

By: Keel

H.B. No. 1690

A BILL TO BE ENTITLED

AN ACT

relating to the elements of common nuisance.

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

SECTION 1. Section 125.0015, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 125.0015. COMMON NUISANCE. (a) A person who intentionally [~~knowingly~~] maintains a place to which persons habitually go for the following purposes 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;

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

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

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

(7) compelling prostitution as prohibited by the Penal

1 Code; or

2 (8) commercial manufacture, commercial distribution,
3 or commercial exhibition of obscene material as prohibited by the
4 Penal Code.

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

6 (1) intentionally [~~knowingly~~] maintains a multiunit
7 residential property to which persons habitually go to commit the
8 following 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 19.03,
24 Penal Code; and

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

27 SECTION 2. Section 125.004, Civil Practice and Remedies

1 Code, is amended by amending Subsections (a) and (b) to read as
2 follows:

3 (a) Proof that an activity described by Section 125.0015 is
4 frequently committed at the place involved or that the place is
5 frequently used for an activity described by Section 125.0015 is
6 prima facie evidence that the defendant intentionally [~~knowingly~~]
7 permitted the activity.

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

17 SECTION 3. Section 125.044(b), Civil Practice and Remedies
18 Code, is amended to read as follows:

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

20 (1) proof that acts creating a common nuisance are
21 frequently committed at the place is prima facie evidence that the
22 owner and the operator intentionally [~~knowingly~~] permitted the
23 acts; and

24 (2) evidence that persons have been arrested for or
25 convicted of offenses involving acts at the place that create a
26 common nuisance is admissible to show intention [~~knowledge~~] on the
27 part of the owner and the operator with respect to [~~that~~] the acts

1 that occurred.

2 SECTION 4. The change in law made by this Act applies only
3 to a cause of action that accrues on or after the effective date of
4 this Act. A cause of action that accrues before the effective date
5 of this Act is governed by the law in effect immediately before that
6 date, and that law is continued in effect for that purpose.

7 SECTION 5. This Act takes effect September 1, 2005.