

By: Callegari

H.B. No. 4475

A BILL TO BE ENTITLED

AN ACT

relating to fire code certificates of compliance, violations, and enforcement; providing penalties.

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

SECTION 1. Section 233.064, Local Government Code, is amended by amending Subsections (f) and (g) and adding Subsections (h) and (i) to read as follows:

(f) The county shall issue a final certificate of compliance to the owner of a building inspected under this section if the inspector determines, after an inspection of the completed building, that the building complies with the fire code. For a building or complex of buildings involving phased completion or build-out, the county may issue a partial certificate of compliance for any portion of the building or complex the inspector determines is in compliance with the fire code.

(g) If the inspector determines, after an inspection of the ~~completed~~ building, that the building does not comply with the fire code, the inspector may:

(1) ~~[the county shall]~~ deny the certificate of compliance; or ~~[and]~~

(2) issue a conditional certificate of compliance and allow the building to ~~[may not]~~ be occupied.

(h) A conditional certificate of compliance issued under Subsection (g) shall notify the owner of the building of the

1 violations of the fire code and set a time within which the building  
2 must be in compliance with the fire code. A conditional certificate  
3 of compliance shall be revoked if the owner does not remedy the  
4 violations within the time specified on the conditional certificate  
5 of compliance.

6 (i) The owner of the building shall ensure that a person  
7 does not occupy a building for which the owner does not have a  
8 certificate of compliance or a conditional certificate of  
9 compliance, or a portion of a building or complex of buildings for  
10 which a partial certificate of compliance has not been issued.

11 SECTION 2. Section 233.066, Local Government Code, is  
12 amended to read as follows:

13 Sec. 233.066. INJUNCTION. The appropriate attorney  
14 representing the county in the district court may seek injunctive  
15 relief to prevent a [the] violation or threatened violation  
16 constituting an offense under Section 233.067. The county is not  
17 required to give bond. If a county prevails in an action under this  
18 section, the court shall award the county reasonable attorney's  
19 fees, costs of court, and investigative costs [of the fire code].

20 SECTION 3. Section 233.067, Local Government Code, is  
21 amended to read as follows:

22 Sec. 233.067. OFFENSE: CRIMINAL AND CIVIL PENALTY. (a) A  
23 person commits an offense if:

24 (1) a person constructs or substantially improves a  
25 building without obtaining a permit under Section 233.063;

26 (2) a person who owns a building that does not have a  
27 certificate of compliance or a conditional certificate of

1 compliance allows the building to be occupied;

2 (3) a person causes, suffers, allows, or permits a  
3 violation of the fire code;

4 (4) a person fails to post a notice under Section  
5 233.068(d); or

6 (5) a person violates an order issued under Section  
7 233.069.

8 (b) Except as provided by Subsection (c), an offense under  
9 this section is a Class C misdemeanor.

10 (c) An offense under Subsection (a)(5) is a Class B  
11 misdemeanor.

12 (d) Each day an offense occurs or continues constitutes a  
13 separate offense.

14 (e) The appropriate attorney representing the county in  
15 civil cases may file a civil action in a court of competent  
16 jurisdiction to recover from a person who commits an offense under  
17 this section [~~violates the fire code~~] a civil penalty in an amount  
18 not to exceed \$500 [~~\$200~~] for each day on which the offense occurs  
19 [~~violation exists~~]. In determining the amount of the penalty, the  
20 court shall consider the seriousness of the offense [~~violation~~].

21 (f) If a county prevails in an action under this section,  
22 the court shall award the county reasonable attorney's fees, costs  
23 of court, and investigative costs.

24 (g) [(b)] The county shall deposit amounts collected under  
25 this section in the fund and for the purposes described by Section  
26 233.065(c).

27 SECTION 4. Subchapter C, Chapter 233, Local Government

Code, is amended by adding Sections 233.068 and 233.069 to read as follows:

Sec. 233.068. CITATIONS. (a) If, on inspection or investigation, the county fire marshal, an assistant fire marshal, or a certified fire inspector determines that a person has committed an offense under Section 233.067, the county fire marshal, assistant fire marshal, or certified fire safety inspector may issue a citation to the person.

(b) When the citation is issued by a certified fire inspector or an assistant fire marshal, a copy of the citation shall be furnished to the county fire marshal.

(c) The county fire marshal may prescribe procedures for the issuance of a notice in lieu of a citation with respect to a de minimis violation of the fire code that has no direct or immediate relationship to public safety or health.

(d) Each citation issued under this section, or a copy of the citation, shall be prominently posted by the responsible person at a location prescribed by the county fire marshal.

Sec. 233.069. EMERGENCY CONDITIONS. If the county fire marshal determines that an offense by a person under Section 233.067 creates an immediate threat to the public safety, the county fire marshal may direct the person, including a property owner or an occupant of the building, to take specific action to address the issue or to cease and desist from a specified activity. The person shall immediately comply with an order made by the county fire marshal under this section.

