



General Assembly

January Session, 2007

**Committee Bill No. 6832**

LCO No. 5612

\*05612HB06832PD\_\*

Referred to Committee on Planning and Development

Introduced by:  
(PD)

**AN ACT CONCERNING MUNICIPAL ABATEMENT OF PUBLIC NUISANCES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-343 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

3 (a) For the purposes of sections 19a-343 to 19a-343h, inclusive, a  
4 person creates or maintains a public nuisance if such person erects,  
5 establishes, maintains, uses, owns or leases any real property or  
6 portion thereof for any of the purposes enumerated in subdivisions (1)  
7 to (11), inclusive, of subsection (c) of this section.

8 (b) The state [has the exclusive right to] may bring an action to abate  
9 a public nuisance under this section and sections 19a-343a to 19a-343h,  
10 inclusive, involving any real property or portion thereof, commercial  
11 or residential, including single or multifamily dwellings, provided  
12 there have been three or more arrests, or the issuance of three or more  
13 arrest warrants indicating a pattern of criminal activity and not  
14 isolated incidents, for conduct on the property documented by a law  
15 enforcement officer for any of the offenses enumerated in subdivisions

16 (1) to (11), inclusive, of subsection (c) of this section within the three  
17 hundred sixty-five days preceding commencement of the action. The  
18 municipality in which such public nuisance is located may also bring  
19 such action.

20 (c) Three or more arrests, or the issuance of three or more arrest  
21 warrants indicating a pattern of criminal activity and not isolated  
22 incidents, for the following offenses shall constitute the basis for  
23 bringing an action to abate a public nuisance:

24 (1) Prostitution under section 53a-82, 53a-83, 53a-86, 53a-87, 53a-88  
25 or 53a-89.

26 (2) Promoting an obscene performance or obscene material under  
27 section 53a-196 or 53a-196b, employing a minor in an obscene  
28 performance under section 53a-196a, importing child pornography  
29 under section 53a-196c, possessing child pornography in the first  
30 degree under section 53a-196d, possessing child pornography in the  
31 second degree under section 53a-196e or possessing child pornography  
32 in the third degree under section 53a-196f.

33 (3) Transmission of gambling information under section 53-278b or  
34 53-278d or maintaining of a gambling premises under section 53-278e.

35 (4) Offenses for the sale of controlled substances, possession of  
36 controlled substances with intent to sell, or maintaining a drug factory  
37 under section 21a-277, 21a-278 or 21a-278a or use of the property by  
38 persons possessing controlled substances under section 21a-279.  
39 Nothing in this section shall prevent the state from also proceeding  
40 against property under section 21a-259 or 54-36h.

41 (5) Unauthorized sale of alcoholic liquor under section 30-74 or  
42 disposing of liquor without a permit under section 30-77.

43 (6) Violations of the inciting injury to persons or property law under  
44 section 53a-179a.

- 45 (7) Maintaining a motor vehicle chop shop under section 14-149a.
- 46 (8) Murder or manslaughter under section 53a-54a, 53a-54b, 53a-55,  
47 53a-56 or 53a-56a.
- 48 (9) Assault under section 53a-59, 53a-59a, subdivision (1) of  
49 subsection (a) of section 53a-60 or section 53a-60a.
- 50 (10) Sexual assault under section 53a-70 or 53a-70a.
- 51 (11) Fire safety violations under section 29-292, subsection (b) of  
52 section 29-310, or section 29-315, 29-317, 29-320, 29-325, 29-329, 29-337,  
53 29-349 or 29-357.

54 Sec. 2. Section 19a-343a of the general statutes is repealed and the  
55 following is substituted in lieu thereof (*Effective October 1, 2007*):

56 (a) The Chief State's Attorney or a deputy chief state's attorney,  
57 state's attorney or assistant or deputy assistant state's attorney or an  
58 attorney for a municipality desiring to commence an action to abate a  
59 public nuisance shall attach his proposed unsigned writ, summons and  
60 complaint to the following documents:

61 (1) An application directed to the Superior Court to which the action  
62 is made returnable, for the remedies requested to abate the public  
63 nuisance; and

64 (2) An affidavit sworn to by the state or municipality or any  
65 competent affiant setting forth a statement of facts showing by  
66 probable cause the existence of a public nuisance upon the real  
67 property or any portion thereof.

