

By: Giddings, Uresti, Bohac

H.B. No. 2813

Substitute the following for H.B. No. 2813:

By: Gattis

C.S.H.B. No. 2813

A BILL TO BE ENTITLED

AN ACT

relating to public and common nuisances; providing a penalty.

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

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

Sec. 125.001. DEFINITIONS. In this chapter:

(1) "Common nuisance" is a nuisance described by Section 125.0015.

(2) "Public nuisance" is a nuisance described by Section 125.062 or 125.063.

(3) "Multiunit residential property" means improved real property with at least three dwelling units, including an apartment building, condominium, hotel, or motel. The term does not include:

(A) a property in which each dwelling unit is occupied by the owner of the property; or

(B) a single-family home or duplex.

Sec. 125.0015. COMMON NUISANCE. (a) A person who knowingly maintains a place to which persons habitually go for the following purposes maintains a common nuisance:

(1) [~~prostitution or gambling in violation of the Penal Code,~~

~~(2)] discharge of a firearm in a public place as~~

1 prohibited by the [~~in violation of Section 42.01(a)(9),~~] Penal
2 Code;

3 (2) [~~(3)~~] reckless discharge of a firearm as
4 prohibited by the [~~described by Section 42.12,~~] Penal Code;

5 (3) [~~(4)~~] engaging in organized criminal activity as a
6 member of a combination as prohibited by the [~~described by Section~~
7 ~~71.02,~~] Penal Code; [~~or~~]

8 (4) [~~(5)~~] delivery, possession, manufacture, or use
9 of a controlled substance in violation of Chapter 481, Health and
10 Safety Code;

11 (5) gambling, gambling promotion, or communicating
12 gambling information as prohibited by the Penal Code;

13 (6) prostitution, promotion of prostitution, or
14 aggravated promotion of prostitution as prohibited by the Penal
15 Code;

16 (7) compelling prostitution as prohibited by the Penal
17 Code; or

18 (8) commercial manufacture, commercial distribution,
19 or commercial exhibition of obscene material as prohibited by the
20 Penal Code.

21 (b) A person maintains a common nuisance if the person:

22 (1) knowingly maintains a multiunit residential
23 property [~~described by Subsection (c)~~] to which persons habitually
24 go to commit the following acts:

25 (A) aggravated assault as described by Section
26 22.02, Penal Code;

27 (B) sexual assault as described by Section

1 22.011, Penal Code;

2 (C) aggravated sexual assault as described by
3 Section 22.021, Penal Code;

4 (D) robbery as described by Section 29.02, Penal
5 Code;

6 (E) aggravated robbery as described by Section
7 29.03, Penal Code; ~~or~~]

8 (F) unlawfully carrying a weapon as described by
9 Section 46.02, Penal Code; ~~and~~

10 (G) murder as described by Section 19.02, Penal
11 Code; or

12 (H) capital murder as described by Section 19.03,
13 Penal Code; and

14 (2) has failed to make reasonable attempts to abate
15 such acts.

16 ~~[(c) Subsection (b) applies only to a multiunit residential~~
17 ~~property, as that term is defined by Section 125.041, that is~~
18 ~~located in a municipality.]~~

19 SECTION 2. Section 125.002, Civil Practice and Remedies
20 Code, is amended to read as follows:

21 Sec. 125.002. SUIT TO ABATE COMMON NUISANCE; BOND. (a) A
22 suit to enjoin and abate a common nuisance may be brought by an
23 individual, by the attorney general, or by a district, county, or
24 city attorney. The suit must be brought in the county in which it is
25 alleged to exist against the person who is maintaining or about to
26 maintain the nuisance. The suit must be brought in the name of the
27 state if brought by the attorney general or a district or county

1 attorney, in the name of the city if brought by a city attorney, or
2 in the name of the individual if brought by a private citizen.
3 Verification of the petition or proof of personal injury by the acts
4 complained of need not be shown. For purposes of this subsection,
5 personal injury may include economic or monetary loss.

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

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

14 (d) A person who violates a temporary or permanent
15 injunctive order under this subchapter is subject to the following
16 sentences for civil contempt:

17 (1) a fine of not less than \$1,000 or more than
18 \$10,000;

19 (2) confinement in jail for a term of not less than 10
20 or more than 30 days; or

21 (3) both fine and confinement.

