
ENGROSSED SUBSTITUTE HOUSE BILL 2414

State of Washington

61st Legislature

2010 Regular Session

By House Judiciary (originally sponsored by Representatives Johnson, O'Brien, Ross, Finn, Haler, Klippert, Taylor, Crouse, Angel, Ericksen, Roach, Kristiansen, Hinkle, Chandler, Seaquist, Walsh, Warnick, Rodne, Smith, Nealey, Short, Hope, Ericks, Lias, Campbell, Morrell, Kelley, Maxwell, Sullivan, Conway, Bailey, Schmick, and Hurst)

READ FIRST TIME 02/03/10.

1 AN ACT Relating to abatement of nuisances involving criminal street
2 gang activity; amending RCW 59.18.075; adding a new chapter to Title 9
3 RCW; and prescribing penalties.

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

5 **Sec. 1.** RCW 59.18.075 and 1992 c 38 s 4 are each amended to read
6 as follows:

7 (1) Any law enforcement agency which seizes a legend drug pursuant
8 to a violation of chapter 69.41 RCW, a controlled substance pursuant to
9 a violation of chapter 69.50 RCW, or an imitation controlled substance
10 pursuant to a violation of chapter 69.52 RCW, shall make a reasonable
11 attempt to discover the identity of the landlord and shall notify the
12 landlord in writing, at the last address listed in the property tax
13 records and at any other address known to the law enforcement agency,
14 of the seizure and the location of the seizure of the illegal drugs or
15 substances.

16 (2) Any law enforcement agency which arrests a tenant for
17 threatening another tenant with a firearm or other deadly weapon, or
18 for some other unlawful use of a firearm or other deadly weapon on the
19 rental premises, or for physically assaulting another person on the

1 rental premises, shall make a reasonable attempt to discover the
2 identity of the landlord and notify the landlord about the arrest in
3 writing, at the last address listed in the property tax records and at
4 any other address known to the law enforcement agency.

5 (3)(a) A law enforcement agency that has found that a tenant or
6 other occupant of a rental unit has committed a criminal street gang-
7 related offense as defined in RCW 9.94A.030 or that has been called to
8 a rental premises to investigate a criminal street gang-related offense
9 shall make a reasonable attempt to discover the identity of the
10 landlord and notify the landlord in writing, at the last address listed
11 in the property tax records and at any other address known to the law
12 enforcement agency, of the criminal street gang-related offense on the
13 rental premises.

14 (b) For the purposes of this subsection, the law enforcement agency
15 shall include the following information with the notice:

16 (i) The name of the tenant and the individual or individuals who
17 were involved in the criminal street gang-related offense;

18 (ii) The rental unit where the incident occurred;

19 (iii) The date of the incident;

20 (iv) Actions taken by the law enforcement agency in response to the
21 incident;

22 (v) A statement outlining the authority of a landlord under chapter
23 59.12 RCW to commence an unlawful detainer action against a tenant who
24 has committed or permitted gang-related activity at the premises; and

25 (vi) Penalties the landlord may face for failure to abate a
26 nuisance.

27 NEW SECTION. Sec. 2. Notwithstanding the provisions of any other
28 law or ordinance, the legislative authority of a county or municipality
29 may, by ordinance, to protect the public health, safety, and welfare of
30 the residents of the county or municipality, adopt procedures pursuant
31 to which a public agency may file a nuisance action in superior court
32 to seek any or all of the forms of relief detailed in this chapter.
33 The legislative authority of a county or municipality may further
34 authorize and adopt rules providing for a nuisance action instituted by
35 a person who resides, works in, or owns property in the same
36 multifamily building or apartment complex or within a one-block radius
37 of the property where the nuisance is alleged to exist. A nuisance

1 action instituted by a person may only be brought against a building or
2 a unit within a building as defined in section 3 of this act. A
3 nuisance action authorized under this section is subject to the
4 provisions set forth in sections 3 through 15 of this act.

5 NEW SECTION. **Sec. 3.** 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 separate part or portion thereof, whether permanent or not, or the
9 ground itself.

10 (2) "Criminal street gang activity" means a pattern of criminal
11 street gang activity as defined in RCW 9.94A.030.