68 (b) The court, or if the court is not in session, any judge of the  
69 Superior Court, may order that a show cause hearing be held before  
70 the court or a judge thereof to determine whether or not the temporary  
71 relief requested should be granted and the court shall direct the state  
72 or municipality to give notice to any defendant of the pendency of the

73 application and of the time when it will be heard by causing a true and  
74 attested copy of the application, the proposed unsigned writ,  
75 summons, complaint, affidavit and of its order to be served upon the  
76 defendant by some proper officer or indifferent person. Such hearing  
77 shall be scheduled within ten days after service is effected by the state  
78 or municipality.

79 (c) If in the application, the state or municipality requests the  
80 issuance of a temporary ex parte order for the abatement of a public  
81 nuisance, the court, or if the court is not in session, any judge of the  
82 Superior Court, may grant a temporary ex parte order to abate the  
83 public nuisance. The court or judge shall direct the state or  
84 municipality to give notice and service of such documents, including a  
85 copy of the ex parte order, in accordance with subsection (b) of this  
86 section. At such hearing, any defendant may show cause why the  
87 abatement order shall be modified or vacated. No such ex parte order  
88 may be granted unless it appears from the specific facts shown by  
89 affidavit and by complaint that there is probable cause to believe that a  
90 public nuisance exists and the temporary relief requested is necessary  
91 to protect the public health, welfare or safety. Such show cause hearing  
92 shall be scheduled within five business days after service is effected by  
93 the state or municipality. The affidavit may be ordered sealed by the  
94 court or judge upon a finding that the state's or municipality's interest  
95 in nondisclosure substantially outweighs the defendant's right to  
96 disclosure. A copy of the state's or municipality's application and the  
97 temporary order to cease and desist shall be posted on any outside  
98 door to any building on the real property.

99 (d) Such a public nuisance proceeding shall be deemed a civil action  
100 and venue shall lie in the superior court for the judicial district within  
101 which the real property alleged to constitute a public nuisance is  
102 located. Service shall be made in accordance with chapter 896. In  
103 addition, service of process may be made by an inspector of the  
104 Division of Criminal Justice or sworn member of a local police  
105 department or the Division of State Police.

106 (e) At the show cause hearing, the court shall determine whether  
107 there is probable cause to believe that a public nuisance exists, and that  
108 the circumstances demand the temporary relief requested be ordered,  
109 or the temporary ex parte order be continued during the pendency of  
110 the public nuisance proceeding. The court may, upon motion by the  
111 state, municipality or any defendant, enter such orders as justice  
112 requires. The court shall schedule the evidentiary hearing within  
113 ninety days from the show cause hearing.

114 (f) The record owner of the real property, any person claiming an  
115 interest of record pursuant to a bona fide mortgage, assignment of  
116 lease or rent, lien or security in the property and any lessee or tenant  
117 whose conduct is alleged to have contributed to the public nuisance  
118 shall be made a defendant to the action, except that the state or  
119 municipality shall exempt as a defendant any owner, lienholder,  
120 assignee, lessee, tenant or resident who cooperates with the state or  
121 municipality in making bona fide efforts to abate the nuisance or any  
122 tenant or resident who has been factually uninvolved in the conduct  
123 contributing to such public nuisance. If the state or municipality  
124 exempts as a defendant any record owner or any person claiming an  
125 interest of record pursuant to a mortgage, assignment of lease or rent,  
126 lien or security in the property, notice of the commencement of a  
127 nuisance proceeding shall be given by certified mail, return receipt  
128 requested, with a copy of such summons and complaint and a notice of  
129 exemption and right to be added as a party to any such person at his  
130 usual place of abode or business. Any such exempted person may, at  
131 his option, enter an appearance and participate in the nuisance  
132 proceeding to protect his property rights. Notice of the commencement  
133 of such a public nuisance proceeding shall be given by certified mail to  
134 the highest elected official of the municipality in which the real  
135 property is located.

136 (g) If the defendant is a financial institution and the record owner of  
137 the real property, or if the defendant is a financial institution claiming  
138 an interest of record pursuant to a bona fide mortgage, assignment of

139 lease or rent, lien or security in the real property and is not determined  
140 to be a principal or an accomplice in the conduct constituting the  
141 public nuisance, the court shall not enter any order against such  
142 defendant. The state or municipality shall have the burden of proving  
143 by clear and convincing evidence that any such defendant claiming an  
144 interest of record under this subsection is a principal or an accomplice  
145 in the alleged conduct constituting the public nuisance. For the  
146 purposes of this subsection, "financial institution" means a bank, as  
147 defined in subdivision (4) of section 36a-2, an out-of-state bank, as  
148 defined in subdivision (44) of section 36a-2, an institutional lender or  
149 any subsidiary or affiliate of such bank, out-of-state bank or  
150 institutional lender that directly or indirectly acquires the real property  
151 pursuant to strict foreclosure, foreclosure by sale or deed-in-lieu of  
152 foreclosure, and with the intent of ultimately transferring the property,  
153 or other lender licensed by the Department of Banking.

