

## CHAPTER 437

## S.B. No. 1185

An Act relating to regulation of water well and injection well drillers; providing for civil penalties; amending Chapter 264, Acts of the 59th Legislature, Regular Session, 1965 (Article 7621e, Vernon's Texas Civil Statutes), by amending Subsection (a) of Section 3, Section 12, and Section 14 and by adding Subdivision (n) to Section 2, Subsection (d) to Section 8, and Section 8A.

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

**SECTION 1.** Section 2, Chapter 264, Acts of the 59th Legislature, Regular Session, 1965 (Article 7621e, Vernon's Texas Civil Statutes), is amended by adding Subdivision (n) to read as follows:

“(n) ‘Injection well’ includes:

“(1) an air conditioning return flow well used to return water used for heating or cooling in a heat pump to the aquifer that supplied the water;

“(2) a cooling water return flow well used to inject water previously used for cooling;

“(3) a drainage well used to drain surface fluid into a subsurface formation;

“(4) a recharge well used to replenish the water in an aquifer;

“(5) a saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into the fresh water;

“(6) a sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines;

“(7) a subsidence control well used to inject fluids into a nonoil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water; and

*"(8) a closed system geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink."*

**SECTION 2.** Subsection (a), Section 3, Chapter 264, Acts of the 59th Legislature, Regular Session, 1965 (Article 7621e, Vernon's Texas Civil Statutes), is amended to read as follows:

*"(a) It shall be unlawful for any person to act as or to offer to perform services as a water well or injection well driller without first obtaining a license in the manner prescribed herein and pursuant to the rules of the Water Well Drillers Board."*

**SECTION 3.** Section 8, Chapter 264, Acts of the 59th Legislature, Regular Session, 1965 (Article 7621e, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

*"(d) Instead of or in addition to revocation, suspension, probation, or reprimand the board may order a licensee to pay a civil penalty, not to exceed \$2,500, within a specified time, not to exceed 60 days as provided by Section 8A of this Act. A penalty collected under this subsection shall be deposited in the State Treasury to the credit of the Water Well Drillers Fund. With the consent of the parties, an order under this subsection may be made without a hearing. The authority vested in the board by this subsection is in addition to and not in lieu of any other authority to enforce or have enforced any sanction, penalty, fine, forfeiture, denial, suspension, or revocation otherwise authorized by law and is applicable to every person or entity as a licensee under this Act or to any other person or entity in violation of this Act or any rules adopted under this Act."*

**SECTION 4.** Chapter 264, Acts of the 59th Legislature, Regular Session, 1965 (Article 7621e, Vernon's Texas Civil Statutes), is amended by adding Section 8A to read as follows:

*"Section 8A. ADMINISTRATIVE PENALTY. (a) If a person fails to comply with a provision of this Act or a rule or regulation adopted by the board or the department under this Act, the person may be assessed a civil penalty by the board in an amount not to exceed \$2,500 for each act of noncompliance.*

*"(b) In determining the amount of the penalty, the board shall consider the person's history of previous violations and the seriousness of the failure to comply.*

*"(c) A civil penalty may be assessed under this section only after the person charged with noncompliance has been given an opportunity for a public hearing.*

*"(d) If a public hearing has been held, the board shall make findings of fact and issue a written decision as to the occurrence of the violation and the appropriate penalty, if any, incorporating, when appropriate, an order that the penalty be paid.*

*"(e) If the person charged with noncompliance does not appear for the hearing, the board may assess a penalty and issue an order that the penalty be paid after the board has determined that a violation occurred and the appropriate penalty.*

*"(f) Not later than the 30th day after the date an order is issued, the board shall inform a person ordered to pay a penalty under this section of the amount of the penalty.*

*"(g) Not later than the 30th day after the date the order becomes final under Subsection (c), Section 16, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:*

*"(1) pay the penalty in full; or*

*"(2) if the person seeks judicial review of either the amount of the penalty or the fact of the violation, or both:*

*"(A) forward the amount to the board for placement in an escrow account; or*

*"(B) post with the board, in a form approved by the board, a supersedeas bond, effective until judicial review is final, for the amount of the penalty.*

*"(h) Failure to comply with Subsection (g) of this section is a waiver of the right to contest the order.*

*"(i) If it is determined that no violation occurred or that the amount of the penalty should be reduced or not assessed, the board shall remit the appropriate amount to the person with interest or execute release of the bond.*

*"(j) Civil penalties owed under this section may be recovered in a civil action brought by the attorney general at the request of the board."*

**SECTION 5.** Section 12, Chapter 264, Acts of the 59th Legislature, Regular Session, 1965 (Article 7621e, Vernon's Texas Civil Statutes), is amended to read as follows:

*"Section 12. CIVIL PENALTY. Any person who fails to comply with the provisions of this Act, or with any rule or regulation promulgated by the board or the department under this Act, shall be subject to a civil penalty of not less than \$200 and not more than ~~in any sum not exceeding One Thousand Dollars~~ (\$1,000 [ ]) for each day of noncompliance and for each act of noncompliance, as the court may deem proper. A firm, partnership, association, corporation, or other group or combination with which the person was connected in relation to the act of*

noncompliance is also subject to the civil penalty. The action may be brought by the board in any court of competent jurisdiction in the county where the offending activity is occurring or where the defendant resides. Full authority is also given the executive director to enforce by injunction, mandatory injunction or other appropriate remedy, in courts having jurisdiction in the county where the offending activity is occurring, the provisions of this Act. At the request of the board or the executive director, the Attorney General shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both the injunctive relief and civil penalty, authorized in this section. Any party to a suit may appeal from a final judgment as in other civil cases. The obtaining of a license under the provisions of this Act by a person shall not act to relieve that person from liability under any statutory law or the Common Law.”

**SECTION 6.** Section 14, Chapter 264, Acts of the 59th Legislature, Regular Session, 1965 (Article 7621e, Vernon's Texas Civil Statutes), is amended to read as follows:

“Section 14. **PLUGGING OF WATER WELLS.** (a) It shall be the duty of each driller licensed under this Act to *complete a well under standards and procedures adopted by the department* [~~inform forthwith the landowner or person having a well drilled when water injurious to vegetation, to land or to fresh water has been encountered and such well must be plugged or properly completed in order to avoid injury or pollution~~].

“(b) It shall be the duty of each driller licensed under this Act to give notice to the landowner or person having a well drilled when the driller encounters water injurious to vegetation, to land, or to fresh water, and the well must be plugged or properly completed in order to avoid injury or pollution. The [the] driller shall assure [~~to see~~] that the [such a] well is [forthwith] plugged or completed under standards and procedures adopted [~~promulgated~~] by the department.

“(c) It shall be the duty of whoever shall plug such a well to complete a plugging report within thirty (30) days and submit it to the executive director; appropriate forms shall be furnished by the executive director upon request.”

**SECTION 7.** (a) This Act takes effect September 1, 1985.

(b) Sections 3 and 4 of this Act apply only to penalties for violations of Chapter 264, Acts of the 59th Legislature, Regular Session, 1965 (Article 7621e, Vernon's Texas Civil Statutes), that occur on or after September 1, 1985.

**SECTION 8.** 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 the Senate on May 2, 1985, by the following vote: Yeas 31, Nays 0; passed the House on May 17, 1985, by the following vote: Yeas 134, Nays 0, one present not voting.

Approved: June 11, 1985

Effective: September 1, 1985