

By: Hochberg

H.B. No. 2086

A BILL TO BE ENTITLED

AN ACT

relating to abatement of certain nuisances; providing a penalty.

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

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 138 to read as follows:

CHAPTER 138. NUISANCES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 138.001. DEFINITIONS. In this chapter:

(1) "Combination" and "criminal street gang" have the meanings assigned by Section 71.01, Penal Code.

(2) "Gang activity" means the following types of conduct:

(A) organized criminal activity as described by Section 71.02, Penal Code;

(B) terroristic threat as described by Section 22.07, Penal Code;

(C) coercing, soliciting, or inducing gang membership as described by Section 22.015, Penal Code;

(D) criminal trespass as described by Section 30.05, Penal Code;

(E) disorderly conduct as described by Section 42.01, Penal Code;

(F) criminal mischief as described by Section 28.03, Penal Code, that causes a pecuniary loss of \$500 or more;

1                   (G) a graffiti offense in violation of Section  
2 28.08, Penal Code, that:

3                   (i) causes a pecuniary loss of \$500 or more;  
4 or

5                   (ii) occurs at a school, an institution of  
6 higher education, a place of worship or human cemetery, a public  
7 monument, or a community center that provides medical, social, or  
8 educational programs;

9                   (H) a weapons offense in violation of Chapter 46,  
10 Penal Code; or

11                   (I) unlawful possession of a substance or other  
12 item in violation of Chapter 481, Health and Safety Code.

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

17                   (A) a property in which each dwelling unit is  
18 occupied by the owner of the property; or

19                   (B) a single-family home or duplex.

20                   (4) "Nuisance" means a nuisance maintained as  
21 described by Subchapter B.

22                   Sec. 138.002. CHAPTER NOT APPLICABLE TO BOOKSTORE OR MOVIE  
23 THEATER. Notwithstanding any other provision of this chapter, this  
24 chapter does not authorize an action to enjoin and abate a nuisance  
25 against any enterprise whose sole business is that of a bookstore or  
26 movie theater.

27                   [Sections 138.003–138.050 reserved for expansion]

1                   SUBCHAPTER B. MAINTENANCE OF NUISANCES

2                   Sec. 138.051. KNOWING MAINTENANCE OF PLACE TO WHICH PERSONS  
3 HABITUALLY GO FOR CERTAIN PURPOSES. A person maintains a nuisance  
4 if the person knowingly maintains a place to which persons  
5 habitually go for the following purposes:

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

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

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

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

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

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

20                   (7) compelling prostitution as prohibited by the Penal  
21 Code; or

22                   (8) commercial manufacture, commercial distribution,  
23 or commercial exhibition of obscene material as prohibited by the  
24 Penal Code.

25                   Sec. 138.052. MAINTENANCE OF MULTIUNIT RESIDENTIAL  
26 PROPERTY TO WHICH PERSONS HABITUALLY GO TO COMMIT CERTAIN ACTS. A  
27 person maintains a nuisance if the person:

1           (1) knowingly maintains a multiunit residential  
2 property to which persons habitually go to commit the following  
3 acts:

4                   (A) aggravated assault as described by Section  
5 22.02, Penal Code;

6                   (B) sexual assault as described by Section  
7 22.011, Penal Code;

8                   (C) aggravated sexual assault as described by  
9 Section 22.021, Penal Code;

10                   (D) robbery as described by Section 29.02, Penal  
11 Code;

12                   (E) aggravated robbery as described by Section  
13 29.03, Penal Code;

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

16                   (G) murder as described by Section 19.02, Penal  
17 Code; or

18                   (H) capital murder as described by Section 19.03,  
19 Penal Code; and

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

22           Sec. 138.053. COMBINATION OR CRIMINAL STREET GANG. (a) A  
23 combination or a criminal street gang is a nuisance if the  
24 combination or gang engages in gang activity at least five times  
25 during a period of six months or less.

