

1-1 By: West S.B. No. 1010
1-2 (In the Senate - Filed March 7, 2003; March 13, 2003, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 7, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; April 7, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1010 By: West

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to public and common nuisances; providing a penalty.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Subchapter A, Chapter 125, Civil Practice and
1-13 Remedies Code, is amended by amending Section 125.001 and adding
1-14 Section 125.0015 to read as follows:
1-15 Sec. 125.001. DEFINITIONS. In this chapter:
1-16 (1) "Common nuisance" is a nuisance described by
1-17 Section 125.0015.
1-18 (2) "Public nuisance" is a nuisance described by
1-19 Section 125.062 or 125.063.
1-20 (3) "Multiunit residential property" means improved
1-21 real property with at least three dwelling units, including an
1-22 apartment building, condominium, hotel, or motel. The term does
1-23 not include:
1-24 (A) a property in which each dwelling unit is
1-25 occupied by the owner of the property; or
1-26 (B) a single-family home or duplex.
1-27 Sec. 125.0015. COMMON NUISANCE. (a) A person who
1-28 knowingly maintains a place to which persons habitually go for the
1-29 following purposes maintains a common nuisance:
1-30 (1) [~~prostitution or gambling in violation of the~~
1-31 ~~Penal Code;~~
1-32 [~~(2)~~] discharge of a firearm in a public place as
1-33 prohibited by the [~~in violation of Section 42.01(a)(9),~~] Penal
1-34 Code;
1-35 (2) [~~(3)~~] reckless discharge of a firearm as
1-36 prohibited by the [~~described by Section 42.12,~~] Penal Code;
1-37 (3) [~~(4)~~] engaging in organized criminal activity as a
1-38 member of a combination as prohibited by the [~~described by Section~~
1-39 ~~71.02,~~] Penal Code; [~~or~~
1-40 (4) [~~(5)~~] delivery, possession, manufacture, or use
1-41 of a controlled substance in violation of Chapter 481, Health and
1-42 Safety Code;
1-43 (5) gambling, gambling promotion, or communicating
1-44 gambling information as prohibited by the Penal Code;
1-45 (6) prostitution, promotion of prostitution, or
1-46 aggravated promotion of prostitution as prohibited by the Penal
1-47 Code;
1-48 (7) compelling prostitution as prohibited by the Penal
1-49 Code; or
1-50 (8) commercial manufacture, commercial distribution,
1-51 or commercial exhibition of obscene material as prohibited by the
1-52 Penal Code.
1-53 (b) A person maintains a common nuisance if the person:
1-54 (1) knowingly maintains a multiunit residential
1-55 property [~~described by Subsection (c)~~] to which persons habitually
1-56 go to commit the following acts:
1-57 (A) aggravated assault as described by Section
1-58 22.02, Penal Code;
1-59 (B) sexual assault as described by Section
1-60 22.011, Penal Code;
1-61 (C) aggravated sexual assault as described by
1-62 Section 22.021, Penal Code;
1-63 (D) robbery as described by Section 29.02, Penal

2-1 Code;
 2-2 (E) aggravated robbery as described by Section
 2-3 29.03, Penal Code; ~~[or]~~
 2-4 (F) unlawfully carrying a weapon as described by
 2-5 Section 46.02, Penal Code; ~~[and]~~
 2-6 (G) murder as described by Section 19.02, Penal
 2-7 Code; or
 2-8 (H) capital murder as described by Section 19.03,
 2-9 Penal Code; and

2-10 (2) has failed to make reasonable attempts to abate
 2-11 such acts.

2-12 ~~[(c) Subsection (b) applies only to a multiunit residential~~
 2-13 ~~property, as that term is defined by Section 125.041, that is~~
 2-14 ~~located in a municipality.]~~

2-15 SECTION 2. Section 125.002, Civil Practice and Remedies
 2-16 Code, is amended to read as follows:

2-17 Sec. 125.002. SUIT TO ABATE COMMON NUISANCE; BOND. (a) A
 2-18 suit to enjoin and abate a common nuisance may be brought by an
 2-19 individual, by the attorney general, or by a district, county, or
 2-20 city attorney. The suit must be brought in the county in which it is
 2-21 alleged to exist against the person who is maintaining or about to
 2-22 maintain the nuisance. The suit must be brought in the name of the
 2-23 state if brought by the attorney general or a district or county
 2-24 attorney, in the name of the city if brought by a city attorney, or
 2-25 in the name of the individual if brought by a private citizen.
 2-26 Verification of the petition or proof of personal injury by the acts
 2-27 complained of need not be shown. For purposes of this subsection,
 2-28 personal injury may include economic or monetary loss.

