

CHAPTER 959

S.B. No. 417

AN ACT

relating to maintaining a common or public nuisance; providing for remedies and penalties.

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

SECTION 1. Section 125.001, Civil Practice and Remedies Code, is 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 *or for the delivery or use of a controlled substance in violation of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)* maintains a common nuisance.

SECTION 2. Section 125.002, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 125.002. SUIT TO ABATE COMMON NUISANCE; BOND. (a) *A suit to enjoin and abate a common nuisance may be brought by an individual, by the attorney general, or by a district, county, or city attorney. The suit must be brought in the county in which it is alleged to exist against the person who is maintaining or about to maintain the nuisance. The suit must be brought in the name of the state if brought by the attorney general or a district or county attorney, in the name of the city if brought by a city attorney, or in the name of the individual if brought by a private citizen. Verification of the petition or proof of personal injury by the acts complained of need not be shown. For purposes of this subsection, personal injury may include economic or monetary loss. [If a county or district attorney or the attorney general has reliable information that a common nuisance exists, the county or district attorney or the attorney general shall sue the person maintaining the nuisance for an injunction to abate and enjoin the nuisance. The suit is in the name of the state and shall be filed in the county in which the nuisance is alleged to exist.]*

(b) If judgment is in favor of the *petitioner [state]*, the court shall grant an injunction ordering the defendant to abate the nuisance and enjoining the defendant from maintaining *or participating in* the nuisance. The judgment must order that the place where the nuisance exists be closed for one year after the date of judgment unless the defendant or the *real property* owner, lessee, or tenant of the property posts bond.

(c) The bond must:

- (1) be payable to the state at the county seat of the county in which the nuisance exists;
- (2) be in the penal sum of \$10,000 ~~[not less than \$1,000 nor more than \$5,000]~~;
- (3) have sufficient sureties approved by the court; and
- (4) be conditioned that the property will not be used or permitted to be used for prostitution or gambling in violation of the Penal Code *or for delivery or use of a controlled substance in violation of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)*.

SECTION 3. Section 125.003, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 125.003. SUIT ON BOND. (a) If a condition of a bond filed or an injunctive order entered under this subchapter is violated, the district, ~~or~~ county, or city attorney of the county in which the property is located shall sue on the bond in the name of the state. In that suit, the whole sum shall be forfeited ~~[may be recovered]~~ as a penalty. On violation of any condition of the bond or of the injunctive order and subsequent to forfeiture of the bond, the place where the nuisance exists shall be ordered closed for one year from the date of the order of bond forfeiture.

(b) A person may not continue the enjoined activity pending appeal or trial on the merits of an injunctive order entered in a suit brought under this subchapter. Not later than the 90th day after the date of the injunctive order, the appropriate court of appeals shall hear and decide an appeal taken by a party enjoined under this subchapter. If an appeal is not taken by a party temporarily enjoined under this article, the party is entitled to a full trial on the merits not later than the 90th day after the date of the temporary injunctive order.

(c) In an action brought under this chapter, the court may award a prevailing party reasonable attorney's fees in addition to costs. In determining the amount of attorney's fees, the court shall consider:

- (1) the time and labor involved;
- (2) the novelty and difficulty of the questions;
- (3) the expertise, reputation, and ability of the attorney; and
- (4) any other factor considered relevant by the court.

(d) Nothing herein is intended to allow a suit to enjoin and abate a common nuisance to be brought against any enterprise whose sole business is that of a bookstore or movie theater.

SECTION 4. Subsections (a) and (b), Section 125.004, Civil Practice and Remedies Code, are amended to read as follows:

(a) Proof that prostitution or gambling in violation of the Penal Code or that the delivery or use of a controlled substance in violation of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes) is frequently committed at the place involved is prima facie evidence that the proprietor knowingly permitted the act.

(b) Evidence that persons have been convicted of gambling, ~~or~~ committing prostitution, or delivering or using a controlled substance 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.

