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H.B. No. 459

A BILL TO BE ENTITLED

1 AN ACT

2 relating to county abatement and regulation of nuisances and  
3 certain massage parlors; providing civil and criminal penalties.

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

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

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

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

10 (B) in the case of a nuisance under Section  
11 343.011(c)(1), (5), (9) [~~(8)~~], or (10) [~~(9)~~], by prohibition or  
12 control of access; and

13 (C) in the case of a nuisance under Section  
14 343.011(c)(12) [~~343.011(c)(11)~~], by removal, remediation, storage,  
15 transportation, disposal, or other means of waste management  
16 authorized by Chapter 361.

17 SECTION 2. Section 343.011(c), Health and Safety Code, as  
18 amended by Chapters 388 (S.B. 680) and 1366 (H.B. 3581), Acts of the  
19 80th Legislature, Regular Session, 2007, is reenacted and amended  
20 to read as follows:

21 (c) A public nuisance is:

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

1           (2) keeping, storing, or accumulating rubbish,  
2 including newspapers, abandoned vehicles, refrigerators, stoves,  
3 furniture, tires, and cans, on premises in a neighborhood or within  
4 300 feet of a public street for 10 days or more, unless the rubbish  
5 or object is completely enclosed in a building or is not visible  
6 from a public street;

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

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

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

18           (6) maintaining on abandoned and unoccupied property  
19 in a neighborhood a swimming pool that is not protected with:

20                   (A) a fence that is at least four feet high and  
21 that has a latched and locked gate; and

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

24           (7) maintaining on any property in a neighborhood in a  
25 county with a population of more than 1.1 million a swimming pool  
26 that is not protected with:

27                   (A) a fence that is at least four feet high and

1 that has a latched gate that cannot be opened by a child; or

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

4 (8) maintaining a flea market in a manner that  
5 constitutes a fire hazard;

6 (9) discarding refuse or creating a hazardous visual  
7 obstruction on:

8 (A) county-owned land; or

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

12 (10) discarding refuse on the smaller of:

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

15 (B) the actual span of the utility easement;

16 (11) filling or blocking a drainage easement, failing  
17 to maintain a drainage easement, maintaining a drainage easement in  
18 a manner that allows the easement to be clogged with debris,  
19 sediment, or vegetation, or violating an agreement with the county  
20 to improve or maintain a drainage easement; or

21 (12) [~~(11)~~] discarding refuse on property that is not  
22 authorized for that activity.

23 SECTION 3. Section 343.012(a), Health and Safety Code, is  
24 amended to read as follows:

25 (a) A person commits an offense if:

26 (1) the person violates Section 343.011(b); and

27 (2) the nuisance remains unabated after the 10th

1 [30~~th~~] day after the date on which the person receives notice from a  
2 county official, agent, or employee to abate the nuisance.

3 SECTION 4. Section 343.013(c), Health and Safety Code, is  
4 amended to read as follows:

5 (c) A county may bring suit under this section to prohibit  
6 or control access to the premises to prevent a continued or future  
7 violation of Section 343.011(c)(1), (5), (6), (9), or (10). The  
8 court may grant relief under this subsection only if the county  
9 demonstrates that:

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

14 (2) the owner of the premises knew about the nuisance  
15 and has not responded sufficiently to previous attempts to abate a  
16 nuisance on the premises, if the relief sought controls access of  
17 the owner.

18 SECTION 5. Section 343.021, Health and Safety Code, as  
19 amended by Chapters 388 (S.B. 680) and 1366 (H.B. 3581), Acts of the  
20 80th Legislature, Regular Session, 2007, is reenacted and amended  
21 to read as follows:

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

26 (1) by demolition or removal;

27 (2) in the case of a nuisance under Section

1 343.011(c)(1), (5), (9), or (10), by prohibiting or controlling  
2 access to the premises;

3 (3) in the case of a nuisance under Section  
4 343.011(c)(6), by:

5 (A) prohibiting or controlling access to the  
6 premises and installing a cover that cannot be opened by a child  
7 over the entire swimming pool; or

8 (B) draining and filling the swimming pool; or

9 (4) in the case of a nuisance under Section  
10 343.011(c)(12) [~~343.011(c)(11)~~], by removal, remediation, storage,  
11 transportation, disposal, or other means of waste management  
12 authorized under Chapter 361.