154 (h) For any defendant who fails to appear, the court may enter a  
155 default following an evidentiary showing by the state or municipality  
156 in support of the relief requested, which shall include affidavits or the  
157 testimony of witnesses. When the court enters a judgment upon  
158 default, the court may enter such orders as appear reasonably  
159 necessary to abate the public nuisance.

160 (i) At the evidentiary hearing upon the public nuisance complaint,  
161 the state or municipality shall have the burden of proving, by clear and  
162 convincing evidence, the existence of a public nuisance upon the real  
163 property as provided in section 19a-343, as amended by this act. If the  
164 state or municipality presents clear and convincing evidence that there  
165 have been three or more arrests, or the issuance of three or more arrest  
166 warrants indicating a pattern of criminal activity and not isolated  
167 incidents, for conduct on the real property or any portion thereof  
168 documented by a law enforcement officer for any of the offenses  
169 enumerated in subdivisions (1) to (11), inclusive, of subsection (c) of  
170 section 19a-343, as amended by this act, within the three hundred  
171 sixty-five days preceding commencement of the action, such evidence

172 shall create a rebuttable presumption of the existence of a public  
173 nuisance. Any defendant may offer evidence by way of an affirmative  
174 defense that such defendant has taken reasonable steps to abate the  
175 public nuisance, but has been unable to abate the nuisance.

176 Sec. 3. Section 19a-343b of the general statutes is repealed and the  
177 following is substituted in lieu thereof (*Effective October 1, 2007*):

178 In any proceeding to abate a public nuisance, the state or  
179 municipality may request such remedies or relief as are reasonably  
180 necessary to abate the nuisance including, but not limited to, orders for  
181 repair or alteration to the real property or any portion thereof,  
182 temporary orders to cease and desist, orders to cease and desist or  
183 appointment of a receiver of rents. In any such action, the court may  
184 enter any orders necessary and proper to abate the nuisance.

185 Sec. 4. Section 19a-343d of the general statutes is repealed and the  
186 following is substituted in lieu thereof (*Effective October 1, 2007*):

187 (a) The court may, upon application of the state or municipality,  
188 appoint a receiver to operate and manage the property or any portion  
189 thereof in accordance with the provisions of this section during the  
190 pendency of the public nuisance proceeding and shall include such  
191 powers and duties as the court may direct.

192 (b) The receiver shall with all reasonable speed, remove the  
193 delinquent matters and deficiencies in the property or any portion  
194 thereof constituting a serious fire hazard or a serious threat to life,  
195 health or safety. During the term of the receivership, the receiver shall  
196 repair and maintain the property or any portion thereof in a safe and  
197 healthful condition. The receiver shall have the power to let contracts  
198 therefor in accordance with the provisions of local laws, ordinances,  
199 rules and regulations. Notwithstanding any such laws, ordinances,  
200 rules or regulations, the receiver may let contracts or incur expenses  
201 for individual items of repairs, improvements or supplies without  
202 advertisement or the procurement of competitive bids where the total

203 amount of any such individual item does not exceed five hundred  
204 dollars or where there exists a condition which constitutes an  
205 imminent and substantial danger to life, health or safety, but in such  
206 event the receiver shall endeavor to obtain contracts on the most  
207 advantageous terms.

208 (c) The receiver shall collect the accrued and accruing rents, issues  
209 and profits of the property or any portion thereof and apply the same  
210 to the cost of removing or remedying such nuisance, to the payment of  
211 expenses reasonably necessary to the proper operation and  
212 management of the property, including insurance and the fees of the  
213 managing agent, if any, and to unpaid taxes, assessments, water rents  
214 and sewer rents and penalties and interest thereon.

215 (d) Any excess of income of the property in the hands of the receiver  
216 shall be applied to the necessary expenses in regard to such property  
217 of his office as receiver and then to sums due to mortgagees or lienors.

218 (e) The receiver shall have the power to bring a summary process  
219 action pursuant to the provisions of chapter 832 against any tenant or  
220 occupant of the property.