SECTION 5. Section 125.021, Civil Practice and Remedies Code, is amended to read as follows:

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; ~~or~~
- (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; or
- (7) delivering or using a controlled substance in violation of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

SECTION 6. Section 125.022, Civil Practice and Remedies Code, is amended by adding Subsections (d) through (g) to read as follows:

(d) *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 the attorney.*

(e) *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.*

(f) *A person may not continue the enjoined activity pending appeal or trial on the merits of an injunctive order in a suit brought under this subchapter. Not later than the 90th day after the date of the injunctive order, the appropriate court of appeals shall hear and decide an appeal taken by a party enjoined under this subchapter. If an appeal is not taken by a party temporarily enjoined under this subchapter, the party is entitled to a full trial on the merits not later than the 90th day after the date of the temporary injunctive order.*

(g) *In an action brought under this chapter, the court may award a prevailing party reasonable attorney's fees in addition to his costs. In determining the amount of attorney's fees, the court shall consider:*

- (1) *the time and labor involved;*
- (2) *the novelty and difficulty of the questions;*
- (3) *the expertise, reputation, and ability of the attorney; and*
- (4) *any other factor considered relevant by the court.*

SECTION 7. Chapter 125, Civil Practice and Remedies Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. ADDITIONAL NUISANCE REMEDIES

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; or*
- (6) *manufacture, delivery, or use of a controlled substance in violation of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).*

Sec. 125.042. REQUEST FOR MEETING. (a) *The voters of an election precinct in which a public nuisance is alleged to exist or is alleged to be likely to be created, or the voters in an adjacent election precinct, may request the district attorney, city attorney, or county attorney having geographical jurisdiction of the place that is the subject of the voters' complaints to authorize a meeting at which interested persons may state their complaints about the matter. To be valid to begin proceedings under this section, the written request must be signed by at least:*

- (1) *10 percent of the registered voters of the election precinct in which the public nuisance is alleged to exist or is alleged to be likely to be created; or*

(2) 20 percent of the voters of the adjacent election precinct.

(b) On receiving a written request for a meeting from the required number of persons, the district attorney, city attorney, or county attorney may appoint a person to conduct the meeting at a location as near as practical to the place that is the subject of the complaints.

Sec. 125.043. **NOTICE.** The district attorney, city attorney, or county attorney receiving the request may:

(1) post notice of the purpose, time, and place of the meeting at either the county courthouse of the county or the city hall of the city in which the place that is the subject of the complaints is located and publish the notice in a newspaper of general circulation published in that county or city; and

(2) serve the notice, by personal service, to the owner and the operator of the place.

Sec. 125.044. **FINDINGS.** (a) After the meeting, the person appointed to conduct the meeting shall report the findings to the district attorney, city attorney, or county attorney who appointed the person. The district attorney, city attorney, or county attorney, on finding by the attorney that a public nuisance exists or is likely to be created, may initiate appropriate available proceedings against the persons owning or operating the place at which the public nuisance exists or is likely to be created.

(b) In a proceeding begun under Subsection (a):

(1) proof that acts creating a public nuisance are frequently committed at the place is prima facie evidence that the owner and the operator knowingly permitted the acts; and

(2) evidence that persons have been convicted of offenses involving acts at the place that create a public nuisance is admissible to show knowledge on the part of the owner and the operator that the acts occurred.

(c) The originals or certified copies of the papers and judgments of the convictions described by Subdivision (2) of Subsection (b) are admissible in a suit for an injunction, and oral evidence is admissible to show that the offense for which a person was convicted was committed at the place involved.

Sec. 125.045. **REMEDIES.** (a) If, in any judicial proceeding, a court determines that a person has maintained a place at which a public nuisance existed, the court shall require the person to execute a bond. The bond must:

(1) be payable to the state at the county seat of the county in which the nuisance existed;

(2) be in the amount set by the court, but not less than \$5,000 or more than \$10,000;

(3) have sufficient sureties approved by the court; and

(4) be conditioned that the person will not allow a public nuisance to exist at the place.

(b) If any party to a court case fails to cease and desist creating and maintaining a public nuisance within the time allowed by the court, a political subdivision may:

(1) discontinue the furnishing of utility services by the political subdivision to the place at which the nuisance exists;

(2) prohibit the furnishing of utility service to the place by any public utility holding a franchise to use the streets and alleys of the political subdivision;

(3) revoke the certificate of occupancy of the place;

(4) prohibit the use of city streets, alleys, and other public ways for access to the place during the existence of the nuisance or in furtherance of the nuisance; and

(5) use any other legal remedy available under the laws of the state.

SECTION 8. This Act applies only to actions brought on or after the effective date of this Act. Actions brought before the effective date of this Act are subject to the law as it existed at the time the petition for injunction was filed.

SECTION 9. This Act takes effect September 1, 1987.

SECTION 10. 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.

Passed the Senate on April 15, 1987, by a viva-voce vote; May 25, 1987, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 26, 1987, House granted request of the Senate; June 1, 1987, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0. Passed the House, with amendments, on May 22, 1987, by a non-record vote; May 26, 1987, House granted request of the Senate for appointment of Conference Committee; June 1, 1987, House adopted Conference Committee Report by a non-record vote.

Approved June 20, 1987.

Effective Sept. 1, 1987.