

## **BILL ANALYSIS**

C.S.H.B. 1690  
By: Keel  
Civil Practices  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Typically, the nuisance code is used to address problem places where the responsible party is not taking the appropriate steps to prevent illegal activity from occurring. Under current statute, it is unclear who is responsible for maintaining nuisance problems in the common areas of a condominium complex. If a condominium complex is experiencing a nuisance problem in the areas jointly owned and shared by all condo residents, law enforcement officials are required to address the entire complex population. Law enforcement officers need clarification as to who is responsible for the maintenance of reoccurring illegal activity in common areas of a condo.

Further, Section 125.0015, Civil Practice and Remedies Code, states that a person who knowingly maintains a place to which persons go for certain purposes maintains a common nuisance. At least one judge in Texas has determined that simply being aware of the situation, regardless of whether or not an owner has attempted to take steps to fight the nuisance, is sufficient to find the owner liable. In that case, the owner was deemed culpable although he had called the police multiple times and took steps to fight the crime occurring on the premises of the business he owned. Some courts may interpret this section as constituting liability for the owner with the only proof of a mental state required being that the owner is "knowingly maintaining a place" – but no culpability as to tolerating the nuisance.

CSHB 1690 clarifies that a council of owners or a unit of the owners' association is responsible for maintaining a nuisance in common areas of properties that have multiple owners. Further, it changes the culpability of the owner from "knowingly" maintains to maintains and "knowingly tolerates the activity".

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

CSHB 1690 amends Chapter 125.001, Civil Practice and Remedies Code, by amending the definition of multiunit residential property to delete the exclusion of a property in which each dwelling unit is occupied by the owner of the property. Further, it amends Chapter 125, CPRC, by changing "knowingly" maintains to maintains and "knowingly tolerates the activity" and by amending the list of offenses under which a person maintains a common nuisance. Provides that a council of owners or a unit owners' association may be sued under this section if the council maintains, owns, uses or is a party to the use of the common areas for purposes constituting a nuisance. Specifies that evidence that the defendant requested law enforcement assistance where a nuisance is allegedly maintained is not admissible for the purposes of showing the defendant tolerated the activity alleged to constitute the nuisance. Conforming changes are made.

### **EFFECTIVE DATE**

September 1, 2005.

## **COMPARISON OF ORIGINAL TO SUBSTITUTE**

Strikes "intentionally" maintains and inserts "knowingly tolerates the activity" for the level of culpability for maintaining a nuisance. Makes conforming changes to address the level of culpability.

Amends the definition of multiunit residential property to delete the exclusion of a property in which each dwelling unit is occupied by the owner of the property.

Provides that a council of owners or a unit owners' association may be sued under this section if the council maintains, owns, uses or is a party to the use of the common areas for purposes constituting a nuisance.

Specifies that evidence that the defendant requested law enforcement assistance where a nuisance is allegedly maintained is not admissible for the purposes of showing the defendant tolerated the activity alleged to constitute the nuisance.