221 (f) Following appointment, the receiver shall keep complete written  
222 records, including records of all receivership funds on deposit and  
223 records itemizing all receipts and expenditures.

224 (g) The receiver's accounts shall be open to inspection by any  
225 defendant having an ownership interest in the real property, the state,  
226 the municipality, the court or any defendant with a record interest in  
227 the leases or rents.

228 (h) Upon motion by any defendant having an interest in the real  
229 property, [or] the state or the municipality, or upon its own motion,  
230 the court may direct the receiver to render a periodic accounting to the  
231 court.

232 (i) A receiver shall act until removed by the court. Upon the

233 termination of the receivership, the receiver shall render to the court a  
234 final accounting of all funds pertaining to the real property on deposit,  
235 as well as records of receipts and expenditures. The receiver shall  
236 deliver ledgers, records and the receiver's files and notes pertaining to  
237 any litigation or claim arising out of management of the real property  
238 to any person designated by the court.

239 (j) A receiver appointed pursuant to this section shall not be liable in  
240 his capacity as receiver to any person except for intentional or wilful  
241 misconduct.

242 Sec. 5. Section 19a-343e of the general statutes is repealed and the  
243 following is substituted in lieu thereof (*Effective October 1, 2007*):

244 (a) If the court finds by clear and convincing evidence that a public  
245 nuisance exists, the court may enter such orders as justice requires to  
246 abate the public nuisance, including but not limited to, an order to  
247 close the real property or any portion thereof. The court shall retain  
248 jurisdiction over the case until it appears that the nuisance no longer  
249 exists. The state or municipality shall post a copy of any court order to  
250 close the real property or any portion thereof on any outside door of  
251 the premises. The order shall include a notice that any person who  
252 removes, mutilates or defaces the closing order may be punished,  
253 upon conviction, by a fine not to exceed two hundred fifty dollars or  
254 by imprisonment of fifteen days, or both.

255 (b) At any time after entry of an order, any defendant may apply to  
256 the court to have any order vacated or modified for good cause. Prior  
257 to any decision on a defendant's application to vacate or modify an  
258 order, the state or municipality shall be afforded a reasonable  
259 opportunity to inspect the real property or any portion thereof to  
260 verify that the public nuisance has been abated, and the court shall  
261 provide the state or municipality with an opportunity to be heard to  
262 contest the defendant's application.

263 (c) Where the court vacates or modifies any order, it may condition

264 its decision on the posting of a bond in an amount not to exceed the  
265 current fair market value of the real property, as stated in an  
266 independent appraisal by a certified real estate appraiser, as surety  
267 against recurrence of the public nuisance.

268 (d) Where the court finds that real property or any portion thereof  
269 constitutes a public nuisance and enters a final judgment, the state or  
270 municipality shall record a copy of such judgment and any orders on  
271 the land records in the town in which such real property is located. At  
272 any time after the entry of judgment, any defendant may apply to the  
273 court to modify or vacate any order, including the reduction of the  
274 amount of, or release of liability for any bond required pursuant to this  
275 section. The court may grant such application for good cause shown,  
276 which may include, but not be limited to, a showing by such defendant  
277 by clear and convincing evidence that: (1) All court orders have been  
278 complied with, that any named persons have ceased any conduct  
279 constituting a public nuisance upon the real property or any portion  
280 thereof and that the nuisance has abated; (2) the defendant wishes to  
281 refinance or sell the real property to an identified bona fide purchaser  
282 for value whose proposed use for the real property will not constitute  
283 a public nuisance; or (3) the defendant has demolished or razed any  
284 buildings, structures or features upon the real property capable of  
285 supporting a public nuisance. Prior to any decision on a defendant's  
286 application to vacate or modify a final order or release a lien, the state  
287 or municipality shall be afforded a reasonable opportunity to inspect  
288 the real property or any portion thereof. Any modification to any order  
289 shall be recorded on the land records in the town in which such real  
290 property is located.

291 (e) Where the state or municipality applies for an order to close the  
292 real property or any portion thereof, the court shall take into  
293 consideration the rights of all interested parties and shall limit the  
294 scope of a closing order to minimize dispossession or dislocation of  
295 tenants or residents who have been factually uninvolved in the  
296 conduct contributing to the public nuisance, unless closure of the

297 property is necessary to protect public health, safety or welfare.

