

BILL ANALYSIS

Senate Research Center

S.B. 642
By: Harris
Jurisprudence
4-22-97
As Filed

DIGEST

Currently, the law provides that a place to which persons habitually go for certain prohibited activities is a common nuisance. This provision is limited to gambling, discharge of firearms, organized criminal activity, and certain illegal drug activities. This bill will expand the list of activities that make a place a common nuisance, and provide for the investigation and abatement of those nuisances by the attorney general.

PURPOSE

As proposed, S.B. 642 expands the list of activities that make a place a common nuisance, and provides for the investigation and abatement of those nuisances by the attorney general.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 125.001, Civil Practice and Remedies Code, to provide that a person who knowingly maintains a place to which persons habitually go for the purpose of public lewdness, obscene activity, or indecent exposure in violation of certain sections of the Penal Code, maintains a common nuisance.

SECTION 2. Amends Section 125.002(c), Civil Practice and Remedies Code, to delete a provision requiring a bond in response to a suit to abate a common nuisance to have sufficient sureties approved by the court. Requires the bond to be conditioned that the property will not be used or permitted to be used for a place to which persons habitually go for the purpose of an activity listed under Section 125.001 that the suit was brought to abate. Makes conforming changes.

SECTION 3. Amends Section 125.003, Civil Practice and Remedies Code, by adding Subsection (f), to authorize the court, in an action brought under this chapter, to award a prevailing party investigative costs in addition to costs. Sets forth items the court is required to consider in determining the amount of the investigative costs.

SECTION 4. Amends Section 125.004, Civil Practice and Remedies Code, to provide that proof that an activity described by Section 125.001 is frequently committed at the place involved or that the place is frequently used for an activity described by Section 125.001 is prima facie evidence that the proprietor knowingly permitted the activity. Provides that evidence that persons have been convicted of offenses for an activity described by Section 125.001 in the place involved is admissible to show knowledge on the part of the defendant that the act occurred. Makes conforming changes.

SECTION 5. Amends Section 101.70, Alcoholic Beverage Code, by amending Subsection (c) and adding Subsections (e)-(h), to require the court, if the court finds against the defendant on final judgment to order that the place where the nuisance exists be closed for one year, rather than one year or less, and until the owner, lessee, tenant, or occupant gives bond in cash, rather than gives bond with sufficient surety as approved by the court, in the penal sum of at least \$5,000, rather than \$1,000. Sets forth procedures to be followed if a condition of a bond filed or an injunctive order entered under this section is violated. Provides that proof that violations of this code or the Penal

Code are frequently committed at the place involved is prima facie evidence that the proprietor knowingly permitted the act. Provides that evidence that persons have been convicted of or cited for violating this code or the Penal Code at the premises involved is admissible to show knowledge on the part of the defendant that the act occurred. Sets forth what type of evidence is admissible for this section.

SECTION 6. Amends Section 402.009, Government Code, to authorize the attorney general to employ and commission peace officers, rather than employ and commission as peace officers not more than five persons at any one time as investigators, for the purposes of law enforcement and assisting the attorney general in carrying out the duties of that office, rather than duties of that office relating to prosecution assistance and crime prevention.

SECTION 7. (a) Provides that the attorney general is appropriated all fees assessed and all recovered expenses obtained in actions brought by the attorney general under Chapter 125, Civil Practice and Remedies Code, and Section 101.70, Alcoholic Beverage Code.

(b) Provides that recovered expenses appropriated under Subsection (a) of this section include investigative costs, witness fees, attorney's fees, and deposition expenses.

(c) Authorizes money appropriated under this section to be spent by the attorney general only for the purpose of bringing actions under Chapter 125, Civil Practice and Remedies Code, and Section 101.70, Alcoholic Beverage Code.

SECTION 8. Effective date: September 1, 1997.
Makes application of this Act prospective.

SECTION 9. Emergency clause.