

Moved by Kauffman

Seconded by Youngblood

IN THE HOUSE OF REPRESENTATIVES
HOUSE AMENDMENT TO H.B. NO. 171

AMENDMENT TO SECTION 1

1
2 On page 1 of the printed bill, delete lines 11 through 40, and insert:
3 "highway or public right-of-way under the jurisdiction of a county or high-
4 way district is encroached upon by gates, fences, buildings, or otherwise,
5 the appropriate county or highway district may require the encroachment to
6 be removed.

7 (2) If the county or highway district has actual notice of an encroach-
8 ment that is of a nature as to effectually obstruct and prevent the use of an
9 open highway for vehicles or is unsafe for pedestrian or motorist use of an
10 open highway, the county or highway district shall immediately cause the en-
11 croachment to be removed without notice.

12 (23) If the county or highway district elects to remove an encroachment
13 as provided for in subsection (1) of this section, notice shall be given to
14 the occupant or owner of the land, or person causing or owning the encroach-
15 ment, or left at his place of residence if he resides in the highway jurisdic-
16 tion. If not, it shall be posted on the encroachment, specifying the place
17 and extent of the encroachment, and requiring him to remove the encroachment
18 within ten (10) days.

19 (3a) If the encroachment is not removed, or commenced to be removed,
20 prior to the expiration of ten (10) days from the service or posting
21 the notice, the person who caused, owns or controls the encroachment
22 shall forfeit up to one hundred fifty dollars (\$150) for each day the
23 encroachment continues unremoved;

24 (4b) If the encroachment is denied, and the owner, occupant, or person
25 controlling the encroachment, refuses either to remove it or to permit
26 its removal, the county or highway district shall commence in the proper
27 court an action to abate the encroachment as a nuisance. If the county
28 or highway district recovers judgment, it may, in addition to having the
29 encroachment abated, recover up to one hundred fifty dollars (\$150) for
30 every day the nuisance encroachment remained after notice, as well as
31 costs of the legal action and removal; or

32 (5c) If the encroachment is not denied, but is not removed owner, oc-
33 cupant or person controlling the encroachment fails to respond to the
34 notice within five (5) days after the notice is complete, the county or
35 highway district may remove it at the expense of the owner, occupant, or
36 person controlling the encroachment, and the county or highway district
37 may recover costs and expenses, as well as the sum of up to one hundred
38 fifty dollars (\$150) for each day the encroachment remained after no-
39 tice was complete."

1 On page 2, delete lines 1 through 3, and insert:

2 "(4) The duties referenced in the provisions of this section, whether
3 statutory or common law, require reasonable care only and shall not be con-
4 strued to impose strict liability or to otherwise enlarge the liability of
5 the county or highway district. The county or highway district, while re-
6 sponsible for their own acts or omissions, shall not be liable for any injury
7 or damage caused by or arising from the encroachment or the failure to remove
8 or abate the encroachment as provided for in subsection (1) of this section.
9 The provision of this section shall not be construed to impair any defense
10 that the county or highway district may assert in a civil action.";
11 and in line 4, delete "7" and insert: "5".

12 CORRECTION TO TITLE

13 On page 1, delete lines 3 through 5, and insert: "THE COUNTY OR HIGHWAY
14 DISTRICT HAS ACTUAL NOTICE OF AN ENCROACHMENT THAT IS UNSAFE FOR PEDESTRI-
15 ANS OR MOTORISTS, TO REVISE TERMINOLOGY, TO PROVIDE THAT AN OWNER, OCCUPANT
16 OR PERSON CONTROLLING AN ENCROACHMENT MUST FAIL TO RESPOND TO NOTICE TO RE-
17 MOVE AN ENCROACHMENT, TO PROVIDE FOR THE STANDARD OF CARE FOR THE COUNTY OR
18 HIGHWAY DISTRICT, TO PROVIDE THAT THE COUNTY OR HIGHWAY DISTRICT SHALL NOT BE
19 LIABLE FOR ANY INJURY OR DAMAGE CAUSED BY AN ENCROACHMENT OR FAILURE TO RE-
20 MOVE AN UNAUTHORIZED ENCROACHMENT UPON A HIGHWAY AND TO ESTABLISH PROVISIONS
21 RELATING TO ANY DEFENSE THE COUNTY OR HIGHWAY DISTRICT MAY ASSERT IN A CIVIL
22 ACTION.".