

SSB 5695 - H COMM AMD  
By Committee on Judiciary

1 Strike everything after the enacting clause and insert the  
2 following:

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

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

8 (2) "Criminal activity" means a pattern of criminal activity  
9 including felonies and misdemeanors.

10 NEW SECTION. **Sec. 2.** Every building or unit within a building  
11 used for the purpose of aiding, promoting, or conducting criminal  
12 activity is a nuisance which shall be enjoined, abated, and prevented,  
13 whether it is a public or private nuisance. In a multiunit building  
14 only the offending unit shall be declared a nuisance, and only the  
15 offending unit shall be enjoined, abated, and prevented. Nothing in  
16 this chapter shall apply to property used for the purpose of, or  
17 activity involved in, providing health services, food and financial  
18 assistance, treatment, counseling, training, religious services,  
19 education, civic involvement, or any social service or charitable  
20 assistance.

21 NEW SECTION. **Sec. 3.** Any person who resides, works in, or owns  
22 property in the same multifamily building, apartment complex, or within  
23 a one-block radius of the property where the nuisance is alleged to  
24 exist may bring an action as provided for in section 2 of this act by  
25 filing a complaint with a law enforcement agency in the county in which  
26 the property is located. Such action shall be commenced by the filing  
27 of a complaint alleging the facts constituting the nuisance. Such  
28 action may also be commenced by any public agency.

1 Any complaint filed under this chapter shall be verified or  
2 accompanied by affidavit. A copy of the complaint and affidavit must  
3 be served on the occupant and the owner of the property according to  
4 the rules of civil procedure. In addition to showing that the occupant  
5 and the owner or his or her agent has had an opportunity to abate the  
6 nuisance, the affidavit shall contain a description of all attempts by  
7 the applicant to notify and locate the occupant and the owner of the  
8 property or the owner's agent, including at least one attempt to notify  
9 the occupant and the owner or owner's agent by registered mail.

10 In addition, the affidavit shall describe in detail the adverse  
11 impact associated with the property on the surrounding neighborhood.  
12 "Adverse impact" includes, but is not limited to, the following: Any  
13 recent search warrants served on the property where evidence of  
14 criminal activity was seized; recent arrests of persons who frequent  
15 the property for purposes of criminal activity; a recent increase in  
16 the number of complaints made to law enforcement of illegal activity  
17 associated with the property which result in arrests for criminal  
18 activity; and recent increases in arrests for weapons violations of  
19 persons who frequent the property.

20 Upon receipt of the complaint, the law enforcement agency shall  
21 conduct an investigation into the allegations and, if probable cause is  
22 found that a violation of this chapter is occurring, the complaint and  
23 results of the investigation shall be filed in the county superior  
24 court. After receiving the complaint, the court shall grant a hearing  
25 as soon as practicable as required by section 6 of this act.

26 NEW SECTION. **Sec. 4.** Upon application for a temporary restraining  
27 order or preliminary injunction, the court may, upon a showing of good  
28 cause, issue an ex parte restraining order or preliminary injunction,  
29 preventing the occupant and all other persons, other than the owner,  
30 from removing or in any manner interfering with the personal property  
31 and contents of the place where the nuisance is alleged to exist and  
32 may grant such preliminary equitable relief as is necessary to prevent  
33 the continuance or recurrence of the nuisance pending final resolution  
34 of the matter on the merits. However, pending the decision, the stock  
35 in trade may not be so restrained, but an inventory and full accounting  
36 of all business transactions may be required. Such ex parte

1 restraining order or preliminary injunction shall remain in effect no  
2 more than fifteen days from the date of issuance, except as provided in  
3 section 8 of this act.

4 The restraining order or preliminary injunction shall be served on  
5 the occupant and the owner personally or by handing to and leaving a  
6 copy with any person of suitable age and discretion who is in charge of  
7 the place or residing in the place. Where such a person cannot with  
8 reasonable diligence be served as described, the restraining order or  
9 preliminary injunction may be served by posting a copy in a conspicuous  
10 place and by thereafter mailing a copy by registered mail to the person  
11 to be served at his or her usual mailing address. The officer serving  
12 the order or injunction shall forthwith make and return into court an  
13 inventory of the personal property and contents situated in and used in  
14 conducting or maintaining the nuisance. Additionally a copy of the  
15 restraining order or preliminary injunction must be sent by registered  
16 mail to the occupant and the owner of the building.

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

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

32 NEW SECTION. **Sec. 7.** (1) If the complaint under this chapter is  
33 filed by a citizen, the complaint shall not be dismissed by the citizen  
34 for want of prosecution except upon a sworn statement made by the

1 citizen and the citizen's attorney, if the citizen has one. The  
2 statement shall set forth the reasons why the action should be  
3 dismissed. The case shall only be dismissed if so ordered by the  
4 court.

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

9 NEW SECTION. **Sec. 8.** A copy of the complaint, together with a  
10 notice of the time and place of the hearing of the action shall be  
11 served upon the occupant and the owner at least six business days  
12 before the hearing and as provided for in section 4 of this act. If  
13 the hearing is then continued at the request of any defendant, all  
14 temporary orders and injunctions shall be extended upon good cause  
15 shown.

