

- SUBJECT:** Providing additional remedies for common nuisances
- COMMITTEE:** Urban Affairs — committee substitute recommended
- VOTE:** 5 ayes — Bailey, Murphy, Menendez, Cohen, Latham
0 nays
2 absent — Mallory Caraway, Martinez Fischer
- WITNESSES:** For — Nirja Aiyer, City of Houston; (*Registered, but did not testify:* Darrin Hall, City of Houston-Office of the Mayor; Steve Lyons, Houston Police Department)
Against — None
- BACKGROUND:** Civil Practice and Remedies Code, sec. 125.0015 establishes the elements of a claim against another person for maintaining a common nuisance. A person who knowingly tolerates a multi-unit residential property or other place people habitually go for the following purposes maintains a common nuisance:
- discharge or reckless discharge of a firearm in a public place;
 - engaging in organized criminal activity;
 - delivery, possession, manufacture, or use of a controlled substance;
 - gambling;
 - prostitution or compelling of prostitution;
 - commercial manufacture, distribution, or exhibition of obscene material;
 - aggravated assault;
 - sexual assault or aggravated sexual assault;
 - robbery or aggravated robbery;
 - unlawfully carrying a weapon; or
 - murder or capital murder.
- Sec. 125.002 authorizes an individual, the attorney general, or a local district, county, or city attorney to file suit to abate a common nuisance.

Suit may be filed against any person who maintains, owns, or uses, a place that is a common nuisance as described in sec. 125.0015.

Sec. 125.002(e) states that if a judgment is in favor of the petitioner in a suit to abate a common nuisance, the court shall grant an injunction ordering the defendant to abate the nuisance and enjoining the defendant from maintaining or participating in the nuisance and may include in its order requirements to prevent the use or maintenance of the place as a nuisance. The judgment must order that the place where the nuisance exists be closed for one year after the date of the judgment, unless the defendant or property owner, lessee, or tenant posts bond.

Sec. 125.045 authorizes the court to require a defendant to execute a bond as described in sec. 125.002(f), if after a notice and a hearing, the court determines the petitioner is likely to succeed on the merits of the case.

Under sec. 125.045(b), if a party to the case fails to cease and desist as prescribed by the court, a political subdivision may:

- discontinue the furnishing of utility services by the political division to the place;
- prohibit the furnishing of utility service to the place by a public utility company holding a franchise to use the streets and alleys of the political subdivision;
- revoke the certificate of occupancy of the place;
- prohibit the use of city streets, alleys, and other public ways for access to the place the place; and
- use any other legal remedy available under the state laws.

DIGEST:

CSHB 1551 would amend Civil Practice and Remedies Code, sec. 125.002(e) to eliminate the option for a defendant, property owner, lessee, or tenant against whom a judgment had been rendered in a suit to abate a common nuisance to post bond to avoid a court-ordered closure.

The bill also would amend sec. 125.045(a) to permit a court in a petition for a temporary injunction, upon determining that the petitioner was likely to succeed on the merits, to order a landlord to terminate a tenant's lease, if a landlord and tenant were parties to the suit, and to order any reasonable requirements to prevent the maintenance of the place as a nuisance.

If a court determined that a condition of an injunctive order had been violated, a court could order a political subdivision to discontinue furnishing utilities, limit the hours of operation not specified by law, or order any other legal remedy available under state law.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

C SHB 1551 would provide more latitude to the courts in enforcing judgments against a defendant maintaining a common nuisance. The nuisance abatement statutes do not provide for the way in which some enforcement provisions may be administered. For example, under current law, a political subdivision may discontinue furnishing utility services to a place maintaining a common nuisance, but it is not clear how this may be accomplished and by what authority.

Strengthening the nuisance abatement statutes would permit property owners to rely on court orders to evict tenants responsible for maintaining common nuisances on their property. Temporary injunctions can take up to six months to process. During this time, tenants may threaten to sue the property owner for breach of a lease contract or refuse to vacate the premises. Property owners become helpless trying to comply with the law and remove criminal activity from their property. The bill would address these concerns by permitting a court to order the eviction of a tenant, providing leverage for property owners against uncooperative tenants.

C SHB 1551 also would free up local resources. Currently, law enforcement must spend a disproportionate amount of time patrolling locations with common nuisance problems. Also, litigation efforts are undermined by a defendant's ability to post bond to avoid a court-ordered closure. The bill would provide counties and municipalities the necessary tools to tackle common nuisances more efficiently and in turn to redirect efforts to other matters of local concern.

Nuisance abatement statutes are in some cases the only recourse against common nuisances. Zoning laws provide some areas of the state with the needed authority to close down businesses or multi-unit residences that produce common nuisances. Areas lacking zoning laws, including counties or cities such as Houston, must rely on nuisance abatement

statutes. It is important to provide counties and municipalities with the proper authority to address these issues and make neighborhoods safer.

CSHB 1551 would address the problem of common nuisances and would provide the courts with the authority to enforce the nuisance abatement statutes after suit had been filed by a county, municipality, or other party.

**OPPONENTS
SAY:**

Stronger nuisance abatement authority might allow for smoother enforcement of court-ordered closures, but would not address the potential for selective targeting of particular businesses or residential communities or cases in which residents and businesses are discouraged from contacting law enforcement.

NOTES:

The committee substitute would authorize a court, rather than the district, county, or city attorney where a property maintaining the nuisance was located, to order discontinuation of utility services, limit hours of operation, or order any other remedy under state law.