

CHAPTER 648

H.B. No. 2079

AN ACT

relating to the enforcement of certain public health and safety laws.

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

SECTION 1. Section 341.012(d), Health and Safety Code, is amended to read as follows:

(d) If the public health nuisance is not abated within the time specified by the notice, the local health authority shall notify the prosecuting attorney who received the copy of the original notice. The prosecuting attorney:

- (1) shall immediately institute proceedings to abate the public health nuisance; or
- (2) request the attorney general to institute the proceedings or provide assistance in the prosecution of the proceedings, including participation as an assistant prosecutor when appointed by the prosecuting attorney.

SECTION 2. Section 341.092, Health and Safety Code, is amended by amending Subsections (d), (f), and (i) and adding Subsection (j) to read as follows:

(d) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted under this chapter, the department, a county, ~~or~~ a municipality, or the attorney general on request by the district attorney, criminal district attorney, county attorney, or, with the approval of the governing body of the municipality, the attorney for the municipality may institute a civil suit in a district court for:

- (1) injunctive relief to restrain the person from continuing the violation or threat of violation;
- (2) the assessment and recovery of a civil penalty; or
- (3) both injunctive relief and a civil penalty.

(f) On the department's request, or as otherwise provided by this chapter, the attorney general shall institute and conduct a suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and civil penalty.

(i) Civil penalties recovered in a suit brought under this section by a county or municipality through its own attorney shall be equally divided between:

- (1) the state; and
- (2) the county or municipality that first brought the suit.

(j) *The state is entitled to civil penalties recovered in a suit instituted by the attorney general.*

SECTION 3. Section 366.093, Health and Safety Code, is amended to read as follows:

Sec. 366.093. LEGAL PROCEEDINGS. (a) A prosecuting attorney who receives a report from the department or an authorized agent of a violation of this chapter or a rule adopted under this chapter shall:

- (1) begin appropriate proceedings in the proper court without unnecessary delay; and
- (2) prosecute the cause as required by law.

(b) *The attorney general, on request of the prosecuting attorney, may institute or assist in the prosecution.*

SECTION 4. Sections 16.343(b) and (c), Water Code, are amended to read as follows:

(b) The model rules must:

(1) assure that adequate drinking water is available to the residential areas in accordance with Chapter 341, Health and Safety Code, and the Rules and Regulations for Public Water Systems and the Drinking Water Standards Governing Water Quality and Reporting Requirements for Public Water Supply Systems adopted by the Texas Board of Health and other law and rules applicable to drinking water; and

(2) *provide criteria applicable to tracts that were divided into two or more parts to lay out a subdivision and were not platted or recorded before September 1, 1989.*

(c) The model rules must:

(1) assure that adequate sewer facilities are available to the residential areas through either septic tanks or an organized sewage disposal system that is a publicly or privately owned system for the collection, treatment, and disposal of sewage operated in accordance with the terms and conditions of a valid waste discharge permit issued by the Texas Water Commission or private sewage facilities in accordance with Chapter 366, Health and Safety Code, and the Construction Standards for On-Site Sewerage Facilities adopted by the Texas Department of Health and other law and rules applicable to sewage facilities; and

(2) *provide criteria applicable to tracts that were divided into two or more parts to lay out a subdivision and were not platted or recorded before September 1, 1989.*

SECTION 5. Section 232.0049, Local Government Code, is amended by amending Subsections (a) and (b) and adding Subsections (e), (f), and (g) to read as follows:

(a) The attorney general, the county attorney, or other prosecuting attorney for the county may take any action necessary in a court of competent jurisdiction to:

(1) *enjoin the violation or threatened violation of the model rules adopted under Section 16.343, Water Code;*

(2) *enjoin the violation or threatened violation of a requirement adopted by the commissioners court under this chapter;*

(3) *recover as damages payable to the state or to the affected county an amount adequate for the county to undertake the construction or other activity necessary to bring about compliance with a requirement adopted by the commissioners court under this chapter; and*

(4) ~~assess and recover civil or criminal penalties [may take any action necessary to enforce a requirement imposed by or under Section 232.0035 or 232.0036 or to ensure that water and sewer service facilities are constructed or installed to service a subdivision in compliance with the model rules adopted under Section 16.343, Water Code].~~

(b) A person who [~~violates Section 232.0035 or 232.0036 or~~] fails to timely provide for the construction or installation of water or sewer service facilities that the person described on the plat or on the document attached to the plat *or who otherwise violates* [~~, as required by~~] Section 232.0035 or 232.0036 or a rule or requirement adopted by the commissioners court under this chapter[,], is subject to a civil penalty of not less than \$500 nor more than \$1,000 for each violation and for each day of a continuing violation but not to exceed \$5,000 each day and shall also pay [plus] court costs and attorney's fees.

(e) *In a suit under this section to enjoin a violation or threatened violation of Section 232.0035 or 232.0036 or a rule or requirement adopted by the commissioners court under this chapter, the court shall grant the attorney general, county attorney, or other prosecuting attorney any injunctive relief that the facts may warrant without bond or other undertaking.*

(f) *Civil penalties recovered in a suit brought under this section by a county or its prosecuting attorney shall be equally divided between the state and the county.*

(g) *This section applies in a county that is an affected county as defined by Section 16.341, Water Code.*

SECTION 6. (a) The change in law made by Section 232.0049, Local Government Code, as amended by this Act, applies only to a criminal offense committed on or after the effective date of this Act. For purposes of this section, a criminal offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) A criminal offense committed before the effective date of this Act is covered by the law in effect when the criminal offense was committed, and the former law is continued in effect for that purpose.

SECTION 7. This Act does not affect the transfer of powers, duties, rights, and obligations made by Chapter 3, Acts of the 72nd Legislature, 1st Called Session, 1991.

SECTION 8. This Act takes effect September 1, 1993.

SECTION 9. 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 7, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 2079 on May 28, 1993, by a non-record vote; passed by the Senate, with amendments, on May 26, 1993: Yeas 30, Nays 0.

Approved June 12, 1993.

Effective Sept. 1, 1993.