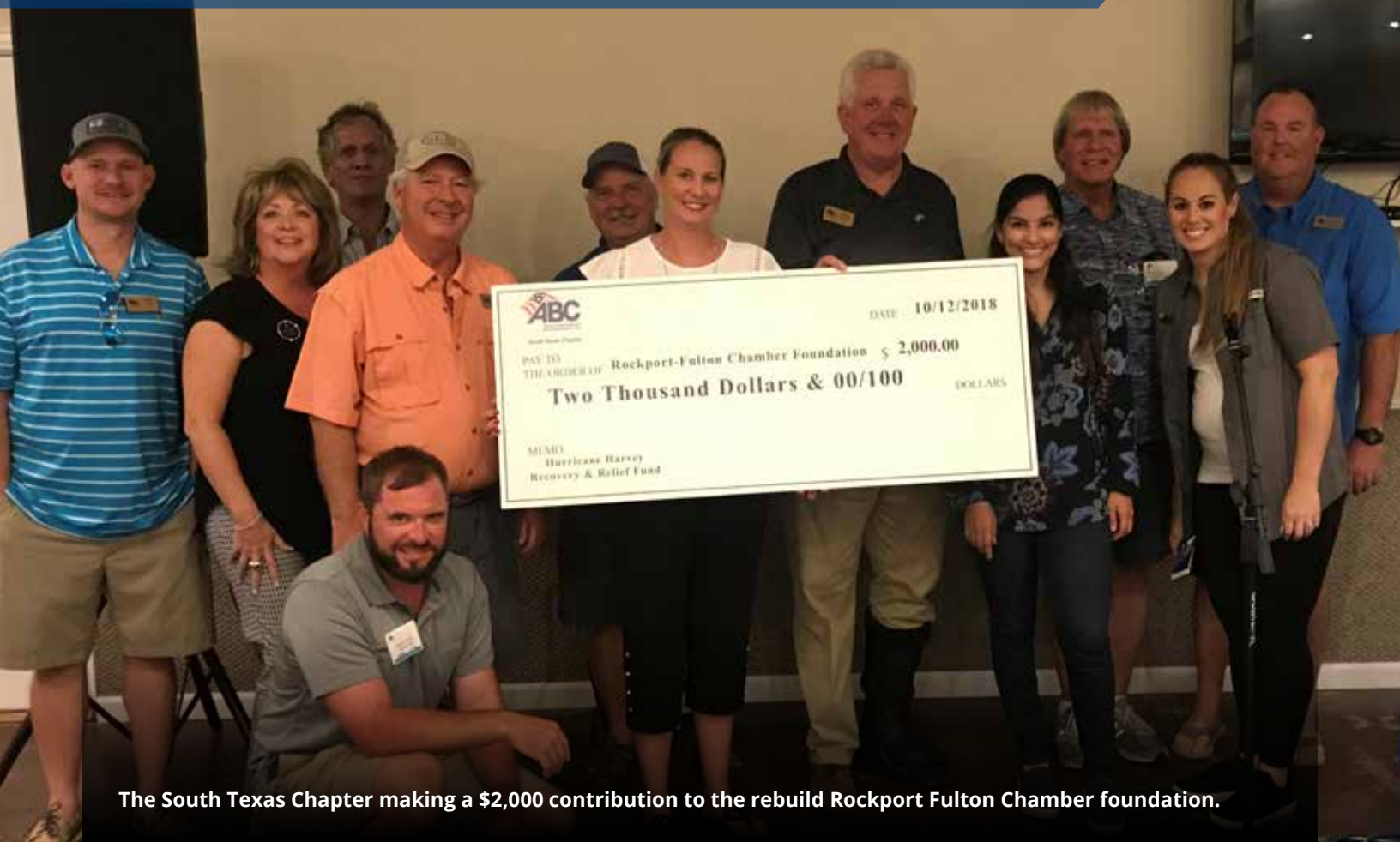
You shocked some people when you won. Now, you've got to shift gears and represent your district. What do you see as your Number One priority in representing your district going into the Eighty-Sixth Texas Legislature?

Senate District 19 is massive. We stretch from San Antonio to Pecos, Del Rio to Ozona. I represent 17 counties, 51 school districts, and over 460 miles of the Texas border with Mexico. By square miles, my district is larger than the state of Maine. Thus, my constituents in the south side of San Antonio have very different issues than those out in Fort Stockton.

However, among this massive geographic region, one primary issue that affects all of us is energy. I represent large parts of both the Eagle Ford shale and Permian Basin. The areas represent billions of dollars of investments and the oil and gas being produced in this area is literally changing the international energy balance. These two issues are crucial in the United States' effort to become energy independent. We have to address the good and bad here, making sure regulations achieve the proper balance of continuing economic growth and protecting the people of Texas.