22 (e) If judgment is in favor of the petitioner, the court
23 shall grant an injunction ordering the defendant to abate the
24 nuisance and enjoining the defendant from maintaining or
25 participating in the nuisance and may include in its order
26 reasonable requirements to prevent the use or maintenance of the
27 place as a nuisance. If the petitioner brings an action in rem, the

1 judgment is a judgment in rem against the property as well as a
2 judgment against the defendant. The judgment must order that the
3 place where the nuisance exists be closed for one year after the
4 date of judgment unless the defendant or the real property owner,
5 lessee, or tenant of the property posts bond.

6 (f) [~~(c)~~] The bond must:

7 (1) be payable to the state at the county seat of the
8 county in which the nuisance exists;

9 (2) be in the penal sum of \$10,000;

10 (3) have sufficient sureties approved by the court;
11 and

12 (4) be conditioned that the property will not be used
13 or permitted to be used for prostitution or gambling in violation of
14 the Penal Code or for delivery, possession, manufacture, or use of a
15 controlled substance in violation of Chapter 481, Health and Safety
16 Code.

17 (g) In an action brought under this chapter, the petitioner
18 may file a notice of lis pendens in the office of the county clerk.
19 If the petitioner files the notice, a subsequent purchaser or
20 mortgagee who acquires an interest in the property takes the
21 property subject to the enforcement proceeding and subsequent
22 orders of the court.

23 SECTION 3. Section 125.003(c), Civil Practice and Remedies
24 Code, is amended to read as follows:

25 (c) A person may not continue the enjoined activity pending
26 appeal or trial on the merits of an injunctive order entered in a
27 suit brought under this subchapter. Not later than the 90th day

1 after the date of the injunctive order, the appropriate court of
2 appeals shall hear and decide an appeal taken by a party enjoined
3 under this subchapter. If an appeal is not taken by a party
4 temporarily enjoined under this article, the parties are [~~party is~~]
5 entitled to a full trial on the merits not later than the 90th day
6 after the date of the temporary injunctive order.

7 SECTION 4. Sections 125.004(a) and (b), Civil Practice and
8 Remedies Code, are amended to read as follows:

9 (a) Proof that an activity described by Section 125.0015
10 [~~125.001~~] is frequently committed at the place involved or that the
11 place is frequently used for an activity described by Section
12 125.0015 [~~125.001~~] is prima facie evidence that the defendant
13 [~~proprietor~~] knowingly permitted the activity.

14 (b) Evidence that persons have been arrested for or
15 convicted of offenses for an activity described by Section 125.0015
16 [~~125.001~~] in the place involved is admissible to show knowledge on
17 the part of the defendant that the act occurred. The originals or
18 certified copies of the papers and judgments of those arrests or
19 convictions are admissible in the suit for injunction, and oral
20 evidence is admissible to show that the offense for which a person
21 was arrested or convicted was committed at the place involved.

22 SECTION 5. Section 125.042(a), Civil Practice and Remedies
23 Code, is amended to read as follows:

24 (a) The voters of an election precinct in which a common
25 [~~public~~] nuisance is alleged to exist or is alleged to be likely to
26 be created, or the voters in an adjacent election precinct, may
27 request the district attorney, city attorney, or county attorney

1 having geographical jurisdiction of the place that is the subject
2 of the voters' complaints to authorize a meeting at which
3 interested persons may state their complaints about the matter. To
4 be valid to begin proceedings under this section, the written
5 request must be signed by at least:

6 (1) 10 percent of the registered voters of the
7 election precinct in which the common [~~public~~] nuisance is alleged
8 to exist or is alleged to be likely to be created; or

9 (2) 20 percent of the voters of the adjacent election
10 precinct.

11 SECTION 6. Sections 125.044 and 125.045, Civil Practice and
12 Remedies Code, are amended to read as follows:

13 Sec. 125.044. FINDINGS. (a) After the meeting, the person
14 appointed to conduct the meeting shall report the findings to the
15 district attorney, city attorney, or county attorney who appointed
16 the person. The district attorney, city attorney, or county
17 attorney, on finding by the attorney that a common [~~public~~]
18 nuisance exists or is likely to be created, may initiate
19 appropriate available proceedings against the persons owning or
20 operating the place at which the common [~~public~~] nuisance exists or
21 is likely to be created.

22 (b) In a proceeding begun under Subsection (a):

23 (1) proof that acts creating a common [~~public~~]
24 nuisance are frequently committed at the place is prima facie
25 evidence that the owner and the operator knowingly permitted the
26 acts; and

27 (2) evidence that persons have been arrested for or

1 convicted of offenses involving acts at the place that create a
2 common [~~public~~] nuisance is admissible to show knowledge on the
3 part of the owner and the operator that the acts occurred.

4 (c) The originals or certified copies of the papers and
5 judgments of the arrests or convictions described by Subdivision
6 (2) of Subsection (b) are admissible in a suit for an injunction,
7 and oral evidence is admissible to show that the offense for which a
8 person was arrested or convicted was committed at the place
9 involved.

10 Sec. 125.045. REMEDIES. (a) If, after notice and hearing
11 on a request by a petitioner for a temporary injunction [~~in any~~
12 ~~judicial proceeding~~], a court determines that the petitioner is
13 likely to succeed on the merits in a suit brought under Section
14 125.002 [~~a person has maintained a place at which a public nuisance~~
15 ~~existed~~], the court shall require that the defendant [~~person to~~]
16 execute a bond. The bond must:

17 (1) be payable to the state at the county seat of the
18 county in which the nuisance existed;

19 (2) be in the amount set by the court, but not less
20 than \$5,000 or more than \$10,000;

21 (3) have sufficient sureties approved by the court;
22 and

23 (4) be conditioned that the defendant [~~person~~] will
24 not knowingly maintain [~~allow~~] a common [~~public~~] nuisance to exist
25 at the place.

26 (b) If any party to a court case fails to cease and desist
27 creating and maintaining a common [~~public~~] nuisance within the time

1 allowed by the court, a political subdivision may:

2 (1) discontinue the furnishing of utility services by
3 the political subdivision to the place at which the nuisance
4 exists;

5 (2) prohibit the furnishing of utility service to the
6 place by any public utility holding a franchise to use the streets
7 and alleys of the political subdivision;

8 (3) revoke the certificate of occupancy of the place;

9 (4) prohibit the use of city streets, alleys, and
10 other public ways for access to the place during the existence of
11 the nuisance or in furtherance of the nuisance; and

12 (5) use any other legal remedy available under the
13 laws of the state.

14 (c) 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 may 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 SECTION 7. Section 125.046(a), Civil Practice and Remedies
23 Code, is amended to read as follows:

24 (a) If, in any judicial proceeding under Subchapter A [~~or~~
25 ~~B~~], a court determines that a person is maintaining a multiunit
26 residential property that is a common nuisance [~~or a multiunit~~
27 ~~residential property at which a public nuisance exists~~], the court

1 may, on its own motion or on the motion of any party, order the
2 appointment of a receiver to manage the property or render any other
3 order allowed by law as necessary to abate the nuisance.

4 SECTION 8. Subchapter C, Chapter 125, Civil Practice and
5 Remedies Code, is amended by adding Section 125.047 to read as
6 follows:

7 Sec. 125.047. NUISANCE ABATEMENT FUND. (a) In this
8 section:

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

10 (2) "Nuisance abatement" means an activity taken by a
11 municipality to reduce the occurrences of a common or public
12 nuisance.

13 (b) This section applies only to a municipality with a
14 population of 1.5 million or more.

15 (c) A municipality shall create a fund as a separate account
16 in the treasury of the municipality.

17 (d) The fund consists of:

18 (1) money awarded the municipality in an action under
19 this chapter;

20 (2) money awarded the municipality under a settlement
21 to an action under this chapter;

22 (3) fines resulting from code enforcement citations
23 issued by the municipality for conduct defined as a common or public
24 nuisance under this chapter;

25 (4) bonds forfeited to the municipality under this
26 chapter; and

27 (5) donations or grants made to the municipality for

1 the purpose of nuisance abatement.

2 (e) The money in the fund may be used only for the purpose of
3 ongoing nuisance abatement. That purpose includes:

4 (1) regular and overtime compensation for nuisance
5 abatement or enforcement personnel; and

6 (2) hiring additional personnel for nuisance
7 abatement as needed.

8 SECTION 9. Sections 125.061-125.063, Civil Practice and
9 Remedies Code, are amended to read as follows:

10 Sec. 125.061. DEFINITIONS. In this subchapter:

11 (1) "Combination" [~~,"combination"~~] and "criminal
12 street gang" have the meanings assigned by Section 71.01, Penal
13 Code.

14 (2) "Continuously or regularly" means at least five
15 times in a period of not more than six months.

