

House Bill 3581
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Section 343.002(1), Health and Safety Code, is amended to read as follows:

(1) "Abate" means to eliminate or remedy:

(A) by removal, repair, rehabilitation, or demolition;

(B) in the case of a nuisance under Section 343.011(c)(1), (8), or (9), by prohibition or control of access; and

(C) in the case of a nuisance under Section 343.011(c)(11), by removal, remediation, storage, transportation, disposal, or other means of waste management authorized by Chapter 361.

SECTION 2. Sections 343.011(c) and (d), Health and Safety Code, are 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

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another residence or commercial establishment;

(5) maintaining a building in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire hazard;

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

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

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

(7) maintaining a flea market in a manner that constitutes a fire hazard;

(8) discarding refuse or creating a hazardous visual obstruction on:

(A) county-owned land; or

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

(9) discarding refuse on the smaller of:

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

(B) the actual span of the utility easement; [Ø]

(10) filling or blocking a drainage easement, failing to maintain a drainage easement, maintaining a drainage easement in a manner that allows the easement to be

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clogged with debris, sediment, or vegetation, or violating an agreement with the county to improve or maintain a drainage easement; or

(11) discarding refuse on property that is not authorized for that activity.

(d) This section does not apply to:

(1) a site or facility that is:

(A) permitted and regulated by a state agency for the activity described by Subsection (c); or

(B) licensed or permitted under Chapter 361 for the activity described by Subsection (c); or

(2) agricultural land.

SECTION 3. Section 343.013(a), Health and Safety Code, is amended to read as follows:

(a) A county or district court may by injunction prevent, ~~[or]~~ restrain, abate, or otherwise remedy a violation of this chapter in the unincorporated area of the county.

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SECTION 3. Sections 343.013(a) and (b), Health and Safety Code, are amended to read as follows:

(a) A county or district court may:

(1) by injunction prevent, ~~[or]~~ restrain, abate, or otherwise remedy a violation of this chapter in the unincorporated area of the county; and

(2) award abatement costs to any person who has:

(A) incurred abatement costs; and

(B) been adversely affected by a nuisance under Section 343.011(c)(11).

(b) A county or a person affected or to be affected by a violation under this chapter, including a property owner, resident of a neighborhood, or organization of property owners or residents of a neighborhood, may bring suit under Subsection (a). If the court grants the injunction or awards abatement costs as provided by Subsection (a),

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the court may award the plaintiff reasonable attorney's fees and court costs, including attorney's fees and court costs incurred in seeking relief from a nuisance under Section 343.011(c)(11) from any state or federal environmental agency or in any state or federal court at any time after the nuisance arose.

SECTION 4. Section 343.021, Health and Safety Code, is amended to read as follows:

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

(1) by demolition or removal;

(2) [or,] in the case of a nuisance under Section 343.011(c)(1), (8), or (9), by prohibition or control of access to the premises; and

(3) in the case of a nuisance under Section 343.011(c)(11), by removal, remediation, storage, transportation, disposal, or other means of waste management authorized under Chapter 361 [~~if the county adopts abatement procedures that are consistent with the general purpose of this chapter and that conform to this chapter~~].

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SECTION 5. Section 343.022(a), Health and Safety Code, is amended to read as follows:

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(a) The abatement procedures adopted by the commissioners court must be administered by a regularly salaried, full-time county employee. A person authorized by the person administering the abatement program may administer:

(1) ~~[, but]~~ the prohibition or control of access to the premises to prevent a violation of Section 343.011(c)(1), (8), or (9);

(2) ~~[, or]~~ the removal or demolition of the nuisance; and

(3) the abatement of a nuisance described by Section 343.011(c)(11) ~~[, may be made by a person authorized by the person administering the abatement program].~~

SECTION 6. Section 343.023(a), Health and Safety Code, is amended to read as follows:

(a) A county may:

(1) assess:

(A) the cost of abating the nuisance, including management, remediation, storage, transportation, and disposal costs, and damages and other expenses incurred by the county;

(B) the cost of legal notification by publication; ~~[,]~~ and

(C) an administrative fee of not more than \$100 on the person receiving notice under Section 343.022; or

(2) by resolution or order, assess:

(A) the cost of abating the nuisance;

(B) ~~[,]~~ the cost of legal notification by publication; ~~[,]~~ and

(C) an administrative fee of not more than \$100 against

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the property on which the nuisance exists.

No equivalent provision.

SECTION 7. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

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SECTION 7. The change in law made by this Act applies only to the abatement of a nuisance under Section 343.011(c)(11), Health and Safety Code, as added by this Act, that:

- (1) occurs on or after the effective date of this Act; or
- (2) arose before the effective date of this Act and continues unabated on or after the effective date of this Act.

SECTION 8. Same as House version.

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