

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 who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate 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

1 member of a combination as prohibited by the Penal Code;

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

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

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

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

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

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

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

19 (11) aggravated sexual assault as described by Section
20 22.021, Penal Code;

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

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

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

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

1 or

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

4 (b) A person maintains a common nuisance if the person[+
5 ~~[(1) knowingly]~~ maintains a multiunit residential
6 property to which persons habitually go to commit acts listed in
7 Subsection (a) and knowingly tolerates the ~~[following]~~ acts and
8 furthermore fails to make reasonable attempts to abate the acts [+

9 ~~[(A) aggravated assault as described by Section~~
10 ~~22.02, Penal Code,~~

11 ~~[(B) sexual assault as described by Section~~
12 ~~22.011, Penal Code,~~

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

15 ~~[(D) robbery as described by Section 29.02, Penal~~
16 ~~Code,~~

17 ~~[(E) aggravated robbery as described by Section~~
18 ~~29.03, Penal Code,~~

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

21 ~~[(G) murder as described by Section 19.02, Penal~~
22 ~~Code, or~~

23 ~~[(H) capital murder as described by Section~~
24 ~~19.03, Penal Code, and~~

25 ~~[(2) has failed to make reasonable attempts to abate~~
26 ~~such acts].~~

27 SECTION 3. Section 125.002, Civil Practice and Remedies

1 Code, is amended by amending Subsection (b) and adding Subsection
2 (h) to read as follows:

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

13 (h) A person who may bring a suit under Section 125.0015
14 shall consider, among other factors, whether the property owner,
15 the owner's authorized representative, or the operator or occupant
16 of the business, dwelling, or other place where the criminal acts
17 occurred:

18 (1) promptly notifies the appropriate governmental
19 entity or the entity's law enforcement agency of the occurrence of
20 criminal acts on the property; and

21 (2) cooperates with the governmental entity's law
22 enforcement investigation of criminal acts occurring at the
23 property.

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

27 (a) Proof that an activity described by Section 125.0015 is

1 frequently committed at the place involved or that the place is
2 frequently used for an activity described by Section 125.0015 is
3 prima facie evidence that the defendant knowingly tolerated
4 ~~[permitted]~~ the activity.

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

14 (d) Notwithstanding Subsection (a), evidence that the
15 defendant, the defendant's authorized representative, or another
16 person acting at the direction of the defendant or the defendant's
17 authorized representative requested law enforcement or emergency
18 assistance with respect to an activity at the place where the common
19 nuisance is allegedly maintained is not admissible for the purpose
20 of showing the defendant tolerated the activity or failed to make
21 reasonable attempts to abate the activity alleged to constitute the
22 nuisance but may be admitted for other purposes, such as showing
23 that a crime listed in Section 125.0015 occurred. Evidence that the
24 defendant refused to cooperate with law enforcement or emergency
25 services with respect to the activity is admissible. The posting of
26 a sign prohibiting the activity alleged is not conclusive evidence
27 that the owner did not tolerate the activity.

1 SECTION 5. Section 125.044, Civil Practice and Remedies
2 Code, is amended by amending Subsection (b) and adding Subsection
3 (b-1) to read as follows:

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

5 (1) proof that acts creating a common nuisance are
6 frequently committed at the place is prima facie evidence that the
7 owner and the operator knowingly tolerated [~~permitted~~]
8 ~~and~~

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

14 (3) notwithstanding Subdivision (1), evidence that
15 the defendant, the defendant's authorized representative, or
16 another person acting at the direction of the defendant or the
17 defendant's authorized representative requested law enforcement or
18 emergency assistance with respect to an activity at the place where
19 the common nuisance is allegedly maintained is not admissible for
20 the purpose of showing the defendant tolerated the activity or
21 failed to make reasonable attempts to abate the activity alleged to
22 constitute the nuisance but may be admitted for other purposes,
23 such as showing that a crime listed in Section 125.0015 occurred.
24 Evidence that the defendant refused to cooperate with law
25 enforcement or emergency services with respect to the activity is
26 admissible.

27 (b-1) The posting of a sign prohibiting the activity alleged

1 is not conclusive evidence that the owner did not tolerate the
2 activity.

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

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

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

President of the Senate

Speaker of the House

I certify that H.B. No. 1690 was passed by the House on April 22, 2005, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 1690 on May 26, 2005, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1690 on May 29, 2005, by a non-record vote.

Chief Clerk of the House

H.B. No. 1690

I certify that H.B. No. 1690 was passed by the Senate, with amendments, on May 23, 2005, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1690 on May 29, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor