

By: Murphy

H.B. No. 1407

A BILL TO BE ENTITLED

AN ACT

relating to certain swimming pools as public nuisances in the unincorporated areas of counties.

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

SECTION 1. Subsection (c), Section 343.011, Health and Safety Code, is amended to read as follows:

(c) A public nuisance is:

(1) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;

(2) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;

(3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests;

(4) allowing weeds to grow on premises in a neighborhood if the weeds are located within 300 feet of another residence or commercial establishment;

(5) maintaining a building in a manner that is structurally unsafe or constitutes a hazard to safety, health, or

1 public welfare because of inadequate maintenance, unsanitary
2 conditions, dilapidation, obsolescence, disaster, damage, or
3 abandonment or because it constitutes a fire hazard;

4 (6) maintaining on abandoned and unoccupied property
5 in a neighborhood [~~, or maintaining on any property in a~~
6 ~~neighborhood in a county with a population of more than 1.1~~
7 ~~million,~~] a swimming pool that is not protected with:

8 (A) a fence that is at least four feet high and
9 that has a latched and locked gate [~~that cannot be opened by a~~
10 ~~child~~]; or

11 (B) a cover over the entire swimming pool that
12 cannot be removed by a child;

13 (7) maintaining on any property in a neighborhood in a
14 county with a population of more than 1.1 million, a swimming pool
15 that is not protected with:

16 (A) a fence that is at least four feet high and
17 that has a latched gate that cannot be opened by a child; or

18 (B) a cover over the entire swimming pool that
19 cannot be removed by a child;

20 (8) maintaining a flea market in a manner that
21 constitutes a fire hazard;

22 (9) [~~(8)~~] discarding refuse or creating a hazardous
23 visual obstruction on:

24 (A) county-owned land; or

25 (B) land or easements owned or held by a special
26 district that has the commissioners court of the county as its
27 governing body;

1 (10) [~~(9)~~] discarding refuse on the smaller of:

2 (A) the area that spans 20 feet on each side of a
3 utility line; or

4 (B) the actual span of the utility easement; or

5 (11) [~~(10)~~] filling or blocking a drainage easement,
6 failing to maintain a drainage easement, maintaining a drainage
7 easement in a manner that allows the easement to be clogged with
8 debris, sediment, or vegetation, or violating an agreement with the
9 county to improve or maintain a drainage easement.

10 SECTION 2. Subsections (c) and (d), Section 343.013, Health
11 and Safety Code, are amended to read as follows:

12 (c) A county may bring suit under this section to prohibit
13 or control access to the premises to prevent a continued or future
14 violation of Section 343.011(c)(1), (6), (9) [~~(8)~~], or (10) [~~(9)~~].
15 The court may grant relief under this subsection only if the county
16 demonstrates that:

17 (1) the person responsible for causing the public
18 nuisance has not responded sufficiently to previous attempts to
19 abate a nuisance on the premises, if the relief sought prohibits or
20 controls access of a person other than the owner; or

21 (2) the owner of the premises knew about the nuisance
22 and has not responded sufficiently to previous attempts to abate a
23 nuisance on the premises, if the relief sought controls access of
24 the owner.

25 (d) In granting relief under Subsection (c), the court:

26 (1) may not, in a suit brought under Section
27 343.011(c)(10) [~~343.011(c)(9)~~], prohibit or control access by the

1 owner or operator of a utility line or utility easement to that
2 utility line or utility easement; and

3 (2) may not prohibit the owner of the premises from
4 accessing the property but may prohibit a continued or future
5 violation.

6 SECTION 3. Section 343.021, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 343.021. AUTHORITY TO ABATE NUISANCE. If the county
9 adopts abatement procedures that are consistent with the general
10 purpose of this chapter and that conform to this chapter, a [A]
11 county may abate a nuisance under this chapter by:

12 (1) demolition or removal; [~~or,~~]

13 (2) in the case of a nuisance under Section
14 343.011(c)(1), (6), (9) [~~(8)~~], or (10) [~~(9)~~], by prohibition or
15 control of access to the premises; or

16 (3) in the case of a nuisance under Section
17 343.011(c)(7) by draining and filling the swimming pool [~~, if the~~
18 ~~county adopts abatement procedures that are consistent with the~~
19 ~~general purpose of this chapter and that conform to this chapter~~].

20 SECTION 4. Section 343.022, Health and Safety Code, is
21 amended by amending Subsections (a), (c), and (e) and adding
22 Subsection (f) to read as follows:

23 (a) The abatement procedures adopted by the commissioners
24 court must be administered by a regularly salaried, full-time
25 county employee, but the prohibition or control of access to the
26 premises to prevent a violation of Section 343.011(c)(1), (6), (9)
27 [~~(8)~~], or (10) [~~(9)~~], or the removal or demolition of the nuisance,

1 may be made by a person authorized by the person administering the
2 abatement program.

3 (c) The notice must state:

4 (1) the specific condition that constitutes a
5 nuisance;

6 (2) that the person receiving notice shall abate the
7 nuisance before the:

8 (A) 31st day after the date on which the notice is
9 served, if the person has not previously received a notice
10 regarding a nuisance on the premises; or

11 (B) 10th business day after the date on which the
12 notice is served, if the person has previously received a notice
13 regarding a nuisance on the premises;

14 (3) that failure to abate the nuisance may result in:

15 (A) abatement by the county;

16 (B) assessment of costs to the person responsible
17 for causing the nuisance when that person can be identified; and

18 (C) a lien against the property on which the
19 nuisance exists, if the person responsible for causing the nuisance
20 has an interest in the property;

21 (4) that the county may prohibit or control access to
22 the premises to prevent a continued or future nuisance described by
23 Section 343.011(c)(1), (6), (9) [~~(8)~~], or (10) [~~(9)~~]; and

24 (5) that the person receiving notice is entitled to
25 submit a written request for a hearing before the:

26 (A) 31st day after the date on which the notice is
27 served, if the person has not previously received a notice

1 regarding a nuisance on the premises; or

2 (B) 10th business day after the date on which the
3 notice is served, if the person has previously received a notice
4 regarding a nuisance on the premises.

5 (e) Except as provided in Subsection (f), the ~~[The]~~
6 abatement procedures must require a hearing before the county
7 abates the nuisance if a hearing is requested. The hearing may be
8 conducted before the commissioners court or any board, commission,
9 or official designated by the commissioners court. The
10 commissioners court may designate a board, commission, or official
11 to conduct each hearing.

12 (f) The person administering the abatement program or a
13 person authorized by the person administering the abatement program
14 may abate a nuisance under Section 343.011(c)(6) by prohibiting or
15 controlling access to the premises prior to notice and hearing,
16 provided notice is given and a hearing is held in accordance with
17 the county procedures.

18 SECTION 5. Section 343.0235, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 343.0235. USE OF COUNTY FUNDS. A county is entitled to
21 use any money available under other law for a cleanup or remediation
22 of private property to abate a nuisance described by Section
23 343.011(c)(1), (9) ~~[(8)]~~, or (10) ~~[(9)]~~.

24 SECTION 6. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2007.