

**House Bill 459**  
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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), (5), (9) [~~(8)~~], or (10) [~~(9)~~], by prohibition or control of access; and

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

SECTION 2. 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, is reenacted and 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

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- 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 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 a swimming pool that is not protected with:
    - (A) a fence that is at least four feet high and that has a latched and locked gate; and
    - (B) a cover over the entire swimming pool that cannot be removed by a child;
  - (7) 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;
  - (8) maintaining a flea market in a manner that constitutes a fire hazard;
  - (9) 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

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that has the commissioners court of the county as its governing body;

(10) 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;

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

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

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

(a) A person commits an offense if:

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

(2) the nuisance remains unabated after the 10th [~~30th~~] day after the date on which the person receives notice from a county official, agent, or employee to abate the nuisance.

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

(c) A county may bring suit under this section to prohibit or control access to the premises to prevent a

**No equivalent provision.**

SECTION 3. Same as House version.

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continued or future violation of Section 343.011(c)(1), ~~(5)~~, (6), (9), or (10). The court may grant relief under this subsection only if the county demonstrates that:

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

SECTION 5. 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, is reenacted and 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 this chapter and that conform to this chapter, the county may abate a nuisance under this chapter:

- (1) by demolition or removal;
- (2) in the case of a nuisance under Section 343.011(c)(1), ~~(5)~~, (9), or (10), by prohibiting or controlling access to the premises;
- (3) in the case of a nuisance under Section 343.011(c)(6), by:
  - (A) prohibiting or controlling access to the premises and

SECTION 4. Same as House version.

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installing a cover that cannot be opened by a child over the entire swimming pool; or

(B) draining and filling the swimming pool; or

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

SECTION 6. Section 343.022(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, is reenacted and amended to read as follows:

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

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

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

SECTION 7. Section 343.022(c), Health and Safety Code, is amended to read as follows:

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SECTION 5. Same as House version.

SECTION 6. Section 343.022(c), Health and Safety Code, is amended to read as follows:

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- (c) The notice must state:
- (1) the specific condition that constitutes a nuisance;
  - (2) that the person receiving notice shall abate the nuisance before the:  
[~~(A) 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~~  
[~~(B)~~] 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];
  - (3) that failure to abate the nuisance may result in:
    - (A) abatement by the county;
    - (B) assessment of costs to the person responsible for causing the nuisance when that person can be identified; and
    - (C) a lien against the property on which the nuisance exists, if the person responsible for causing the nuisance has an interest in the property;
  - (4) that the county may prohibit or control access to the premises to prevent a continued or future nuisance described by Section 343.011(c)(1), (5), (6), (9), or (10); and
  - (5) that the person receiving notice is entitled to submit a written request for a hearing before the:  
[~~(A) 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~~  
[~~(B)~~] 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].

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- (c) The notice must state:
- (1) the specific condition that constitutes a nuisance;
  - (2) that the person receiving notice shall abate the nuisance before the:  
(A) 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  
(B) 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;
  - (3) that failure to abate the nuisance may result in:
    - (A) abatement by the county;
    - (B) assessment of costs to the person responsible for causing the nuisance when that person can be identified; and
    - (C) a lien against the property on which the nuisance exists, if the person responsible for causing the nuisance has an interest in the property;
  - (4) that the county may prohibit or control access to the premises to prevent a continued or future nuisance described by Section 343.011(c)(1), (5), (6), (9), or (10); and
  - (5) that the person receiving notice is entitled to submit a written request for a hearing before the:  
(A) 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  
(B) 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.

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

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

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

SUBCHAPTER D. MASSAGE PARLORS IN CERTAIN COUNTIES

Sec. 234.101. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

SECTION 7. Same as House version.

**No equivalent provision.**

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or more.

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

Sec. 234.104. INJUNCTION. A district or county attorney may 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) 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. Each day a violation continues is considered a separate violation for purposes of assessing the civil penalty.

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

Sec. 234.106. CRIMINAL PENALTY. (a) 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) An offense under this section is a Class A misdemeanor.

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



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SECTION 10. The change in law made by Section 343.012, Health and Safety Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

No equivalent provision.

No equivalent provision.

SECTION \_\_. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.1127 to read as follows:

Sec. 361.1127. LAND RECLAMATION PROJECTS USING TIRES. (a) In this section:

(1) "Land reclamation" means the process of restoring an area of excavated, deteriorated, or disturbed land to its approximate natural grade and to prepare or reclaim the land for reuse.

(2) "Scrap tire" has the meaning assigned by Section 361.112.

(b) A person may not begin a land reclamation project using scrap tires without a permit issued by the commission under this chapter.

(c) A person may not use scrap tires for a land reclamation project unless the tires are shredded, split, or

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quartered as provided by commission rule. The commission may grant an exception to this requirement if the commission finds that circumstances warrant the exception.

(d) The commission may not grant a permit for a land reclamation project using scrap tires before:

(1) the commission receives comments or suggestions from the commissioners court of each county in which the proposed project is located; or

(2) the expiration of a time period, established by commission rule, in which the entities described by this subsection may offer comments.

(e) The application to request a permit for a land reclamation project using scrap tires must include at a minimum:

(1) a legal description of the area to be reclaimed;

(2) a map clearly identifying the area to be reclaimed and the topography of the area;

(3) an affidavit from the property owner certifying that the reclamation project complies with this section and the rules adopted under this section; and

(4) an analysis and evaluation of the environmental impacts on the soil and groundwater in the area of the proposed project that compare the impact of using scrap tires for the proposed reclamation project to the impact of at least one reasonable alternative method of land reclamation for the proposed project.

