

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) [~~(e)~~] 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 and a certified copy of an order of
19 the court in the office of the county clerk in each county in which
20 the land is located. The notice of lis pendens must conform to the
21 requirements of Section 12.007, Property Code, and constitutes
22 notice as provided by Section 13.004, Property Code. A certified
23 copy of an order of the court filed in the office of the county clerk
24 constitutes notice of the terms of the order and is binding on
25 subsequent purchasers and lienholders.

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

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

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

12 (a) Proof that an activity described by Section 125.0015
13 [~~125.001~~] is frequently committed at the place involved or that the
14 place is frequently used for an activity described by Section
15 125.0015 [~~125.001~~] is prima facie evidence that the defendant
16 [~~proprietor~~] knowingly permitted the activity.

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

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

27 (a) The voters of an election precinct in which a common

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

9 (1) 10 percent of the registered voters of the
10 election precinct in which the common ~~[public]~~ nuisance is alleged
11 to exist or is alleged to be likely to be created; or

12 (2) 20 percent of the voters of the adjacent election
13 precinct.

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

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

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

26 (1) proof that acts creating a common ~~[public]~~
27 nuisance are frequently committed at the place is prima facie

1 evidence that the owner and the operator knowingly permitted the
2 acts; and

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

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

13 Sec. 125.045. REMEDIES. (a) If, after notice and hearing
14 on a request by a petitioner for a temporary injunction [~~in any~~
15 ~~judicial proceeding~~], a court determines that the petitioner is
16 likely to succeed on the merits in a suit brought under Section
17 125.002 [~~a person has maintained a place at which a public nuisance~~
18 ~~existed~~], the court shall require that the defendant [~~person to~~]
19 execute a bond. The bond must:

20 (1) be payable to the state at the county seat of the
21 county in which the place is located [~~nuisance existed~~];

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

24 (3) have sufficient sureties approved by the court;
25 and

26 (4) be conditioned that the defendant [~~person~~] will
27 not knowingly maintain [~~allow~~] a common [~~public~~] nuisance to exist

1 at the place.

2 (b) If any party to a court case fails to cease and desist
3 creating and maintaining a common [~~public~~] nuisance within the time
4 allowed by the court, a political subdivision may:

5 (1) discontinue the furnishing of utility services by
6 the political subdivision to the place at which the nuisance
7 exists;

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

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

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

15 (5) use any other legal remedy available under the
16 laws of the state.

17 (c) If a condition of a bond filed or an injunctive order
18 entered under this subchapter is violated, the district, county, or
19 city attorney of the county in which the property is located or the
20 attorney general may sue on the bond in the name of the state. In
21 the event the attorney general originates the suit, the whole sum
22 shall be forfeited as a penalty to the state. In the event the suit
23 is originated by any office other than the attorney general, the
24 whole sum shall be forfeited as a penalty to the originating entity.

25 SECTION 7. Subsection (a), Section 125.046, Civil Practice
26 and Remedies Code, is amended to read as follows:

27 (a) If, in any judicial proceeding under Subchapter A [~~or~~

1 ~~B~~], a court determines that a person is maintaining a multiunit
2 residential property that is a common nuisance [~~or a multiunit~~
3 ~~residential property at which a public nuisance exists~~], the court
4 may, on its own motion or on the motion of any party, order the
5 appointment of a receiver to manage the property or render any other
6 order allowed by law as necessary to abate the nuisance.

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

10 Sec. 125.047. NUISANCE ABATEMENT FUND. (a) In this
11 section:

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

13 (2) "Nuisance abatement" means an activity taken by a
14 municipality to reduce the occurrences of a common or public
15 nuisance.

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

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

20 (d) The fund consists of:

21 (1) money awarded the municipality in an action under
22 this chapter;

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

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

1 (4) bonds forfeited to the municipality under this
2 chapter; and

3 (5) donations or grants made to the municipality for
4 the purpose of nuisance abatement.

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

7 (1) regular and overtime compensation for nuisance
8 abatement or enforcement personnel; and

9 (2) hiring additional personnel for nuisance
10 abatement as needed.

11 SECTION 9. Sections 125.061, 125.062, and 125.063, Civil
12 Practice and Remedies Code, are amended to read as follows:

13 Sec. 125.061. DEFINITIONS. In this subchapter:

14 (1) "Combination"~~[, — "combination"]~~ and "criminal
15 street gang" have the meanings assigned by Section 71.01, Penal
16 Code.

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

19 (3) "Gang activity" means the following types of
20 conduct:

21 (A) organized criminal activity as described by
22 Section 71.02, Penal Code;

23 (B) terroristic threat as described by Section
24 22.07, Penal Code;

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

27 (D) criminal trespass as described by Section

1 30.05, Penal Code;

2 (E) disorderly conduct as described by Section
3 42.01, Penal Code;

4 (F) criminal mischief as described by Section
5 28.03, Penal Code, that causes a pecuniary loss of \$500 or more;

6 (G) a graffiti offense in violation of Section
7 28.08, Penal Code, that:

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

9 or

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

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

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

18 Sec. 125.062. PUBLIC NUISANCE; COMBINATION. A combination
19 or criminal street gang that continuously or regularly associates
20 in gang [~~organized criminal~~] activities [~~as described by Section~~
21 ~~71.02, Penal Code,~~] is a public nuisance.

22 Sec. 125.063. PUBLIC NUISANCE; USE OF PLACE. The habitual
23 use of a place by a combination or criminal street gang for engaging
24 in gang [~~organized criminal~~] activity [~~as described by Section~~
25 ~~71.02, Penal Code,~~] is a public nuisance.

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

1 (b) Any person who habitually associates with others to
2 engage in gang [~~organized criminal~~] activity as a member of a
3 combination or criminal street gang may be made a defendant in the
4 suit. Any person who owns or is responsible for maintaining a place
5 that is habitually used for engaging in gang [~~organized criminal~~]
6 activity [~~as described by Section 71.02, Penal Code,~~] may be made a
7 defendant in the suit.

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

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

13 (1) enjoining a defendant in the suit from engaging in
14 the gang [~~organized criminal~~] activities of the combination or
15 gang; and

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

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

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

25 Sec. 125.0675. INJUNCTION FOR SPECIFIED PERIOD. In
26 addition to any other order that may be issued under this subchapter
27 or other law, a court of appeals or a trial court acting under

1 Section 125.067(b) or (c) may issue an injunctive order under this
2 subchapter stating that the injunction remains in effect during the
3 course of the trial or until lifted by the court.

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

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

16 SECTION 14. Subchapter B, Chapter 125, Civil Practice and
17 Remedies Code, and Section 125.041, Civil Practice and Remedies
18 Code, are repealed.

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

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1010 passed the Senate on April 23, 2003, by a viva-voce vote; May 21, 2003, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 24, 2003, House granted request of the Senate; June 1, 2003, Senate adopted Conference Committee Report by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 1010 passed the House, with amendments, on May 9, 2003, by a non-record vote; May 24, 2003, House granted request of the Senate for appointment of Conference Committee; June 1, 2003, House adopted Conference Committee Report by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor