

BILL ANALYSIS

Senate Research Center
87R26182 SMT-F

C.S.H.B. 1240
By: Coleman (Miles)
Local Government
5/11/2021
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current penalties for violating a fire marshal's order are too punitive for many types of violations. Section 352.022, Local Government Code, states that the offense for a person who does not comply with a fire marshal's order is a Class B misdemeanor. There is no Class C option. Subsequent offenses are state jail felonies. The current penalty is too harsh for a first time offender of a minor violation, and personnel is reluctant to issue them.

Class B misdemeanors should be reserved for failures to meet orders that result in significant property damage. Class A misdemeanors should be reserved for offenses that result in bodily injury or death. County fire marshals need a Class C (fine-only) option for lower level violations to encourage compliance. H.B. 1240 allows county fire marshals to adequately address minor violations.

H.B. 1240 also allows a commissioners court to appoint persons to conduct fire and life safety inspections with the power to issue citations. H.B. 1240 models the same authority that public health inspectors have in the Health and Safety Code.

(Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 1240 amends current law relating to the offense of failure to comply with an order from a fire marshal and the authority of certain county employees to issue citations for certain violations and changes a criminal penalty.

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 352.022, Local Government Code, as follows:

Sec. 352.022. PENALTY FOR FAILURE TO COMPLY WITH ORDER. (a) Creates this subsection from existing text. Provides that a person, rather than an owner or occupant, who is subject to an order issued under Section 352.016 (Inspection or Review of Plan for Fire or Life Safety Hazards) commits an offense if that person fails to comply with the order. Provides that each refusal to comply is a separate offense.

(b) Creates this subsection from existing text. Provides that an offense under this section, except as provided by Subsection (c), (d), or (e), is a Class C, rather than a Class B, misdemeanor. Makes nonsubstantive changes.

(c) Provides that an offense under this section is a Class A misdemeanor if the commission of the offense results in bodily injury or death.

(d) Provides that, unless Subsection (c) applies, if it is shown on the trial of the offense that the defendant has been previously convicted under this section, the offense is a Class B misdemeanor.

(e) Creates this subsection from existing text. Provides that if, rather than unless, it is shown on the trial of the offense that the defendant has been previously convicted two or more times under this section, the offense is a state jail felony. Makes a nonsubstantive change.

SECTION 2. Amends Subchapter B, Chapter 352, Local Government Code, by adding Section 352.0221, as follows:

Sec. 352.0221. AUTHORITY OF CERTAIN COUNTY EMPLOYEES TO ISSUE CITATION. (a) Provides that this section applies only to a county with a population of 3.3 million or more, and a county with a population of 550,000 or more adjacent to a county with a population of 3.3 million or more.

(b) Authorizes the commissioners court of a county to which this section applies to grant the authority to issue a citation under this section to a county employee who:

(1) is certified by the Texas Commission on Fire Protection as a fire inspector;

(2) conducts fire or life safety inspections under Section 352.016; and

(3) is not a peace officer.

(c) Authorizes the employee to issue a citation in the unincorporated area of the county only for an offense under Section 352.022, or a violation of an order relating to fire or life safety issued by the commissioners court that is reasonably necessary to protect public safety and welfare.

(d) Requires that a citation issued under this section state the name of the person cited, the violation charged, and the time and place the person is required to appear in court.

(e) Provides that this section does not authorize the employee to arrest a person.

(f) Authorizes the court, if a person who receives a citation under this section fails to appear in court on the return date of the citation, to issue a warrant for the person's arrest for the violation described in the citation.

SECTION 3. Makes application of Section 352.022, Local Government Code, as amended by this Act, prospective.

SECTION 4. Effective date: September 1, 2021.