298 Sec. 6. Section 19a-343f of the general statutes is repealed and the  
299 following is substituted in lieu thereof (*Effective October 1, 2007*):

300 (a) In any case where dispossession or dislocation of tenants or  
301 residents who have been factually uninvolved with the conduct  
302 contributing to such public nuisance is necessary to abate the public  
303 nuisance, the court may impose the reasonable costs of relocating such  
304 tenants or residents upon any defendant determined by the court to be  
305 liable for the public nuisance.

306 (b) In any public nuisance proceeding, the court may impose the  
307 reasonable costs of investigation, prosecution and any extraordinary  
308 expenses incurred in abating the public nuisance upon any defendant  
309 determined by the court to be liable for the public nuisance. In any  
310 public nuisance proceeding, the court may award to the state or any  
311 municipality the reasonable costs of investigation, prosecution and any  
312 extraordinary expenses incurred in abating the public nuisance. The  
313 state or municipality shall submit an affidavit and such other  
314 documents as the court directs in support of a request for award of  
315 costs.

316 (c) The court may authorize the state or municipality or its agents to  
317 make any repairs or alterations to the real property or any portion  
318 thereof to bring it into compliance with applicable state and local  
319 building, fire, health, housing or similar codes. The court may impose  
320 the actual costs of any repairs or alterations upon any defendant  
321 determined by the court to be liable for the public nuisance. The court  
322 shall award the state or municipality the actual costs of any such  
323 repairs or alterations.

324 (d) In any public nuisance proceeding, any monetary penalty  
325 imposed by the court on a defendant with an ownership interest in the  
326 real property and any award of costs to the state or municipality shall  
327 constitute a judgment lien on the real property, and shall be recorded

328 as such on the land records in the town where the property is located.  
329 In addition, the state or municipality may, at its election, pursue any  
330 remedy under chapter 906.

331 (e) If any defendant in a public nuisance proceeding subject to a  
332 court order to abate the nuisance intentionally violates any such court  
333 order entered in judgment in a public nuisance proceeding under  
334 sections 19a-343 to 19a-343h, inclusive, the court may impose a civil  
335 penalty of not more than one thousand dollars for each day the public  
336 nuisance is found to have existed after such order. Upon recovery,  
337 such penalty shall be deposited in the General Fund.

338 (f) Any person who was not a defendant in a public nuisance action  
339 who intentionally violates any court order entered in judgment in a  
340 public nuisance proceeding, may be fined not more than one hundred  
341 dollars or imprisoned not more than six months or both.

342 Sec. 7. Section 19a-343g of the general statutes is repealed and the  
343 following is substituted in lieu thereof (*Effective October 1, 2007*):

344 (a) The state or municipality may use an inspector of the Division of  
345 Criminal Justice or a state or municipal police officer to assist in the  
346 enforcement of any court order in a public nuisance proceeding.  
347 Where a municipal police officer acts at the direction of a prosecutor,  
348 the state shall first obtain the permission of the municipal chief of  
349 police. Where a municipal police officer acts at the direction of a  
350 prosecutor or pursuant to a court order in a public nuisance matter, the  
351 officer and the municipality shall be indemnified against any losses,  
352 damages or liabilities arising within the scope of such duties, and the  
353 police officer shall be deemed an employee of the state for purposes of  
354 indemnification.

355 (b) In any public nuisance proceeding, an order by the court closing  
356 the real property or any portion thereof shall not be deemed to pass  
357 dominion, title, possession or control over the real property to the state  
358 or municipality.

359 Sec. 8. Section 19a-343h of the general statutes is repealed and the  
360 following is substituted in lieu thereof (*Effective October 1, 2007*):

361 Availability to the state or municipality of other remedies at law or  
362 equity shall not prevent the granting of relief under sections 19a-343 to  
363 19a-343h, inclusive, as amended by this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	19a-343
Sec. 2	<i>October 1, 2007</i>	19a-343a
Sec. 3	<i>October 1, 2007</i>	19a-343b
Sec. 4	<i>October 1, 2007</i>	19a-343d
Sec. 5	<i>October 1, 2007</i>	19a-343e
Sec. 6	<i>October 1, 2007</i>	19a-343f
Sec. 7	<i>October 1, 2007</i>	19a-343g
Sec. 8	<i>October 1, 2007</i>	19a-343h

**Statement of Purpose:**

To expand authority to bring a public nuisance action under sections 19a-343 to 19a-343h, inclusive, of the general statutes to municipalities.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*

Co-Sponsors: REP. CANDELARIA, 95th Dist.

H.B. 6832