

By: Leibowitz

H.B. No. 459

Substitute the following for H.B. No. 459:

By: Gutierrez

C.S.H.B. No. 459

A BILL TO BE ENTITLED

1 AN ACT
2 relating to county abatement of public nuisances; providing a
3 penalty.

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. The change in law made by Section 343.012, Health
11 and Safety Code, as amended by this Act, applies only to an offense
12 committed on or after the effective date of this Act. An offense
13 committed before the effective date of this Act is governed by the
14 law in effect when the offense was committed, and the former law is
15 continued in effect for that purpose. For purposes of this section,
16 an offense was committed before the effective date of this Act if
17 any element of the offense was committed before that date.

18 SECTION 10. This Act takes effect September 1, 2009.