12 (3) "Criminal street gang associate or member" and "criminal street
13 gang-related offense" have the meaning prescribed in RCW 9.94A.030.

14 (4) "Public agency" includes a county, city, town, municipal
15 corporation, and an office, department, division, or agency thereof.

16 NEW SECTION. **Sec. 4.** An ordinance may authorize a nuisance action
17 providing for a restraining order, preliminary injunction, or permanent
18 injunction against a specific criminal street gang associate or member
19 to enjoin his or her activity that is associated with any criminal
20 street gang activity or any criminal street gang-related offense and
21 that is occurring within the county or municipality.

22 NEW SECTION. **Sec. 5.** An ordinance may authorize a nuisance action
23 providing for a restraining order, preliminary injunction, or order of
24 abatement against any building or unit within a building used for the
25 purpose of aiding, promoting, or conducting criminal street gang
26 activity. In a multiunit building, only the offending unit shall be
27 declared a nuisance, and only the offending unit shall be enjoined,
28 abated, and prevented. Nothing in this chapter applies to property
29 used for the purpose of, or activity involved in, providing health
30 services, food and financial assistance, treatment, counseling,
31 training, religious services, education, civic involvement, or any
32 social service or charitable assistance.

33 NEW SECTION. **Sec. 6.** (1) Upon application for a temporary
34 restraining order or preliminary injunction, the court may, upon a

1 showing of good cause, (a) issue an ex parte restraining order or
2 preliminary injunction, preventing the defendant and all other persons,
3 other than the legal owner, from removing or in any manner interfering
4 with the personal property and contents of the place where the nuisance
5 is alleged to exist, and (b) grant preliminary equitable relief as is
6 necessary to prevent the continuance or recurrence of the nuisance
7 pending final resolution of the matter on the merits. Such ex parte
8 restraining order or preliminary injunction may remain in effect no
9 more than fifteen days from the date of issuance, except as provided in
10 section 8 of this act.

11 (2) The restraining order or preliminary injunction issued under
12 subsection (1) of this section in an action under section 4 of this act
13 must be served on the defendant personally, or by leaving a copy at the
14 dwelling house or usual place of abode of the defendant with any person
15 of suitable age and discretion residing therein. Where such a person
16 cannot with reasonable diligence be served as described, the
17 restraining order or preliminary injunction may be served by posting a
18 copy in a conspicuous place at the dwelling house or usual place of
19 abode of the defendant and thereafter mailing a copy by registered mail
20 to the defendant at his or her usual mailing address.

21 (3) The restraining order or preliminary injunction issued under
22 subsection (1) of this section in an action under section 5 of this act
23 must be served on the occupant and the owner of the building or unit
24 personally, or by leaving a copy with any person of suitable age and
25 discretion who is in charge of the property or who is residing at the
26 property. Where such a person cannot with reasonable diligence be
27 served as described, the restraining order or preliminary injunction
28 may be served by posting a copy in a conspicuous place on the property
29 and thereafter mailing a copy by registered mail to the person to be
30 served at his or her usual mailing address. Additionally, a copy of
31 the restraining order or preliminary injunction must be sent by
32 registered mail to the owner of the building.

33 NEW SECTION. **Sec. 7.** An action under this chapter shall have
34 precedence over all other actions, except prior matters of the same
35 character, actions under chapter 7.43 RCW, criminal proceedings,
36 election contests, hearings on temporary restraining orders and
37 injunctions, child dependency hearings, foreclosures by a legal owner,

1 actions to forfeit vehicles used in violation of the uniform controlled
2 substances act, and any other case determined to be a priority by
3 statute or by the court.

4 NEW SECTION. **Sec. 8.** A copy of the complaint, together with a
5 notice of the time and place of the hearing of the action, shall be
6 served upon the defendant at least six business days before the
7 hearing, and as provided for in section 6 of this act. If the hearing
8 is then continued at the request of any defendant, all temporary orders
9 and injunctions shall be extended as a matter of course.