What do you see as the Number One priority for the state going in the Eighty-Sixth Texas Legislature?

Our number one priority for the state is property taxes. Texans across the state -- and especially in my district -- are suffering under the burden of ever-increasing property taxes. Home owners are becoming home renters because they cannot keep up. I feel this personally -- as a retiree, I live on a fixed income. Every dollar my taxes increase represents less money I live on. I am hoping my colleagues and I can address this issue in the upcoming legislative session. 🇺🇸



The South Texas Chapter making a \$2,000 contribution to the rebuild Rockport Fulton Chamber foundation.

from over 20 member firms, as well as 50+ Crockett High School Construction Tech students, received OSHA Awareness Training certificates in Fall Protection, CPR/First Aid, HAZCOM reporting, PPE/Silica, and Electrical Safety. The event also featured a fully catered BBQ lunch sponsored by DPR as well as a dozen vendor tables providing safety product information and demonstrations. Casey Perkins, OSHA's Area Director, welcomed the participants, stressing the importance of a consistent safety practice and culture.

Over 150 ABC Central Texas members attended the chapter's annual Holiday Party on December 6 at Abel's on the Lake. As part of the event, members were asked to donate items to be delivered to the Austin Ronald McDonald House.

SOUTH TEXAS CHAPTER

The South Texas Chapter joined with other San Antonio business associations in filing an Amicus Brief in the City of Austin mandated paid sick leave lawsuit. The Austin ordinance is similar to the San Antonio ordinance passed a few months ago. In meetings with some of the members of the Bexar County Legislative delegation all expressed concern about this issue and vowed to support state legislation pre-empting municipalities from interfering with the employer-employee relationship.

There has been an increase in the filing of lawsuits by independent school districts against contractors claiming construction defects, without any evidence or giving the construction team the opportunity to repair. This issue was also discussed with a few members of the Bexar County Legislative delegation. There appears growing interest in getting Right to Repair legislation passed in the next session.

The fall 2018 Fishing Tournament was an outstanding success with 36 teams competing in the two divisions. The chapter was able to make a \$2,000 contribution to the rebuild Rockport Fulton Chamber foundation. Plans are already underway for the 2019 tournament. The Sporting Clays shot had over 35 teams competing with 20 teams in the barbeque cook-off. Rounding out the year will be the annual Construct a Kids Christmas gala held the first week of December. The 2017 event resulting in a \$35,000 contribution to the "Friends of the Child Welfare Board.

The Board of Directors held their annual strategic planning retreat this fall, which included a review and commitment to Board Responsibilities. The top three priorities are increased ABC-PAC fundraising, increased active participation on the Workforce Development Committee, and increased membership and membership engagement. Former Central Texas Chapter Chair David Smith (TD Industries) facilitated this year's retreat.



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—Richard Brown,
2018 Craft Professional
of the Year, Gaylor Electric

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The ABC Texas Mid Coast Chapter opened the Mid Coast Construction Academy (MCA) on August 23, 2018, offering pre-apprenticeships and apprenticeships for plumbers and electricians.

A Boy Scout first aid/CPR class was conducted at no charge in November, and plans are underway to participate in the 2019 Merit Badge Academy. The construction career pipeline effort is being expanded to include middle schools and elementary schools. These outreach efforts with area high schools have resulting in chapter members hiring high school student interns. Finally, the chapter is looking into the feasibility of a pre-apprenticeship program with a number of area high schools. Meetings have been held with the Department of Labor to review standards, work requirements, regulatory and recordkeeping requirements, and chapter liability.

SOUTHEAST TEXAS CHAPTER

In 2013, ABC-Southeast Texas (ABC-SETX) expanded its NCCER Safety Training Program to include an OSHA 30-Hr in Construction Certification; to be taught in conjunction with the NCCER's Safety Learning Series (aka, Construction Site Safety Technician Program). The NCCER's program has been recognized by the Council on Certification of Health, Environmental and Safety Technologists (CHEST), as exam preparation for their Safety Training Supervisors (STS), and Occupational Health and Safety Technologists' (OHST) Certifications.

Since this program's inception in 1993, the interest level and enrollment has grown exponentially with the offer of the OSHA 30-Hr. When looking at both safety training programs, the OSHA certification is typically required for individuals who are pursuing a career in safety for the petrochemical industry. The incorporation of this OSHA 30-Hr into our existing program, has not only been beneficial for the students, but also ABC-SETX because of the increased enrollment in this program. Since both the NCCER and OSHA follow similar training guidelines in their required curricula, teaching them both simultaneously has been relatively seamless for our Instructors. Upon successful completion of the Safety training program, our students receive "dual certifications"—both an NCCER Construction Site Safety Technician Certificate and an OSHA 30-Hr Card. To our knowledge, ABC-SETX is currently the only ABC Chapter in the State of Texas offering this dual certification for Safety, and it has proven to be very beneficial, especially for our member contractors working in the petro-chemical industry who reap the benefit of employing these highly trained individuals.