26           (b) A person maintains a nuisance if the person knowingly  
27 maintains a place habitually used by a combination or criminal

1 street gang engaging in gang activity.

2 [Sections 138.054-138.100 reserved for expansion]

3 SUBCHAPTER C. INITIATION OF ACTION

4 Sec. 138.101. WHO MAY BRING AN ACTION. (a) An action to  
5 enjoin and abate a nuisance may be brought by:

6 (1) the attorney general;

7 (2) a district, county, or municipal attorney; or

8 (3) an individual.

9 (b) The action must be brought in the name of:

10 (1) the state if brought by the attorney general or a  
11 district or county attorney;

12 (2) the municipality if brought by a municipal  
13 attorney; or

14 (3) the individual if brought by a private citizen.

15 Sec. 138.102. REQUEST FOR MEETING. (a) The voters of an  
16 election precinct in which a nuisance is alleged to exist or is  
17 alleged to be likely to be created, or the voters in an adjacent  
18 election precinct, may request the district attorney, municipal  
19 attorney, or county attorney having geographical jurisdiction of  
20 the place that is the subject of the voters' complaints to authorize  
21 a meeting at which interested persons may state their complaints  
22 about the matter.

23 (b) The written request must be signed by at least:

24 (1) 10 percent of the registered voters of the  
25 election precinct in which the nuisance is alleged to exist or is  
26 alleged to be likely to be created; or

27 (2) 20 percent of the voters of the adjacent election

1 precinct.

2 Sec. 138.103. NOTICE OF MEETING. The district attorney,  
3 municipal attorney, or county attorney receiving a request under  
4 Section 138.102 may:

5 (1) post notice of the purpose, time, and place of the  
6 meeting at either the county courthouse of the county or the  
7 municipal hall of the municipality in which the place that is the  
8 subject of the complaints is located and publish the notice in a  
9 newspaper of general circulation published in that county or  
10 municipality; and

11 (2) serve the notice, by personal service, to the  
12 owner and the operator of the place.

13 Sec. 138.104. MEETING; FINDINGS. (a) On receipt of a  
14 request under Section 138.102 and posting of notice under Section  
15 138.103, the district attorney, municipal attorney, or county  
16 attorney may appoint a person to conduct the meeting at a location  
17 as near as practical to the place that is the subject of the  
18 complaints.

19 (b) After the meeting, the person appointed to conduct the  
20 meeting shall report the findings to the district attorney,  
21 municipal attorney, or county attorney who appointed the person.

22 Sec. 138.105. INITIATION OF PROCEEDINGS. The district  
23 attorney, municipal attorney, or county attorney shall evaluate the  
24 findings of the person appointed to conduct the meeting under  
25 Section 138.104. On a determination by the attorney that a nuisance  
26 exists or is likely to be created, the attorney may initiate  
27 appropriate available proceedings against the persons owning or

1 operating the place at which the nuisance exists or is likely to be  
2 created.

3 [Sections 138.106-138.150 reserved for expansion]

4 SUBCHAPTER D. PROCEDURE

5 Sec. 138.151. VENUE. An action to enjoin and abate a  
6 nuisance must be brought in the county in which it is alleged to  
7 exist.

8 Sec. 138.152. PETITION. The petition to enjoin and abate a  
9 nuisance:

10 (1) need not be verified; and

11 (2) need not show proof of personal injury, including  
12 economic or monetary loss.

13 Sec. 138.153. ACTION INVOLVING USE OF REAL PROPERTY. A  
14 person may bring an action to enjoin and abate a nuisance involving  
15 the use of real property:

16 (1) against any person who maintains, owns, uses, or  
17 engages in gang activity at the property; or

18 (2) in rem against the property itself.

19 Sec. 138.154. SERVICE. Service of any order, notice,  
20 process, motion, or ruling of the court on the attorney of record of  
21 an action under this chapter is sufficient service of the party  
22 represented by an attorney.

