

SUBJECT: Revising nuisance law

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 6 ayes — Nixon, Gattis, Y. Davis, King, Rose, Woolley  
0 nays  
3 absent — Capelo, Hartnett, Krusee

WITNESSES: For — Larry Casto, City of Dallas.  
Against — None

BACKGROUND: Civil Practices and Remedies Code, sec. 125.001 addresses common nuisances. A common nuisance is a nuisance that affects the public in general, such as prostitution. An owner or landlord maintains a common nuisance by knowingly maintaining a property where people habitually go to commit unlawful acts, such as aggravated assault, robbery, or unlawfully carrying a weapon, and doing nothing to prevent these acts. If an injunction is granted following a suit to abate a common nuisance, the defendant may be ordered to stop maintaining or participating in the nuisance, and the place where the nuisance occurred can be closed for one year unless the defendant posts a bond. An injunction against a common nuisance is effective against the owner of the land to whom it was issued and does not run with the land.

Current law allows proof of convictions for crimes committed on a property as *prime facie* evidence that a property owner had knowledge of illegal activities on the property. When an owner cannot be found or served, a municipality may seek an injunction through an action *in rem* (i.e., an action against the property). Upon commencing an action for injunction, some municipalities file a notice of *lis pendens*, warning prospective buyers that there is an action pending against the property.

Sec. 125.021 addresses public nuisances. A public nuisance is the habitual use or threatened habitual use of a place for certain purposes such as gambling, promoting prostitution, and commercial manufacturing of obscene material.

Membership in a criminal street gang, so long as the gang continuously or regularly associates in criminal activity, constitutes maintaining a public nuisance. This nuisance can be abated in a procedure similar to other nuisances. Proof that gang activity frequently is committed in a place, or that a place is frequently used for engaging in gang activity, can be used as *prima facie* evidence that the owner or landlord knowingly permitted the act.

DIGEST:

CSHB 2813 would replace “public nuisance” with “common nuisance” throughout Civil Practices Code, ch. 125. It would define common nuisance to include specific types of gambling, prostitution, and other acts. CSHB 2813 would add murder and capital murder to the list of acts that would constitute maintaining a common nuisance for a multi-unit residential property.

In a suit to abate a common nuisance, CSHB 2813 would provide that a person who violated an injunctive order be held in civil contempt and either jailed for 10 to 30 days or fined from \$1,000 to \$10,000, or both. The bill would allow the judge to include in the injunction order the reasonable requirements to prevent the use or maintenance of the place as a nuisance.

CSHB 2813 would allow proof that persons have been arrested or convicted for an activity constituting a common nuisance on a piece of property as evidence that a defendant knowingly permitted the activity.

The bill would allow a temporary injunction to be granted after a hearing if it was shown that the petitioner likely would succeed on the merits of the suit. The defendant would be required to post a bond and, if a condition of the bond was violated, the district, county, or city attorney of the county in which the property was located, or the attorney general, could sue on the bond. If the suit was brought by the attorney general, the state would receive the amount of the bond. If the suit was brought by any other office, the whole sum would be forfeited as a penalty to the originating entity.

CSHB 2813 would create a nuisance abatement fund, which would apply only to municipalities with populations of 1.5 million or more (currently only Houston). The fund would consist of monies awarded to the municipality under this chapter or a settlement of an action under this chapter, fines collected for nuisances, bonds forfeited to the municipality, and donations or grants to the municipality for the purpose of nuisance abatement. The money

in the fund could be used to pay and hire personnel for nuisance abatement purposes.

CSHB 2813 would define “continuously or regularly” and “gang activity” as they pertain to membership in a criminal street gang. It would replace “organized criminal activities” with “gang activities.” A court order against gang activity could impose reasonable requirements to prevent the gang from engaging in future gang activities. A judge could order an additional injunction order that could last up to 180 days after the date of issue.

The bill would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

CSHB 2813, by clarifying the law and providing a designated fund for nuisance enforcement, would help municipalities to crack down on the two problems that most plague them — drug activity and prostitution.

This bill would clarify and modernize nuisance law, which has evolved into two statutes since its enactment in 1923 — one for public nuisances and another for common nuisances. However, the differences between common and public nuisances are so confusing that most people do not understand the distinction. Police and prosecutors must consider both statutes, and it can be difficult to decide which one applies best to a particular situation. CSHB 2813 would clarify these ambiguities, thereby making it easier to determine which statute to apply. It also would modernize the statutes by removing outdated nuisance categories, such as bull fighting.

CSHB 2813 would empower municipalities to bring suit against persons or properties involved in acts that constituted a nuisance. Some matters can be resolved more effectively under civil law than criminal law. For example, it might be easier to shut down a crack house through an injunction than by attempting to prosecute each and every user. It can be very difficult to get sufficient evidence to prosecute even an owner who might have played an active role in the crack house and probably even profited from it. This bill would make it easier for a judge to order the owner to abate the nuisance under civil law.