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

23 (2) If the court finds and concludes that the occupant or the owner  
24 of the building or unit within a building:

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

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

29 (c) Will make reasonable efforts to immediately abate any such  
30 nuisance that may exist at the building or unit within a building and  
31 prevent it from being a nuisance within a period of one year  
32 thereafter, the court shall, if satisfied of the occupant's or the  
33 owner's good faith, order the building or unit within a building to be  
34 delivered to the occupant or the owner, and no order of abatement shall

1 be entered. If an order of abatement has been entered and the occupant  
2 or the owner subsequently meets the requirements of this subsection,  
3 the order of abatement shall be canceled.

4 (3) For the purposes of determining whether the occupant or owner  
5 of the building or unit within a building made reasonable efforts to  
6 abate the nuisance, the court shall consider such factors as whether  
7 the occupant or owner:

8 (a) Terminated or attempted to terminate the tenancy or lease of a  
9 tenant or leaseholder where the nuisance is occurring if the tenant or  
10 leaseholder is involved in the criminal activity;

11 (b) Placed restrictions on the rental agreement or lease;

12 (c) Adopted feasible measures on the property to try to prevent the  
13 criminal activity;

14 (d) Cooperated with law enforcement to attempt to stop the criminal  
15 activity; and

16 (e) Any other factors the court finds relevant.

17 (4) If the court finds there is insufficient evidence to establish  
18 the existence of the nuisance, the court shall order the person to pay  
19 the occupant and the owner their reasonable attorney fees and costs to  
20 defend the action, any loss of rent or revenue experienced as a result  
21 of the action, restraining order, or preliminary injunction, and  
22 damages up to five hundred dollars to each.

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

25 (1) Direct the removal of all personal property subject to seizure  
26 and forfeiture under RCW 69.50.505 or other law from the building or  
27 unit within a building, and direct the commencement of proceedings to  
28 forfeit the property under the forfeiture provisions of RCW 69.50.505  
29 or other law;

30 (2) If the building or unit is not subject to the interests of  
31 innocent occupants or innocent legal owners, provide for the immediate  
32 closure of the building or unit within a building against its use for  
33 any purpose, and for keeping it closed for a period of one year unless  
34 released sooner as provided in this chapter; and

35 (3) State that while the order of abatement remains in effect the

1 building or unit within a building shall remain in the custody of the  
2 court.

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

- 6 (1) First, to the fees and costs of the removal and sale;  
7 (2) Second, to the allowances and costs of closing and keeping  
8 closed the building or unit within a building;  
9 (3) Third, to the payment of the plaintiff's costs in the action;  
10 and  
11 (4) Fourth, the balance, if any, to the owner of the forfeited  
12 property.

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

18 A building or unit within a building shall not be sold under this  
19 section unless the court finds and concludes by clear and convincing  
20 evidence that the occupant and the owner of the building or unit within  
21 a building had actual or constructive knowledge or notice of the  
22 existence of the nuisance. However, this shall not be construed as  
23 limiting or prohibiting the entry of any final order of abatement as  
24 provided in this chapter.

25 NEW SECTION. **Sec. 12.** Whenever the owner of a building or unit  
26 within a building upon which the act or acts constituting the contempt  
27 have been committed, or the owner of any interest in the building or  
28 unit has been found in contempt of court, and fined in any proceedings  
29 under this chapter, the fine is a lien upon the building or unit within  
30 a building to the extent of the owner's interest, subject to the lien  
31 of the legal owner. The lien is enforceable and collectible by  
32 execution issued by order of the court.

33 NEW SECTION. **Sec. 13.** The abatement of a nuisance under this

1 chapter does not prejudice the right of any person to recover damages  
2 for its past existence.

3 NEW SECTION. **Sec. 14.** If any provision of this act or its  
4 application to any person or circumstance is held invalid, the  
5 remainder of the act or the application of the provision to other  
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 15.** Sections 1 through 14 of this act  
8 constitute a new chapter in Title 7 RCW."

EFFECT: (1) Applies the nuisance action only to buildings or  
units that are used for the purpose of aiding, promoting, or conducting  
criminal activity (as opposed to those buildings and any building or  
unit where such acts take place);

(2) Excludes property used for the purpose of providing health  
services, food and financial assistance, treatment, counseling,  
training, religious services, education, civic involvement, or any  
social service or charitable assistance;

(3) Clarifies who may bring an action (person who resides, works  
in, or owns property in the same multifamily building, apartment  
complex, or within a one-block radius of the nuisance);

(4) Requires notice to be given to both the occupant and the owner,  
requires notice to be served according to the rules of civil procedure,  
and requires notice to be served at least 6 days before the hearing  
(instead of 3 days);

(5) Removes the consideration of any "recent increase graffiti and  
garbage" from the list of what can be an "adverse impact";

(6) Requires the court to grant a hearing "as soon as practicable"  
(instead of within 5 business days or 7 calendar days);

(7) Makes an ex parte temporary restraining order or preliminary  
injunction effective for no more than 15 days;

(8) Adds child dependency cases to the list of actions that take  
precedence over nuisance actions for the purposes of a court granting  
hearings;

(9) Removes provisions making violations of an order or injunction  
contempt of court;

(10) Requires a court to award reasonable attorney fees, costs, any  
loss of rent or revenue, and up to \$500 damages each to the occupant  
and the owner if the court finds there is insufficient evidence of a  
nuisance.

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