

CHAPTER 305

H.B. No. 2174

AN ACT

relating to the regulation of solid waste; providing penalties.

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

SECTION 1. Section 1, Chapter 178, Acts of the 49th Legislature, Regular Session, 1945 (Article 4477-1, Vernon's Texas Civil Statutes), is amended by adding Subsection (r) to read as follows:

(r) "Person" means any individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

SECTION 2. Section 4(c), Chapter 178, Acts of the 49th Legislature, Regular Session, 1945 (Article 4477-1, Vernon's Texas Civil Statutes), is amended to read as follows:

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(c) No waste products, offal, polluting material, spent chemicals, liquors, brines, garbage, rubbish, refuse, used tires, or other wastes of any kind shall be stored, deposited, or disposed of in any manner that [as] may cause the pollution of the surrounding land, [or] the contamination of groundwater or surface water, or the breeding of insects or rodents [the well waters to the extent of endangering the public health].

SECTION 3. Sections 24 and 25, Chapter 178, Acts of the 49th Legislature, Regular Session, 1945 (Article 4477-1, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 24. PENALTY. Any person[, firm or corporation] who violates [shall violate any of the provisions of any Section or sub-division of] this Act[,], or any rule adopted under this Act commits an offense. An offense under this section is a misdemeanor punishable by a fine of[, shall be fined] not less than \$10 nor [Ten Dollars (\$10.00) and not] more than \$200. If it is shown on the trial of the defendant that the defendant has been convicted of an offense under this Act within one year before the date that the offense being tried occurred, the defendant shall be punished by a fine of not less than \$10 nor more than \$1,000, by confinement in jail for not more than 30 days, or by both. Each [Two Hundred Dollars (\$200.00), and each] day of a continuing [such] violation is [shall constitute] a separate offense.

Sec. 25. CIVIL PENALTY [ENFORCEMENT]. (a) A person may not cause, suffer, allow, or permit a violation of this Act or of any rule adopted under this Act.

(b) A person who violates this Act or a rule adopted under this Act shall be assessed a civil penalty of not less than \$10 nor more than \$200 for each violation and for each day of a continuing violation, to be recovered in the manner provided by this section. If it is shown on the trial of the defendant that the defendant has previously been adjudicated to have violated this section, the defendant shall be assessed a civil penalty of not less than \$10 nor more than \$1,000.

(c) If it appears that a person has violated or is violating or is threatening to violate this Act or a rule adopted under this Act, the Texas Department of Health or a county or municipality may institute a civil suit in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty, or for both injunctive relief and civil penalty. The Texas Department of Health is a necessary and indispensable party in a suit brought by a county or municipality under this section.

(d) At the request of the Texas Department of Health, the attorney general shall institute and conduct a suit in the name of the state for injunctive relief or to recover a civil penalty, or for both injunctive relief and civil penalty, as provided by this section.

(e) 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.

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

(g) All civil penalties recovered in suits instituted by a county or municipality under this section shall be equally divided between the State of Texas and the county or municipality first instituting suit, with 50 percent of the recovery paid to the general revenue fund and the other 50 percent paid to the county or municipality first instituting the suit [The Texas Department of Health Resources may apply to any district court in this state to enforce, prevent, or restrain violations of this Act or violations of rules adopted pursuant to this Act].

SECTION 4. Subdivision (31), Section 2, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) (effective until delegation to the Railroad Commission of Texas under the Resource Conservation and Recovery Act), as amended by Section 1,

Chapter 566, and Section 3, Chapter 921, Acts of the 69th Legislature, Regular Session, 1985, is amended to read as follows:

(31) "Solid waste" means any garbage, *rubbish*, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include: (i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to Chapter 26, Water Code; (ii) soil, dirt, rock, sand and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or (iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, and any other substance or material regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

SECTION 5. Subdivision (31), Section 2, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) (effective on delegation to the Railroad Commission of Texas under the Resource Conservation and Recovery Act), as amended by Section 1, Chapter 566, and Section 3, Chapter 921, Acts of the 69th Legislature, Regular Session, 1985, is amended to read as follows:

(31) "Solid waste" means any garbage, *rubbish*, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include: (i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to Chapter 26, Water Code; (ii) soil, dirt, rock, sand and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or (iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, and any other substance or material regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code.

