



House of Representatives

General Assembly

File No. 544

February Session, 2012

Substitute House Bill No. 5489

House of Representatives, April 19, 2012

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE ABATEMENT OF A PUBLIC NUISANCE AND CRIMINAL LOCKOUT.

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

1 Section 1. Section 19a-343 of the general statutes, as amended by
2 section 20 of public act 09-177 and section 6 of public act 10-54, is
3 repealed and the following is substituted in lieu thereof (*Effective*
4 *January 1, 2013*):

5 (a) For the purposes of sections 19a-343 to 19a-343h, inclusive, as
6 amended by this act, a person creates or maintains a public nuisance if
7 such person erects, establishes, maintains, uses, owns or leases any real
8 property or portion thereof (1) for any of the purposes enumerated in
9 subdivisions (1) to ~~[(11)]~~ (6), inclusive, of subsection (c) of this section,
10 or (2) on which any of the offenses enumerated in subdivisions (1) to
11 (14), inclusive, of subsection (c) of this section have occurred.

12 (b) The state has the exclusive right to bring an action to abate a
13 public nuisance under this section and sections 19a-343a to 19a-343h,

14 inclusive, as amended by this act, involving any real property or
15 portion thereof, commercial or residential, including single or
16 multifamily dwellings, except as limited by subdivisions (12) and (14)
17 of subsection (c) of this section, provided there have been three or
18 more arrests, or the issuance of three or more arrest warrants
19 indicating a pattern of criminal activity and not isolated incidents, for
20 conduct on the property documented by a law enforcement officer for
21 any of the offenses enumerated in subdivisions (1) to [(11)] (14),
22 inclusive, of subsection (c) of this section within the three hundred
23 sixty-five days preceding commencement of the action.

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

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

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

37 (3) Transmission of gambling information under section 53-278b or
38 53-278d or maintaining of a gambling premises under section 53-278e.

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

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

47 [(6) Violations of the inciting injury to persons or property law
48 under section 53a-179a.]

49 [(7)] (6) Maintaining a motor vehicle chop shop under section
50 14-149a.

51 (7) Inciting injury to persons or property under section 53a-179a.

52 (8) Murder or manslaughter under section 53a-54a, 53a-54b, 53a-55,
53 53a-56 or 53a-56a.

54 (9) Assault under section 53a-59, 53a-59a, subdivision (1) of
55 subsection (a) of section 53a-60, [or] section 53a-60a or section 53a-61.

56 (10) Sexual assault under section 53a-70 or 53a-70a.

57 (11) Fire safety violations under section 29-292, subsection (b) of
58 section 29-310, or section 29-315, 29-320, 29-329, 29-337, 29-349 or 29-
59 357.

60 (12) Breach of the peace under section 53a-180aa or 53a-181 arising
61 out of activity on nonresidential real property that significantly
62 impacts the safety of the surrounding area.

63 (13) Sale or delivery of alcoholic liquor to a minor, intoxicated
64 person or habitual drunkard under section 30-86.

65 (14) Violation of a municipal ordinance resulting in the issuance of a
66 citation for (A) excessive noise on nonresidential real property that
67 significantly impacts the surrounding area, (B) owning or leasing a
68 dwelling unit that provides residence to an excessive number of
69 unrelated persons resulting in dangerous or unsanitary conditions that
70 significantly impact the safety of the surrounding area, or (C)
71 impermissible operation of an adult-oriented business or massage
72 parlor that significantly impacts the safety of the surrounding area.

73 Sec. 2. Section 19a-343a of the general statutes is repealed and the
74 following is substituted in lieu thereof (*Effective January 1, 2013*):

75 (a) The Chief State's Attorney or a deputy chief state's attorney,
76 state's attorney or assistant or deputy assistant state's attorney desiring
77 to commence an action to abate a public nuisance shall attach his
78 proposed unsigned writ, summons and complaint to the following
79 documents:

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

83 (2) An affidavit sworn to by the state or any competent affiant
84 setting forth a statement of facts showing by probable cause the
85 existence of a public nuisance upon the real property or any portion
86 thereof.