Other classes offered by the ABC-SETX Safety Instructors include:

- NCCER's "Your Role in the Green Environment"
- American Heart Association's CPR / First Aid / AED Training
- Accident Investigation Training
- Bloodborne Pathogen Training
- OSHA-based Hazwoper Training

ABC-SETX's objective is to provide as many "tools" available in training and certifications for our local workforce and members, in order to assist them in working safely, achieving their goals, and being successful. For more information about our Chapter and training programs, visit our website: www.abcsetx.org.

TEXO CHAPTER

This week, in Texas, five people will be hospitalized, someone will lose a limb and two construction workers will lose their life. That is this week, last week, next week and unfortunately, statistics tell us if the industry doesn't do more in the way of educating and practicing safety in the workplace, this weekly trend will continue.

In North Texas, TEXO and its members are striving to do more, to make an impact and to make sure workers go home to their



Modeled after an OSHA 10HR course and endorsed by industry leaders in construction safety, TEXO Safety 1st provides emphasis on critical safety topics

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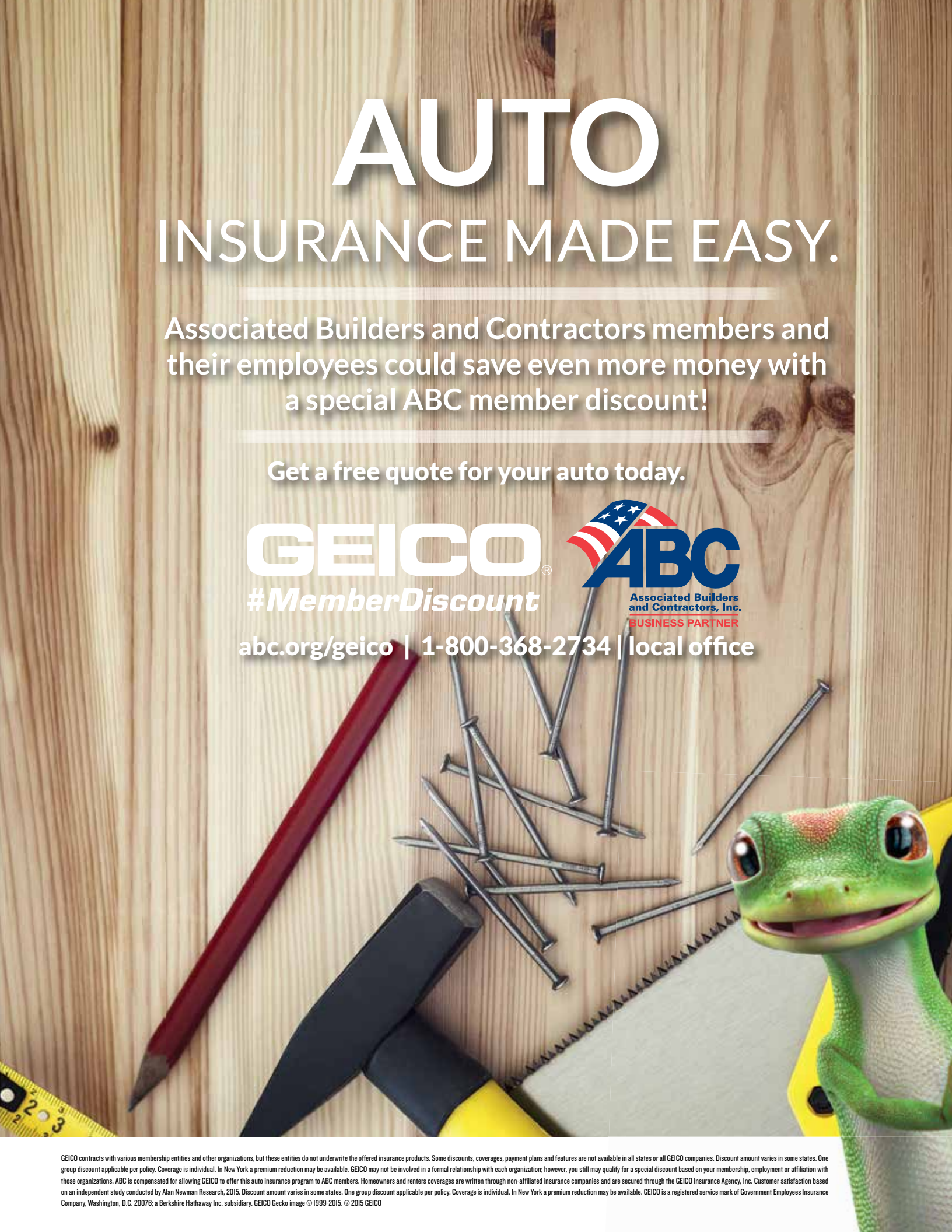
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families safe and healthy every day. TEXO shares the message of safety in the workplace with the support of its Board of Directors, the Safety Committee and the TEXO Staff. That message is delivered by safety training, jobsite safety audits and safety program review.

