

By: Bohac

H.B. No. 2182

A BILL TO BE ENTITLED

1 AN ACT

2 relating to common and public nuisances and the creation of and  
3 allocation of money from a nuisance abatement fund.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 125.001(a), Civil Practice and Remedies  
6 Code, is amended to read as follows:

7 (a) A person who knowingly maintains a place to which  
8 persons habitually go for the following purposes maintains a common  
9 nuisance:

10 (1) prostitution or gambling in violation of the Penal  
11 Code;

12 (2) discharge of a firearm in a public place in  
13 violation of Section 42.01(a)(9), Penal Code;

14 (3) reckless discharge of a firearm as described by  
15 Section 42.12, Penal Code;

16 (4) engaging in organized criminal activity as a  
17 member of a combination as described by Section 71.02, Penal Code;  
18 ~~[or]~~

19 (5) delivery, possession, manufacture, or use of a  
20 controlled substance in violation of Chapter 481, Health and Safety  
21 Code;

22 (6) engaging in acts of public lewdness as described  
23 by Section 21.07, Penal Code; or

24 (7) engaging in acts of indecent exposure as described

1 by Section 21.08, Penal Code.

2 SECTION 2. Section 125.002(b), Civil Practice and Remedies  
3 Code, is amended to read as follows:

4 (b) If judgment is in favor of the petitioner, the court  
5 shall grant an injunction ordering the defendant to abate the  
6 nuisance and enjoining the defendant from maintaining or  
7 participating in the nuisance. The judgment must order that the  
8 place where the nuisance exists be closed for at least one year but  
9 not more than two years after the date of judgment unless the  
10 defendant or the real property owner, lessee, or tenant of the  
11 property posts bond.

12 SECTION 3. Section 125.003(a), Civil Practice and Remedies  
13 Code, is amended to read as follows:

14 (a) If a condition of a bond filed or an injunctive order  
15 entered under this subchapter is violated, the district, county, or  
16 city attorney of the county in which the property is located or the  
17 attorney general shall sue on the bond in the name of the state. In  
18 the event the attorney general originates the suit, the whole sum  
19 shall be forfeited as a penalty to the state. In the event the suit  
20 is originated by any office other than the attorney general, the  
21 whole sum shall be forfeited as a penalty to the originating entity  
22 for deposit in the entity's nuisance abatement fund. On violation  
23 of any condition of the bond or of the injunctive order and  
24 subsequent to forfeiture of the bond, the place where the nuisance  
25 exists shall be ordered closed for one year from the date of the  
26 order of bond forfeiture.

27 SECTION 4. Section 125.021, Civil Practice and Remedies

1 Code, as reenacted and amended by Section 28, Chapter 318, Acts of  
2 the 74th Legislature, Regular Session, 1995, and as amended by  
3 Section 5, Chapter 663, Acts of the 74th Legislature, Regular  
4 Session, 1995, is reenacted and amended to read as follows:

5 Sec. 125.021. PUBLIC NUISANCE. The habitual use or the  
6 threatened or contemplated habitual use of any place for any of the  
7 following purposes is a public nuisance:

8 (1) gambling, gambling promotion, or communicating  
9 gambling information prohibited by law;

10 (2) prostitution or promotion or aggravated promotion  
11 of prostitution;

12 (3) compelling prostitution;

13 (4) commercial manufacture, commercial distribution,  
14 or commercial exhibition of obscene material;

15 (5) commercial exhibition of live dances or other acts  
16 depicting real or simulated sexual intercourse or deviate sexual  
17 intercourse;

18 (6) engaging in a voluntary fight between a man and a  
19 bull if the fight is for a thing of value or a championship, if a  
20 thing of value is wagered on the fight, or if an admission fee for  
21 the fight is directly or indirectly charged, as prohibited by law;

22 (7) discharge of a firearm in a public place in  
23 violation of Section 42.01(a)(9), Penal Code;

24 (8) engaging in organized criminal activity as a  
25 member of a combination or as a member of a criminal street gang as  
26 described by Section 71.02, Penal Code; [~~or~~]

27 (9) [~~(8)~~] reckless discharge of a firearm as described

1 by Section 42.12, Penal Code;

2 (10) delivering or using a controlled substance in  
3 violation of Chapter 481, Health and Safety Code;

4 (11) engaging in acts of public lewdness as described  
5 by Section 21.07, Penal Code; or

6 (12) engaging in acts of indecent exposure as  
7 described by Section 21.08, Penal Code.

8 SECTION 5. Section 125.045, Civil Practice and Remedies  
9 Code, is amended by adding Subsection (c) to read as follows:

10 (c) If a condition of a bond filed or an injunctive order  
11 entered under this subchapter is violated, the district, county, or  
12 city attorney of the county in which the property is located or the  
13 attorney general may sue on the bond in the name of the state. In  
14 the event the attorney general originates the suit, the whole sum  
15 shall be forfeited as a penalty to the state. In the event the suit  
16 is originated by any office other than the attorney general, the  
17 whole sum shall be forfeited as a penalty to the originating entity  
18 for deposit in the entity's nuisance abatement fund.

19 SECTION 6. Subchapter C, Chapter 125, Civil Practice and  
20 Remedies Code, is amended by adding Section 125.047 to read as  
21 follows:

22 Sec. 125.047. NUISANCE ABATEMENT FUND. (a) In this  
23 section:

24 (1) "Fund" means a nuisance abatement fund.

25 (2) "Nuisance abatement" means an activity taken by a  
26 political subdivision to reduce the occurrences of:

27 (A) a common nuisance as described by Section

1 125.001;

2 (B) a public nuisance as described by Section  
3 125.021; or

4 (C) conduct described by Section 125.062 or  
5 125.063.

6 (3) "Political subdivision" means a municipality or  
7 county.

8 (b) A political subdivision shall create a fund as a  
9 separate account in the treasury of the political subdivision.

10 (c) The fund consists of:

11 (1) money awarded the political subdivision in an  
12 action under this chapter;

13 (2) money awarded the political subdivision under a  
14 settlement to an action under this chapter;

15 (3) fines resulting from code enforcement citations  
16 issued by the political subdivision for conduct defined as a common  
17 or public nuisance under this chapter, or for conduct under Section  
18 125.062 or 125.063;

19 (4) bonds forfeited to the political subdivision under  
20 this chapter; and

21 (5) donations or grants made to the political  
22 subdivision for the purpose of nuisance abatement.

23 (d) The money in the fund may be used only for the purpose of  
24 ongoing nuisance abatement. That purpose includes:

25 (1) regular and overtime compensation for nuisance  
26 abatement or enforcement personnel; and

27 (2) hiring additional personnel for nuisance

1 abatement as needed.

2 SECTION 7. (a) The change in law made by this Act applies  
3 only to an action that accrues on or after the effective date of  
4 this Act. An action that accrued before the effective date of this  
5 Act is governed by the law in effect at the time the cause of action  
6 accrued, and that law is continued in effect for that purpose.

7 (b) This Act applies only to conduct that occurs on or after  
8 the effective date of this Act, except that evidence of conduct that  
9 occurred before the effective date of this Act may be considered for  
10 the purpose of determining whether a place is a place to which  
11 persons habitually go or is habitually used for engaging in acts of  
12 prostitution, public lewdness, or indecent exposure. Conduct that  
13 occurred before the effective date of this Act is governed by the  
14 law in effect at the time the conduct occurred, and that law is  
15 continued in effect for that purpose.

16 (c) This Act takes effect September 1, 2003.