

By: Wohlgemuth

H.B. No. 2291

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of mass gatherings; providing penalties.

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

SECTION 1. Sections 751.002(1) and (3), Health and Safety Code, are amended to read as follows:

(1) "Mass gathering" means a gathering that is held outside the limits of a municipality and that attracts or is expected to attract more than 2,500 [~~5,000~~] persons who will remain at the meeting location for more than five continuous hours.

(3) "Promote" includes [~~organize,~~] manage, finance, advertise, [~~or~~] hold, or knowingly furnish real property to serve as the meeting location for a mass gathering.

SECTION 2. Chapter 751, Health and Safety Code, is amended by adding Section 751.0025 to read as follows:

Sec. 751.0025. LOCATION OF MEETING. An owner of the real property serving as the location of a mass gathering is presumed to have knowledge of whether the application for a permit to hold a mass gathering has been granted under this chapter.

SECTION 3. Section 751.004(a), Health and Safety Code, is amended to read as follows:

(a) At least 90 [~~45~~] days before the date on which a mass gathering will be held, the promoter shall file a permit application with the county judge of the county in which the mass gathering will be held.

1 SECTION 4. Section 751.005, Health and Safety Code, is
2 amended by amending Subsections (a), (b), (c), and (d) and adding
3 Subsections (g) and (h) to read as follows:

4 (a) Not later than the 10th day after the date on which
5 ~~[After]~~ a permit application is filed with the county judge, the
6 county judge shall send a copy of the application to the county
7 health authority, the county fire marshal or the person designated
8 under Subsection (c), and the sheriff.

9 (b) The county health authority shall inquire into
10 preparations for the mass gathering. At least five days before the
11 date on which the hearing prescribed by Section 751.006 is held, the
12 county health authority shall submit to the county judge a written
13 report containing findings about whether the promoter's
14 preparations are sufficient to meet ~~[stating whether the health~~
15 ~~authority believes that]~~ the minimum standards of health and
16 sanitation prescribed by state and local laws, rules, and orders
17 ~~[will be maintained]~~.

18 (c) The county fire marshal shall investigate preparations
19 for the mass gathering. If there is no county fire marshal in that
20 county, the commissioners court shall designate a person to act
21 under this section. At least five days before the date on which the
22 hearing prescribed by Section 751.006 is held, the county fire
23 marshal or the commissioners court designee shall submit to the
24 county judge a written report containing findings about whether the
25 promoter's preparations are sufficient to meet ~~[stating whether the~~
26 ~~fire marshal or designee believes that]~~ the minimum standards for
27 ensuring public fire safety and order as prescribed by state and

1 local laws, rules, and orders [~~will be maintained~~].

2 (d) The sheriff shall investigate preparations for the mass
3 gathering. At least five days before the date on which the hearing
4 prescribed by Section 751.006 is held, the sheriff shall submit to
5 the county judge a written report containing findings about whether
6 the promoter's preparations are sufficient to meet [~~stating whether~~
7 ~~the sheriff believes that~~] the minimum standards for ensuring
8 public safety and order that are prescribed by state and local laws,
9 rules, and orders [~~will be maintained~~].

10 (g) The county judge shall provide to the promoter a copy of
11 the reports filed under Subsections (b), (c), and (d). The judge may
12 send the copies by fax or by certified mail with return receipt
13 requested or personal delivery to the address provided in the
14 application.

15 (h) The county judge may, on the county judge's own motion
16 or the motion of the promoter, the county attorney, district
17 attorney, or attorney general, issue a subpoena for a witness to
18 appear so the county judge may conduct additional investigation as
19 provided under Subsection (e). A subpoena issued under this
20 subsection must comply with the requirements applicable to
21 subpoenas in civil cases under the Texas Rules of Civil Procedure,
22 as applicable. The limitations under Rule 176.3 do not apply to any
23 person appearing at the mass gathering or providing concessions,
24 entertainment, or services at the mass gathering.

25 SECTION 5. Section 751.0055, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 751.0055. DELEGATION OF DUTIES OF COUNTY JUDGE. (a)

1 The county judge of a county may file an order with the
2 commissioners court of the county delegating to another county
3 officer or department head the duty to hear applications for a
4 permit under this chapter. The order may provide for allowing the
5 county officer or department head to revoke a permit under Section
6 751.008 if a promoter fails to meet a requirement under this chapter
7 or rule adopted under this chapter.

