

By: West

S.B. No. 1010

Substitute the following for S.B. No. 1010:

By: Hartnett

C.S.S.B. No. 1010

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 by amending Subsections (b) and (c) and adding  
21 Subsections (d)-(g) to read as follows:

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

26 (c) Service of any order, notice, process, motion, or ruling  
27 of the court on the attorney of record of a cause pending under this

1 subchapter is sufficient service of the party represented by an  
2 attorney.

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

6 (1) a fine of not less than \$1,000 or more than  
7 \$10,000;

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

10 (3) both fine and confinement.

11 (e) If judgment is in favor of the petitioner, the court  
12 shall grant an injunction ordering the defendant to abate the  
13 nuisance and enjoining the defendant from maintaining or  
14 participating in the nuisance and may include in its order  
15 reasonable requirements to prevent the use or maintenance of the  
16 place as a nuisance. If the petitioner brings an action in rem, the  
17 judgment is a judgment in rem against the property as well as a  
18 judgment against the defendant. The judgment must order that the  
19 place where the nuisance exists be closed for one year after the  
20 date of judgment unless the defendant or the real property owner,  
21 lessee, or tenant of the property posts bond.

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

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

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

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

27 and

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

6           (g) In an action brought under this chapter, the petitioner  
7 may file a notice of lis pendens in the office of the county clerk.  
8 If the petitioner files the notice, a subsequent purchaser or  
9 mortgagee who acquires an interest in the property takes the  
10 property subject to the enforcement proceeding and subsequent  
11 orders of the court.

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

14           (c) A person may not continue the enjoined activity pending  
15 appeal or trial on the merits of an injunctive order entered in a  
16 suit brought under this subchapter. Not later than the 90th day  
17 after the date of the injunctive order, the appropriate court of  
18 appeals shall hear and decide an appeal taken by a party enjoined  
19 under this subchapter. If an appeal is not taken by a party  
20 temporarily enjoined under this article, the parties are ~~[party is]~~  
21 entitled to a full trial on the merits not later than the 90th day  
22 after the date of the temporary injunctive order.

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

25           (a) Proof that an activity described by Section 125.0015  
26 ~~[125.001]~~ is frequently committed at the place involved or that the  
27 place is frequently used for an activity described by Section

1 125.0015 [~~125.001~~] is prima facie evidence that the defendant  
2 [~~proprietor~~] knowingly permitted the activity.

3 (b) Evidence that persons have been arrested for or  
4 convicted of offenses for an activity described by Sections  
5 125.0015(1)-(7) or convicted of offenses for an activity described  
6 by Section 125.0015(8) [~~Section 125.001~~] in the place involved is  
7 admissible to show knowledge on the part of the defendant that the  
8 act occurred. The originals or certified copies of the papers and  
9 judgments of those arrests or convictions are admissible in the  
10 suit for injunction, and oral evidence is admissible to show that  
11 the offense for which a person was arrested or convicted was  
12 committed at the place involved.

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

15 (a) The voters of an election precinct in which a common  
16 [~~public~~] nuisance is alleged to exist or is alleged to be likely to  
17 be created, or the voters in an adjacent election precinct, may  
18 request the district attorney, city attorney, or county attorney  
19 having geographical jurisdiction of the place that is the subject  
20 of the voters' complaints to authorize a meeting at which  
21 interested persons may state their complaints about the matter. To  
22 be valid to begin proceedings under this section, the written  
23 request must be signed by at least:

24 (1) 10 percent of the registered voters of the  
25 election precinct in which the common [~~public~~] nuisance is alleged  
26 to exist or is alleged to be likely to be created; or

27 (2) 20 percent of the voters of the adjacent election

1 precinct.

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

4 Sec. 125.044. FINDINGS. (a) After the meeting, the person  
5 appointed to conduct the meeting shall report the findings to the  
6 district attorney, city attorney, or county attorney who appointed  
7 the person. The district attorney, city attorney, or county  
8 attorney, on finding by the attorney that a common [~~public~~]  
9 nuisance exists or is likely to be created, may initiate  
10 appropriate available proceedings against the persons owning or  
11 operating the place at which the common [~~public~~] nuisance exists or  
12 is likely to be created.

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

14 (1) proof that acts creating a common [~~public~~]  
15 nuisance are frequently committed at the place is prima facie  
16 evidence that the owner and the operator knowingly permitted the  
17 acts; and

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

22 (c) The originals or certified copies of the papers and  
23 judgments of the arrests or convictions described by Subdivision  
24 (2) of Subsection (b) are admissible in a suit for an injunction,  
25 and oral evidence is admissible to show that the offense for which a  
26 person was arrested or convicted was committed at the place  
27 involved.

