

1-1 By: Leibowitz, et al. (Senate Sponsor - Zaffirini) H.B. No. 459
1-2 (In the Senate - Received from the House May 8, 2009;
1-3 May 8, 2009, read first time and referred to Committee on Criminal
1-4 Justice; May 23, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
1-6 May 23, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 459 By: Whitmire

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to county abatement and regulation of nuisances.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Section 343.002(1), Health and Safety Code, is
1-13 amended to read as follows:
1-14 (1) "Abate" means to eliminate or remedy:
1-15 (A) by removal, repair, rehabilitation, or
1-16 demolition;
1-17 (B) in the case of a nuisance under Section
1-18 343.011(c)(1), (5), (9) [~~(8)~~], or (10) [~~(9)~~], by prohibition or
1-19 control of access; and
1-20 (C) in the case of a nuisance under Section
1-21 343.011(c)(12) [~~343.011(c)(11)~~], by removal, remediation, storage,
1-22 transportation, disposal, or other means of waste management
1-23 authorized by Chapter 361.
1-24 SECTION 2. Section 343.011(c), Health and Safety Code, as
1-25 amended by Chapters 388 (S.B. 680) and 1366 (H.B. 3581), Acts of the
1-26 80th Legislature, Regular Session, 2007, is reenacted and amended
1-27 to read as follows:
1-28 (c) A public nuisance is:
1-29 (1) keeping, storing, or accumulating refuse on
1-30 premises in a neighborhood unless the refuse is entirely contained
1-31 in a closed receptacle;
1-32 (2) keeping, storing, or accumulating rubbish,
1-33 including newspapers, abandoned vehicles, refrigerators, stoves,
1-34 furniture, tires, and cans, on premises in a neighborhood or within
1-35 300 feet of a public street for 10 days or more, unless the rubbish
1-36 or object is completely enclosed in a building or is not visible
1-37 from a public street;
1-38 (3) maintaining premises in a manner that creates an
1-39 unsanitary condition likely to attract or harbor mosquitoes,
1-40 rodents, vermin, or disease-carrying pests;
1-41 (4) allowing weeds to grow on premises in a
1-42 neighborhood if the weeds are located within 300 feet of another
1-43 residence or commercial establishment;
1-44 (5) maintaining a building in a manner that is
1-45 structurally unsafe or constitutes a hazard to safety, health, or
1-46 public welfare because of inadequate maintenance, unsanitary
1-47 conditions, dilapidation, obsolescence, disaster, damage, or
1-48 abandonment or because it constitutes a fire hazard;
1-49 (6) maintaining on abandoned and unoccupied property
1-50 in a neighborhood a swimming pool that is not protected with:
1-51 (A) a fence that is at least four feet high and
1-52 that has a latched and locked gate; and
1-53 (B) a cover over the entire swimming pool that
1-54 cannot be removed by a child;
1-55 (7) maintaining on any property in a neighborhood in a
1-56 county with a population of more than 1.1 million a swimming pool
1-57 that is not protected with:
1-58 (A) a fence that is at least four feet high and
1-59 that has a latched gate that cannot be opened by a child; or
1-60 (B) a cover over the entire swimming pool that
1-61 cannot be removed by a child;
1-62 (8) maintaining a flea market in a manner that
1-63 constitutes a fire hazard;

2-1 (9) discarding refuse or creating a hazardous visual
 2-2 obstruction on:
 2-3 (A) county-owned land; or
 2-4 (B) land or easements owned or held by a special
 2-5 district that has the commissioners court of the county as its
 2-6 governing body;
 2-7 (10) discarding refuse on the smaller of:
 2-8 (A) the area that spans 20 feet on each side of a
 2-9 utility line; or
 2-10 (B) the actual span of the utility easement;
 2-11 (11) filling or blocking a drainage easement, failing
 2-12 to maintain a drainage easement, maintaining a drainage easement in
 2-13 a manner that allows the easement to be clogged with debris,
 2-14 sediment, or vegetation, or violating an agreement with the county
 2-15 to improve or maintain a drainage easement; or
 2-16 (12) [~~11~~] discarding refuse on property that is not
 2-17 authorized for that activity.

