

BILL ANALYSIS

Senate Research Center
79R17778 AJA-D

C.S.H.B. 1690
By: Keel (West, Royce)
State Affairs
5/17/2005
Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Typically, the nuisance code is used to address problem places where the responsible party is not taking the appropriate steps to prevent illegal activity from occurring. S.B. 1010, enacted by the 78th Legislature, Regular Session, 2003, gave jurisdictions the ability to sue certain owners considered unresponsive to initial efforts to address properties that have been determined to be a nuisance by local government bodies.

Further, Section 125.0015, Civil Practice and Remedies Code, states that a person who knowingly maintains a place to which persons go for certain purposes maintains a common nuisance. At least one judge in Texas has determined that simply being aware of the situation, regardless of whether or not an owner has attempted to take steps to fight the nuisance, is sufficient to find the owner liable. In that case, the owner was deemed culpable although he had called the police multiple times and took steps to fight the crime occurring on the premises of the business he owned. Some courts may interpret this section as constituting liability for the owner with the only proof of a mental state required being that the owner is "knowingly maintaining a place" – but no culpability as to tolerating the nuisance.

Under current statute, it is also unclear who is responsible for maintaining nuisance problems in the common areas of a condominium complex. If a condominium complex is experiencing a nuisance problem in the areas jointly owned and shared by all residents, law enforcement officials are required to address the entire complex population. Law enforcement officers need clarification as to who is responsible for the maintenance of recurring illegal activity in common areas of a condominium complex.

C.S.H.B. 1690 clarifies that a council of owners or a unit of the owners' association is responsible for maintaining a nuisance in common areas of properties that have multiple owners. Further, it changes the culpability of the owner from "knowingly" maintaining a nuisance to maintaining and "knowingly tolerating the activity."

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 125.001(3), Civil Practice and Remedies, to redefine "multiunit residential property."

SECTION 2. Amends Section 125.0015, Civil Practice and Remedies Code, as follows:

Sec. 125.0015. COMMON NUISANCE. (a) Provides that a person who maintains a place to which persons habitually go for one of 16, rather than eight, listed purposes and who knowingly tolerates the activity maintains a common nuisance.

(b) Provides that a person maintains a common nuisance if the person maintains a multiunit residential property to which persons habitually go to commit acts listed in Subsection (a) and knowingly tolerates the acts and has failed to make reasonable attempts to abate such acts. Deletes existing text specifying actions that constitute a common nuisance.

SECTION 3. Amends Section 125.002(b), Civil Practice and Remedies Code, to authorize a council of owners, as defined by Section 81.002 (Applicability of Uniform Condominium Act), Property Code, or a unit owners' association organized under Section 82.101 (Organization of Unit Owners' Association), Property Code, to be sued under this subsection if the council or association maintains, owns, uses, or is a party to the use of the common areas of the council's or association's condominium for purposes constituting a nuisance.

SECTION 4. Amends Section 125.004, Civil Practice and Remedies Code, by amending Subsections (a) and (b) and adding Subsection (d), as follows:

(a) Provides that proof that an activity described by Section 125.0015 is frequently committed at the place involved or that the place is frequently used for an activity described by Section 125.0015 is prima facie evidence that the defendant knowingly tolerated, rather than permitted, the activity.

(b) Makes nonsubstantive changes.

(d) Provides that, notwithstanding Subsection (a), evidence that the defendant, the defendant's authorized representative, or another person acting at the direction of the defendant or the defendant's authorized representative requested law enforcement or emergency assistance with respect to an activity at the place where the common nuisance is allegedly maintained is not admissible for the purpose of showing the defendant tolerated the activity alleged to constitute the nuisance but may be admitted for other purposes, such as showing that a crime listed in Section 125.0015 occurred. Provides that evidence that the defendant refused to cooperate with law enforcement or emergency services with respect to the activity is admissible.

SECTION 5. Amends Section 125.044(b), Civil Practice and Remedies Code, to provide that, in a proceeding begun under Subsection (a), notwithstanding Subdivision (1), evidence that the defendant, the defendant's authorized representative, or another person acting at the direction of the defendant or the defendant's authorized representative requested law enforcement or emergency assistance with respect to an activity at the place where the common nuisance is allegedly maintained is not admissible for the purpose of showing the defendant tolerated the activity alleged to constitute the nuisance but may be admitted for other purposes, such as showing that a crime listed in Section 125.0015 occurred. Provides that evidence that the defendant refused to cooperate with law enforcement or emergency services with respect to the activity is admissible. Makes conforming changes.

SECTION 6. Provides that it is the intent of the legislature that the passage by the 79th Legislature, Regular Session, 2005, of H.B. 2086 or another bill that repeals Chapter 125, Civil Practice and Remedies Code, and adds other law governing common or public nuisance and the amendments made by this Act shall be harmonized, if possible, as provided by Section 311.025(b), Government Code, so that effect may be given to each. Provides that if the amendments made by this Act to Chapter 125, Civil Practice and Remedies Code, and the amendments made by House Bill No. 2086 or any other bill that repeals Chapter 125, Civil Practice and Remedies Code, and adds other law governing common or public nuisance are irreconcilable, it is the intent of the legislature that this Act prevail, regardless of the relative dates of enactment of this Act and any other bill, but only to the extent that any differences are irreconcilable.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2005.