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HOUSE BILL 1648

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State of Washington

55th Legislature

1997 Regular Session

By Representatives Honeyford, Sheahan, Skinner, Clements, H. Sommers, Boldt, Delvin and Sullivan

Read first time 02/04/97. Referred to Committee on Law & Justice.

1 AN ACT Relating to declaring buildings used for criminal street  
2 gang activity to be a nuisance; adding a new chapter to Title 7 RCW;  
3 and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The definitions in this section apply  
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Building" includes, but is not limited to, any structure or  
8 any separate part or portion thereof, whether permanent or not, or the  
9 ground itself.

10 (2) "Criminal street gang" means an ongoing organization,  
11 association, or group of three or more persons, whether formal or  
12 informal, that has as one of its primary activities the commission of  
13 a criminal act or acts, that has a common name, and whose members  
14 individually or collectively engage in or have engaged in a pattern of  
15 criminal gang activity.

16 (3) "Pattern of criminal gang activity" means the commission,  
17 attempted commission, or solicitation of two or more felony or  
18 misdemeanor offenses under the following conditions: (a) At least one  
19 of the offenses occurred after the effective date of this act; (b) the

1 last of the offenses occurred within one year after a prior offense;  
2 and (c) the offenses are committed on separate occasions, or by two or  
3 more persons.

4 NEW SECTION. **Sec. 2.** Every building or unit within a building  
5 used for the purpose of aiding, promoting, or conducting criminal  
6 street gang activity, and every building or unit within a building  
7 wherein or upon which such acts take place, is a nuisance which shall  
8 be enjoined, abated, and prevented, whether it is a public or private  
9 nuisance.

10 NEW SECTION. **Sec. 3.** The action provided for in section 2 of this  
11 act shall be brought in the superior court in the county in which the  
12 property is located. Such action shall be commenced by the filing of  
13 a complaint alleging the facts constituting the nuisance.

14 Any complaint filed under this chapter shall be verified or  
15 accompanied by affidavit. For purposes of showing that the owner or  
16 his or her agent has had an opportunity to abate the nuisance, the  
17 affidavit shall contain a description of all attempts by the applicant  
18 to notify and locate the owner of the property or the owner's agent.

19 In addition, the affidavit shall describe in detail the adverse  
20 impact associated with the property on the surrounding neighborhood.  
21 "Adverse impact" includes, but is not limited to, the following: Any  
22 search warrants served on the property where evidence of criminal  
23 activity was seized; arrests of persons who frequent the property for  
24 violation of criminal laws; increased volume of traffic associated with  
25 the property; and the number of complaints made to law enforcement of  
26 illegal activity associated with the property.

27 After filing the complaint, the court shall grant a hearing within  
28 three business days after the filing.

29 NEW SECTION. **Sec. 4.** Upon application for a temporary restraining  
30 order or preliminary injunction, the court may, upon a showing of good  
31 cause, issue an ex parte restraining order or preliminary injunction,  
32 preventing the defendant and all other persons from removing or in any  
33 manner interfering with the personal property and contents of the place  
34 where the nuisance is alleged to exist and may grant such preliminary  
35 equitable relief as is necessary to prevent the continuance or  
36 recurrence of the nuisance pending final resolution of the matter on

1 the merits. However, pending the decision, the stock in trade may not  
2 be so restrained, but an inventory and full accounting of all business  
3 transactions may be required.

4 The restraining order or preliminary injunction may be served by  
5 handing to and leaving a copy with any person in charge of the place or  
6 residing in the place, or by posting a copy in a conspicuous place at  
7 or upon one or more of the principal doors or entrances to the place,  
8 or by both delivery and posting. The officer serving the order or  
9 injunction shall forthwith make and return into court an inventory of  
10 the personal property and contents situated in and used in conducting  
11 or maintaining the nuisance.

12 Any violation of the order or injunction is a contempt of court,  
13 and where such order or injunction is posted, mutilation or removal  
14 thereof while the same remains in force is a contempt of court if such  
15 posted order or injunction contains a notice to that effect.

16 NEW SECTION. **Sec. 5.** A temporary restraining order or preliminary  
17 injunction shall not issue under this chapter except upon the giving of  
18 a bond or security by the applicant, in the sum that the court deems  
19 proper, but not less than one thousand dollars, for the payment of such  
20 costs and damages as may be incurred or suffered by any party who is  
21 found to have been wrongfully restrained or enjoined. A bond or  
22 security shall not be required of the state of Washington, municipal  
23 corporations, or political subdivisions of the state of Washington.

24 NEW SECTION. **Sec. 6.** An action under this chapter shall have  
25 precedence over all other actions, except prior matters of the same  
26 character, actions under chapter 7.43 RCW, criminal proceedings,  
27 election contests, hearings on temporary restraining orders and  
28 injunctions, and actions to forfeit vehicles used in violation of the  
29 uniform controlled substances act.