2-29 (b) A person may bring a suit under Subsection (a) against
 2-30 any person who maintains, owns, uses, or is a party to the use of a
 2-31 place for purposes constituting a nuisance under this subchapter
 2-32 and may bring an action in rem against the place itself.

2-33 (c) Service of any order, notice, process, motion, or ruling
 2-34 of the court on the attorney of record of a cause pending under this
 2-35 subchapter is sufficient service of the party represented by an
 2-36 attorney.

2-37 (d) A person who violates a temporary or permanent
 2-38 injunctive order under this subchapter is subject to the following
 2-39 sentences for civil contempt:

2-40 (1) a fine of not less than \$1,000 or more than
 2-41 \$10,000;

2-42 (2) confinement in jail for a term of not less than 10
 2-43 or more than 30 days; or

2-44 (3) both fine and confinement.

2-45 (e) If judgment is in favor of the petitioner, the court
 2-46 shall grant an injunction ordering the defendant to abate the
 2-47 nuisance and enjoining the defendant from maintaining or
 2-48 participating in the nuisance and may include in its order
 2-49 reasonable requirements to prevent the use or maintenance of the
 2-50 place as a nuisance. If the petitioner brings an action in rem, the
 2-51 judgment is a judgment in rem against the property as well as a
 2-52 judgment against the defendant. The judgment must order that the
 2-53 place where the nuisance exists be closed for one year after the
 2-54 date of judgment unless the defendant or the real property owner,
 2-55 lessee, or tenant of the property posts bond.

2-56 (f) ~~[(c)]~~ The bond must:

2-57 (1) be payable to the state at the county seat of the
 2-58 county in which the nuisance exists;

2-59 (2) be in the penal sum of \$10,000;

2-60 (3) have sufficient sureties approved by the court;

2-61 and

2-62 (4) be conditioned that the property will not be used
 2-63 or permitted to be used for prostitution or gambling in violation of
 2-64 the Penal Code or for delivery, possession, manufacture, or use of a
 2-65 controlled substance in violation of Chapter 481, Health and Safety
 2-66 Code.

2-67 (g) In an action brought under this chapter, the petitioner
 2-68 may file a notice of lis pendens in the office of the county clerk.
 2-69 If the petitioner files the notice, a subsequent purchaser or

3-1 mortgagee who acquires an interest in the property takes the
 3-2 property subject to the enforcement proceeding and subsequent
 3-3 orders of the court.

3-4 SECTION 3. Subsection (c), Section 125.003, Civil Practice
 3-5 and Remedies Code, is amended to read as follows:

3-6 (c) A person may not continue the enjoined activity pending
 3-7 appeal or trial on the merits of an injunctive order entered in a
 3-8 suit brought under this subchapter. Not later than the 90th day
 3-9 after the date of the injunctive order, the appropriate court of
 3-10 appeals shall hear and decide an appeal taken by a party enjoined
 3-11 under this subchapter. If an appeal is not taken by a party
 3-12 temporarily enjoined under this article, the parties are ~~[party is]~~
 3-13 entitled to a full trial on the merits not later than the 90th day
 3-14 after the date of the temporary injunctive order.

3-15 SECTION 4. Subsections (a) and (b), Section 125.004, Civil
 3-16 Practice and Remedies Code, are amended to read as follows:

3-17 (a) Proof that an activity described by Section 125.0015
 3-18 ~~[125.001]~~ is frequently committed at the place involved or that the
 3-19 place is frequently used for an activity described by Section
 3-20 125.0015 ~~[125.001]~~ is prima facie evidence that the defendant
 3-21 ~~[proprietor]~~ knowingly permitted the activity.

3-22 (b) Evidence that persons have been arrested for or
 3-23 convicted of offenses for an activity described by Section 125.0015
 3-24 ~~[125.001]~~ in the place involved is admissible to show knowledge on
 3-25 the part of the defendant that the act occurred. The originals or
 3-26 certified copies of the papers and judgments of those arrests or
 3-27 convictions are admissible in the suit for injunction, and oral
 3-28 evidence is admissible to show that the offense for which a person
 3-29 was arrested or convicted was committed at the place involved.

3-30 SECTION 5. Subsection (a), Section 125.042, Civil Practice
 3-31 and Remedies Code, is amended to read as follows:

3-32 (a) The voters of an election precinct in which a common
 3-33 ~~[public]~~ nuisance is alleged to exist or is alleged to be likely to
 3-34 be created, or the voters in an adjacent election precinct, may
 3-35 request the district attorney, city attorney, or county attorney
 3-36 having geographical jurisdiction of the place that is the subject
 3-37 of the voters' complaints to authorize a meeting at which
 3-38 interested persons may state their complaints about the matter. To
 3-39 be valid to begin proceedings under this section, the written
 3-40 request must be signed by at least:

3-41 (1) 10 percent of the registered voters of the
 3-42 election precinct in which the common ~~[public]~~ nuisance is alleged
 3-43 to exist or is alleged to be likely to be created; or

3-44 (2) 20 percent of the voters of the adjacent election
 3-45 precinct.