87 (b) The court, or if the court is not in session, any judge of the
88 Superior Court, may order that a show cause hearing be held before
89 the court or a judge thereof to determine whether or not the temporary
90 relief requested should be granted and the court shall direct the state
91 to give notice to any defendant of the pendency of the application and
92 of the time when it will be heard by causing a true and attested copy of
93 the application, the proposed unsigned writ, summons, complaint,
94 affidavit and of its order to be served upon the defendant by some
95 proper officer or indifferent person. Such hearing shall be scheduled
96 within ten days after service is effected by the state.

97 (c) If in the application, the state requests the issuance of a
98 temporary ex parte order for the abatement of a public nuisance, the
99 court, or if the court is not in session, any judge of the Superior Court,
100 may grant a temporary ex parte order to abate the public nuisance. The
101 court or judge shall direct the state to give notice and service of such
102 documents, including a copy of the ex parte order, in accordance with
103 subsection (b) of this section. At such hearing, any defendant may
104 show cause why the abatement order shall be modified or vacated. No

105 such ex parte order may be granted unless it appears from the specific
106 facts shown by affidavit and by complaint that there is probable cause
107 to believe that a public nuisance exists and the temporary relief
108 requested is necessary to protect the public health, welfare or safety.
109 Such show cause hearing shall be scheduled within five business days
110 after service is effected by the state. The affidavit may be ordered
111 sealed by the court or judge upon a finding that the state's interest in
112 nondisclosure substantially outweighs the defendant's right to
113 disclosure. A copy of the state's application and the temporary order to
114 cease and desist shall be posted on any outside door to any building on
115 the real property.

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

123 (e) At the show cause hearing, the court shall determine whether
124 there is probable cause to believe that a public nuisance exists, and that
125 the circumstances demand the temporary relief requested be ordered,
126 or the temporary ex parte order be continued during the pendency of
127 the public nuisance proceeding. The court may, upon motion by the
128 state or any defendant, enter such orders as justice requires. The court
129 shall schedule the evidentiary hearing within ninety days from the
130 show cause hearing.

131 (f) The record owner of the real property, any person claiming an
132 interest of record pursuant to a bona fide mortgage, assignment of
133 lease or rent, lien or security in the property and any lessee or tenant
134 whose conduct is alleged to have contributed to the public nuisance
135 shall be made a defendant to the action, except that the state shall
136 exempt as a defendant any owner, lienholder, assignee, lessee, tenant
137 or resident who cooperates with the state in making bona fide efforts

138 to abate the nuisance or any tenant or resident who has been factually
139 uninvolved in the conduct contributing to such public nuisance. If the
140 state exempts as a defendant any record owner or any person claiming
141 an interest of record pursuant to a mortgage, assignment of lease or
142 rent, lien or security in the property, notice of the commencement of a
143 nuisance proceeding shall be given by certified mail, return receipt
144 requested, with a copy of such summons and complaint and a notice of
145 exemption and right to be added as a party to any such person at his
146 usual place of abode or business. Any such exempted person may, at
147 his option, enter an appearance and participate in the nuisance
148 proceeding to protect his property rights. Notice of the commencement
149 of such a public nuisance proceeding shall be given by certified mail to
150 the highest elected official of the municipality in which the real
151 property is located.

