

CHAPTER 685

S.B. No. 1055

AN ACT

relating to the abatement of public nuisances in certain counties; providing civil and criminal penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The Neighborhood Nuisance Abatement Act is enacted to read as follows:

ARTICLE I. GENERAL PROVISIONS

Sec. 1.01. APPLICATION. This Act applies to the unincorporated area of a county having a population of 2,400,000 or more according to the most recent federal census.

Sec. 1.02. DEFINITIONS. In this Act:

- (1) "Abate" means to eliminate a nuisance by removal, repair, rehabilitation, or demolition.
- (2) "Building" means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property.
- (3) "Garbage" means decayable waste from public and private establishments and restaurants, including vegetable, animal, and fish offal and animal and fish carcasses, but does not include sewage, body waste, or an industrial by-product.
- (4) "Neighborhood" means:

- (A) a platted subdivision; or
 - (B) property contiguous to a platted subdivision and within 300 feet of a platted subdivision.
- (5) "Person" has the meaning assigned to that term by Subdivision (2) of Section 311.005 of the Government Code.
- (6) "Platted subdivision" means a subdivision that has its approved or unapproved plat recorded with the county clerk of the county in which the subdivision is located.
- (7) "Premises" means all privately owned property, including vacant land or a building designed or used for residential, commercial, business, industrial, or religious purposes, together with the yard, ground, walk, driveway, fence, porch, steps, or other structure appurtenant to the property.
- (8) "Public street" means the entire width between property lines of a road, street, way, thoroughfare, or bridge if any part of the road, street, way, thoroughfare, or bridge is open to the public for vehicular or pedestrian traffic.
- (9) "Rubbish" means nondecayable waste from a public or private establishment or residence.
- (10) "Receptacle" means a container that is composed of durable material and designed in a way that prevents the discharge of its contents and makes its contents inaccessible to animals, vermin, or other pests.
- (11) "Refuse" means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.
- (12) "Weeds" means all rank and uncultivated vegetable growth or matter that:
- (A) has grown to more than 18 inches in height; or
 - (B) regardless of height, may create an unsanitary condition or become a harborage for rodents, vermin, or other disease-carrying pests.

ARTICLE II. PUBLIC NUISANCES ON PREMISES

Sec. 2.01. PUBLIC NUISANCE. (a) 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 or any unused, discarded, or abandoned object, including newspapers, vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood for 10 days or more, unless the rubbish or object is completely enclosed within 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 mosquitos, rodents, vermin, or disease-carrying pests;
 - (4) allowing weeds to grow on premises in a neighborhood if such weeds are located within 300 feet of another residence or commercial establishment; or
 - (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, fire hazard, disaster, damage, or abandonment.
- (b) Subsection (a) of this section does not apply to a site or facility that is permitted and regulated by a state agency.

ARTICLE III. PENALTY AND CIVIL ENFORCEMENT

Sec. 3.01. VIOLATION; OFFENSE. (a) A person may not cause, permit, or allow a public nuisance as described by Section 2.01 of this Act on premises.

(b) A person commits an offense if the nuisance remains unabated after the 30th day after the date on which the person receives notice from a county official, agent, or employee to abate the nuisance.

(c) An offense under this section is a misdemeanor punishable by a fine of not less than \$50 and not more than \$200. If it is shown on the trial of the defendant that the

defendant has been convicted of an offense under this section within one year of the date that the offense being tried occurred, the defendant shall be punished by a fine of not less than \$200 nor more than \$1,000, by confinement in jail for not more than six months, or by both. Each day a violation occurs is a separate offense. If the defendant is convicted of an offense under this section, the court shall order abatement of the nuisance.

Sec. 3.02. CIVIL ENFORCEMENT. (a) A county may bring a suit in county or district court to obtain an injunction to prevent or restrain a violation of this Act within the unincorporated area of the county. If the court grants the injunction, the court may award to the county reasonable attorney's fees and costs.

(b) A person affected or to be affected by a violation under this Act may bring suit in county or district court to enjoin the violation. If the court grants the injunction, the court may award the plaintiff reasonable attorney's fees and court costs. An affected person under this subsection includes a property owner, a resident of a neighborhood, or an organization of property owners or residents of a neighborhood.

