

## **BILL ANALYSIS**

Senate Research Center

H.B. 459  
By: Leibowitz et al. (Zaffirini)  
Criminal Justice  
5/21/2009  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 459 relates to county abatement and regulation of nuisances and certain massage parlors and provides civil and criminal penalties.

### **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 343.002(1), Health and Safety Code, to redefine "abate."

SECTION 2. Reenacts Section 343.011(c), Health and Safety Code, as amended by Chapters 388 (S.B. 680) and 1366 (H.B. 3581), Acts of the 80th Legislature, Regular Session, 2007, and amends it to make a nonsubstantive change.

SECTION 3. Amends Section 343.012(a), Health and Safety Code, as follows:

- (a) Provides that a person commits an offense if the person commits a certain violation and the nuisance remains unabated after the 10th, rather than the 30th, day after the date on which the person receives notices from a county official, agent, or employee to abate the nuisance.

SECTION 4. Amends Section 343.013(c), Health and Safety Code, to authorize a county to bring suit under this section to prohibit or control access to the premises to prevent a continued or future violation of certain subdivisions, including Section 343.011(c)(5) (relating to the definition of a public nuisance).

SECTION 5. Reenacts Section 343.021, Health and Safety Code, as amended by Chapters 388 (S.B. 680) and 1366 (H.B. 3581), Acts of the 80th Legislature, Regular Session, 2007, and amends it to make conforming changes.

SECTION 6. Reenacts Section 343.002(a), Health and Safety Code, as amended by Chapters 388 (S.B. 680) and 1366 (H.B. 3581), Acts of the 80th Legislature, Regular Session, 2007, and amends it to make conforming changes.

SECTION 7. Amends Section 343.022(c), Health and Safety Code, to delete existing text requiring the notice to state that the person receiving the notice is required to abate the nuisance before the 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises or the 10th business day after the date on which the notice is served, if the person has previously received a notice regarding a nuisance on the premises and that the person receiving the notice is entitled to submit a written request for a hearing before the 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises or the 10th business day after the date on which the notice is served, if the person has previously received a notice regarding a nuisance on the premises. Makes conforming and nonsubstantive changes.

SECTION 8. Amends Section 343.0235, Health and Safety Code, to make a conforming change.

SECTION 9. Amends Chapter 234, Local Government Code, by adding Subchapter D, as follows:

SUBCHAPTER D. MASSAGE PARLORS IN CERTAIN COUNTIES

Sec. 234.101. DEFINITIONS. Defines "massage parlor," "nude," and "sexual contact."

Sec. 234.102. APPLICABILITY. Provides that this subchapter applies only to a county with a population of 3.3 million or more.

Sec. 234.103. AUTHORITY TO REGULATE. Authorizes the commissioners court of a county by order, to promote public health, safety, and welfare, to prohibit or otherwise regulate massage parlors located in the unincorporated area of the county.

Sec. 234.104. INJUNCTION. Authorizes a district or county attorney to bring suit to enjoin the operation of a massage parlor in violation or threatened violation of a prohibition or other regulation adopted under this subchapter.

Sec. 234.105. CIVIL PENALTY. (a) Provides that a person who violates a prohibition or regulation adopted by the county under this subchapter is liable to the county for a civil penalty of not more than \$1,000 for each violation. Provides that each day a violation continues is considered a separate violation for purposes of assessing the civil penalty.

(b) Authorizes a county to bring suit in a district court to recover a civil penalty authorized by Subsection (a).

Sec. 234.106. CRIMINAL PENALTY. (a) Provides that a person commits an offense if the person intentionally or knowingly operates a massage parlor in violation of a prohibition or regulation adopted under this subchapter by the commissioners court.

(b) Provides that an offense under this section is a Class A misdemeanor.

Sec. 234.107. CUMULATIVE EFFECT. Provides that authority under this subchapter is cumulative of other authority that a county has to regulate massage parlors and does not limit that other authority.

SECTION 10. Makes application of Section 343.012, Health and Safety Code, as amended by this Act, prospective.

SECTION 11. Effective date: September 1, 2009.