

House Bill 882
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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

(b) ~~A [Except as provided by Subsections (c) and (d), a]~~ landlord may not interrupt or cause the interruption of water, wastewater, gas, or electric service 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.

Same as House version.

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

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

(b) The tenant must 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. The tenant must also state orally under oath to the justice the facts of the alleged unlawful utility disconnection.

(c) If the tenant has complied with Subsection (b) and if the justice reasonably believes an unlawful utility disconnection has likely occurred, the justice may issue, ex parte, a writ of restoration of utility service that entitles the tenant to immediate and temporary

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restoration of the disconnected utility service, pending a final hearing on the tenant's sworn complaint.

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

(f) 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), a judgment for court costs may be rendered against the landlord.

(g) A party may 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) If a writ of possession is issued, it supersedes a writ of restoration of utility service.

(i) 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

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under Section 21.002, Government Code. If the writ is disobeyed, the tenant or the tenant's attorney may 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. On receipt of an affidavit, the justice shall 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. If the justice finds, after considering the evidence at the hearing, that the person has directly or indirectly disobeyed the writ, the justice may 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. If the person disobeyed the writ before receiving the show cause order but has complied with the writ after receiving the order, the justice may find the person in contempt and assess punishment under Section 21.002(c), Government Code.

(j) 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, the landlord may in a separate cause of action 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) 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. The fee for service of a writ of

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restoration of utility service is the same as that for service of a writ of possession. The fee for service of a show cause order is the same as that for service of a civil citation. The justice may 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. Court costs may be waived only if the tenant executes a pauper's affidavit.

No equivalent provision.

SECTION 3. Sections 92.008(c), (d), and (e), Property

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SECTION 3. Subchapter A, Chapter 92, Property Code, is amended by adding Section 92.025 to read as follows:
Sec. 92.025. TENANT'S REMEDIES REGARDING GOVERNMENTAL DETERMINATION OF SUBSTANDARD HOUSING. If a municipality or a county revokes a certificate of occupancy for a leased premises because of the landlord's failure to maintain the premises, the landlord is liable to a tenant who is not in default under the lease for:
(1) the full amount of the tenant's security deposit;
(2) the pro rata portion of any rental payment the tenant has paid in advance;
(3) the tenant's actual damages, including any moving costs, utility connection fees, storage fees, and lost wages; and
(4) court costs and attorney's fees arising from any related cause of action by the tenant against the landlord.

SECTION 4. Same as House version.

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Code, are repealed.

SECTION 4. Section 92.0091, Property Code, as added by this Act, applies only to a violation of Section 92.008, Property Code, as amended by this Act, on or after the effective date of this Act or a violation of Section 92.008, Property Code, as that section existed immediately before the effective date of this Act, that continues on or after the effective date of this Act. A violation that occurred before the effective date of this Act and does not continue after the effective date of this Act is covered by the law in effect at the time the violation occurred, and the former law is continued in effect for that purpose.

SECTION 5. This Act takes effect January 1, 2010.

SECTION 5. Same as House version.

SECTION 6. Same as House version.