152 (g) If the defendant is a financial institution and the record owner of
153 the real property, or if the defendant is a financial institution claiming
154 an interest of record pursuant to a bona fide mortgage, assignment of
155 lease or rent, lien or security in the real property and is not determined
156 to be a principal or an accomplice in the conduct constituting the
157 public nuisance, the court shall not enter any order against such
158 defendant. The state shall have the burden of proving by [clear and
159 convincing] a preponderance of the evidence that any such defendant
160 claiming an interest of record under this subsection is a principal or an
161 accomplice in the alleged conduct constituting the public nuisance.
162 Any such defendant may offer evidence by way of an affirmative
163 defense that such defendant has taken reasonable steps to abate the
164 public nuisance, but has been unable to abate the nuisance. Any
165 affirmative defense offered by such defendant shall be proven by a
166 preponderance of the evidence. The provisions of this subsection shall
167 not apply if the defendant is a financial institution that knew or should
168 have known, through the exercise of reasonable diligence, of the
169 existence of the public nuisance and took no action to abate such
170 public nuisance prior to the commencement of an action under the
171 provisions of this section. For the purposes of this subsection,
172 "financial institution" means a bank, as defined in section 36a-2, an out-

173 of-state bank, as defined in section 36a-2, an institutional lender or any
174 subsidiary or affiliate of such bank, out-of-state bank or institutional
175 lender that directly or indirectly acquires the real property pursuant to
176 strict foreclosure, foreclosure by sale or deed-in-lieu of foreclosure, and
177 with the intent of ultimately transferring the property, or other lender
178 licensed by the Department of Banking.

179 (h) For any defendant who fails to appear, the court may enter a
180 default following an evidentiary showing by the state in support of the
181 relief requested, which shall include affidavits or the testimony of
182 witnesses. When the court enters a judgment upon default, the court
183 may enter such orders as appear reasonably necessary to abate the
184 public nuisance.

185 (i) At the evidentiary hearing upon the public nuisance complaint,
186 the state shall have the burden of proving, by [clear and convincing] a
187 preponderance of the evidence, the existence of a public nuisance upon
188 the real property as provided in section 19a-343, as amended by this
189 act. If the state presents [clear and convincing] a preponderance of the
190 evidence that there have been three or more arrests, or the issuance of
191 three or more arrest warrants indicating a pattern of criminal activity
192 and not isolated incidents, for conduct on the real property or any
193 portion thereof documented by a law enforcement officer for any of
194 the offenses enumerated in subdivisions (1) to [(11)] (14), inclusive, of
195 subsection (c) of section 19a-343, as amended by this act, within the
196 three hundred sixty-five days preceding commencement of the action,
197 such evidence shall create a rebuttable presumption of the existence of
198 a public nuisance. Any defendant may offer evidence by way of an
199 affirmative defense that such defendant has taken reasonable steps to
200 abate the public nuisance, but has been unable to abate the nuisance.

201 Sec. 3. Section 53a-214 of the general statutes is repealed and the
202 following is substituted in lieu thereof (*Effective January 1, 2013*):

203 (a) A landlord or lessor of a [dwelling] residential or nonresidential
204 unit subject to the provisions of chapter 830 or 832, an owner of such a
205 unit, or the agent of such landlord, lessor or owner is guilty of criminal

206 lockout when, without benefit of a court order, he or she deprives: [a]
 207 (1) A tenant, as defined in subsection (l) of section 47a-1, of access to
 208 [his dwelling] such tenant's residential unit or [his personal]
 209 possessions; or (2) a lessee of access to such lessee's nonresidential unit
 210 or possessions.

211 (b) Criminal lockout is a class [C] B misdemeanor.

This act shall take effect as follows and shall amend the following sections:		
Section 1	January 1, 2013	19a-343
Sec. 2	January 1, 2013	19a-343a
Sec. 3	January 1, 2013	53a-214

Statement of Legislative Commissioners:

In sections 1(c)(12) and 1(c)(14), "nonresidential property" was changed to "nonresidential real property" to maintain consistency with the references to "real property" in sections 1(a) and 1(b).

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: See Below

Explanation

The bill adds to the nuisance abatement law certain violations of municipal ordinances that result in citations. Municipalities could potentially realize a minimal increase in revenue as it is likely that the bill will not result in a significant number of additional citations.

