

CHAPTER 178

H.B. No. 783

An Act relating to the civil enforcement of various health and safety ordinances of certain cities.

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

SECTION 1. APPLICATION TO HOME-RULE CITY. This Act applies only to a city operating under Article XI, Section 5, of the Texas Constitution (the home-rule amendment).

SECTION 2. CIVIL ACTION. A city may bring a civil action in accordance with this Act for the enforcement of any of the following ordinances:

(1) an ordinance relating to the manner, materials, methods, or means of construction of any building or other structure or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances, or exits, and having for its purpose the preservation of public safety;

(2) an ordinance relating to the fire safety of any building or other structure or improvement, including provisions relating to materials, types of construction or design, warning devices, sprinklers or other fire suppression devices, availability of water supply for extinguishing fires, or location, design, or width of entrances or exits;

(3) a zoning ordinance providing for the use of land or classifying any parcel according to the city's district classification scheme;

(4) an ordinance establishing criteria for land subdivision or construction of buildings, including provisions relating to street width and design, lot size, building width or elevation, setback requirements, or utility service specifications or requirements;

(5) an ordinance implementing civil penalties under this Act for conduct that is in violation of state statutes proscribing Class C misdemeanors; or

(6) an ordinance relating to dangerously damaged or deteriorated structures or improvements or to conditions caused by accumulations of trash, garbage, refuse, vegetation, or other matter that creates breeding and living places for insects and rodents.

SECTION 3. INJUNCTION. (a) A city may obtain, upon showing a substantial danger of injury or adverse health impact to any person or to any property of any person other than the defendant, an injunction against the owner or owner's representative with control over the premises that:

(1) prohibits specified future conduct in violation of the ordinance; and

(2) requires specific conduct necessary to achieve compliance with the ordinance.

(b) It is not necessary for the city to prove that no other adequate remedy or penalty for a violation exists or to show that prosecution in a criminal action has occurred or has been attempted. The court may punish violation of its orders in accordance with its general and statutory powers of contempt, and each separate instance of contempt is separately punishable.

SECTION 4. CIVIL PENALTY. A city may recover in a suit against the owner or owner's representative with control over the premises a civil penalty not to exceed \$1,000 a day for a violation of an ordinance to which this Act applies, on proving that:

(1) the defendant was actually notified of the provisions of the ordinance; and

(2) the defendant thereafter committed acts that were in violation of the ordinance or failed to take actions that were necessary to achieve compliance with the ordinance.

SECTION 5. PROCEDURAL MATTERS. (a) The allegations required to be pleaded in any proceeding under this Act are limited to the identification of the real property involved in the violation, the relationship of the defendant to the real property or activity involved in the violation, a citation to the applicable ordinance, a description of the violation, and a statement that the ordinance is one to which this Act applies.

(b) The standard for proof is the same as is otherwise applicable in suits for extraordinary relief.

(c) The Texas Rules of Civil Procedure apply to the action except as otherwise provided by this Act. All means of discovery set forth and provided for in those rules are available to the parties to the action.

SECTION 6. ACTION TO COMPEL REPAIR OR DEMOLITION. (a) An action may be brought under this Act to compel the repair or demolition of a structure and, in the alternative, for a determination of the city's right to remove the structure and for recovery of the removal costs incurred by the city. The action may also include a claim for civil penalties as provided by this Act.

(b) In connection with the action, the city may file a notice of lis pendens in the office of the county clerk and, if the city files a notice, any subsequent purchaser or mortgagee who acquires an interest in the property takes the property subject to the enforcement proceeding and all subsequent orders of the court.

SECTION 7. PERSONAL ATTACHMENT AND IMPRISONMENT; CONTEMPT.

(a) A person may not be made subject to personal attachment or to imprisonment for failure to pay a civil penalty assessed under this Act.

(b) This Act does not, however, affect the powers of the court to imprison a person for contempt of valid orders of the court and does not affect the available remedies or procedures for collection of a judgment assessing civil penalties under this Act. All remedies available under Chapter 671, Acts of the 66th Legislature, 1979 (Article 3827a, Vernon's Texas Civil Statutes), are expressly preserved.

SECTION 8. JURISDICTION AND VENUE; PREFERENCE. (a) Jurisdiction and venue of an action filed under this Act are in either the district court or county court at law of the county in which the city bringing the action is located.

(b) The court shall give a preference in setting cases filed under this Act, on verified motion of the city setting forth facts that demonstrate that a delay will unreasonably endanger persons or property.

SECTION 9. EMERGENCY. 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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 11, 1985, by a non-record vote; passed by the Senate on May 9, 1985, by the following vote: Yeas 31, Nays 0.

Approved: May 24, 1985

Effective: August 26, 1985