

By: J. Davis of Harris

H.B. No. 2419

A BILL TO BE ENTITLED

1 AN ACT

2 relating to toilet accommodations at filling stations; providing
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 341.061, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 341.061. TOILET FACILITIES. An operator, manager, or
8 superintendent of a public building, schoolhouse, theater,
9 ~~[filling station]~~ tourist court, bus station, or tavern shall
10 provide and maintain sanitary toilet accommodations.

11 SECTION 2. Subchapter D, Chapter 341, Health and Safety
12 Code, is amended by adding Section 341.0615 to read as follows:

13 Sec. 341.0615. FILLING STATIONS. (a) In this section,
14 "filling station" means a facility that:

15 (1) sells motor fuel;

16 (2) provides one or more attendants; and

17 (3) offers one or more of the following products or
18 services:

19 (A) tire repair;

20 (B) oil change;

21 (C) battery charging;

22 (D) motor vehicle repair;

23 (E) food service; or

24 (F) retail or wholesale sale of goods in

1 conjunction with the sale of motor fuel.

2 (b) An operator, manager, or superintendent of a filling
3 station shall provide and maintain sanitary toilet accommodations.

4 (c) Toilet accommodations must be:

5 (1) permanently installed;

6 (2) in compliance with all applicable building and
7 plumbing codes;

8 (3) made available to the traveling public or
9 customers during normal business hours; and

10 (4) cleaned and serviced at least once during each
11 24-hour period.

12 (d) An operator, manager, or superintendent of a filling
13 station shall post a sign in a conspicuous location readily visible
14 to a person entering the toilet accommodations. The sign must
15 contain the following statement in letters at least one inch in
16 height: "Please report deficiencies in cleanliness or
17 serviceability, water leakage, waste of water, or lack of supplies
18 to the Texas State Board of Plumbing Examiners, Austin, Texas, at
19 1-800-845-6584."

20 (e) The Texas State Board of Plumbing Examiners shall
21 enforce this section.

22 (f) The Texas State Board of Plumbing Examiners may inspect
23 a filling station to determine compliance with this section.

24 SECTION 3. The heading to Subchapter F, Chapter 341, Health
25 and Safety Code, is amended to read as follows:

26 SUBCHAPTER F. CRIMINAL AND CIVIL PENALTIES

27 SECTION 4. Chapter 341, Health and Safety Code, is amended

1 by adding Subchapter G to read as follows:

2 SUBCHAPTER G. ADMINISTRATIVE PENALTY

3 Sec. 341.101. DEFINITION. Notwithstanding Section
4 341.001, in this subchapter, "board" means the Texas State Board of
5 Plumbing Examiners.

6 Sec. 341.102. IMPOSITION OF PENALTY. The board may impose
7 an administrative penalty on a person who violates Section
8 341.0615.

9 Sec. 341.103. AMOUNT OF PENALTY. (a) The amount of an
10 administrative penalty may not exceed \$1,000 for each violation.
11 Each day a violation continues or occurs is a separate violation for
12 purposes of imposing a penalty.

13 (b) The amount of the penalty shall be based on:

- 14 (1) the seriousness of the violation;
15 (2) the economic harm caused by the violation;
16 (3) the history of previous violations;
17 (4) the amount necessary to deter a future violation;
18 (5) efforts made to correct the violation; and
19 (6) any other matter that justice may require.

20 (c) The board by rule or through procedures adopted by the
21 board and published in the Texas Register shall develop a
22 standardized penalty schedule based on the criteria listed in
23 Subsection (b).

24 Sec. 341.104. REPORT AND NOTICE OF VIOLATION AND PENALTY.

25 (a) If the enforcement committee determines that a violation
26 occurred, the enforcement committee may issue to the board a report
27 stating:

1 (1) the facts on which the determination is based; and
2 (2) the committee's recommendation on the imposition
3 of the penalty, including a recommendation on the amount of the
4 penalty.

5 (b) Not later than the 14th day after the date the report is
6 issued, the enforcement committee shall give written notice of the
7 report to the person.

8 (c) The notice must:

9 (1) include a brief summary of the alleged violation;
10 (2) state the amount of the recommended penalty; and
11 (3) inform the person of the person's right to a
12 hearing on the occurrence of the violation, the amount of the
13 penalty, or both.

14 Sec. 341.105. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
15 Not later than the 20th day after the date the person receives the
16 notice, the person in writing may:

17 (1) accept the determination and recommended penalty
18 of the enforcement committee; or

19 (2) make a request for a hearing on the occurrence of
20 the violation, the amount of the penalty, or both.