8 (b) An order of a county officer or department head acting
9 under the delegated authority of the county judge in regard to a
10 permit has the same effect as an order of the county judge.

11 ~~[(c) During the period in which the order is in effect, the~~
12 ~~county judge may withdraw the authority delegated in relation to an~~
13 ~~application and the county judge may hear the application.]~~

14 ~~[(d) The county judge may at any time revoke an order~~
15 ~~delegating duties under this section.]~~

16 SECTION 6. Section 751.006, Health and Safety Code, is
17 amended by amending Subsections (a) and (b) and adding Subsection
18 (d) to read as follows:

19 (a) On or after the 30th day but on or before ~~[Not later~~
20 ~~than]~~ the 45th ~~[10th]~~ day after ~~[before]~~ the date on which a permit
21 application is filed ~~[mass gathering will begin]~~, the county judge
22 shall hold a hearing on the application. The county judge shall set
23 the date and time of the hearing.

24 (b) Before the 10th day before the date of the hearing,
25 notice ~~[Notice]~~ of the time and place of the hearing shall be given
26 to the promoter and to each person who has an interest in whether
27 the permit is granted or denied. Notice is sufficient if sent by

1 certified mail with return receipt requested or in accordance with
2 the requirements for giving notice to a party in a suit under the
3 Texas Rules of Civil Procedure before the 10th day before the date
4 of the hearing.

5 (d) On motion of the county judge or any party, the county
6 judge may order the promoter to appear at the hearing and testify to
7 matters relating to the permit application.

8 SECTION 7. Section 751.007(a), Health and Safety Code, is
9 amended to read as follows:

10 (a) Not later than the seventh day after [~~After~~] the
11 completion of the hearing prescribed by Section 751.006, the county
12 judge shall enter his findings in the record and shall either grant
13 or deny the permit. A permit is considered granted if the judge
14 fails to enter a ruling on the record in the time required by this
15 section.

16 SECTION 8. Section 751.008, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 751.008. PERMIT REVOCATION. (a) The county judge may
19 revoke a permit issued under this chapter if the county judge finds
20 by a preponderance of the evidence that preparations for the mass
21 gathering will not be completed by the time the mass gathering will
22 begin or that the permit was obtained by fraud or
23 misrepresentation.

24 (b) The county judge must give notice to the promoter that
25 the permit will be revoked at least 24 hours before the revocation.
26 If timely requested by the promoter, the county judge shall hold a
27 hearing on the revocation.

1 (c) A hearing under this section must be held not later than
2 72 hours before the scheduled time of the mass gathering.

3 (d) The county judge shall issue a decision under this
4 section not later than 48 hours before the scheduled time of the
5 mass gathering.

6 (e) A county judge may hold more than one revocation hearing
7 under this section.

8 (f) A revocation of a permit under this section or the
9 failure to revoke a permit does not preclude a civil or criminal
10 action against a promoter.

11 SECTION 9. Section 751.009, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 751.009. APPEAL AND REMOVAL. (a) A promoter or a
14 person affected by the granting, denying, or revoking of a permit
15 may appeal that action to a state district court having
16 jurisdiction in the county in which the mass gathering will be held.

17 (b) An appeal under this section is to be reviewed under an
18 abuse of discretion standard by the district court.

19 (c) Not later than the fifth day before the date on which a
20 hearing under Section 751.006 is scheduled, a promoter, county
21 attorney, district attorney, or the attorney general may request
22 removal of the case to a district court described by Subsection (a)
23 for the district court to hold the hearing and either grant or deny
24 the permit. On receipt of a request for removal under this section,
25 the county judge shall remove the case to district court.

26 (d) The district court has exclusive jurisdiction to grant,
27 deny, or revoke a permit under this chapter in a case removed from a

1 county judge's court under this section.

2 (e) In a case removed to a district court under this
3 section, a party may appeal the district court's decision to grant
4 or deny the permit to the court of appeals having jurisdiction in
5 the district in which the mass gathering will be held.