SECTION 6. Section 2.01, Texas Litter Abatement Act (Article 4477-9a, Vernon's Texas Civil Statutes), is amended by adding Subdivision (5) to read as follows:

(5) "*Dispose*" means to discharge, deposit, inject, dump, spill, leak, or place junk, garbage, *rubbish*, refuse, or other solid waste into or on land or water.

SECTION 7. Section 2.011, Texas Litter Abatement Act (Article 4477-9a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.011. DISPOSING OF SOLID WASTE RESTRICTED. (a) A person commits an offense if that person disposes of junk, garbage, *rubbish*, refuse, or other solid waste on a public highway, right-of-way, other public or private property, or into inland or coastal waters of Texas.

(b) A person [~~who~~] commits an offense under this section *if the person allows or permits another person to dispose of junk, garbage, rubbish, refuse, or other solid waste on the person's property* [~~is, on conviction, subject to a fine of not less than \$50 nor more than \$200~~].

(c) It is a defense to prosecution under this section that *the disposal occurred at a solid waste site permitted by the Texas Water Commission or the Texas Department of Health or licensed by a county under the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes)*. Also, it is a defense to prosecution under this section that *the disposal of solid waste occurs in a designated collection area for ultimate*

disposal at a permitted or licensed municipal solid waste site [~~before the disposal, the person disposing of solid waste had written consent to dispose of solid waste on that property from the owner, the owner's agent, or the public official in charge of the property~~].

(d) *An offense under this section is a Class C misdemeanor. If it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, the offense is a Class A misdemeanor. A county or district attorney also may bring suit for injunction to prevent or restrain a violation under this section. A person affected or to be affected by a violation also is entitled to seek injunctive relief to enjoin the violation* [~~A law enforcement officer of this state or of a political subdivision of this state or a health officer of a municipality authorized by law to regulate matters of sanitation and public health may enforce this section~~].

SECTION 8. Section 2.02(d), Texas Litter Abatement Act (Article 4477-9a, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) *An offense under this section is a Class C misdemeanor. If it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, the offense is a Class A misdemeanor* [~~A person who commits an offense under this section is, on conviction, subject to a fine of not less than \$50 nor more than \$200~~].

SECTION 9. Section 2.04(g), Texas Litter Abatement Act (Article 4477-9a, Vernon's Texas Civil Statutes), is amended to read as follows:

(g) *An offense under this section is a Class C misdemeanor. If it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, the offense is a Class A misdemeanor* [~~A person who commits an offense under this section is, on conviction, subject to a fine of not less than \$50 nor more than \$400, and each day of the offense is a separate offense~~]. A county or district attorney may also bring suit for injunction to prevent or restrain a violation of this section. A person affected or to be affected by a violation is entitled to enjoin the violation.

SECTION 10. Section 2.07(b), Texas Litter Abatement Act (Article 4477-9a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) *An offense under this section is a Class C misdemeanor. If it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, the offense is a Class A misdemeanor* [~~A person who commits an offense under this section is, on conviction, subject to a fine of not less than \$25 nor more than \$100~~].

SECTION 11. Section 2.08(c), Texas Litter Abatement Act (Article 4477-9a, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) *An offense under this section is a Class C misdemeanor. If it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, the offense is a Class A misdemeanor* [~~An offense under this section is punishable by a fine of not less than \$50 and not more than \$200~~].

SECTION 12. Nothing in this Act is intended to limit the power of local governmental officers as provided by Section 3, Chapter 178, Acts of the 49th Legislature, Regular Session, 1945 (Article 4477-1, Vernon's Texas Civil Statutes).

SECTION 13. (a) The change in law made by this Act applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

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

SECTION 14. The following are repealed:

(1) Subdivision (22), Section 2, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) (effective until delegation to the Railroad Commission of Texas

under the Resource Conservation and Recovery Act), as amended by Section 1.160, Chapter 795, and Section 3, Chapter 921, Acts of the 69th Legislature, Regular Session, 1985; and

(2) Subdivision (22), Section 2, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) (effective on delegation to the Railroad Commission of Texas under the Resource Conservation and Recovery Act), as amended by Section 1.160, Chapter 795, and Section 3, Chapter 921, Acts of the 69th Legislature, Regular Session, 1985.

SECTION 15. This Act takes effect September 1, 1987.

SECTION 16. 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 22, 1987, by a non-record vote. Passed by the Senate on May 30, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 11, 1987.

Effective Sept. 1, 1987.