ARTICLE IV. AUTHORITY TO ABATE NUISANCE

Sec. 4.01. AUTHORITY. A county may abate a nuisance under this Act by demolition or removal if it adopts abatement procedures that are consistent with the general purpose of this Act and that conform to the requirements of this article.

Sec. 4.02. REQUIREMENTS. (a) The abatement procedures adopted under this section by the county commissioners must be administered by a regularly salaried, full-time county employee, but the removal or demolition of the nuisance may be made by a person authorized by the person administering the abatement program.

(b) The procedures must require that written notice be given to the owner, lessee, occupant, agent, or person in charge of the premises. The notice must state:

- (1) the specific condition that constitutes a nuisance;
- (2) that the person receiving notice must abate the nuisance not later than the 30th day after the date on which the notice is served;
- (3) that failure to abate the nuisance may result in abatement by the county, assessment of costs, and a lien against the property on which the nuisance exists; and
- (4) that the owner, lessee, occupant, agent, or person in charge of the premises is entitled to submit, not later than the 30th day after the date on which the notice is served, a written request for a hearing.

(c) Notice must be served to the owner, lessee, agent, or person in charge of the property:

- (1) in person or by registered or certified mail, return receipt requested; or
- (2) if personal service cannot be obtained or the address of the owner, lessee, agent, or person in charge of the property is unknown, by posting a copy of the notice on the premises on which the nuisance exists and by publishing the notice in a newspaper with general circulation in the county, two times within 10 consecutive days.

(d) The procedures adopted by the county commissioners under this section must require a hearing before abatement of the nuisance by the county if a hearing is requested. The hearing must be held before the county commissioners or any board, commission, or official designated by the county commissioners.

Sec. 4.03. ASSESSMENT OF COSTS; LIEN. (a) A county may assess the cost of abating the nuisance, plus an administrative fee not to exceed \$100, on the owner, lessee, or occupant of the premises on which the nuisance exists.

(b) Instead of making the assessment under Subsection (a) of this section, a county may, by resolution or order, assess the cost of abating the nuisance, plus an administrative fee not to exceed \$100, against the property on which the nuisance exists. An assessment against property may not be made unless the owner or owner's agent receives notice of the nuisance violation in accordance with Section 4.02 of this Act.

(c) To obtain a lien against the property to secure an assessment, the county commissioners shall file a statement of costs with the county clerk of the county in which the

property is located and follow any other procedure required by law to secure a lien against the property.

(d) The county's lien to secure an assessment is inferior to any previously recorded bona fide mortgage lien attached to the real property to which the county's lien attaches, if the mortgage was filed for record in the office of the county clerk of the county in which the real property is located before the date the abatement is begun by the county.

(e) The county is entitled to interest accruing beginning on the 31st day after the date of the assessment against the property at the rate of 10 percent a year.

(f) The statement of costs or a certified copy is prima facie proof of the costs incurred to abate the nuisance.

ARTICLE V. MISCELLANEOUS PROVISIONS

Sec. 5.01. **AUTHORITY TO ENTER PREMISES.** (a) A county official, agent, or employee charged with the enforcement of health, environmental, safety, and fire laws may enter premises in the unincorporated area of the county at any reasonable time to inspect, investigate, or abate a nuisance or to enforce this Act.

(b) Before a county official, agent, or employee charged with the enforcement of health, environmental, safety, and fire laws may enter premises for a purpose authorized by this Act, the official, agent, or employee must give reasonable notice and exhibit proper identification to the occupant, manager, or other appropriate person.

(c) A court of competent jurisdiction in the county may issue orders necessary to enforce the requirements of this Act.

Sec. 5.02. **EFFECT OF ACT ON OTHER STATE LAW.** This Act does not affect any right, remedy, or penalty under any other state law.

SECTION 2. This Act takes effect September 1, 1987.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 24, 1987, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 29, 1987, by a viva-voce vote.

Passed the House, with amendment, on May 26, 1987, by a non-record vote.

Approved June 18, 1987.

Effective Sept. 1, 1987.