

BILL ANALYSIS

Senate Research Center
81R22282 UM-D

H.B. 882
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Business & Commerce
5/15/2009
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The current provisions of the Property Code governing when utilities can be disconnected are confusing for both landlords and tenants. Because of the confusing provisions, a landlord may incorrectly disconnect utility service when it is not authorized under state law, causing potential liability for the landlord and leaving residents without needed utility service. In such cases, it may be difficult for tenants to get the utility service restored, since any judicial remedies require going to county or district court, which can be time consuming and expensive for both parties.

H.B. 882 clarifies current law by limiting a landlord's ability to disconnect a tenant's utilities to situations involving construction, bona fide repairs, and emergencies. The bill also authorizes a tenant to go to a justice of the peace to seek a writ of restoration if a landlord has illegally disconnected utilities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 92.008(b), Property Code, to prohibit a landlord from interrupting or causing the interruption of certain utility services furnished to a tenant by the landlord as an incident of the tenancy or by other agreement unless the interruption results from bona fide repairs, construction, or an emergency, rather than prohibits a landlord from interrupting or causing the interruption of certain utilities, except as provided by Subsections (c) (relating to the authorization of a landlord to interrupt or cause the interruption of electrical service under certain conditions) and (d) (relating to the authorization of a landlord to interrupt or cause the interruption of electrical service under certain conditions).

SECTION 2. Amends Subchapter A, Chapter 92, Property Code, by adding Section 92.0091, as follows:

Sec. 92.0091. RESIDENTIAL TENANT'S RIGHT OF RESTORATION AFTER UNLAWFUL UTILITY DISCONNECTION. (a) Authorizes the tenant, if a landlord has interrupted utility service in violation of Section 92.008 (Interruption of Utilities), to obtain relief as provided by this section.

(b) Requires the tenant to file with the justice court in the precinct in which the rental premises are located a sworn complaint specifying the facts of the alleged unlawful utility disconnection by the landlord or the landlord's agent. Requires the tenant to also state orally under oath to the justice the facts of the alleged unlawful utility disconnection.

(c) Authorizes the justice, if the tenant has complied with Subsection (b) and if the justice reasonably believes an unlawful utility disconnection has likely occurred, to issue, ex parte, a writ of restoration of utility service that entitles the tenant to immediate and temporary restoration of the disconnected utility service, pending a final hearing on the tenant's sworn complaint.

(d) Requires that the writ of restoration of utility service be served on either the landlord or the landlord's management company, on-premises manager, or rent collector in the same manner as a writ of possession in a forcible detainer suit.

(e) Entitles the landlord to a hearing on the tenant's sworn complaint for restoration of utility service. Requires that the writ of restoration of utility service notify the landlord of the right to a hearing. Requires that the hearing be held not earlier than the first day and not later than the seventh day after the date the landlord requests a hearing.

(f) Authorizes a judgment for court costs to be rendered against the landlord if the landlord fails to request a hearing on the tenant's sworn complaint for restoration of utility service before the eighth day after the date of service of the writ of restoration of utility service on the landlord under Subsection (d).

(g) Authorizes a party to appeal from the court's judgment at the hearing on the sworn complaint for restoration of utility service in the same manner as a party may appeal a judgment in a forcible detainer suit.

(h) Provides that if a writ of possession is issued, it supersedes a writ of restoration of utility service.

(i) Provides that if the landlord or the person on whom a writ of restoration of utility service is served fails to immediately comply with the writ or later disobeys the writ, the failure is grounds for contempt of court against the landlord or the person on whom the writ was served under Section 21.002 (Contempt of Court), Government Code. Authorizes the tenant or the tenant's attorney, if the writ is disobeyed, to file in the court in which the action is pending an affidavit stating the name of the person who has disobeyed the writ and describing the acts or omissions constituting the disobedience. Requires the justice, on receipt of an affidavit, to issue a show cause order, directing the person to appear on a designated date and show cause why the person should not be adjudged in contempt of court. Authorizes the justice, if the justice finds, after considering the evidence at the hearing, that the person has directly or indirectly disobeyed the writ, to commit the person to jail without bail until the person purges the contempt action or omission in a manner and form as the justice may direct. Authorizes the justice, if the person disobeyed the writ before receiving the show cause order but has complied with the writ after receiving the order, to find the person in contempt and assess punishment under Section 21.002(c) (relating to the punishment for a certain infraction), Government Code.

(j) Authorizes the landlord, if a tenant in bad faith files a sworn complaint for restoration of utility service resulting in a writ being served on the landlord or landlord's agent, in a separate cause of action to recover from the tenant an amount equal to actual damages, one month's rent or \$500, whichever is greater, reasonable attorney's fees, and costs of court, less any sums for which the landlord is liable to the tenant.

(k) Provides that the fee for filing a sworn complaint for restoration of utility service is the same as that for filing a civil action in justice court. Provides that the fee for service of a writ of restoration of utility service is the same as that for service of a writ of possession. Provides that the fee for service of a show cause order is the same as that for service of a civil citation. Authorizes the justice to defer payment of the tenant's filing fees and service costs for the sworn complaint for restoration of utility service and writ of restoration of utility service. Authorizes court costs to be waived only if the tenant executes a pauper's affidavit.

SECTION 3. Repealer: Sections 92.008(c) (relating to the authorization of a landlord to interrupt or cause the interruption of electrical service under certain conditions), (d) (relating to the authorization of a landlord to interrupt or cause the interruption of electrical service under

certain conditions), and (e) (relating to the requirement of a landlord to restore electrical service by a certain time), Property Code.

SECTION 4. Makes application of Section 92.0091, Property Code, as added by this Act, prospective.

SECTION 5. Effective date: January 1, 2010.