

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1010
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Jurisprudence
4/6/2003
Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, Texas law contains what is commonly referred to as the Public Nuisance and the Common Nuisance statutes. These statutes, similar in design and intent, are used by local governments to address problem locations where owners, landlords, and property managers are not taking steps within their powers to prevent such activities as gambling, prostitution, and illegal drug use from occurring. However, the statutes contain many provisions that are in conflict with one another. This makes it difficult to determine the appropriate statute governing a particular case. C.S.S.B. 1010 would incorporate both statutes to eliminate the confusion.

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 Chapter 125A, Civil Practice and Remedies Code, by amending Section 125.001 and adding Section 125.0015, as follows:

Sec. 125.001. New heading: DEFINITIONS. Defines “common nuisance,” “public nuisance,” and “multiunit residential property.”

Sec. 125.0015. Redesignated from Section 125.001. (a) Adds new language to existing text to provide the circumstances under which a person maintains a common nuisance.

(b) Adds new language to existing text to provide the conditions under which a person maintains a common nuisance.

(c) Deletes existing Section 125.001(c).

SECTION 2. Amends Section 125.002, Civil Practice and Remedies Code, as follows:

(b) Authorizes a person to bring a suit under Subsection (a) against any person who maintains, owns, uses, is about to use, or is a party to the use of a place for purposes constituting a nuisance under this subchapter and to bring an action in rem against the place itself.

(c) Provides that service of any order, notice, process, motion, or ruling of the court on the attorney of record of a cause pending under this subchapter is sufficient service of the party represented by an attorney.

(d) Provides that a person who violates a temporary or permanent injunctive order under this subchapter is subject to certain sentences for civil contempt.

(e) Redesignated from existing subsection (b). Requires the court, if judgment is in favor of the petitioner, to grant an injunction ordering the defendant to abate the nuisance and enjoining the defendant from maintaining or participating in the nuisance and authorizes the court to include in its order reasonable requirements to prevent the use or maintenance of the

place as a nuisance. Provides that, if the petitioner brings an action in rem, the judgment is a judgment in rem against the property as well as a judgment against the defendant.

(f) Redesignated from existing Subsection (c).

(g) Authorizes the petitioner, in an action brought under this chapter, to file a notice of lis pendens in the office of the county clerk. Provides that if the petitioner files the notice, a subsequent purchaser or mortgagee who acquires an interest in the property takes the property subject to the enforcement proceeding and subsequent orders of the court.

SECTION 3. Amends Section 125.003(c), Civil Practice and Remedies Code, to make a nonsubstantive change.

SECTION 4. Amends Sections 125.004(a) and (b), Civil Practice and Remedies Code, as follows:

(a) Makes conforming changes.

(b) Provides that evidence that persons have been arrested or convicted for certain activities is admissible to show knowledge on the part of the defendant that the act occurred. Makes conforming changes.

SECTION 5. Amends Section 125.042(a), Civil Practice and Remedies Code, to make conforming changes.

SECTION 6. Amends Sections 125.044 and 125.045, Civil Practice and Remedies Code, as follows:

Sec. 125.044. Makes conforming changes.

Sec. 125.045. (a) Requires the court, if after notice and hearing on a request for a temporary injunction, a court determines that the petitioner is likely to succeed on the merits of the lawsuit, to require the defendant to execute a bond. Requires the bond to meet certain conditions. Makes conforming changes.

SECTION 7. Amends Section 125.046(a), Civil Practice and Remedies Code, to delete current language in existing text regarding a multiunit residential property at which a public nuisance exists.

SECTION 8. Repealer: Chapter 125B, (Suit to Abate Certain Public Nuisances), Civil Practice and Remedies Code) and Section 125.041 (Definitions), Civil Practice and Remedies Code.

SECTION 9. Effective date: September 1, 2003. Makes application of this Act prospective.

SUMMARY OF COMMITTEE CHANGES

SECTION 1. Differs from the original by deleting proposed Subdivision (1) and creating a new Subdivision 1 and renumbering subsequent subdivisions accordingly. Deletes existing Section 125.001 (c).

SECTION 4. Makes conforming changes.

SECTION 6. Deletes proposed Section 125.045 (Remedies) and creates a new Section 125.045. Makes conforming changes.

SECTION 7. Differs from the original by deleting a reference in proposed text.