

# SENATE BILL REPORT

## SSB 5695

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As Passed Senate, March 17, 2003

**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: 2/27/03, 3/5/03 [DPS].

Passed Senate: 3/17/03, 40-9.

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5695 be substituted therefor, and the substitute bill do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Hargrove and Johnson.

**Staff:** Jinnah Rose-McFadden (786-7421)

**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.

A "moral nuisance" may be declared where the following activities take place: prostitution, exhibition of lewd films or publications, illegal gambling, fighting, drunkenness, or breach of the peace. A prosecutor may proceed against a person who maintains a moral nuisance in two ways: (1) a civil lawsuit, carrying a fine of up to \$25,000, may be filed against the operator of a moral nuisance or the owner of the property where the nuisance is maintained; and (2) abatement procedures may be brought against the owner or operator of a moral nuisance, allowing for immediate shutdown of the alleged nuisance pending determination that a moral nuisance actually exists.

A special drug nuisance law was enacted in 1988, allowing for private or public prosecution of an abatement action against a drug related nuisance.

**Summary of Bill:** A criminal activity nuisance law is enacted. A building where criminal activity occurs may be declared a nuisance; criminal activity includes felonies and misdemeanors.

Any individual with legal standing, who resides, works, or owns property in the same multifamily building, apartment complex, or within a one block radius may bring a criminal activity nuisance action. To commence an action, a complaint must be filed with the local

law enforcement agency. Law enforcement must investigate the alleged activity and, if probable cause is found that a violation is occurring, the complaint and results of the investigation must be filed in superior court. Once filed, a hearing must be granted within five business or seven calendar days. A copy of the complaint and a notice of the hearing must be served on the defendant at least three business day before the hearing.

An affidavit describing the building's adverse impact on the neighborhood must accompany a complaint. "Adverse impact" may consist of evidence that: search warrants have been served on the building, resulting in the seizure of evidence of a crime; there have been recent arrests of people who frequent the premises; there is increased traffic associated with the property; complaints about the building have been made to law enforcement; and there have been recent increases in graffiti or garbage in the immediate vicinity. Additionally, the complaint must provide evidence that the owner of the building has been given an opportunity to stop the nuisance.

If the existence of a nuisance is established in the action, an order of abatement is entered and the building is closed and placed in the custody of the court for a period of one year. In a multi-unit building, only the offending unit may be abated. An order of abatement may not be entered if: (1) the owner had no knowledge of the nuisance; (2) the owner has made reasonable efforts to abate the nuisance; or (3) the owner has not been guilty of any contempt of court and prevents the building from being a nuisance for a period of one year. An intentional or willful violation of an abatement order is punishable by a fine, of not more than \$10,000, and imprisonment, for not more than one year, or both.

Prior to a court hearing, a temporary restraining order or preliminary injunction may be granted if the person seeking the order gives a bond or other security, of not less than \$1,000, to pay damages to a person wrongfully restrained. A copy of the restraining order must be sent by registered mail to the owner of the building.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For (Concerns):** The underlying substance of the bill is agreed upon, but there are concerns regarding provisions in the bill.

The bill raises constitutional due process issues regarding the notice provisions. Under these provisions, (1) a property owner must receive notice of a hearing one day prior to the hearing date; (2) the bill allows notice to be posted on the property itself; and (3) notice may be made by "registered mail." In the first instance, the term "one day" is undefined and unclear. Second, posting notice on the property is unfair to absent property owners; this provision should be deleted. Finally, the provision allowing for notice by "registered mail" is unclear as to when the notice must be sent or received.

The bill provides a private right of action to citizens who are affected by the nuisance. These citizens must file a complaint with the local law enforcement agency. If there is probable

cause, law enforcement has authority to file the claim in superior court. It is unclear whether a citizen has authority to proceed with a claim that law enforcement fails to file.

**Testimony Against:** None.

**Testified:** CON: Richard J. Troberman, WACDL; Gary Gardner, BECU.