In 2013, a group of TEXO members collaborated to create an innovative way to provide jobsite safety orientations to all workers. This is how TEXO Safety 1st was born. Modeled after an OSHA 10HR course and endorsed by industry leaders in construction safety, TEXO Safety 1st provides emphasis on critical safety topics such as: OSHA's Fatal Four, heat related illnesses and the new silica exposure control program. Facilitated by construction safety professionals and taught in English and Spanish languages, TEXO Safety 1st uses a classroom setting and interactive safety labs to provide an opportunity for workers to learn about safety on the jobsite with experienced construction safety professionals and peer-to-peer discussion. Since its inception, TEXO Safety 1st has seen over 40,000 construction workers come through its doors. TEXO safety training doesn't stop with TEXO Safety 1st. Monthly OSHA 30HR courses, First Aid/CPR and discipline specific topics like fall protection, excavation, work zone traffic control and defensive driving are among other safety related courses administered in English and Spanish.

TEXO's safety staff also supports its members and their commitment to safety by visiting jobsites and conducting safety audits. Sometimes serving as a "second set of eyes" and other times, acting as an advisor to smaller contractors who don't have the benefit of full-time safety professionals. TEXO can help identify areas of deficiency with respect to OSHA compliance and best safety practices. After the walk-through, TEXO provides a PDF report for the member company to use in establishing corrective actions and abate safety violations.

The TEXO Safety Committee has grown in numbers and activity over the last three years, addressing new OSHA standards, sharing lessons learned and becoming the voice for the commercial construction safety industry in North Texas and beyond. An extension of the TEXO Safety Committee is the Latino Safety Outreach Committee. This group visits jobsites frequently to conduct Spanish speaking safety "tool box talks" and share the message of safety to Spanish speaking construction workers.

TEXO also encourages its members to participate in the application of local, state and national level safety awards, and is proud to boast its members have been awarded many at each of these levels.





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In November, the Central Texas chapter held its 5th annual OSHA Partnership Safety Rodeo, a unique event that trains workers in 5 areas of safety in both English and Spanish.

Most recently TEXO signed an Alliance with its local OSHA area offices; Dallas and Fort Worth. Through this Alliance, TEXO and OSHA will work together to provide assistance with member safety programs and training development. The Alliance also opens the door for TEXO members to participate in jobsite specific partnerships where OSHA and the contractor share a mutual commitment to safety so that EVERY construction worker goes home every day safe and healthy.

TEXO enjoys a very active membership, and is unique because the chapter has both general contractors and specialty contractors as part of its membership. Its general contractors and specialty contractors take off their company hats and don their safety hats for one common goal: workplace safety.

TEXAS MID COAST CHAPTER

The ABC Texas Mid Coast Chapter opened the Mid Coast Construction Academy (MCA) on August 23, 2018, offering pre-apprenticeships and apprenticeships for plumbers and electricians. Starting out, safety was the number one focus of the instructors for their new students.

The mission of the MCA is to promote and educate students and jobseekers about the construction industry and develop skilled labor. The MCA will prepare students with career-ready job skills to enter the workforce with confidence. This workforce development initiative will promote regional job growth in: Bee, Calhoun, DeWitt, Goliad, Jackson, Lavaca, Refugio and Victoria Counties. The benefits of MCA are vast, including: contribution to the economic development of the region, training of future taxpayers, and offering lucrative career opportunities to students (which promotes better self-esteem, discourages drug usage and high school dropout). Educating local individuals for construction jobs will allow businesses to bid more work,

which increases revenue, and fulfills the need for skilled labor in the construction industry. For more information, please call 361-572-0299 or www.mcademy.org and visit and Like our Facebook page (search "Mid Coast Construction Academy").

On October 2, the NCCER Construction Site Safety Technician class began. The chapter is excited about its continued partnership with Workforce Solutions of the Golden Crescent and being able to provide a variety of safety training and education classes to the unemployed workforce. 📍

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