6 SECTION 10. Section 751.011, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 751.011. PENALTIES [~~CRIMINAL PENALTY~~]. (a) A person
9 commits an offense if the person violates Section 751.003.

10 (b) Except as otherwise provided by this section, an [An]
11 offense of promoting a mass gathering in violation of Section
12 751.003 is a Class B misdemeanor [~~under this section is a~~
13 ~~misdemeanor punishable by a fine of not more than \$1,000,~~
14 ~~confinement in the county jail for not more than 90 days, or both~~].

15 (c) Except as provided by Subsection (d), an offense of
16 holding a mass gathering in violation of Section 751.003 is a Class
17 A misdemeanor.

18 (d) An offense of holding a mass gathering in violation of
19 Section 751.003 where an injury occurs causing serious bodily harm
20 or death is a felony of the third degree.

21 (e) A person who violates this chapter or an order or rule
22 adopted under this chapter in connection with a mass gathering or a
23 proposed mass gathering is liable for a civil penalty to the
24 political subdivision in which the mass gathering is held or
25 proposed to be held and that initially brings the suit to collect
26 the penalty. The amount of the penalty is an amount, as justice
27 requires, of not less than \$1,000 or more than \$25,000 for each day

1 of the violation. An attorney representing the political
2 subdivision may sue to collect the penalty. The penalty:

3 (1) is in addition to any other applicable criminal or
4 civil penalty; and

5 (2) may be assessed on one or more persons.

6 SECTION 11. Sections 751.012(c) and (d), Health and Safety
7 Code, are amended to read as follows:

8 (c) The sheriff, attorney general, local prosecuting
9 attorney, Department of Public Safety, or the federal Drug
10 Enforcement Agency may inspect a mass gathering during the mass
11 gathering to ensure that the minimum standards for ensuring public
12 safety and order prescribed by state and local laws, rules, and
13 orders are being maintained. If the sheriff determines a violation
14 of the minimum standards is occurring, the sheriff may order the
15 promoter of the mass gathering to correct the violation.

16 (d) A promoter who fails to comply with an order issued
17 under this section commits an offense. An offense under this
18 section is a Class A [€] misdemeanor.

19 SECTION 12. Chapter 751, Health and Safety Code, is amended
20 by adding Sections 751.014, 751.015, and 751.016 to read as
21 follows:

22 Sec. 751.014. VIOLATION OF CERTAIN REMEDIAL ORDERS. (a) A
23 promoter commits an offense if the promoter violates an order by a
24 county judge or district judge to take a remedial action relating to
25 the mass gathering.

26 (b) An offense under this section is a felony of the third
27 degree.

1 Sec. 751.015. INJUNCTION. (a) A district court in the
2 county in which a mass gathering is scheduled to be held may issue a
3 permanent injunction or temporary restraining order to restrain the
4 mass gathering from being held if the court finds that the promoter:

5 (1) has failed to comply with an order of the county
6 judge or district judge; or

7 (2) has violated a provision in this chapter or a rule
8 adopted under this chapter.

9 (b) The attorney general, district attorney, or county
10 attorney may institute and conduct a suit authorized by this
11 section.

12 (c) On further hearing, a district court may change a
13 temporary restraining order to a permanent injunction.

14 (d) Venue for a suit brought under this section is in:

15 (1) the county in which the mass gathering is
16 scheduled to be held;

17 (2) the county in which the mass gathering is being
18 promoted; or

19 (3) Travis County.

20 Sec. 751.016. RECORD UNDER PENAL CODE. An application for a
21 permit under this chapter is:

22 (1) a record, for purposes of Section 37.09, Penal
23 Code; and

24 (2) a governmental record, for purposes of Section
25 37.10, Penal Code.

26 SECTION 13. The change in law made by this Act applies only
27 to an offense committed on or after September 1, 2003. An offense

1 committed before September 1, 2003, is covered by the law in effect
2 when the offense was committed, and the former law is continued in
3 effect for that purpose. For purposes of this section, an offense
4 was committed before September 1, 2003, if any element of the
5 offense occurred before that date.

6 SECTION 14. This Act takes effect September 1, 2003.