13 SECTION 6. Section 343.022(a), Health and Safety Code, as  
14 amended by Chapters 388 (S.B. 680) and 1366 (H.B. 3581), Acts of the  
15 80th Legislature, Regular Session, 2007, is reenacted and amended  
16 to read as follows:

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

21 (1) the prohibition or control of access to the  
22 premises to prevent a violation of Section 343.011(c)(1), (5), (6),  
23 (9), or (10);

24 (2) the removal or demolition of the nuisance; and

25 (3) the abatement of a nuisance described by Section  
26 343.011(c)(12) [~~343.011(c)(11)~~].

27 SECTION 7. Section 343.022(c), Health and Safety Code, is

1 amended to read as follows:

2 (c) The notice must state:

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

5 (2) that the person receiving notice shall abate the  
6 nuisance before the[+]

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

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

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

14 (A) abatement by the county;

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

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

20 (4) that the county may prohibit or control access to  
21 the premises to prevent a continued or future nuisance described by  
22 Section 343.011(c)(1), (5), (6), (9), or (10); and

23 (5) that the person receiving notice is entitled to  
24 submit a written request for a hearing before the[+]

25 ~~[(A) 31st day after the date on which the notice~~  
26 ~~is served, if the person has not previously received a notice~~  
27 ~~regarding a nuisance on the premises; or~~

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

4            SECTION 8. Section 343.0235, Health and Safety Code, is  
5 amended to read as follows:

6            Sec. 343.0235. USE OF COUNTY FUNDS. A county is entitled to  
7 use any money available under other law for a cleanup or remediation  
8 of private property to abate a nuisance described by Section  
9 343.011(c)(1), (5), (9), or (10).

10           SECTION 9. Chapter 234, Local Government Code, is amended  
11 by adding Subchapter D to read as follows:

12                    SUBCHAPTER D. MASSAGE PARLORS IN CERTAIN COUNTIES

13            Sec. 234.101. DEFINITIONS. In this subchapter:

14                    (1) "Massage parlor" means a massage establishment  
15 that allows:

16                                    (A) a nude or partially nude employee to provide  
17 massage therapy or other massage services to a customer;

18                                    (B) any individual to engage in sexual contact in  
19 the massage establishment; or

20                                    (C) any individual to practice massage therapy in  
21 the nude or in clothing designed to arouse or gratify the sexual  
22 desire of any individual.

23                    (2) "Nude" and "sexual contact" have the meanings  
24 assigned by Section 455.202, Occupations Code.

25            Sec. 234.102. APPLICABILITY. This subchapter applies only  
26 to a county with a population of 3.3 million or more.

27            Sec. 234.103. AUTHORITY TO REGULATE. To promote public

1 health, safety, and welfare, the commissioners court of a county by  
2 order may prohibit or otherwise regulate massage parlors located in  
3 the unincorporated area of the county.

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

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

14 (b) A county may bring suit in a district court to recover a  
15 civil penalty authorized by Subsection (a).

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

20 (b) An offense under this section is a Class A misdemeanor.

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

24 SECTION 10. The change in law made by Section 343.012,  
25 Health and Safety Code, as amended by this Act, applies only to an  
26 offense committed on or after the effective date of this Act. An  
27 offense committed before the effective date of this Act is governed



1 by the law in effect when the offense was committed, and the former  
2 law is continued in effect for that purpose. For purposes of this  
3 section, an offense was committed before the effective date of this  
4 Act if any element of the offense was committed before that date.

5 SECTION 11. This Act takes effect September 1, 2009.