23 Sec. 138.155. BOND. (a) If, after notice and hearing on a  
24 request by a petitioner for a temporary injunction, a court  
25 determines that the petitioner is likely to succeed on the merits in  
26 an action brought under this subchapter, the court shall require  
27 that the defendant execute a bond.

1           (b) The bond must:

2                   (1) be payable to the state at the county seat of the  
3 county in which the place is located;

4                   (2) be in the amount set by the court, but not less  
5 than \$1,000 or more than \$10,000;

6                   (3) have sufficient sureties approved by the court;  
7 and

8                   (4) be conditioned that the defendant will not  
9 knowingly maintain a nuisance to exist at the place.

10           Sec. 138.156. NOTICE OF LIS PENDENS. (a) In an action to  
11 enjoin and abate a nuisance, the petitioner may file a notice of lis  
12 pendens and a certified copy of an order of the court in the office  
13 of the county clerk in each county in which the land is located.

14           (b) The notice of lis pendens:

15                   (1) must conform to the requirements of Section  
16 12.007, Property Code; and

17                   (2) constitutes notice as provided by Section 13.004,  
18 Property Code.

19           (c) A certified copy of an order of the court filed in the  
20 office of the county clerk:

21                   (1) constitutes notice of the terms of the order; and

22                   (2) binds subsequent purchasers and lienholders.

23           Sec. 138.157. EVIDENCE. In an action to enjoin or abate a  
24 nuisance involving certain activity at a place:

25                   (1) proof that an activity is frequently committed at  
26 the place or that the place is frequently used for an activity is  
27 prima facie evidence that the defendant knowingly permitted the



1 activity, unless the activity is conspiring to commit gang  
2 activity;

3 (2) evidence that persons have been arrested for or  
4 convicted of offenses for an activity at the place is admissible to  
5 show knowledge on the part of the defendant that the activity  
6 occurred;

7 (3) originals or certified copies of the papers and  
8 judgments of arrests or convictions described by Subdivision (2)  
9 are admissible;

10 (4) oral evidence is admissible to show that the  
11 offense for which a person was arrested or convicted was committed  
12 at the place; and

13 (5) evidence of the general reputation of the place is  
14 admissible to show the existence of the nuisance.

15 Sec. 138.158. TRIAL ON THE MERITS. If an appeal is not  
16 taken by a party temporarily enjoined under this chapter, the  
17 parties are entitled to a full trial on the merits not later than  
18 the 90th day after the date of the temporary injunctive order.

19 [Sections 138.159–138.200 reserved for expansion]

20 SUBCHAPTER E. ENFORCEMENT

21 Sec. 138.201. COURT ORDER. (a) If judgment in an action  
22 under this chapter is in favor of the petitioner, the court shall  
23 enter an order:

24 (1) enjoining the defendant from maintaining or  
25 participating in the nuisance; and

26 (2) ordering that the defendant abate the nuisance.

27 (b) The court may include in its order other reasonable

1 requirements to prevent the use or maintenance of the place as a  
2 nuisance.

3 (c) For a nuisance described by Section 138.053, the court  
4 may include in its order other reasonable requirements to prevent  
5 the combination or gang from engaging in future gang activities.

6 Sec. 138.202. VIOLATION OF COURT ORDER. A court that finds  
7 a person in violation of a temporary or permanent injunctive order  
8 issued to enjoin or abate a nuisance may find the person in civil  
9 contempt and order the person to:

10 (1) pay a fine of not less than \$1,000 or more than  
11 \$10,000;

12 (2) be confined to jail for a term of not less than 10  
13 or more than 30 days; or

14 (3) submit to both the fine and confinement.

15 Sec. 138.203. ACTION IN REM; BOND. (a) If a person brings  
16 an action to enjoin and abate a nuisance in rem, a judgment in favor  
17 of the petitioner is a judgment in rem against the property as well  
18 as a judgment against the defendant.

19 (b) The judgment must order that the real property where the  
20 nuisance exists be closed for one year after the date of judgment  
21 unless the defendant or the property owner, lessee, or tenant of the  
22 property posts bond.