3-46 SECTION 6. Sections 125.044 and 125.045, Civil Practice and
 3-47 Remedies Code, are amended to read as follows:

3-48 Sec. 125.044. FINDINGS. (a) After the meeting, the person
 3-49 appointed to conduct the meeting shall report the findings to the
 3-50 district attorney, city attorney, or county attorney who appointed
 3-51 the person. The district attorney, city attorney, or county
 3-52 attorney, on finding by the attorney that a common ~~[public]~~
 3-53 nuisance exists or is likely to be created, may initiate
 3-54 appropriate available proceedings against the persons owning or
 3-55 operating the place at which the common ~~[public]~~ nuisance exists or
 3-56 is likely to be created.

3-57 (b) In a proceeding begun under Subsection (a):

3-58 (1) proof that acts creating a common ~~[public]~~
 3-59 nuisance are frequently committed at the place is prima facie
 3-60 evidence that the owner and the operator knowingly permitted the
 3-61 acts; and

3-62 (2) evidence that persons have been arrested for or
 3-63 convicted of offenses involving acts at the place that create a
 3-64 common ~~[public]~~ nuisance is admissible to show knowledge on the
 3-65 part of the owner and the operator that the acts occurred.

3-66 (c) The originals or certified copies of the papers and
 3-67 judgments of the arrests or convictions described by Subdivision
 3-68 (2) of Subsection (b) are admissible in a suit for an injunction,
 3-69 and oral evidence is admissible to show that the offense for which a

4-1 person was arrested or convicted was committed at the place
4-2 involved.

4-3 Sec. 125.045. REMEDIES. (a) If, after notice and hearing
4-4 on a request for a temporary injunction [~~in any judicial~~
4-5 ~~proceeding~~], a court determines that the petitioner is likely to
4-6 succeed on the merits of the lawsuit [~~a person has maintained a~~
4-7 ~~place at which a public nuisance existed~~], the court shall require
4-8 that the defendant [~~person to~~] execute a bond. The bond must:

4-9 (1) be payable to the state at the county seat of the
4-10 county in which the place is located [~~nuisance existed~~];

4-11 (2) be in the amount set by the court, but not less
4-12 than \$5,000 or more than \$10,000;

4-13 (3) have sufficient sureties approved by the court;
4-14 and

4-15 (4) be conditioned that the defendant [~~person~~] will
4-16 not knowingly maintain [~~allow~~] a common [~~public~~] nuisance [~~to~~
4-17 ~~exist~~] at the place.

4-18 [~~(b)~~] If any party to a court case fails to cease and desist
4-19 creating and maintaining a common [~~public~~] nuisance within the time
4-20 allowed by the court, a political subdivision may:

4-21 (1) discontinue the furnishing of utility services by
4-22 the political subdivision to the place at which the nuisance
4-23 exists;

4-24 (2) prohibit the furnishing of utility service to the
4-25 place by any public utility holding a franchise to use the streets
4-26 and alleys of the political subdivision;

4-27 (3) revoke the certificate of occupancy of the place;

4-28 (4) prohibit the use of city streets, alleys, and
4-29 other public ways for access to the place during the existence of
4-30 the nuisance or in furtherance of the nuisance; and

4-31 (5) use any other legal remedy available under the
4-32 laws of the state.

4-33 SECTION 7. Subsection (a), Section 125.046, Civil Practice
4-34 and Remedies Code, is amended to read as follows:

4-35 (a) If, in any judicial proceeding under Subchapter A [~~or~~
4-36 ~~B~~], a court determines that a person is maintaining a multiunit
4-37 residential property that is a common nuisance [~~or a multiunit~~
4-38 ~~residential property at which a public nuisance exists~~], the court
4-39 may, on its own motion or on the motion of any party, order the
4-40 appointment of a receiver to manage the property or render any other
4-41 order allowed by law as necessary to abate the nuisance.

4-42 SECTION 8. Subchapter B, Chapter 125, Civil Practice and
4-43 Remedies Code, and Section 125.041, Civil Practice and Remedies
4-44 Code, are repealed.

4-45 SECTION 9. This Act takes effect September 1, 2003, and
4-46 applies only to a cause of action that accrues on or after that
4-47 date. An action that accrued before the effective date of this Act
4-48 is governed by the law applicable to the action immediately before
4-49 the effective date of this Act, and that law is continued in effect
4-50 for that purpose.

4-51 * * * * *