

- SUBJECT:** Allowing temporary restraining orders for common nuisance
- COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Leach, Davis, Dutton, Julie Johnson, Krause, Middleton, Moody, Schofield, Smith
- 0 nays
- WITNESSES:** For — Christopher Mosley, City of Fort Worth; Amy Monsivais, El Paso County Attorney and County of El Paso; (*Registered, but did not testify:* Eddie Solis, City of Arlington; Brie Franco, City of Austin; Tammy Embrey, City of Corpus Christi; Guadalupe Cuellar, City of El Paso; Sally Bakko, City of Galveston; Andrew Fortune, City of Grand Prairie; Jamaal Smith, City of Houston, Office of the Mayor Sylvester Turner; Adam Haynes, Conference of Urban Counties; Steve Bresnen and Daniel Collins, County of El Paso; Thamara Narvaez, Harris County Commissioners Court; Monty Wynn, Texas Municipal League; Julie Wheeler, Travis County Commissioners Court)
- Against — None
- BACKGROUND:** Under Civil Practice and Remedies Code sec. 125.0015, a person who maintains a place to which people habitually go for certain purposes — including prostitution, the sale or use of narcotics, illegal gambling, aggravated offenses, and other crimes — and who knowingly tolerates the activity and fails to make reasonable attempts to abate the activity maintains a common nuisance.
- Civil Practice and Remedies Code sec. 125.002 governs lawsuits to abate a common nuisance. Statute requires that if a court finds in favor of the petitioner in such a suit, the court must issue an injunction ordering the defendant to abate the nuisance and enjoining the defendant from maintaining or participating in the nuisance.
- DIGEST:** HB 167 would include temporary restraining orders (TROs), along with

temporary and permanent injunctions, in the forms of injunctive relief that a court could issue in a suit to abate a common nuisance. A court could issue a TRO without a formal hearing only if the person seeking the order showed in an ex parte hearing that a place was maintained in a manner that was a common nuisance or about to become a common nuisance.

A TRO issued under the bill could not last for more than 14 days and would not be:

- an injunctive order for the purposes of statutory provisions related to the execution of a bond and a suit on that bond; or
- a determination by the court that a person was maintaining a common nuisance for the purposes of statutory provisions related to appointment of a receiver.

The bill also would authorize, rather than require, a municipality to create a nuisance abatement fund as a separate account in the municipality's treasury.

The bill would take effect September 1, 2021.

**SUPPORTERS
SAY:**

HB 167 would authorize courts to issue temporary restraining orders (TROs) to abate common nuisances, giving individuals and local and state entities a legal tool to immediately address certain criminal activities. The common nuisance statute deals with specific criminal activities that occur frequently, and this type of criminal activity should justify an immediate remedy to ensure that criminal violations at nuisance properties do not continue any longer than is necessary.

Authorizing courts to issue a TRO for common nuisance would allow for greater efficiency and transparency in the nuisance abatement process. Under current law this process can become redundant when parties are forced to use other sections of code to abate nuisance activity more quickly. HB 167 would allow the use of TROs to immediately and uniformly address nuisance activity within Texas communities.

Currently, a party can seek injunctive relief to abate a common nuisance in the form of a temporary or permanent injunction. However, seeking such relief can be a time-consuming and cumbersome process and does not always prevent criminal activity from occurring because such activity may continue pending an injunction. HB 167 would allow a court to issue a TRO for up to 14 days, which could fill the potential gap between the start of a lawsuit and a hearing for a temporary injunction. The TRO would allow a court to immediately restrain a property from continuing to operate, resulting in quick reduction of criminal activity that currently goes unaddressed and helping to break the cycle of crime at properties addressed under the common nuisance statute.

A TRO issued in an ex parte hearing would have a limited time frame of 14 days, and HB 167 would not change requirements for the issuance of temporary or permanent injunctions. The limited applicability of a TRO issued under the bill would address concerns about private property rights and due process.

**CRITICS
SAY:**

HB 167 would allow a party to seek a temporary restraining order to abate a common nuisance through an ex parte hearing, which could raise concerns about private property rights and adequate due process.