

HOUSE BILL REPORT

SSB 5695

As Reported by House Committee On:
Judiciary

Title: An act relating to declaring buildings used for criminal activity to be a nuisance.

Brief Description: Declaring buildings used for criminal activity to be a nuisance.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Honeyford, Winsley, Mulliken, Johnson, T. Sheldon, Zarelli, Oke and Rasmussen).

Brief History:

Committee Activity:

Judiciary: 4/3/03, 4/4/03 [DPA].

Brief Summary of Substitute Bill
(As Amended by House Committee)

- Creates a criminal activity nuisance law.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 7 members: Representatives Lantz, Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Kirby, Lovick and Newhouse.

Minority Report: Do not pass. Signed by 2 members: Representatives Moeller, Vice Chair; and Flannigan.

Staff: Trudes Tango Hutcheson (786-7384).

Background:

A variety of public and private nuisance actions are available to stop activity that is illegal, dangerous, or disruptive to neighboring property owners and the general public. Nuisance laws cover such activities as prostitution, exhibition of lewd films, fighting, and breach of the peace. Although nuisance has traditionally developed through common law, the Legislature has enacted specific statutes to deal with certain kinds of nuisances.

For instance, the Legislature enacted a drug nuisance law allowing for private or public prosecution of an abatement action against a drug related nuisance. Any building or unit within a building that is used for the purpose of unlawfully manufacturing, delivering, selling, storing, or giving away illegal drugs, and any building or unit where such acts take place is a nuisance. A person may bring an action to abate the nuisance by filing a complaint in superior court.

If the existence of the nuisance is established in the action, the court may order an abatement of the nuisance which shall, among other things: (a) direct the removal of all personal property subject to seizure and forfeiture under the drug forfeiture laws, and (b) provide for the immediate closure of the building or unit against its use for any purpose for a period of one year, unless released sooner. A defendant can avoid an abatement order by satisfying certain criteria.

In a recent case, the Washington State Court of Appeals (Court) found that the drug nuisance law was not unconstitutional *on its face* because the statute does not operate an unconstitutional takings by its mere enactment. However, the Court found that the statute, as applied to the facts in the particular case, was an unconstitutional taking of property and violated the defendant's right to due process. *City of Seattle v. McCoy*, 101 Wn. App. 815 (2000).

Summary of Amended Bill:

A criminal activity nuisance law is created. A building or unit within a building that is used for the purpose of aiding, promoting, or conducting criminal activity is a nuisance. Criminal activity means "a pattern of criminal activity including felonies and misdemeanors." In a multi-unit building, only the offending unit shall be declared a nuisance. The nuisance provisions do not apply to property used for the purpose of, or activity involved in, providing health, services, food and financial assistance, treatment, counseling, training, religious services, education, civic involvement, or any social service or charitable assistance.

Any person who resides, works in, or owns property in the same multifamily building or apartment complex, or within a one-block radius of the nuisance, may bring a nuisance action by filing a complaint with a law enforcement agency in the county where the property is located. A public agency may also commence an action.

Law enforcement must investigate the allegations in the complaint. If there is probable cause that a violation of the act is occurring, the complaint must be filed in the county superior court. After receiving the complaint, the court shall grant a hearing as soon as practicable. Nuisance actions take precedence over other actions, except for certain specified actions such as criminal matters and child dependencies.

The complaint must be verified or accompanied by an affidavit that describes the adverse impact associated with the property on the surrounding neighborhood. "Adverse impact" includes, but is not limited to: (a) any recent search warrants served on the property where evidence of criminal activity was seized; (b) recent arrests of persons who frequent the property for purposes of criminal activity; (c) a recent increase in the number of complaints made to law enforcement of illegal activity associated with the property which result in arrests; and (d) recent increases in arrests for weapons violations of persons who frequent the property.

The complaint and affidavit must be served on the occupant and owner at least six business days before the hearing. Service of the complaint must be in accordance with the rules of civil procedure.

