

1-1 By: Rodriguez, et al. (Senate Sponsor - Eltife) H.B. No. 882
1-2 (In the Senate - Received from the House May 5, 2009;
1-3 May 6, 2009, read first time and referred to Committee on Business
1-4 and Commerce; May 21, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 May 21, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 882 By: Eltife

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to a residential tenant's rights and remedies after
1-11 certain determinations or unlawful conduct.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 92.008(b), Property Code, is amended to
1-14 read as follows:

1-15 (b) A ~~[Except as provided by Subsections (c) and (d), a]~~
1-16 landlord may not interrupt or cause the interruption of water,
1-17 wastewater, gas, or electric service furnished to a tenant by the
1-18 landlord as an incident of the tenancy or by other agreement unless
1-19 the interruption results from bona fide repairs, construction, or
1-20 an emergency.

1-21 SECTION 2. Subchapter A, Chapter 92, Property Code, is
1-22 amended by adding Section 92.0091 to read as follows:

1-23 Sec. 92.0091. RESIDENTIAL TENANT'S RIGHT OF RESTORATION
1-24 AFTER UNLAWFUL UTILITY DISCONNECTION. (a) If a landlord has
1-25 interrupted utility service in violation of Section 92.008, the
1-26 tenant may obtain relief as provided by this section.

1-27 (b) The tenant must file with the justice court in the
1-28 precinct in which the rental premises are located a sworn complaint
1-29 specifying the facts of the alleged unlawful utility disconnection
1-30 by the landlord or the landlord's agent. The tenant must also state
1-31 orally under oath to the justice the facts of the alleged unlawful
1-32 utility disconnection.

1-33 (c) If the tenant has complied with Subsection (b) and if
1-34 the justice reasonably believes an unlawful utility disconnection
1-35 has likely occurred, the justice may issue, ex parte, a writ of
1-36 restoration of utility service that entitles the tenant to
1-37 immediate and temporary restoration of the disconnected utility
1-38 service, pending a final hearing on the tenant's sworn complaint.

1-39 (d) The writ of restoration of utility service must be
1-40 served on either the landlord or the landlord's management company,
1-41 on-premises manager, or rent collector in the same manner as a writ
1-42 of possession in a forcible detainer suit.

1-43 (e) The landlord is entitled to a hearing on the tenant's
1-44 sworn complaint for restoration of utility service. The writ of
1-45 restoration of utility service must notify the landlord of the
1-46 right to a hearing. The hearing shall be held not earlier than the
1-47 first day and not later than the seventh day after the date the
1-48 landlord requests a hearing.

1-49 (f) If the landlord fails to request a hearing on the
1-50 tenant's sworn complaint for restoration of utility service before
1-51 the eighth day after the date of service of the writ of restoration
1-52 of utility service on the landlord under Subsection (d), a judgment
1-53 for court costs may be rendered against the landlord.

1-54 (g) A party may appeal from the court's judgment at the
1-55 hearing on the sworn complaint for restoration of utility service
1-56 in the same manner as a party may appeal a judgment in a forcible
1-57 detainer suit.

1-58 (h) If a writ of possession is issued, it supersedes a writ
1-59 of restoration of utility service.

1-60 (i) If the landlord or the person on whom a writ of
1-61 restoration of utility service is served fails to immediately
1-62 comply with the writ or later disobeys the writ, the failure is
1-63 grounds for contempt of court against the landlord or the person on

2-1 whom the writ was served under Section 21.002, Government Code. If
2-2 the writ is disobeyed, the tenant or the tenant's attorney may file
2-3 in the court in which the action is pending an affidavit stating the
2-4 name of the person who has disobeyed the writ and describing the
2-5 acts or omissions constituting the disobedience. On receipt of an
2-6 affidavit, the justice shall issue a show cause order, directing
2-7 the person to appear on a designated date and show cause why the
2-8 person should not be adjudged in contempt of court. If the justice
2-9 finds, after considering the evidence at the hearing, that the
2-10 person has directly or indirectly disobeyed the writ, the justice
2-11 may commit the person to jail without bail until the person purges
2-12 the contempt action or omission in a manner and form as the justice
2-13 may direct. If the person disobeyed the writ before receiving the
2-14 show cause order but has complied with the writ after receiving the
2-15 order, the justice may find the person in contempt and assess
2-16 punishment under Section 21.002(c), Government Code.

2-17 (j) If a tenant in bad faith files a sworn complaint for
2-18 restoration of utility service resulting in a writ being served on
2-19 the landlord or landlord's agent, the landlord may in a separate
2-20 cause of action recover from the tenant an amount equal to actual
2-21 damages, one month's rent or \$500, whichever is greater, reasonable
2-22 attorney's fees, and costs of court, less any sums for which the
2-23 landlord is liable to the tenant.

2-24 (k) The fee for filing a sworn complaint for restoration of
2-25 utility service is the same as that for filing a civil action in
2-26 justice court. The fee for service of a writ of restoration of
2-27 utility service is the same as that for service of a writ of
2-28 possession. The fee for service of a show cause order is the same as
2-29 that for service of a civil citation. The justice may defer payment
2-30 of the tenant's filing fees and service costs for the sworn
2-31 complaint for restoration of utility service and writ of
2-32 restoration of utility service. Court costs may be waived only if
2-33 the tenant executes a pauper's affidavit.

2-34 SECTION 3. Subchapter A, Chapter 92, Property Code, is
2-35 amended by adding Section 92.025 to read as follows:

2-36 Sec. 92.025. TENANT'S REMEDIES REGARDING GOVERNMENTAL
2-37 DETERMINATION OF SUBSTANDARD HOUSING. If a municipality or a
2-38 county revokes a certificate of occupancy for a leased premises
2-39 because of the landlord's failure to maintain the premises, the
2-40 landlord is liable to a tenant who is not in default under the lease
2-41 for:

- 2-42 (1) the full amount of the tenant's security deposit;
- 2-43 (2) the pro rata portion of any rental payment the
2-44 tenant has paid in advance;
- 2-45 (3) the tenant's actual damages, including any moving
2-46 costs, utility connection fees, storage fees, and lost wages; and
- 2-47 (4) court costs and attorney's fees arising from any
2-48 related cause of action by the tenant against the landlord.

2-49 SECTION 4. Sections 92.008(c), (d), and (e), Property Code,
2-50 are repealed.

2-51 SECTION 5. Section 92.0091, Property Code, as added by this
2-52 Act, applies only to a violation of Section 92.008, Property Code,
2-53 as amended by this Act, on or after the effective date of this Act or
2-54 a violation of Section 92.008, Property Code, as that section
2-55 existed immediately before the effective date of this Act, that
2-56 continues on or after the effective date of this Act. A violation
2-57 that occurred before the effective date of this Act and does not
2-58 continue after the effective date of this Act is covered by the law
2-59 in effect at the time the violation occurred, and the former law is
2-60 continued in effect for that purpose.

2-61 SECTION 6. This Act takes effect January 1, 2010.

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