21 (b) If the person accepts the determination and recommended
22 penalty of the enforcement committee, the board by order shall
23 approve the determination and impose the recommended penalty.

24 Sec. 341.106. HEARING. (a) If the person requests a
25 hearing or fails to respond in a timely manner to the notice, the
26 enforcement committee shall set a hearing and give written notice
27 of the hearing to the person. An administrative law judge of the

1 State Office of Administrative Hearings shall hold the hearing.

2 (b) The administrative law judge shall make findings of fact
3 and conclusions of law and promptly issue to the board a proposal
4 for a decision about the occurrence of the violation and the amount
5 of a proposed penalty.

6 Sec. 341.107. DECISION BY BOARD. (a) Based on the findings
7 of fact, conclusions of law, and proposal for a decision, the board
8 by order may:

9 (1) find that a violation occurred and impose a
10 penalty; or

11 (2) find that a violation did not occur.

12 (b) The notice of the board's order given to the person must
13 include a statement of the right of the person to judicial review of
14 the order.

15 Sec. 341.108. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
16 Not later than the 30th day after the date the board's order becomes
17 final, the person shall:

18 (1) pay the penalty; or

19 (2) file a petition for judicial review contesting the
20 occurrence of the violation, the amount of the penalty, or both.

21 Sec. 341.109. STAY OF ENFORCEMENT OF PENALTY. (a) Within
22 the 30-day period prescribed by Section 341.108, a person who files
23 a petition for judicial review may:

24 (1) stay enforcement of the penalty by:

25 (A) paying the penalty to the court for placement
26 in an escrow account; or

27 (B) giving the court a supersedeas bond approved

1 by the court that:

2 (i) is for the amount of the penalty; and

3 (ii) is effective until all judicial review

4 of the board's order is final; or

5 (2) request the court to stay enforcement of the
6 penalty by:

7 (A) filing with the court a sworn affidavit of
8 the person stating that the person is financially unable to pay the
9 penalty and is financially unable to give the supersedeas bond; and

10 (B) sending a copy of the affidavit to the
11 enforcement committee by certified mail.

12 (b) If the enforcement committee receives a copy of an
13 affidavit under Subsection (a)(2), the executive director may file
14 with the court, not later than the fifth day after the date the copy
15 is received, a contest to the affidavit.

16 (c) The court shall hold a hearing on the facts alleged in
17 the affidavit as soon as practicable and shall stay the enforcement
18 of the penalty on finding that the alleged facts are true. The
19 person who files an affidavit has the burden of proving that the
20 person is financially unable to pay the penalty and to give a
21 supersedeas bond.

22 Sec. 341.110. DECISION BY COURT. (a) If the court sustains
23 the finding that a violation occurred, the court may uphold or
24 reduce the amount of the penalty and order the person to pay the
25 full or reduced amount of the penalty.

26 (b) If the court does not sustain the finding that a
27 violation occurred, the court shall order that a penalty is not

1 owed.

2 Sec. 341.111. REMITTANCE OF PENALTY AND INTEREST. (a) If
3 the person paid the penalty and if the amount of the penalty is
4 reduced or the penalty is not upheld by the court, the court shall
5 order, when the court's judgment becomes final, that the
6 appropriate amount plus accrued interest be remitted to the person.

7 (b) The interest accrues at the rate charged on loans to
8 depository institutions by the New York Federal Reserve Bank.

9 (c) The interest shall be paid for the period beginning on
10 the date the penalty is paid and ending on the date the penalty is
11 remitted.

12 Sec. 341.112. RELEASE OF BOND. (a) If the person gave a
13 supersedeas bond and the penalty is not upheld by the court, the
14 court shall order, when the court's judgment becomes final, the
15 release of the bond.

16 (b) If the person gave a supersedeas bond and the amount of
17 the penalty is reduced, the court shall order the release of the
18 bond after the person pays the reduced amount.

19 Sec. 341.113. COLLECTION OF PENALTY. (a) If the person
20 does not pay the penalty and the enforcement of the penalty is not
21 stayed, the penalty may be collected.

22 (b) The attorney general may sue to collect the penalty.

23 Sec. 341.114. ADMINISTRATIVE PROCEDURE. A proceeding to
24 impose the penalty is considered to be a contested case under
25 Chapter 2001, Government Code.

26 SECTION 5. This Act takes effect September 1, 2011.