

CHAPTER 968

H.B. No. 697

AN ACT

relating to civil actions to abate certain activities of combinations or criminal street gangs.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Sections 125.001, 125.021, and 125.041, Civil Practice and Remedies Code, are amended to read as follows:

Sec. 125.001. COMMON NUISANCE. A person who knowingly maintains a place to which persons habitually go for the purpose of prostitution or gambling in violation of the Penal Code, *for the purpose of engaging in organized criminal activity as a member of a combination or as a member of a criminal street gang as described by Section 71.02, Penal Code*, or for the delivery or use of a controlled substance in violation of Chapter 481, Health and Safety Code, maintains a common nuisance.

Sec. 125.021. PUBLIC NUISANCE. The habitual use or the threatened or contemplated habitual use of any place for any of the following purposes is a public nuisance:

- (1) gambling, gambling promotion, or communicating gambling information prohibited by law;
- (2) promotion or aggravated promotion of prostitution;
- (3) compelling prostitution;
- (4) commercial manufacture, commercial distribution, or commercial exhibition of obscene material;
- (5) commercial exhibition of live dances or other acts depicting real or simulated sexual intercourse or deviate sexual intercourse;
- (6) engaging in a voluntary fight between a man and a bull if the fight is for a thing of value or a championship, if a thing of value is wagered on the fight, or if an admission fee for the fight is directly or indirectly charged, as prohibited by law; [œ]
- (7) *engaging in organized criminal activity as a member of a combination or as a member of a criminal street gang as described by Section 71.02, Penal Code; or*
- (8) delivering or using a controlled substance in violation of Chapter 481, Health and Safety Code.

Sec. 125.041. PUBLIC NUISANCE. For the purposes of this subchapter, a public nuisance is considered to exist at a place if one or more of the following acts occurs at that place on a regular basis:

- (1) gambling, gambling promotion, or communication of gambling information, as prohibited by Chapter 47, Penal Code;
- (2) promotion or aggravated promotion of prostitution, as prohibited by Chapter 43, Penal Code;
- (3) compelling prostitution, as prohibited by Chapter 43, Penal Code;
- (4) commercial manufacture, commercial distribution, or commercial exhibition of material that is obscene, as defined by Section 43.21, Penal Code;
- (5) commercial exhibition of a live dance or other act in which a person engages in real or simulated sexual intercourse or deviate sexual intercourse, as defined by Section 43.01, Penal Code; [œ]

(6) *engaging in organized criminal activity as a member of a combination or as a member of a criminal street gang as described by Section 71.02, Penal Code; or*

(7) *manufacture, delivery, or use of a controlled substance in violation of Chapter 481, Health and Safety Code.*

SECTION 2. Section 125.004, Civil Practice and Remedies Code, is amended by amending Subsection (b) and adding Subsection (g) to read as follows:

(b) *Evidence that persons have been convicted of gambling, committing prostitution, engaging in organized criminal activity as a member of a combination or a criminal street gang as described by Section 71.02, Penal Code, or delivering or using a controlled substance in violation of Chapter 481, Health and Safety Code, in the place involved is admissible to show knowledge on the part of the defendant that the act occurred. The originals or certified copies of the papers and judgments of those convictions are admissible in the suit for injunction, and oral evidence is admissible to show that the offense for which a person was convicted was committed at the place involved.*

(g) *Proof that organized criminal activity by a member of a combination or a criminal street gang as described by Section 71.02, Penal Code, is frequently committed at a place or proof that a place is frequently used for engaging in organized criminal activity by a member of a combination or a criminal street gang as described by Section 71.02, Penal Code, is prima facie evidence that the proprietor knowingly permitted the act, unless the act constitutes conspiring to commit an offense as described by Section 71.02, Penal Code.*

SECTION 3. Chapter 125, Civil Practice and Remedies Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. MEMBERSHIP IN CRIMINAL STREET GANG

Sec. 125.061. *DEFINITIONS. In this subchapter, "combination" and "criminal street gang" have the meanings assigned by Section 71.01, Penal Code.*

Sec. 125.062. *PUBLIC NUISANCE; COMBINATION OR CRIMINAL STREET GANG. A combination or criminal street gang that continuously or regularly associates in organized criminal activities as described by Section 71.02, Penal Code, is a public nuisance.*

Sec. 125.063. *PUBLIC NUISANCE; USE OF PLACE. The habitual use of a place for engaging in organized criminal activity as described by Section 71.02, Penal Code, is a public nuisance.*

Sec. 125.064. *SUIT TO ABATE NUISANCE. (a) A district, county, or city attorney, the attorney general, or a resident of the state may sue to enjoin a public nuisance under this subchapter.*

(b) *Any person who habitually associates with others to engage in organized criminal activity as a member of a combination or criminal street gang may be made a defendant in the suit. Any person who owns or is responsible for maintaining a place that is habitually used for engaging in organized criminal activity as described by Section 71.02, Penal Code, may be made a defendant in the suit.*

(c) *If the suit is brought by the state, the petition does not require verification.*

(d) *If the suit is brought by a resident, the resident is not required to show personal injury.*

Sec. 125.065. *COURT ORDER. (a) If the court finds that a combination or criminal street gang constitutes a public nuisance, the court may enter an order enjoining a defendant in the suit from engaging in the organized criminal activities of the combination or gang.*

(b) *If the court finds that a place is habitually used in a manner that constitutes a public nuisance, the court may include in its order reasonable requirements to prevent the use of the place for organized criminal activity.*

Sec. 125.066. *VIOLATION OF COURT ORDER. A person who violates a temporary or permanent injunctive order under this subchapter is subject to the following sentences for civil contempt:*

- (1) a fine of not less than \$1,000 nor more than \$10,000;
- (2) confinement in jail for a term of not less than 10 nor more than 30 days; or
- (3) both fine and confinement.

Sec. 125.067. CONTINUATION OF ACTIVITIES PENDING TRIAL OR APPEAL; APPEAL. (a) A person may not continue the enjoined activity pending trial or appeal on the merits of an injunctive order in a suit brought under this subchapter.

(b) Not later than the 90th day after the date of the injunctive order, an appropriate court of appeals shall hear and decide an appeal taken by a person enjoined under this subchapter.

(c) If an appeal is not taken by a person temporarily enjoined under this subchapter, the person is entitled to a trial on the merits not later than the 90th day after the date of the temporary injunctive order.

Sec. 125.068. ATTORNEY'S FEES. In an action brought under this subchapter, the court may award a prevailing party reasonable attorney's fees and costs.

Sec. 125.069. USE OF PLACE; EVIDENCE. In an action brought under this subchapter, proof that organized criminal activity by a member of a combination or a criminal street gang as described by Section 71.02, Penal Code, is frequently committed at a place or proof that a place is frequently used for engaging in organized criminal activity by a member of a combination or a criminal street gang as described by Section 71.02, Penal Code, is prima facie evidence that the proprietor knowingly permitted the act, unless, the act constitutes conspiring to commit an offense as described by Section 71.02.

SECTION 4. This Act applies only to conduct that occurs on or after the effective date of this Act, except that evidence of conduct that occurred before the effective date of this Act may be considered for the purpose of determining whether a person habitually associated with others to engage in organized criminal activity as a member of a combination or criminal street gang or whether a place is habitually used for engaging in organized criminal activity by a member of a combination or criminal street gang. Conduct that occurred before the effective date of this Act is governed by the law in effect at the time the conduct occurred, and that law is continued in effect for that purpose.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 7, 1993, by a non-record vote; passed by the Senate on May 27, 1993: Yeas 31, Nays 0.

Approved June 19, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.