1           Sec. 125.045. REMEDIES. (a) If, after notice and hearing  
2 on a request by a petitioner for a temporary injunction [~~in any~~  
3 ~~judicial proceeding~~], a court determines that the petitioner is  
4 likely to succeed on the merits in a suit brought under Section  
5 125.002 [~~a person has maintained a place at which a public nuisance~~  
6 ~~existed~~], the court shall require that the defendant [~~person to~~]  
7 execute a bond. The bond must:

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

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

12                   (3) have sufficient sureties approved by the court;  
13 and

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

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

20                   (1) discontinue the furnishing of utility services by  
21 the political subdivision to the place at which the nuisance  
22 exists;

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

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

27                   (4) prohibit the use of city streets, alleys, and



1 other public ways for access to the place during the existence of  
2 the nuisance or in furtherance of the nuisance; and

3 (5) use any other legal remedy available under the  
4 laws of the state.

5 (c) If a condition of a bond filed or an injunctive order  
6 entered under this subchapter is violated, the district, county, or  
7 city attorney of the county in which the property is located or the  
8 attorney general may sue on the bond in the name of the state. In  
9 the event the attorney general originates the suit, the whole sum  
10 shall be forfeited as a penalty to the state. In the event the suit  
11 is originated by any office other than the attorney general, the  
12 whole sum shall be forfeited as a penalty to the originating entity.

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

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

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

25 Sec. 125.047. NUISANCE ABATEMENT FUND. (a) In this  
26 section:

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

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

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

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

8           (d) The fund consists of:

9               (1) money awarded the municipality in an action under  
10 this chapter;

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

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

16               (4) bonds forfeited to the municipality under this  
17 chapter; and

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

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

22               (1) regular and overtime compensation for nuisance  
23 abatement or enforcement personnel; and

24               (2) hiring additional personnel for nuisance  
25 abatement as needed.

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

1           Sec. 125.061. DEFINITIONS. In this subchapter:

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

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

7           (3) "Gang activity" means the following types of  
8 conduct:

9                   (A) organized criminal activity as described by  
10 Section 71.02, Penal Code;

11                   (B) terroristic threat as described by Section  
12 22.07, Penal Code;

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

15                   (D) criminal trespass as described by Section  
16 30.05, Penal Code;

17                   (E) disorderly conduct as described by Section  
18 42.01, Penal Code;

19                   (F) criminal mischief as described by Section  
20 28.03, Penal Code, that causes a pecuniary loss of \$500 or more;

21                   (G) a graffiti offense in violation of Section  
22 28.08, Penal Code, that:

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

24 or

25                           (ii) occurs at a school, an institution of  
26 higher education, a place of worship or human cemetery, a public  
27 monument, or a community center that provides medical, social, or

1 educational programs;

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

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

6 Sec. 125.062. PUBLIC NUISANCE; COMBINATION. A combination  
7 or criminal street gang that continuously or regularly associates  
8 in gang [~~organized criminal~~] activities [~~as described by Section~~  
9 ~~71.02, Penal Code,~~] is a public nuisance.

10 Sec. 125.063. PUBLIC NUISANCE; USE OF PLACE. The habitual  
11 use of a place by a combination or criminal street gang for engaging  
12 in gang [~~organized criminal~~] activity [~~as described by Section~~  
13 ~~71.02, Penal Code,~~] is a public nuisance.

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

16 (b) Any person who habitually associates with others to  
17 engage in gang [~~organized criminal~~] activity as a member of a  
18 combination or criminal street gang may be made a defendant in the  
19 suit. Any person who owns or is responsible for maintaining a place  
20 that is habitually used for engaging in gang [~~organized criminal~~]  
21 activity [~~as described by Section 71.02, Penal Code,~~] may be made a  
22 defendant in the suit.

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

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

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

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

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

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

13           Sec. 125.0675. INJUNCTION FOR SPECIFIED PERIOD. In  
14 addition to any other order that may be issued under this subchapter  
15 or other law, a court of appeals or a trial court acting under  
16 Section 125.067(b) or (c) may issue an injunctive order under this  
17 subchapter stating that the injunction remains in effect during the  
18 course of the trial or until lifted by the court.

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

21           Sec. 125.069. USE OF PLACE; EVIDENCE. In an action brought  
22 under this subchapter, proof that gang [~~organized criminal~~]  
23 activity by a member of a combination or a criminal street gang [~~as~~  
24 ~~described by Section 71.02, Penal Code,~~] is frequently committed at  
25 a place or proof that a place is frequently used for engaging in  
26 gang [~~organized criminal~~] activity by a member of a combination or a  
27 criminal street gang [~~as described by Section 71.02, Penal Code,~~]

1 is prima facie evidence that the proprietor knowingly permitted the  
2 act, unless[~~7~~] the act constitutes conspiring to commit gang  
3 activity [~~an offense as described by Section 71.02~~].

4 SECTION 14. Subchapter B, Chapter 125, Civil Practice and  
5 Remedies Code, and Section 125.041, Civil Practice and Remedies  
6 Code, are repealed.

7 SECTION 15. This Act takes effect September 1, 2003, and  
8 applies only to a cause of action that accrues on or after that  
9 date. An action that accrued before the effective date of this Act  
10 is governed by the law applicable to the action immediately before  
11 the effective date of this Act, and that law is continued in effect  
12 for that purpose.