

By: Giddings

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) engaging in a voluntary fight between a man and a bull if the fight is for a thing of value or a championship, if a thing of value is wagered on the fight, or if an admission fee for

1 the fight is directly or indirectly charged, as prohibited by law  
2 [prostitution or gambling in violation of the Penal Code];

3 (2) discharge of a firearm in a public place as  
4 prohibited by the [in violation of Section 42.01(a)(9),] Penal  
5 Code;

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

8 (4) engaging in organized criminal activity as a  
9 member of a combination as prohibited by the [described by Section  
10 71.02,] Penal Code; ~~or~~

11 (5) delivery, possession, manufacture, or use of a  
12 controlled substance in violation of Chapter 481, Health and Safety  
13 Code;

14 (6) gambling, gambling promotion, or communicating  
15 gambling information as prohibited by the Penal Code;

16 (7) prostitution, promotion of prostitution, or  
17 aggravated promotion of prostitution as prohibited by the Penal  
18 Code;

19 (8) compelling prostitution as prohibited by the Penal  
20 Code; or

21 (9) commercial manufacture, commercial distribution,  
22 or commercial exhibition of obscene material as prohibited by the  
23 Penal Code.

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

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

1 (A) aggravated assault as described by Section  
2 22.02, Penal Code;

3 (B) sexual assault as described by Section  
4 22.011, Penal Code;

5 (C) aggravated sexual assault as described by  
6 Section 22.021, Penal Code;

7 (D) robbery as described by Section 29.02, Penal  
8 Code;

9 (E) aggravated robbery as described by Section  
10 29.03, Penal Code; ~~or~~]

11 (F) unlawfully carrying a weapon as described by  
12 Section 46.02, Penal Code; ~~and~~]

13 (G) murder as described by Section 19.02, Penal  
14 Code; or

15 (H) capital murder as described by Section 19.03,  
16 Penal Code; and

17 (2) has failed to make reasonable attempts to abate  
18 such acts.

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

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

24 Sec. 125.002. SUIT TO ABATE COMMON NUISANCE; BOND. (a) A  
25 suit to enjoin and abate a common nuisance may be brought by an  
26 individual, by the attorney general, or by a district, county, or  
27 city attorney. The suit must be brought in the county in which it is

1 alleged to exist against the person who is maintaining or about to  
2 maintain the nuisance. The suit must be brought in the name of the  
3 state if brought by the attorney general or a district or county  
4 attorney, in the name of the city if brought by a city attorney, or  
5 in the name of the individual if brought by a private citizen.  
6 Verification of the petition or proof of personal injury by the acts  
7 complained of need not be shown. For purposes of this subsection,  
8 personal injury may include economic or monetary loss.

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

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

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

21               (1) a fine of not less than \$1,000 or more than  
22 \$10,000;

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

25               (3) both fine and confinement.

26       (e) If judgment is in favor of the petitioner, the court  
27 shall grant an injunction ordering the defendant to abate the

1 nuisance and enjoining the defendant from maintaining or  
2 participating in the nuisance and may include in its order  
3 reasonable requirements to prevent the use or maintenance of the  
4 place as a nuisance. If the petitioner brings an action in rem, the  
5 judgment is a judgment in rem against the property as well as a  
6 judgment against the defendant. The judgment must order that the  
7 place where the nuisance exists be closed for one year after the  
8 date of judgment unless the defendant or the real property owner,  
9 lessee, or tenant of the property posts bond.

10 (f) [~~(e)~~] The bond must:

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

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

14 (3) have sufficient sureties approved by the court;

15 and

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

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

27 SECTION 3. Section 125.003(c), Civil Practice and Remedies

1 Code, is amended to read as follows:

2 (c) A person may not continue the enjoined activity pending  
3 appeal or trial on the merits of an injunctive order entered in a  
4 suit brought under this subchapter. Not later than the 90th day  
5 after the date of the injunctive order, the appropriate court of  
6 appeals shall hear and decide an appeal taken by a party enjoined  
7 under this subchapter. If an appeal is not taken by a party  
8 temporarily enjoined under this article, the parties are [~~party is~~]  
9 entitled to a full trial on the merits not later than the 90th day  
10 after the date of the temporary injunctive order.

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

13 (a) Proof that an activity described by Section 125.001 is  
14 frequently committed at the place involved or that the place is  
15 frequently used for an activity described by Section 125.001 is  
16 prima facie evidence that the defendant [~~proprietor~~] knowingly  
17 permitted the activity.

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

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

1 (a) The voters of an election precinct in which a common  
2 [~~public~~] nuisance is alleged to exist or is alleged to be likely to  
3 be created, or the voters in an adjacent election precinct, may  
4 request the district attorney, city attorney, or county attorney  
5 having geographical jurisdiction of the place that is the subject  
6 of the voters' complaints to authorize a meeting at which  
7 interested persons may state their complaints about the matter. To  
8 be valid to begin proceedings under this section, the written  
9 request must be signed by at least:

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

13 (2) 20 percent of the voters of the adjacent election  
14 precinct.

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

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

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

27 (1) proof that acts creating a common [~~public~~]

1 nuisance are frequently committed at the place is prima facie  
2 evidence that the owner and the operator knowingly permitted the  
3 acts; and

4 (2) evidence that persons have been arrested for or  
5 convicted of offenses involving acts at the place that create a  
6 common [~~public~~] nuisance is admissible to show knowledge on the  
7 part of the owner and the operator that the acts occurred.

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

14 Sec. 125.045. REMEDIES. (a) If, in any judicial  
15 proceeding, a court determines that a person has maintained a place  
16 at which a common [~~public~~] nuisance existed, the court shall  
17 require the person to execute a bond. The bond must:

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

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

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

24 (4) be conditioned that the person will not allow a  
25 common [~~public~~] nuisance to exist 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 SECTION 7. Section 125.046(a), Civil Practice and Remedies  
15 Code, is amended to read as follows:

16 (a) If, in any judicial proceeding under Subchapter A or B,  
17 a court determines that a person is maintaining a multiunit  
18 residential property that is a common nuisance [~~or a multiunit~~  
19 ~~residential property at which a public nuisance exists~~], the court  
20 may, on its own motion or on the motion of any party, order the  
21 appointment of a receiver to manage the property or render any other  
22 order allowed by law as necessary to abate the nuisance.

23 SECTION 8. Subchapter B, Chapter 125, Civil Practice and  
24 Remedies Code, and Section 125.041, Civil Practice and Remedies  
25 Code, are repealed.

26 SECTION 9. This Act takes effect September 1, 2003, and  
27 applies only to a cause of action that accrues on or after that

1 date. An action that accrued before the effective date of this Act  
2 is governed by the law applicable to the action immediately before  
3 the effective date of this Act, and that law is continued in effect  
4 for that purpose.