23 (c) The bond must:

24 (1) be payable to the state at the county seat of the  
25 county in which the nuisance exists;

26 (2) be in the penal sum of \$10,000;

27 (3) have sufficient sureties approved by the court;

1 and

2 (4) be conditioned that the property will not be used  
3 or permitted to be used for the activity that is the nuisance.

4 Sec. 138.204. VIOLATION OF BOND; SUING ON BOND IF COURT  
5 ORDER VIOLATED. (a) If a condition of a bond filed or an injunctive  
6 order entered to enjoin or abate a nuisance at a place is violated,  
7 the district, county, or municipal attorney of the county in which  
8 the place is located or the attorney general shall sue on the bond  
9 in the name of the state.

10 (b) If the attorney general originates the action, the whole  
11 sum shall be forfeited as a penalty to the state. If the action is  
12 originated by any office other than the attorney general, the whole  
13 sum shall be forfeited as a penalty to the originating entity.

14 (c) On violation of any condition of the bond or of the  
15 injunctive order and subsequent to forfeiture of the bond, the real  
16 property where the nuisance exists shall be ordered closed for one  
17 year from the date of the order of bond forfeiture.

18 Sec. 138.205. COSTS. A party successfully bringing an  
19 action to enjoin or abate a nuisance may recover reasonable  
20 expenses incurred in prosecuting the action, including  
21 investigative costs, court costs, witness fees, and deposition  
22 fees.

23 Sec. 138.206. ATTORNEY'S FEES. (a) In an action to enjoin  
24 or abate a nuisance, the court may award a prevailing party  
25 reasonable attorney's fees in addition to costs.

26 (b) In determining the amount of attorney's fees, the court  
27 shall consider:

- 1           (1) the time and labor involved;
- 2           (2) the novelty and difficulty of the questions;
- 3           (3) the expertise, reputation, and ability of the  
4 attorney; and
- 5           (4) any other factor considered relevant by the court.

6           Sec. 138.207. ADDITIONAL REMEDIES. If any party to a  
7 nuisance action under this chapter does not cease and desist  
8 creating and maintaining a nuisance within the time allowed by the  
9 court, a political subdivision may:

- 10           (1) discontinue the furnishing of utility services by  
11 the political subdivision to the place at which the nuisance  
12 exists;
- 13           (2) prohibit the furnishing of utility service to the  
14 place by any public utility holding a franchise to use the streets  
15 and alleys of the political subdivision;
- 16           (3) revoke the certificate of occupancy of the place;
- 17           (4) prohibit the use of municipal streets, alleys, and  
18 other public ways for access to the place during the existence of  
19 the nuisance or in furtherance of the nuisance; and
- 20           (5) use any other legal remedy available under the  
21 laws of the state.

22           Sec. 138.208. RECEIVERSHIP. (a) A court that determines  
23 that a person is maintaining a multiunit residential property that  
24 is a nuisance may, on its own motion or on the motion of any party,  
25 order the appointment of a receiver to manage the property or render  
26 any other order allowed by law as necessary to abate the nuisance.

27           (b) A receiver appointed under this section may not be

1 appointed for a period longer than one year.

2 (c) The court shall determine the management duties of the  
3 receiver, the amount to be paid the receiver, the method of payment,  
4 and the payment periods.

5 (d) A receiver appointed under this section shall continue  
6 to manage the property during the pendency of any appeal relating to  
7 the nuisance or the appointment of the receiver.

8 (e) A receiver appointed by the court may:

9 (1) take control of the property;

10 (2) collect rents due on the property;

11 (3) make or have made any repairs necessary to bring  
12 the property into compliance with minimum standards in local  
13 ordinances;

14 (4) make payments necessary for the maintenance or  
15 restoration of utilities to the property;

16 (5) purchase materials necessary to accomplish  
17 repairs;

18 (6) renew existing rental contracts and leases;

19 (7) enter into new rental contracts and leases;

20 (8) affirm, renew, or enter into a new contract  
21 providing for insurance coverage on the property; and

22 (9) exercise all other authority that an owner of the  
23 property would have except for the authority to sell the property.

