

1-1 By: Keel, et al. (Senate Sponsor - West) H.B. No. 1690
1-2 (In the Senate - Received from the House April 25, 2005;
1-3 April 26, 2005, read first time and referred to Committee on State
1-4 Affairs; May 18, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
1-6 May 18, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1690 By: Madla

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

1-10 relating to common nuisance.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 125.001(3), Civil Practice and Remedies
1-13 Code, is amended to read as follows:

1-14 (3) "Multiunit residential property" means improved
1-15 real property with at least three dwelling units, including an
1-16 apartment building, condominium, hotel, or motel. The term does
1-17 not include [+

1-18 ~~[(A) a property in which each dwelling unit is~~
1-19 ~~occupied by the owner of the property; or~~

1-20 ~~[(B)] a single-family home or duplex.~~

1-21 SECTION 2. Section 125.0015, Civil Practice and Remedies
1-22 Code, is amended to read as follows:

1-23 Sec. 125.0015. COMMON NUISANCE. (a) A person who
1-24 ~~[knowingly]~~ maintains a place to which persons habitually go for
1-25 the following purposes and knowingly tolerates the activity
1-26 maintains a common nuisance:

1-27 (1) discharge of a firearm in a public place as
1-28 prohibited by the Penal Code;

1-29 (2) reckless discharge of a firearm as prohibited by
1-30 the Penal Code;

1-31 (3) engaging in organized criminal activity as a
1-32 member of a combination as prohibited by the Penal Code;

1-33 (4) delivery, possession, manufacture, or use of a
1-34 controlled substance in violation of Chapter 481, Health and Safety
1-35 Code;

1-36 (5) gambling, gambling promotion, or communicating
1-37 gambling information as prohibited by the Penal Code;

1-38 (6) prostitution, promotion of prostitution, or
1-39 aggravated promotion of prostitution as prohibited by the Penal
1-40 Code;

1-41 (7) compelling prostitution as prohibited by the Penal
1-42 Code; ~~[or]~~

1-43 (8) commercial manufacture, commercial distribution,
1-44 or commercial exhibition of obscene material as prohibited by the
1-45 Penal Code;

1-46 (9) aggravated assault as described by Section 22.02,
1-47 Penal Code;

1-48 (10) sexual assault as described by Section 22.011,
1-49 Penal Code;

1-50 (11) aggravated sexual assault as described by Section
1-51 22.021, Penal Code;

1-52 (12) robbery as described by Section 29.02, Penal
1-53 Code;

1-54 (13) aggravated robbery as described by Section 29.03,
1-55 Penal Code;

1-56 (14) unlawfully carrying a weapon as described by
1-57 Section 46.02, Penal Code;

1-58 (15) murder as described by Section 19.02, Penal Code;
1-59 or

1-60 (16) capital murder as described by Section 19.03,
1-61 Penal Code.

1-62 (b) A person maintains a common nuisance if the person:

1-63 (1) ~~[knowingly]~~ maintains a multiunit residential

2-1 property to which persons habitually go to commit acts listed in
 2-2 Subsection (a) and knowingly tolerates the [following] acts[+]
 2-3 [(A) aggravated assault as described by Section
 2-4 22.02, Penal Code,
 2-5 [(B) sexual assault as described by Section
 2-6 22.011, Penal Code,
 2-7 [(C) aggravated sexual assault as described by
 2-8 Section 22.021, Penal Code,
 2-9 [(D) robbery as described by Section 29.02, Penal
 2-10 Code,
 2-11 [(E) aggravated robbery as described by Section
 2-12 29.03, Penal Code,
 2-13 [(F) unlawfully carrying a weapon as described by
 2-14 Section 46.02, Penal Code,
 2-15 [(C) murder as described by Section 19.02, Penal
 2-16 Code; or
 2-17 [(H) capital murder as described by Section
 2-18 19.03, Penal Code]; and

2-19 (2) has failed to make reasonable attempts to abate
 2-20 such acts.

2-21 SECTION 3. Section 125.002(b), Civil Practice and Remedies
 2-22 Code, is amended to read as follows:

2-23 (b) A person may bring a suit under Subsection (a) against
 2-24 any person who maintains, owns, uses, or is a party to the use of a
 2-25 place for purposes constituting a nuisance under this subchapter
 2-26 and may bring an action in rem against the place itself. A council
 2-27 of owners, as defined by Section 81.002, Property Code, or a unit
 2-28 owners' association organized under Section 82.101, Property Code,
 2-29 may be sued under this subsection if the council or association
 2-30 maintains, owns, uses, or is a party to the use of the common areas
 2-31 of the council's or association's condominium for purposes
 2-32 constituting a nuisance.

