

## CHAPTER 353

## S.B. No. 1041

## AN ACT

relating to protecting public drinking water supplies; creating offenses and providing fees and penalties.

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

SECTION 1. Section 341.040, Health and Safety Code, is amended to read as follows:

Sec. 341.040. DEFINITIONS. In this subchapter:

- (1) "Board" means the *commission* [~~Texas Natural Resource Conservation Commission~~].
- (2) "Commission" means the *Texas Natural Resource Conservation Commission*.
- (3) "Department" means the *commission* [~~Texas Natural Resource Conservation Commission~~].

SECTION 2. Subchapter C, Chapter 341, Health and Safety Code, is amended by adding Sections 341.041 and 341.046 through 341.050 to read as follows:

*Sec. 341.041. FEES. (a) The commission by rule may charge fees to a person who owns, operates, or maintains a public drinking water supply system to recover the costs of public drinking water supply system programs or services authorized by this subchapter or performed pursuant to the requirements of the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.). The commission may establish a schedule of fees. The amount of the*

fees may not exceed the reasonable costs of administering the programs and services in this subchapter or the federal Safe Drinking Water Act.

(b) The commission by rule may assess penalties and interest for late payment of fees owed by persons who own, operate, or maintain public drinking water supply systems. Penalties and interest established under this section may not exceed the rates established for delinquent taxes under Sections 111.060 and 111.061, Tax Code.

[Sections 341.042 to 341.045 reserved for expansion]

Sec. 341.046. **NONAPPLICABILITY OF SUBCHAPTER F.** Subchapter F does not apply to this subchapter.

Sec. 341.047. **CRIMINAL PENALTY.** (a) A person commits an offense if the person:

- (1) violates a provision of Section 341.031;
- (2) violates a provision of Section 341.032(a) or (b);
- (3) violates a provision of Section 341.033(a)–(f);
- (4) constructs a drinking water supply system without submitting completed plans and specifications as required by Section 341.035(a);
- (5) establishes a drinking water supply system without the commission's approval as required by Section 341.035(a);
- (6) violates a provision of Section 341.035(b) or (c);
- (7) fails to remove a sign as required by Section 341.035(e); or
- (8) violates a provision of Section 341.036.

(b) An offense under Subsection (a) is a Class C misdemeanor punishable by a fine of not less than \$100.

(c) If it is shown on a trial of the defendant that the defendant has been convicted of an offense under Subsection (a) within a year before the date on which the offense being tried occurred, the subsequent offense under Subsection (a) is a Class B misdemeanor.

(d) Each day of a continuing violation is a separate offense.

Sec. 341.048. **CIVIL ENFORCEMENT.** (a) A person may not cause, suffer, allow, or permit a violation of this subchapter or a rule or order adopted under this subchapter.

(b) A person who causes, suffers, allows, or permits a violation under this subchapter shall be assessed a civil penalty of not less than \$50 nor more than \$500 for each violation. Each day of a continuing violation is a separate violation.

(c) If it is shown on a trial of the defendant that the defendant has previously been assessed a civil penalty under this section within a year before the date on which the violation being tried occurred, the defendant shall be assessed a civil penalty of not less than \$50 nor more than \$1,000 for each subsequent violation under this subchapter. Each day of a continuing violation is a separate violation.

(d) If it appears that a person has violated, is violating, or threatens to violate a provision under this subchapter, the commission, a county, or a 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.

(e) The commission is a necessary and indispensable party in a suit brought by a county or municipality under this section.

(f) On the commission's request, the attorney general shall institute a suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and civil penalty.

(g) The suit may be brought in Travis County, in the county in which the defendant resides, or in the county in which the violation or threat of violation occurs.

(h) In a suit under this section to enjoin a violation or threat of violation of this subchapter, the court shall grant the state, county, or municipality, without bond or other undertaking, any injunction that the facts may warrant including temporary restraining orders, temporary injunctions after notice and hearing, and permanent injunctions.

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

(1) the state; and

(2) the county or municipality that first brought the suit.

Sec. 341.049. ADMINISTRATIVE PENALTY. (a) If a person causes, suffers, allows, or permits a violation of this subchapter or a rule or order adopted under this subchapter, the commission may assess a penalty against that person as provided by this section. The penalty shall not be less than \$50 nor more than \$500 for each violation. Each day of a continuing violation may be considered a separate violation.

(b) In determining the amount of the penalty, the commission shall consider:

(1) the nature of the circumstances and the extent, duration, and gravity of the prohibited acts or omissions;

(2) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the person's demonstrated good faith, including actions taken by the person to correct the cause of the violation;

(D) any economic benefit gained through the violation; and

(E) the amount necessary to deter future violation; and

(3) any other matters that justice requires.

(c) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director of the commission concludes that a violation has occurred, the executive director may issue a preliminary report stating the facts on which that conclusion is based, recommending that a penalty under this section be imposed on the person, and recommending the amount of that proposed penalty. The executive director shall base the recommended amount of the proposed penalty on the factors provided by Subsection (b) and shall consider each factor for the benefit of the commission.

(d) Not later than the 10th day after the date on which the preliminary report is issued, the executive director of the commission shall give written notice of the report to the person charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(e) Not later than the 20th day after the date on which notice is received, the person charged may give the commission written consent to the executive director's report including the recommended penalty or may make a written request for a hearing.

(f) If the person charged with the violation consents to the penalty recommended by the executive director of the commission or fails to timely respond to the notice, the commission by order shall assess that penalty or order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses a penalty, the commission shall give written notice of its decision to the person charged.

(g) If the person charged requests or the commission orders a hearing, the commission shall call a hearing and give notice of the hearing. As a result of the hearing, the commission by order may find that a violation has occurred and may assess a civil penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil

*Statutes). In making any penalty decision, the commission shall consider each of the factors provided by Subsection (b).*

*(h) The commission shall give notice of its decision to the person charged, and if the commission finds that a violation has occurred and the commission has assessed a penalty, the commission shall give written notice to the person charged of its findings, of the amount of the penalty, and of the person's right to judicial review of the commission's order. If the commission is required to give notice of a penalty under this subsection or Subsection (f), the commission shall file notice of its decision with the Texas Register not later than the 10th day after the date on which the decision is adopted.*

*(i) Within a 30-day period immediately following the day on which the commission's order is final, as provided by Section 16(c), 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 the fact of the violation, the amount of the penalty, or both:*

*(A) forward the amount of the penalty to the commission for placement in an escrow account; or*

*(B) post with the commission a supersedeas bond in a form approved by the commission for the amount of the penalty to be effective until all judicial review of the order or decision is final.*

*(j) If the person charged fails to forward the money for escrow or post the bond as provided by Subsection (i), the commission or the executive director of the commission may refer the matter to the attorney general for enforcement.*

*Sec. 341.050. PENALTIES CUMULATIVE. All penalties accruing under this subchapter are cumulative of all other remedies, and a suit for recovery of any penalty does not bar or affect the recovery of any other penalty or bar any criminal prosecution against a person or any officer, director, agent, or employee of that person.*

[Sections 341.051 [341.041] to 341.060 reserved for expansion]

SECTION 3. Subsection (a), Section 341.031, Health and Safety Code, is amended to read as follows:

(a) Public drinking water must be free from deleterious matter and must comply with the standards established by the *commission*, [~~board or~~] the United States Public Health Service, or the United States Environmental Protection Agency. *The commission may adopt and enforce rules to implement the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.).*

SECTION 4. (a) The changes in law made by Sections 341.046 through 341.050, Health and Safety Code, as added by this Act, apply only to an offense committed or a violation that occurs on or after the effective date of this Act. For purposes of this Act, an offense is committed or a violation occurs before the effective date of this Act if any element of the offense or violation occurs before the effective date of this Act.

(b) An offense committed or a violation that occurs before the effective date of this Act is governed by the law in effect when the offense was committed or the violation occurred, and the former law is continued in effect for this purpose.

SECTION 5. This Act takes effect September 1, 1993.

SECTION 6. 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 April 5, 1993: Yeas 31, Nays 0; the Senate concurred in House amendment on May 19, 1993, by a viva-voce vote; passed the House, with amendment, on May 14, 1993, by a non-record vote.

Approved May 30, 1993.

Effective Sept. 1, 1993.