10 NEW SECTION. **Sec. 9.** (1) Except as provided in subsection (2) of
11 this section, (a) if the existence of the nuisance under section 4 of
12 this act is established in the action, a permanent injunction must be
13 entered as part of the final judgment in the case, and (b) if the
14 existence of the nuisance under section 5 of this act is established in
15 the action, an order of abatement must be entered as part of the final
16 judgment in the case. The plaintiff's costs in the action, including
17 those of abatement, are a lien upon the building or unit within a
18 building to the extent of the owner's interest. The lien must be filed
19 as a judgment summary stating the name of the owner and the legal
20 description of the real property. The lien must be recorded and
21 enforced as a judgment summary.

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

24 (a) Had no knowledge of the existence of the nuisance, or was not
25 provided adequate notice under RCW 59.18.075 of the occurrence of a
26 criminal street gang-related offense at the rental unit, or has been
27 making reasonable efforts to abate the nuisance;

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

30 (c) Will immediately abate any such nuisance that may exist at the
31 building or unit within a building and prevent it from being a nuisance
32 for a period of one year thereafter, the court shall, if satisfied with
33 the owner's good faith, order the building or unit within a building to
34 be delivered to the owner, and no order of abatement shall be entered.
35 If an order of abatement has been entered and the owner subsequently

1 meets the requirements of this subsection, the order of abatement shall
2 be canceled.

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

6 (a) Terminated or attempted to terminate the tenancy or lease of a
7 tenant or leaseholder where the nuisance is occurring, if the tenant or
8 leaseholder is involved in the criminal street gang activity;

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

10 (c) Adopted feasible measures on the property to try to prevent the
11 criminal street gang activity;

12 (d) Cooperated with law enforcement to attempt to stop the criminal
13 street gang activity; and

14 (e) Made other efforts the court finds relevant.

15 (4) In an action filed under section 5 of this act, if the court
16 finds there is insufficient evidence to establish the existence of the
17 nuisance, the court may order the person who filed the complaint to pay
18 the owner reasonable attorneys' fees and costs to defend the action,
19 any loss of rent or revenue experienced as a result of the action,
20 restraining order, or preliminary injunction, and damages up to five
21 hundred dollars each.

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

24 (1) If the building or unit is not subject to the interests of
25 innocent legal owners, provide for the immediate closure of the
26 building or unit within a building against its use for any purpose, and
27 for keeping it closed for a period of one year unless released sooner
28 as provided in this chapter;

29 (2) State that while the order of abatement remains in effect, the
30 building or unit within a building shall remain in the custody of the
31 court; and

32 (3) Authorize a law enforcement officer to enter the building or
33 unit within a building to create an inventory of the personal property
34 and contents located in the building or unit within a building for
35 submission to the court.

1 NEW SECTION. **Sec. 11.** An intentional violation of a restraining
2 order, preliminary injunction, permanent injunction, or order of
3 abatement in an action brought by a public agency under this chapter is
4 a misdemeanor and shall be punishable as such. If the violation also
5 constitutes a criminal offense under another provision of the law, the
6 violation may be prosecuted pursuant to this section or the other
7 provision of law, or both.

8 NEW SECTION. **Sec. 12.** Whenever the owner of a building or unit
9 within a building upon which the act or acts constituting the contempt
10 have been committed, or the owner of any interest in the building or
11 unit has been found in contempt of court, and fined in any proceedings
12 under this chapter, the fine is a lien upon the building or unit within
13 a building to the extent of the owner's interest. The lien must be
14 filed as a judgment summary stating the name of the owner and the legal
15 description of the real property. The lien must be recorded and
16 enforced as a judgment summary.

17 NEW SECTION. **Sec. 13.** An action may not be brought pursuant to
18 this section against any governmental entity or any charitable or
19 nonprofit organization that is conducting, with ordinary care and
20 skill, activities relating to prevention or education concerning
21 criminal street gangs.

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

25 NEW SECTION. **Sec. 15.** If any provision of this act or its
26 application to any person or circumstance is held invalid, the
27 remainder of the act or the application of the provision to other
28 persons or circumstances is not affected.

29 NEW SECTION. **Sec. 16.** Sections 2 through 15 of this act
30 constitute a new chapter in Title 9 RCW.

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