

BILL ANALYSIS

Senate Research Center

S.B. 1010
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Jurisprudence
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Enrolled

DIGEST AND PURPOSE

Currently, Texas law contains what is commonly referred to as the Public Nuisance and the Common Nuisance statutes. These statutes, similar in design and intent, are used by local governments to address problem locations where owners, landlords, and property managers are not taking steps within their powers to prevent such activities as gambling, prostitution, and illegal drug use from occurring. However, the statutes contain many provisions that are in conflict with one another. This makes it difficult to determine the appropriate statute governing a particular case. S.B. 1010 incorporates both statutes to eliminate the confusion.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 125, Civil Practice and Remedies Code, by amending Section 125.001 and adding Section 125.0015, as follows:

Sec. 125.001. New heading: DEFINITIONS. Defines “common nuisance,” “public nuisance,” and “multiunit residential property.”

Sec. 125.0015. Redesignated from Section 125.001. (a) Adds new language to existing text to provide the circumstances under which a person maintains a common nuisance.

(b) Adds new language to existing text to provide the conditions under which a person maintains a common nuisance.

(c) Deletes existing Section 125.001(c).

SECTION 2. Amends Section 125.002, Civil Practice and Remedies Code, as follows:

(b) Authorizes a person to bring a suit under Subsection (a) against any person who maintains, owns, uses, is about to use, or is a party to the use of a place for purposes constituting a nuisance under this subchapter and to bring an action in rem against the place itself.

(c) Provides that service of any order, notice, process, motion, or ruling of the court on the attorney of record of a cause pending under this subchapter is sufficient service of the party represented by an attorney.

(d) Provides that a person who violates a temporary or permanent injunctive order under this subchapter is subject to certain sentences for civil contempt.

(e) Redesignated from existing subsection (b). Requires the court, if judgment is in favor of the petitioner, to grant an injunction ordering the defendant to abate the nuisance and enjoining the defendant from maintaining or participating in the nuisance and authorizes the court to include in its order reasonable requirements to prevent the use or maintenance of the place as a nuisance. Provides that, if the petitioner brings an action in rem, the

judgment is a judgment in rem against the property as well as a judgment against the defendant.

(f) Redesignated from existing Subsection (c).

(g) Authorizes the petitioner, in an action brought under this chapter, to file a notice of lis pendens and a certified copy of an order of the court in the office of the county clerk in each county in which the land is located. Requires the notice of lis pendens to conform to the requirements of Section 12.007 (Lis Pendens), Property Code, and provides that it constitutes notice as provided by Section 13.004 (Effect of Recording Lis Pendens), Property Code. Provides that a certified copy of an order of the court filed in the office of the county clerk constitutes notice of the terms of the order and is binding on subsequent purchasers and lienholders.

SECTION 3. Amends Section 125.003(c), Civil Practice and Remedies Code, to make a nonsubstantive change.

SECTION 4. Amends Sections 125.004(a) and (b), Civil Practice and Remedies Code, as follows:

(a) Makes conforming changes.

(b) Provides that evidence that persons have been arrested or convicted for certain activities is admissible to show knowledge on the part of the defendant that the act occurred. Makes conforming changes.

SECTION 5. Amends Section 125.042(a), Civil Practice and Remedies Code, to make conforming changes.

SECTION 6. Amends Sections 125.044 and 125.045, Civil Practice and Remedies Code, as follows:

Sec. 125.044. Makes conforming changes.

Sec. 125.045. (a) Requires the court, if after notice and hearing on a request by a petitioner for a temporary injunction, a court determines that the petitioner is likely to succeed on the merits in a suit brought under Section 125.002, to require the defendant to execute a bond. Requires the bond to meet certain conditions.

(b) Makes a conforming change.

(c) Authorizes the district, county, or city attorney of the county in which the property is located or the attorney general, if a condition of a bond filed or an injunctive order entered under this subchapter is violated, to sue on the bond in the name of the state. Requires the whole sum, in the event the attorney general originates the suit, to be forfeited as a penalty to the state. Requires the whole sum, in the event the suit is originated by any office other than the attorney general, to be forfeited as a penalty to the originating entity.

SECTION 7. Amends Section 125.046(a), Civil Practice and Remedies Code, to delete current language in existing text regarding a multiunit residential property at which a public nuisance exists.

SECTION 8. Amends Subchapter C, Chapter 125, Civil Practice and Remedies Code, by adding Section 125.047, as follows:

Sec. 125.047. NUISANCE ABATEMENT FUND. (a) Defines "fund" and "nuisance abatement."

(b) Provides that this section applies only to a municipality with a population of 1.5 million or more.

(c) Requires a municipality to create a fund as a separate account in the treasury of the municipality.

(d) Sets forth of what the fund consists.

(e) Authorizes the money in the fund to be used only for the purpose of ongoing nuisance abatement. Provides that that purpose includes regular and overtime compensation for nuisance abatement or enforcement personnel and hiring additional personnel for nuisance abatement as needed.

SECTION 9. Amends Sections 125.061, 125.062, and 125.063, Civil Practice and Remedies Code, as follows:

Sec. 125.061. DEFINITIONS. Defines "combination" and "criminal street gang," "continuously or regularly," and "gang activity."

Sec. 125.062. PUBLIC NUISANCE; COMBINATION. Provides that a combination or criminal street gang that continuously or regularly associates in gang activities, rather than organized criminal activities, is a public nuisance. Deletes a reference to the Penal Code.

Sec. 125.063. PUBLIC NUISANCE; USE OF PLACE. Provides that the habitual use of a place by a combination or criminal street gang for engaging in gang activity is a public nuisance. Makes conforming changes.

SECTION 10. Amends Section 125.064(b), Civil Practice and Remedies Code, to make conforming changes.

SECTION 11. Amends Section 125.065, Civil Practice and Remedies Code, as follows:

Sec. 125.065. COURT ORDER. (a) Authorizes the court, if it finds that a combination or criminal street gang constitutes a public nuisance, to enter an order enjoining a defendant in the suit from engaging in the gang activities of the combination or gang and imposing other reasonable requirements to prevent the combination or gang from engaging in future gang activities. Makes conforming and nonsubstantive changes.

(b) Makes a conforming change.

SECTION 12. Amends Subchapter D, Chapter 125, Civil Practice and Remedies Code, by adding Section 125.0675, to authorize a court of appeals or a trial court acting under Section 125.067(b) or (c), in addition to any other order that may be issued under this subchapter or other law, to issue an injunctive order under this subchapter stating that the injunction remains in effect during the course of the trial or until lifted by the court.

SECTION 13. Amends Section 125.069, Civil Practice and Remedies Code, to make conforming changes.

SECTION 14. Repealer: Subchapter B, Chapter 125, (Suit to Abate Certain Public Nuisances), Civil Practice and Remedies Code, and Section 125.041 (Definitions), Civil Practice and Remedies Code.

SECTION 15. Effective date: September 1, 2003.

Makes application of this Act prospective.