16 (3) "Gang activity" means the following types of
17 conduct:

18 (A) organized criminal activity as described by
19 Section 71.02, Penal Code;

20 (B) terroristic threat as described by Section
21 22.07, Penal Code;

22 (C) coercing, soliciting, or inducing gang
23 membership as described by Section 22.015, Penal Code;

24 (D) criminal trespass as described by Section
25 30.05, Penal Code;

26 (E) disorderly conduct as described by Section
27 42.01, Penal Code;

1 (F) criminal mischief as described by Section
2 28.03, Penal Code, that causes a pecuniary loss of \$500 or more;

3 (G) a graffiti offense in violation of Section
4 28.08, Penal Code, that:

5 (i) causes a pecuniary loss of \$500 or more;
6 or

7 (ii) occurs at a school, an institution of
8 higher education, a place of worship or human cemetery, a public
9 monument, or a community center that provides medical, social, or
10 educational programs;

11 (H) a weapons offense in violation of Chapter 46,
12 Penal Code; or

13 (I) unlawful possession of a substance or other
14 item in violation of Chapter 481, Health and Safety Code.

15 Sec. 125.062. PUBLIC NUISANCE; COMBINATION. A combination
16 or criminal street gang that continuously or regularly associates
17 in gang [~~organized criminal~~] activities [~~as described by Section~~
18 ~~71.02, Penal Code,~~] is a public nuisance.

19 Sec. 125.063. PUBLIC NUISANCE; USE OF PLACE. The habitual
20 use of a place by a combination or criminal street gang for engaging
21 in gang [~~organized criminal~~] activity [~~as described by Section~~
22 ~~71.02, Penal Code,~~] is a public nuisance.

23 SECTION 10. Section 125.064(b), Civil Practice and Remedies
24 Code, is amended to read as follows:

25 (b) Any person who habitually associates with others to
26 engage in gang [~~organized criminal~~] activity as a member of a
27 combination or criminal street gang may be made a defendant in the

1 suit. Any person who owns or is responsible for maintaining a place
2 that is habitually used for engaging in gang [~~organized criminal~~]
3 activity [~~as described by Section 71.02, Penal Code,~~] may be made a
4 defendant in the suit.

5 SECTION 11. Section 125.065, Civil Practice and Remedies
6 Code, is amended to read as follows:

7 Sec. 125.065. COURT ORDER. (a) If the court finds that a
8 combination or criminal street gang constitutes a public nuisance,
9 the court may enter an order:

10 (1) enjoining a defendant in the suit from engaging in
11 the gang [~~organized criminal~~] activities of the combination or
12 gang; and

13 (2) imposing other reasonable requirements to prevent
14 the combination or gang from engaging in future gang activities.

15 (b) If the court finds that a place is habitually used in a
16 manner that constitutes a public nuisance, the court may include in
17 its order reasonable requirements to prevent the use of the place
18 for gang [~~organized criminal~~] activity.

19 SECTION 12. Subchapter D, Chapter 125, Civil Practice and
20 Remedies Code, is amended by adding Section 125.0675 to read as
21 follows:

22 Sec. 125.0675. INJUNCTION FOR SPECIFIED PERIOD. In
23 addition to any other order that may be issued under this subchapter
24 or other law, a court of appeals or a trial court acting under
25 Section 125.067(b) or (c) may issue an injunctive order under this
26 subchapter that expires not later than the 180th day after the date
27 a temporary injunctive order is issued under Section 125.065.

1 SECTION 13. Section 125.069, Civil Practice and Remedies
2 Code, is amended to read as follows:

3 Sec. 125.069. USE OF PLACE; EVIDENCE. In an action brought
4 under this subchapter, proof that gang [~~organized criminal~~]
5 activity by a member of a combination or a criminal street gang [~~as~~
6 ~~described by Section 71.02, Penal Code,~~] is frequently committed at
7 a place or proof that a place is frequently used for engaging in
8 gang [~~organized criminal~~] activity by a member of a combination or a
9 criminal street gang [~~as described by Section 71.02, Penal Code,~~]
10 is prima facie evidence that the proprietor knowingly permitted the
11 act, unless^[7] the act constitutes conspiring to commit gang
12 activity [~~an offense as described by Section 71.02~~].

13 SECTION 14. Subchapter B, Chapter 125, Civil Practice and
14 Remedies Code, and Section 125.041, Civil Practice and Remedies
15 Code, are repealed.

16 SECTION 15. This Act takes effect September 1, 2003, and
17 applies only to a cause of action that accrues on or after that
18 date. An action that accrued before the effective date of this Act
19 is governed by the law applicable to the action immediately before
20 the effective date of this Act, and that law is continued in effect
21 for that purpose.