2-33 SECTION 4. Section 125.004, Civil Practice and Remedies
 2-34 Code, is amended by amending Subsections (a) and (b) and adding
 2-35 Subsection (d) to read as follows:

2-36 (a) Proof that an activity described by Section 125.0015 is
 2-37 frequently committed at the place involved or that the place is
 2-38 frequently used for an activity described by Section 125.0015 is
 2-39 prima facie evidence that the defendant knowingly tolerated
 2-40 [permitted] the activity.

2-41 (b) Evidence that persons have been arrested for or
 2-42 convicted of offenses for an activity described by Section 125.0015
 2-43 in the place involved is admissible to show knowledge on the part of
 2-44 the defendant with respect to [that] the act that occurred. The
 2-45 originals or certified copies of the papers and judgments of those
 2-46 arrests or convictions are admissible in the suit for injunction,
 2-47 and oral evidence is admissible to show that the offense for which a
 2-48 person was arrested or convicted was committed at the place
 2-49 involved.

2-50 (d) Notwithstanding Subsection (a), evidence that the
 2-51 defendant, the defendant's authorized representative, or another
 2-52 person acting at the direction of the defendant or the defendant's
 2-53 authorized representative requested law enforcement or emergency
 2-54 assistance with respect to an activity at the place where the common
 2-55 nuisance is allegedly maintained is not admissible for the purpose
 2-56 of showing the defendant tolerated the activity alleged to
 2-57 constitute the nuisance but may be admitted for other purposes,
 2-58 such as showing that a crime listed in Section 125.0015 occurred.
 2-59 Evidence that the defendant refused to cooperate with law
 2-60 enforcement or emergency services with respect to the activity is
 2-61 admissible.

2-62 SECTION 5. Section 125.044(b), Civil Practice and Remedies
 2-63 Code, is amended to read as follows:

2-64 (b) In a proceeding begun under Subsection (a):

2-65 (1) proof that acts creating a common nuisance are
 2-66 frequently committed at the place is prima facie evidence that the
 2-67 owner and the operator knowingly tolerated [permitted] the acts;
 2-68 [and]

2-69 (2) evidence that persons have been arrested for or

3-1 convicted of offenses involving acts at the place that create a
3-2 common nuisance is admissible to show knowledge on the part of the
3-3 owner and the operator with respect to ~~[that]~~ the acts that
3-4 occurred; and

3-5 (3) notwithstanding Subdivision (1), evidence that
3-6 the defendant, the defendant's authorized representative, or
3-7 another person acting at the direction of the defendant or the
3-8 defendant's authorized representative requested law enforcement or
3-9 emergency assistance with respect to an activity at the place where
3-10 the common nuisance is allegedly maintained is not admissible for
3-11 the purpose of showing the defendant tolerated the activity alleged
3-12 to constitute the nuisance but may be admitted for other purposes,
3-13 such as showing that a crime listed in Section 125.0015 occurred.
3-14 Evidence that the defendant refused to cooperate with law
3-15 enforcement or emergency services with respect to the activity is
3-16 admissible.

3-17 SECTION 6. It is the intent of the legislature that the
3-18 passage by the 79th Legislature, Regular Session, 2005, of House
3-19 Bill No. 2086 or another bill that repeals Chapter 125, Civil
3-20 Practice and Remedies Code, and adds other law governing common or
3-21 public nuisance and the amendments made by this Act shall be
3-22 harmonized, if possible, as provided by Section 311.025(b),
3-23 Government Code, so that effect may be given to each. If the
3-24 amendments made by this Act to Chapter 125, Civil Practice and
3-25 Remedies Code, and the amendments made by House Bill No. 2086 or any
3-26 other bill that repeals Chapter 125, Civil Practice and Remedies
3-27 Code, and adds other law governing common or public nuisance are
3-28 irreconcilable, it is the intent of the legislature that this Act
3-29 prevail, regardless of the relative dates of enactment of this Act
3-30 and any other bill, but only to the extent that any differences are
3-31 irreconcilable.

3-32 SECTION 7. The change in law made by this Act applies only
3-33 to a cause of action that accrues on or after the effective date of
3-34 this Act. A cause of action that accrues before the effective date
3-35 of this Act is governed by the law in effect immediately before that
3-36 date, and that law is continued in effect for that purpose.

3-37 SECTION 8. This Act takes effect September 1, 2005.

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