30 NEW SECTION. **Sec. 7.** (1) If the complaint under this chapter is  
31 filed by a citizen, the complaint shall not be dismissed by the citizen  
32 for want of prosecution except upon a sworn statement made by the  
33 citizen and the citizen's attorney, if the citizen has one. The  
34 statement shall set forth the reasons why the action should be  
35 dismissed. The case shall only be dismissed if so ordered by the  
36 court.

1 (2) In case of failure to prosecute the action with reasonable  
2 diligence, or at the request of the plaintiff, the court, in its  
3 discretion, may substitute any other citizen consenting to be  
4 substituted for the plaintiff.

5 NEW SECTION. **Sec. 8.** A copy of the complaint, together with a  
6 notice of the time and place of the hearing of the action shall be  
7 served upon the defendant at least one business day before the hearing.  
8 Service may also be made by posting the papers in the same manner as is  
9 provided for in section 4 of this act. If the hearing is then  
10 continued at the request of any defendant, all temporary orders and  
11 injunctions shall be extended as a matter of course.

12 NEW SECTION. **Sec. 9.** (1) Except as provided in subsection (2) of  
13 this section, if the existence of the nuisance is established in the  
14 action, an order of abatement shall be entered as part of the final  
15 judgment in the case. Plaintiff's costs in the action, including those  
16 of abatement, are a lien upon the building or unit within a building.  
17 The lien is enforceable and collectible by execution issued by order of  
18 the court.

19 (2) If the court finds and concludes that the owner of the building  
20 or unit within a building:

21 (a) Had no knowledge of the existence of the nuisance or has been  
22 making reasonable efforts to abate the nuisance;

23 (b) Has not been guilty of any contempt of court in the  
24 proceedings; and

25 (c) Will immediately abate any such nuisance that may exist at the  
26 building or unit within a building and prevent it from being a nuisance  
27 within a period of one year thereafter,  
28 the court shall, if satisfied of the owner's good faith, order the  
29 building or unit within a building to be delivered to the owner, and no  
30 order of abatement shall be entered. If an order of abatement has been  
31 entered and the owner subsequently meets the requirements of this  
32 subsection, the order of abatement shall be canceled.

33 NEW SECTION. **Sec. 10.** Any final order of abatement issued under  
34 this chapter shall:

35 (1) Direct the removal of all personal property subject to seizure  
36 and forfeiture under RCW 69.50.505 or other law from the building or

1 unit within a building, and direct their disposition under the  
2 forfeiture provisions of RCW 69.50.505 or other law;

3 (2) Provide for the immediate closure of the building or unit  
4 within a building against its use for any purpose, and for keeping it  
5 closed for a period of one year unless released sooner as provided in  
6 this chapter; and

7 (3) State that while the order of abatement remains in effect the  
8 building or unit within a building shall remain in the custody of the  
9 court.

10 NEW SECTION. **Sec. 11.** In all actions brought under this chapter,  
11 the proceeds and all moneys forfeited under the forfeiture provisions  
12 of RCW 69.50.505 or other law shall be applied as follows:

13 (1) First, to the fees and costs of the removal and sale;

14 (2) Second, to the allowances and costs of closing and keeping  
15 closed the building or unit within a building;

16 (3) Third, to the payment of the plaintiff's costs in the action;  
17 and

18 (4) Fourth, the balance, if any, to the owner of the property.

19 If the proceeds of the sale of items subject to seizure and  
20 forfeiture do not fully discharge all of the costs, fees, and  
21 allowances, the building or unit within a building shall then also be  
22 sold under execution issued upon the order of the court, and the  
23 proceeds of the sale shall be applied in a like manner.

24 A building or unit within a building shall not be sold under this  
25 section unless the court finds and concludes by clear and convincing  
26 evidence that the owner of the building or unit within a building had  
27 actual or constructive knowledge or notice of the existence of the  
28 nuisance. However, this shall not be construed as limiting or  
29 prohibiting the entry of any final order of abatement as provided in  
30 this chapter.

31 NEW SECTION. **Sec. 12.** An intentional violation of a restraining  
32 order, preliminary injunction, or order of abatement under this chapter  
33 is a contempt of court as provided in chapter 7.21 RCW.

34 NEW SECTION. **Sec. 13.** Whenever the owner of a building or unit  
35 within a building upon which the act or acts constituting the contempt  
36 have been committed, or the owner of any interest in the building or

1 unit has been found in contempt of court, and fined in any proceedings  
2 under this chapter, the fine is a lien upon the building or unit within  
3 a building to the extent of the owner's interest. The lien is  
4 enforceable and collectible by execution issued by order of the court.

5 NEW SECTION. **Sec. 14.** The abatement of a nuisance under this  
6 chapter does not prejudice the right of any person to recover damages  
7 for its past existence.

8 NEW SECTION. **Sec. 15.** If any provision of this act or its  
9 application to any person or circumstance is held invalid, the  
10 remainder of the act or the application of the provision to other  
11 persons or circumstances is not affected.

12 NEW SECTION. **Sec. 16.** Sections 1 through 15 of this act  
13 constitute a new chapter in Title 7 RCW.

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