2-18 SECTION 3. Section 343.013(c), Health and Safety Code, is
 2-19 amended to read as follows:

2-20 (c) A county may bring suit under this section to prohibit
 2-21 or control access to the premises to prevent a continued or future
 2-22 violation of Section 343.011(c)(1), (5), (6), (9), or (10). The
 2-23 court may grant relief under this subsection only if the county
 2-24 demonstrates that:

2-25 (1) the person responsible for causing the public
 2-26 nuisance has not responded sufficiently to previous attempts to
 2-27 abate a nuisance on the premises, if the relief sought prohibits or
 2-28 controls access of a person other than the owner; or

2-29 (2) the owner of the premises knew about the nuisance
 2-30 and has not responded sufficiently to previous attempts to abate a
 2-31 nuisance on the premises, if the relief sought controls access of
 2-32 the owner.

2-33 SECTION 4. Section 343.021, Health and Safety Code, as
 2-34 amended by Chapters 388 (S.B. 680) and 1366 (H.B. 3581), Acts of the
 2-35 80th Legislature, Regular Session, 2007, is reenacted and amended
 2-36 to read as follows:

2-37 Sec. 343.021. AUTHORITY TO ABATE NUISANCE. If a county
 2-38 adopts abatement procedures that are consistent with the general
 2-39 purpose of this chapter and that conform to this chapter, the county
 2-40 may abate a nuisance under this chapter:

2-41 (1) by demolition or removal;

2-42 (2) in the case of a nuisance under Section
 2-43 343.011(c)(1), (5), (9), or (10), by prohibiting or controlling
 2-44 access to the premises;

2-45 (3) in the case of a nuisance under Section
 2-46 343.011(c)(6), by:

2-47 (A) prohibiting or controlling access to the
 2-48 premises and installing a cover that cannot be opened by a child
 2-49 over the entire swimming pool; or

2-50 (B) draining and filling the swimming pool; or

2-51 (4) in the case of a nuisance under Section
 2-52 343.011(c)(12) [~~343.011(c)(11)~~], by removal, remediation, storage,
 2-53 transportation, disposal, or other means of waste management
 2-54 authorized under Chapter 361.

2-55 SECTION 5. Section 343.022(a), Health and Safety Code, as
 2-56 amended by Chapters 388 (S.B. 680) and 1366 (H.B. 3581), Acts of the
 2-57 80th Legislature, Regular Session, 2007, is reenacted and amended
 2-58 to read as follows:

2-59 (a) The abatement procedures adopted by the commissioners
 2-60 court must be administered by a regularly salaried, full-time
 2-61 county employee. A person authorized by the person administering
 2-62 the abatement program may administer:

2-63 (1) the prohibition or control of access to the
 2-64 premises to prevent a violation of Section 343.011(c)(1), (5), (6),
 2-65 (9), or (10);

2-66 (2) the removal or demolition of the nuisance; and

2-67 (3) the abatement of a nuisance described by Section
 2-68 343.011(c)(12) [~~343.011(c)(11)~~].

2-69 SECTION 6. Section 343.022(c), Health and Safety Code, is

3-1 amended to read as follows:
3-2 (c) The notice must state:
3-3 (1) the specific condition that constitutes a
3-4 nuisance;
3-5 (2) that the person receiving notice shall abate the
3-6 nuisance before the:
3-7 (A) 31st day after the date on which the notice is
3-8 served, if the person has not previously received a notice
3-9 regarding a nuisance on the premises; or
3-10 (B) 10th business day after the date on which the
3-11 notice is served, if the person has previously received a notice
3-12 regarding a nuisance on the premises;
3-13 (3) that failure to abate the nuisance may result in:
3-14 (A) abatement by the county;
3-15 (B) assessment of costs to the person responsible
3-16 for causing the nuisance when that person can be identified; and
3-17 (C) a lien against the property on which the
3-18 nuisance exists, if the person responsible for causing the nuisance
3-19 has an interest in the property;
3-20 (4) that the county may prohibit or control access to
3-21 the premises to prevent a continued or future nuisance described by
3-22 Section 343.011(c)(1), (5), (6), (9), or (10); and
3-23 (5) that the person receiving notice is entitled to
3-24 submit a written request for a hearing before the:
3-25 (A) 31st day after the date on which the notice is
3-26 served, if the person has not previously received a notice
3-27 regarding a nuisance on the premises; or
3-28 (B) 10th business day after the date on which the
3-29 notice is served, if the person has previously received a notice
3-30 regarding a nuisance on the premises.
3-31 SECTION 7. Section 343.0235, Health and Safety Code, is
3-32 amended to read as follows:
3-33 Sec. 343.0235. USE OF COUNTY FUNDS. A county is entitled to
3-34 use any money available under other law for a cleanup or remediation
3-35 of private property to abate a nuisance described by Section
3-36 343.011(c)(1), (5), (9), or (10).
3-37 SECTION 8. This Act takes effect September 1, 2009.

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