By allowing a notice of *lis pendens* to be filed, the bill would help prevent sham transactions. Sometimes when property owners are notified that an

action is pending against the property, they will try to sell the property quickly. A *lis pendens* notice placed under these circumstances would serve as a warning to ensure that prospective buyers had knowledge of the pending action.

CASHB 2813 would require an injunction to run with the land, meaning that it could be imposed on subsequent owners. This would prevent an owner from attempting to get around an injunction by selling a nuisance property to a family member. On the other hand, a new owner who bought property, such as a former crack house, with good faith intentions to abate the nuisance should not have a problem with the injunction running with the land. Cities are less interested in punishing new owners than in allowing them to comply with the injunction and turn the property back into a tax-producing property.

CASHB 2813 would improve the value of land surrounding nuisances. Property owners surrounding a piece of land that contains a nuisance, such as a crack house, often have a difficult time getting insurance on their property and selling or renting it. By enhancing the ability of government to deal with nuisances, this bill would help surrounding property owners.

CASHB 2813 would ease the burden on local authorities by allowing records of arrests at nuisance properties to serve as proof of knowledge that illegal activities had in fact taken place. A history of arrests on a piece of property proves that the owner should have known there was a problem. Although the bill does not specify which types of arrests and convictions would be *prime facie* evidence of the owner's knowledge, a judge would have the discretion to decide which ones to consider, and likely would consider only those with some relationship to the alleged nuisance.

This bill would codify current law pertaining to injunctions sought in *in rem* proceedings. A municipality often cannot determine the owner of a particular piece of property because the owner purposely has hidden ownership. Even if a municipality can discover ownership, it still might not be able to serve the owner, if, for example, the owner was an off shore bank account. Common law addresses these problems by allowing a municipality, after using due diligence in taking the appropriate reasonable steps to identify and notify the owner, to bring an *in rem* action for injunction that, if successful, might allow the municipality to abate the nuisance by doing such things as putting a fence

around the property or boarding up the windows.

CSHB 2813 would create a nuisance abatement fund to help officials prevent crime and clean up gang infested areas. Although funds from fines and forfeited bonds already go to municipalities, many do not earmark these funds for nuisance abatement, but instead use them as general funds. Nuisance abatement often is a low funding priority for municipalities, and this bill would dedicate more funds to this purpose.

This bill would give judges discretion on setting a bond and adjusting the amount between a statutory minimum and maximum. It also would allow a judge to issue reasonable restrictions on an injunction based on the facts of the case.

OPPONENTS  
SAY:

CSHB 2813 would make it more difficult for a landowner to sell land with an injunction imposed upon it. A good faith buyer would be unlikely to buy a motel carrying a pending injunction, for example, if the city could require the buyer to shut it down, despite the buyer's good faith intent to abate the nuisance. This would be counterproductive because a nuisance law should facilitate the transformation of nuisances into quality, productive property.

CSHB 2813 should limit the types of arrests or convictions that would be considered to put property owners on notice of a nuisance. A person could be arrested or convicted for a crime that was totally unrelated to a nuisance that might be on the property. For example, owners of an alleged crack house could be considered to have received notice of the nuisance if someone was arrested on their property for an unrelated crime, such as theft. Furthermore, governmental entities rarely notify property owners that a person was arrested on their property, so it would be difficult for owners to learn about an arrest.

The *in rem* actions for injunctions permitted by this bill would be unfair because no one should be allowed to alter someone's property without first giving the owner notice.

CSHB 2813 should allow a judge more discretion in setting a bond. It is not fair that a judge could set a maximum bond of \$10,000 on the owner of a crack house and the same amount on the owner of a large motel. The bond amount should be tailored to the value of the property.

CSHB 2813 is not clear about how much of a multi-unit property would have to be closed down to abate a nuisance. For example, would a nuisance found to exist in one room of a motel require that the entire motel be shut down, or just the room in question? The bill's language should be clarified on such points.

NOTES:

The committee substitute differs from the bill as introduced by allowing a temporary injunction to be issued when the court determines that the petitioner likely would succeed on the merits of the suit. It would allow a bond forfeited due to violation of the injunction order to be forfeited to the governmental entity that sued on the bond. The substitute also would remove bull fighting from the definition of a common nuisance, and adds the portions of the bill pertaining to the nuisance abatement fund and gang activity.

The companion bill, SB 1010 by West, passed in the Senate by voice vote on April 23 and was reported favorably, as substituted, by the House Civil Practices Committee on May 5, making it eligible for consideration in lieu of HB 2813.