

By: Keel, Hill, Frost, Hodge, Nixon, et al.

H.B. No. 1690

A BILL TO BE ENTITLED

AN ACT

relating to common nuisance.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 125.001(3), Civil Practice and Remedies Code, is amended to read as follows:

(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.

SECTION 2. Section 125.0015, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 125.0015. COMMON NUISANCE. (a) A person who ~~[knowingly]~~ maintains a place to which persons habitually go for the following purposes and knowingly tolerates the activity maintains a common nuisance:

(1) discharge of a firearm in a public place as prohibited by the Penal Code;

(2) reckless discharge of a firearm as prohibited by the Penal Code;

(3) engaging in organized criminal activity as a member of a combination as prohibited by the Penal Code;

1 (4) delivery, possession, manufacture, or use of a
2 controlled substance in violation of Chapter 481, Health and Safety
3 Code;

4 (5) gambling, gambling promotion, or communicating
5 gambling information as prohibited by the Penal Code;

6 (6) prostitution, promotion of prostitution, or
7 aggravated promotion of prostitution as prohibited by the Penal
8 Code;

9 (7) compelling prostitution as prohibited by the Penal
10 Code; ~~or~~

11 (8) commercial manufacture, commercial distribution,
12 or commercial exhibition of obscene material as prohibited by the
13 Penal Code;

14 (9) aggravated assault as described by Section 22.02,
15 Penal Code;

16 (10) sexual assault as described by Section 22.011,
17 Penal Code;

18 (11) aggravated sexual assault as described by Section
19 22.021, Penal Code;

20 (12) robbery as described by Section 29.02, Penal
21 Code;

22 (13) aggravated robbery as described by Section 29.03,
23 Penal Code;

24 (14) unlawfully carrying a weapon as described by
25 Section 46.02, Penal Code;

26 (15) murder as described by Section 19.02, Penal Code;

27 or

1 (16) capital murder as described by Section 19.03,
2 Penal Code.

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

4 (1) [~~knowingly~~] maintains a multiunit residential
5 property to which persons habitually go to commit acts listed in
6 Subsection (a) and knowingly tolerates the [~~following~~] acts[+]

7 [~~(A) aggravated assault as described by Section~~
8 ~~22.02, Penal Code,~~

9 [~~(B) sexual assault as described by Section~~
10 ~~22.011, Penal Code,~~

11 [~~(C) aggravated sexual assault as described by~~
12 ~~Section 22.021, Penal Code,~~

13 [~~(D) robbery as described by Section 29.02, Penal~~
14 ~~Code,~~

15 [~~(E) aggravated robbery as described by Section~~
16 ~~29.03, Penal Code,~~

17 [~~(F) unlawfully carrying a weapon as described by~~
18 ~~Section 46.02, Penal Code,~~

19 [~~(G) murder as described by Section 19.02, Penal~~
20 ~~Code, or~~

21 [~~(H) capital murder as described by Section~~
22 ~~19.03, Penal Code]~~; and

23 (2) has failed to make reasonable attempts to abate
24 such acts.

25 SECTION 3. Section 125.002(b), Civil Practice and Remedies
26 Code, is amended to read as follows:

27 (b) A person may bring a suit under Subsection (a) against

1 any person who maintains, owns, uses, or is a party to the use of a
2 place for purposes constituting a nuisance under this subchapter
3 and may bring an action in rem against the place itself. A council
4 of owners, as defined by Section 81.002, Property Code, or a unit
5 owners' association organized under Section 82.101, Property Code,
6 may be sued under this subsection if the council or association
7 maintains, owns, uses, or is a party to the use of the common areas
8 of the council's or association's condominium for purposes
9 constituting a nuisance.

10 SECTION 4. Section 125.004, Civil Practice and Remedies
11 Code, is amended by amending Subsections (a) and (b) and adding
12 Subsection (d) to read as follows:

13 (a) Proof that an activity described by Section 125.0015 is
14 frequently committed at the place involved or that the place is
15 frequently used for an activity described by Section 125.0015 is
16 prima facie evidence that the defendant knowingly tolerated
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 in the place involved is admissible to show knowledge on the part of
21 the defendant with respect to ~~[that]~~ the act that occurred. The
22 originals or certified copies of the papers and judgments of those
23 arrests or convictions are admissible in the suit for injunction,
24 and oral evidence is admissible to show that the offense for which a
25 person was arrested or convicted was committed at the place
26 involved.

27 (d) Notwithstanding Subsection (a), evidence that the

1 defendant or another person requested law enforcement or emergency
2 assistance with respect to an activity at the place where the common
3 nuisance is allegedly maintained is not admissible for the purpose
4 of showing the defendant tolerated the activity alleged to
5 constitute the nuisance but may be admitted for other purposes,
6 such as showing that a crime listed in Section 125.0015 occurred.
7 Evidence that the defendant refused to cooperate with law
8 enforcement or emergency services with respect to the activity is
9 admissible.

10 SECTION 5. Section 125.044(b), Civil Practice and Remedies
11 Code, is amended to read as follows:

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

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

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

22 (3) notwithstanding Subdivision (1), evidence that
23 the defendant or another person requested law enforcement or
24 emergency assistance with respect to an activity at the place where
25 the common nuisance is allegedly maintained is not admissible for
26 the purpose of showing the defendant tolerated the activity alleged
27 to constitute the nuisance but may be admitted for other purposes,

1 such as showing that a crime listed in Section 125.0015 occurred.
2 Evidence that the defendant refused to cooperate with law
3 enforcement or emergency services with respect to the activity is
4 admissible.

5 SECTION 6. It is the intent of the legislature that the
6 passage by the 79th Legislature, Regular Session, 2005, of House
7 Bill No. 2086 or another bill that repeals Chapter 125, Civil
8 Practice and Remedies Code, and adds other law governing common or
9 public nuisance and the amendments made by this Act shall be
10 harmonized, if possible, as provided by Section 311.025(b),
11 Government Code, so that effect may be given to each. If the
12 amendments made by this Act to Chapter 125, Civil Practice and
13 Remedies Code, and the amendments made by House Bill No. 2086 or any
14 other bill that repeals Chapter 125, Civil Practice and Remedies
15 Code, and adds other law governing common or public nuisance are
16 irreconcilable, it is the intent of the legislature that this Act
17 prevail, regardless of the relative dates of enactment of this Act
18 and any other bill, but only to the extent that any differences are
19 irreconcilable.

20 SECTION 7. The change in law made by this Act applies only
21 to a cause of action that accrues on or after the effective date of
22 this Act. A cause of action that accrues before the effective date
23 of this Act is governed by the law in effect immediately before that
24 date, and that law is continued in effect for that purpose.

25 SECTION 8. This Act takes effect September 1, 2005.