SECTION 5. Section 352.016(b), Local Government Code, is

1 amended to read as follows:

2 (b) In the interest of safety and fire prevention, the  
3 county fire marshal may inspect for violations of the county fire  
4 code or for fire or life safety hazards any structure,  
5 appurtenance, fixture, or real property located within 500 feet of  
6 a structure, appurtenance, or fixture. The marshal shall inspect a  
7 structure for violations of the county fire code or for fire or life  
8 safety hazards if called on to do so. In the absence of a county  
9 fire code, the county fire marshal may conduct an inspection using  
10 any nationally recognized code or standard adopted by the state. If  
11 the county has adopted a fire code, the marshal may conduct the  
12 inspection using the adopted code and any nationally recognized  
13 code or standard adopted by the state. If the marshal finds a  
14 violation of the county fire code or ~~[determines]~~ the presence of a  
15 fire or life safety hazard, the marshal may order the owner or  
16 occupant of the premises to correct the violation or hazardous  
17 situation. If ordered to do so, an owner or occupant shall correct  
18 the violation or hazardous situation in accordance with the order.

19 SECTION 6. Section 352.022, Local Government Code, is  
20 amended to read as follows:

21 Sec. 352.022. CRIMINAL PENALTIES ~~[PENALTY FOR FAILURE TO~~  
22 ~~COMPLY WITH ORDER]~~. (a) A person commits an offense if the person:

23 (1) [An owner or occupant who] is subject to an order  
24 issued under Section 352.016 and ~~[commits an offense if that~~  
25 ~~person]~~ fails to comply with the order;

26 (2) fails to post a citation in accordance with  
27 Subsection (h);

1           (3) causes, suffers, allows, or permits a violation of  
2 the fire code in a county that has adopted a fire code; or

3           (4) violates an order issued under Section 352.016(b)  
4 or Section 352.0221.

5           (b) Each day an offense occurs or continues constitutes  
6 [refusal to comply is] a separate offense.

7           (c) Except as provided by Subsection (d), the [The] offense  
8 is a Class C [B] misdemeanor unless it is shown on the trial of the  
9 offense that the defendant has been previously convicted two or  
10 more times under this section, in which event the offense is a state  
11 jail felony.

12           (d) An offense under Subsection (a)(4) is a Class B  
13 misdemeanor unless it is shown on the trial of the offense that the  
14 defendant has been previously convicted two or more times under  
15 this section, in which event the offense is a state jail felony.

16           (e) If, on inspection or investigation, the county fire  
17 marshal, an assistant fire marshal, or a certified fire inspector  
18 determines that a person has committed an offense under this  
19 section, the county fire marshal, assistant fire marshal, or  
20 certified fire safety inspector may issue a citation to the person.

21           (f) When the citation is issued by a certified fire  
22 inspector or an assistant fire marshal, a copy of the citation shall  
23 be furnished to the county fire marshal.

24           (g) The county fire marshal may prescribe procedures for the  
25 issuance of a notice in lieu of a citation with respect to a de  
26 minimis violation of the fire code that has no direct or immediate  
27 relationship to public safety or health.

1        (h) Each citation issued under this section, or a copy of  
2 the citation, shall be prominently posted by the responsible person  
3 at the location prescribed by the county fire marshal.

4        SECTION 7. Subchapter B, Chapter 352, Local Government  
5 Code, is amended by adding Sections 352.0221 and 352.0222 to read as  
6 follows:

7        Sec. 352.0221. CIVIL PENALTIES AND INJUNCTIVE RELIEF. (a)  
8 The appropriate attorney representing the county in civil cases may  
9 file a civil action to recover from a person who commits an offense  
10 under Section 352.022 a civil penalty in an amount not to exceed  
11 \$500 for each day on which the offense occurs. In determining the  
12 amount of the penalty, the court shall consider the seriousness of  
13 the offense.

14        (b) The appropriate attorney representing the county in  
15 civil cases may seek injunctive relief to prevent an offense or  
16 threatened offense under Section 352.022. The county is not  
17 required to give bond.

18        (c) If a county prevails in an action under this subchapter,  
19 the court shall award the county reasonable attorney's fees, costs  
20 of court, and investigative costs.

21        Sec. 352.0222. EMERGENCY CONDITIONS. If the county fire  
22 marshal determines that an offense under Section 352.022 or a fire  
23 or life safety hazard as described under Section 352.016 creates an  
24 immediate threat to the public safety, the county fire marshal may  
25 direct the person committing the offense, the property owner, or an  
26 occupant of the building to take specific action or to cease and  
27 desist from a specified activity. A person shall immediately comply

1 with an order made by the county fire marshal under this section.

2         SECTION 8. A county may issue a partial certificate of  
3 compliance under Section 233.064(f), Local Government Code, as  
4 amended by this Act, on or after the effective date of this Act to  
5 any building or complex of buildings that qualifies for the partial  
6 certificate of compliance, regardless of whether the building  
7 project started before, on, or after the effective date of this Act.

8         SECTION 9. The change in law made by this Act applies only  
9 to an offense committed on or after the effective date of this Act.  
10 An offense committed before the effective date of this Act is  
11 covered by the law in effect immediately before the effective date  
12 of this Act, and the former law is continued in effect for that  
13 purpose. For purposes of this section, an offense was committed  
14 before the effective date of this Act if any element of the offense  
15 was committed before that date.

16         SECTION 10. This Act takes effect September 1, 2009.