24 (f) Expenditures of money by the receiver in excess of  
25 \$10,000 under Subsections (e)(3) and (5) must be approved in  
26 advance by the court.

27 (g) On the completion of the receivership, the receiver

1 shall file with the court a full accounting of all costs and  
2 expenses incurred in the repairs, including reasonable costs for  
3 labor and subdivision, and all income received from the property.

4 [Sections 138.209-138.250 reserved for expansion]

5 SUBCHAPTER F. APPEAL

6 Sec. 138.251. DISCONTINUATION OF ACTIVITIES PENDING TRIAL  
7 OR APPEAL. A person may not continue the enjoined activity pending  
8 appeal or trial on the merits of an injunctive order entered in an  
9 action brought under this chapter.

10 Sec. 138.252. TIME OF APPEAL. Not later than the 90th day  
11 after the date of the injunctive order, the appropriate court of  
12 appeals shall hear and decide an appeal taken by a party enjoined  
13 under this chapter.

14 [Sections 138.253-138.300 reserved for expansion]

15 SUBCHAPTER G. NUISANCE ABATEMENT FUND

16 Sec. 138.301. DEFINITIONS. In this subchapter:

17 (1) "Fund" means a nuisance abatement fund.

18 (2) "Nuisance abatement" means an activity taken by a  
19 municipality to reduce the occurrences of a nuisance under this  
20 chapter.

21 Sec. 138.302. APPLICABILITY. This subchapter applies only  
22 to a municipality with a population of 1.5 million or more.

23 Sec. 138.303. NUISANCE ABATEMENT FUND. (a) A municipality  
24 to which this subchapter applies shall create a fund as a separate  
25 account in the treasury of the municipality.

26 (b) The fund consists of:

27 (1) money awarded the municipality in an action under

1 this chapter;

2 (2) money awarded the municipality under a settlement  
3 to an action under this chapter;

4 (3) fines resulting from code enforcement citations  
5 issued by the municipality for conduct defined as a nuisance under  
6 this chapter;

7 (4) bonds forfeited to the municipality under this  
8 chapter; and

9 (5) donations or grants made to the municipality for  
10 the purpose of nuisance abatement.

11 Sec. 138.304. USE OF FUND. The money in the fund may be used  
12 only for the purpose of ongoing nuisance abatement, including:

13 (1) regular and overtime compensation for nuisance  
14 abatement or enforcement personnel; and

15 (2) hiring additional personnel for nuisance  
16 abatement as needed.

17 SECTION 2. Section 41.005(b), Civil Practice and Remedies  
18 Code, is amended to read as follows:

19 (b) The exemption provided by Subsection (a) does not apply  
20 if:

21 (1) the criminal act was committed by an employee of  
22 the defendant;

23 (2) the defendant is criminally responsible as a party  
24 to the criminal act under the provisions of Chapter 7, Penal Code;

25 (3) the criminal act occurred at a location where, at  
26 the time of the criminal act, the defendant was maintaining a  
27 [~~common~~] nuisance under the provisions of Chapter 138 [~~125, Civil~~]

1 ~~Practice and Remedies Code,~~] and had not made reasonable attempts  
2 to abate the nuisance; or

3 (4) the criminal act resulted from the defendant's  
4 intentional or knowing violation of a statutory duty under  
5 Subchapter D, Chapter 92, Property Code, and the criminal act  
6 occurred after the statutory deadline for compliance with that  
7 duty.

8 SECTION 3. Chapter 125, Civil Practice and Remedies Code,  
9 is repealed.

10 SECTION 4. This Act applies only to a cause of action that  
11 accrues on or after the effective date of this Act. A cause of  
12 action that accrues before the effective date of this Act is  
13 governed by the law in effect at the time the cause of action  
14 accrued, and that law is continued in effect for that purpose.

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