(f) The commission by rule shall:

(1) prescribe minimum standards to protect the soil and water for a land reclamation project using scrap tires; and

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(2) adopt application forms and procedures for the permitting process under this section.

(g) The commission may amend, extend, transfer, or renew a permit issued under this section as provided by this chapter and commission rule.

(h) The notice and hearing procedures provided by this subchapter apply to a permit issued, amended, extended, or renewed under this section.

(i) The commission may, for good cause, deny, revoke, or amend a permit under this section for reasons concerning public health and safety, air or water pollution, land use, or a violation of this section as provided by Section 361.089.

No equivalent provision.

SECTION \_\_. (a) Before September 1, 2010, the Texas Commission on Environmental Quality shall adopt any rules required to implement Section 361.1127, Health and Safety Code, as added by this Act.

(b) On or after the effective date of this Act, any person responsible for an ongoing or pending land reclamation project using scrap tires that has not yet placed the tires below ground may not place the tires below ground until the person has obtained a permit under Section 361.1127, Health and Safety Code, as added by this Act.

(c) To the extent that a land reclamation project using scrap tires has placed tires below ground before the effective date of this Act, the project is subject to the law in effect on the date the tires were placed below ground, and that law is continued in effect for that purpose.

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The following row was presented as being from the Senate Committee Report version of Senate Bill 2574, relating to the regulation of tire businesses and authorizing a fee for tire purchases for regulatory compliance in certain counties; creating an offense.

No equivalent provision.

SECTION \_\_. Chapter 234, Local Government Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. BUSINESSES RELATED TO AUTOMOBILE TIRES

Sec. 234.051. DEFINITIONS. In this subchapter:

(1) "Mobile tire repair business" means a business that repairs tires at any temporary location, including a roadway, alley, parking lot, or residence.

(2) "Used tire business" means a business or establishment at which used tires are collected, repaired, processed, recycled, scrapped, sold, bought, or stored, including a mobile tire repair business or a salvage yard.

Sec. 234.052. APPLICABILITY. This subchapter applies only to the unincorporated area of a county:

(1) with a population greater than 45,000 and less than 50,000; and

(2) that is adjacent to an international border.

Sec. 234.053. LICENSE OR PERMIT REQUIRED.

The commissioners court of a county by order may require that the owner or operator of a mobile tire repair business or used tire business obtain a license or permit from the county before engaging in business in the

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county. The commissioners court by order may establish a fee to be paid for a license or permit.

Sec. 234.054. SCRAP TIRE DISPOSAL FEE. The commissioners court of a county by order may:

(1) establish a fee to be imposed on the purchase of an automobile tire in the county; and

(2) require a retailer of automobile tires to collect the fee and use the fee to comply with requirements associated with the disposal of scrap tires.

Sec. 234.055. RULES. The commissioners court of a county may adopt rules as necessary to administer this subchapter.

Sec. 234.056. INJUNCTION. A district or county attorney may bring suit to enjoin the operations of a mobile tire repair business, used tire business, or tire retailer in violation of an order or rule adopted under this subchapter.

Sec. 234.057. OFFENSE. A person commits an offense if the person violates an order adopted under this subchapter. An offense under this section is a Class C misdemeanor.

The following row was presented as identical to the language of the engrossed version of House Bill 1115, relating to the adoption of noise regulations by certain counties; providing a criminal penalty, which passed the house on April 28.

No equivalent provision.

SECTION \_\_. Chapter 240, Local Government Code, is

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amended by adding Subchapter D to read as follows:

SUBCHAPTER D. REGULATION OF NOISE AND SOUND LEVELS

Sec. 240.061. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a county with a population of more than 3.3 million.

Sec. 240.062. AUTHORITY TO REGULATE. (a) The commissioners court of the county by order shall prohibit the production of sound from a loudspeaker or sound amplifier the level of which exceeds 85 decibels at a distance of 50 feet from the property line of the property on which the loudspeaker or sound amplifier is operated. (b) A regulation adopted under this subchapter applies only to the unincorporated area of the county.

Sec. 240.063. PERMIT FOR CERTAIN EVENTS; PERMIT FEES. (a) The commissioners court by order may authorize the holding of events at which loudspeakers or sound amplifiers that produce sounds exceeding the levels specified by Section 240.062 will be used, if the person holding an event obtains a permit from the county for the event.

(b) In determining whether to grant a permit under this section, the commissioners court shall consider whether the sound is recurrent, intermittent, or constant.

(c) A person must apply for the permit in accordance with regulations adopted by the county.

(d) The regulations adopted under this section may provide for the denial, suspension, or revocation of a permit by the county.

(e) A district court has jurisdiction of a suit that arises

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from the denial, suspension, or revocation of a permit by the county.

(f) A county may impose fees on an applicant for a permit under this section. The fees must be based on the administrative costs of issuing the permit. A county that imposes a permit fee shall establish procedures to reduce the fee amount if the applicant is unable to pay the full permit fee.

Sec. 240.064. METHOD OF SOUND MEASUREMENT. The commissioners court shall by rule adopt a procedure to measure noise and sound levels under this subchapter.

Sec. 240.065. INJUNCTION. A county may sue in the district court for an injunction to prohibit the violation or threatened violation of a prohibition or other regulation adopted under this subchapter.

Sec. 240.066. CRIMINAL PENALTY. (a) A person commits an offense if the person violates a prohibition or other regulation adopted under this subchapter.

(b) An offense under this section is a Class C misdemeanor. If it is shown on the trial of an offense under this section that the person has previously been convicted of an offense under this section, the offense is a Class B misdemeanor.

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

SECTION 8. Same as House version.