The court may issue an ex parte restraining order or preliminary injunction, effective for up to 15 days, to prevent the occupant and all other persons, other than the legal owner, from removing personal property and contents of the place where the nuisance is alleged to exist. A temporary restraining order or preliminary injunction may not be issued unless the person requesting it posts a bond or security of at least \$1,000.

If existence of the nuisance is established in the action, an order of abatement must be entered. The order of abatement shall: (a) direct the removal and forfeiture of all personal property subject to seizure and forfeiture under the drug laws or other laws; and (b) if the building or unit is not subject to the interests of innocent occupants or innocent legal owners, provide for the immediate closure of the building or unit against its use for any purpose for a period of one year unless released sooner. While the abatement order is in effect, the building or unit remains in the custody of the court.

If the court finds and concludes that the occupant or owner of the building or unit: (a) had no knowledge of the existence of the nuisance or has been making reasonable efforts to abate the nuisance; (b) has not been guilty of any contempt of court in the proceedings; and (c) will make reasonable efforts to immediately abate any such nuisance at the building or unit and prevent it from being a nuisance within a period of one year thereafter, then the court shall, if satisfied of the occupant's or owner's good faith, order the building or unit to be delivered to the occupant or owner and no abatement order shall be entered. For the purposes of determining whether an occupant or owner made reasonable efforts to abate the nuisance, the court must consider such factors as whether there was an attempt to terminate the tenancy or lease, place restrictions on the rental agreement, adopt feasible measures on the property, cooperate with police, and any other relevant factor.

The bill contains specific provisions for how proceeds of any forfeiture shall be distributed. Generally, the proceeds shall be applied to satisfy the fees and costs of the removal and sale, the costs for keeping the building or unit closed, and to pay the plaintiff's costs.

If the proceeds do not fully satisfy the costs, fees, and allowances, the building or unit may be sold, provided that the court finds by clear and convincing evidence that the occupant or owner of the building or unit had actual or constructive knowledge or notice of the existence of the nuisance.

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

Amended Bill Compared to Substitute Bill:

The striking amendment made the following changes: (a) 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); (b) 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; (c) clarifies who may bring an action; (d) requires notice to be given to both the occupant and the owner according to the rules of civil procedure and requires notice to be served at least six days before the hearing (instead of three days); (e) removes the consideration of any "recent increase graffiti and garbage" from the definition of "adverse impact"; (f) requires the court to grant a hearing "as soon as practicable" (instead of within five business days or seven calendar days); (g) specifies that ex parte temporary restraining orders or preliminary injunctions are effective for no more than 15 days; (h) adds child dependency cases to the list of actions that take precedence over nuisance actions; (i) removes provisions making violations of an order or injunction contempt of court; (j) requires a court to award reasonable attorney fees, costs, any loss of rent or revenue, and up to \$500 in damages if the court finds there is insufficient evidence of a nuisance; and (k) adds the factors the court must consider when determining whether the occupant or owner made reasonable efforts to abate the nuisance.

Appropriation: None.

Fiscal Note: Available on SB 5695.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This bill has been before the Legislature in the past. It has been worked to cover all the issues and to protect property owners. The bill protects all neighboring property owners, landlords, and tenants. The prosecutors favor this bill.

Testimony Against: There are many procedural holes and vague terms in the bill. The

bill needs to be clarified and limited. There are due process concerns regarding notification to the occupants and land owners. The bill requires the court to grant a hearing within five days and the courts already have a heavy caseload. Requiring that nuisance actions take precedence over other actions is problematic. There are other civil matters like child dependencies that are important. Courts should be able to determine what constitutes contempt of court. There are due process problems in the bill that impact both tenants and owners. Owners are subject to court action without regard to whether the property has a causal connection to the illegal activity. If the owner is not involved in the activity, the neighbor can bring an action anyway. This could be a problem in cases such as domestic violence situations where there has been a history of domestic violence in an apartment. The bill gives power to a third party to bring an action against a property owner.

Testified: (In support) Senator Honeyford, prime sponsor.

(Opposed) Martha Harden, Superior Court Judges Association; and Jerry Sheehan, American Civil Liberties Union.