The bill makes additional changes to the nuisance abatement statute that does not result in a fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis

sHB 5489

***AN ACT CONCERNING THE ABATEMENT OF A PUBLIC
NUISANCE AND CRIMINAL LOCKOUT.***

SUMMARY:

This bill adds additional crimes to the public nuisance abatement statutes and broadens the circumstances in which the law applies. The nuisance abatement law allows the state to file civil suits seeking various forms of relief when there are three or more arrests, or three or more arrest warrants indicating a pattern of criminal activity, for certain offenses at a property within one year. Among other things, courts can order the property closed until the nuisance is eliminated.

The bill makes other changes to the nuisance abatement statutes. It lowers the state's burden of proof in nuisance abatement evidentiary hearings, from clear and convincing evidence (meaning it is highly probable or reasonably certain that facts are true) to a preponderance of the evidence (it is more likely than not that facts are true). By law, if the state meets its burden at such hearings, there is a rebuttable presumption in its favor. Defendants can offer an affirmative defense that they took reasonable steps to stop the nuisance but were unable to do so.

The bill expands the circumstances in which the state can make a financial institution (e.g., a bank with a mortgage on the property) a defendant in a nuisance abatement action. It also lowers the state's burden to prove that a financial institution with an interest of record in a property had criminal responsibility for nuisances occurring at the property.

The bill expands the crime of criminal lockout to include nonresidential tenants within its protections, and increases the penalty

for the crime.

The bill also makes technical and conforming changes.

EFFECTIVE DATE: January 1, 2013

PUBLIC NUISANCES

Applicable Crimes

The bill adds to the public nuisance statutes (1) breach of the peace arising out of activity on nonresidential property that significantly impacts the safety of the surrounding area; (2) sale or delivery of alcohol to a minor, intoxicated person, or habitual drunkard; and (3) 3rd degree assault (the law already includes various other degrees of assault).

The law already includes the following offenses in the public nuisance statutes:

1. prostitution;
2. promoting an obscene performance or obscene material, employing a minor in an obscene performance, or importing or possessing child pornography;
3. transmitting gambling information or maintaining gambling premises;
4. selling, possessing with intent to sell, or producing illegal drugs;
5. selling liquor illegally, or disposing of liquor without a permit;
6. running a motor vehicle chop shop;
7. inciting injury to persons or property;
8. murder or manslaughter;
9. assault;
10. sexual assault; and

11. fire safety violations.

Under current law, a person creates or maintains a public nuisance when the person erects, establishes, maintains, uses, owns, or leases any building or place for purposes of any of the listed offenses. The bill expands the law to apply to such actions at a property (1) on which any of the listed offenses have occurred (including those added by the bill) or (2) for purposes of the first six categories of crimes in the list noted above (e.g., using a building for purposes of prostitution or illegal liquor sales).

The bill also adds to the nuisance abatement law certain violations of municipal ordinances that result in citations. But since nuisance abatement actions are predicated on three or more arrests or arrest warrants for the offense, it appears that this provision has no effect unless there is also an arrest associated with the citation. (The law does not generally authorize arrests for violations of municipal ordinances.) The ordinance violations in the bill include:

1. excessive noise on nonresidential property that significantly impacts the surrounding area,
2. owning or leasing a dwelling unit where an excessive number of unrelated people live, resulting in dangerous or unsanitary conditions that significantly impact the surrounding area's safety, or
3. impermissible operation of an adult-oriented business or massage parlor that significantly impacts the surrounding area's safety.

Financial Institution Defendants

By law, courts may not issue a public nuisance abatement order against a financial institution that (1) owns the property or (2) has an interest of record in it (under a mortgage, assignment of lease or rent, lien, or security interest) and is not found to be a principal or accomplice to the conduct constituting the nuisance.

The bill requires the state to prove by a preponderance of the evidence, rather than by the stricter clear and convincing evidence, that such an institution claiming an interest of record in the property as specified above was a principal or accomplice to the alleged conduct. It specifies that such defendants can offer an affirmative defense, which they must prove by a preponderance of the evidence, that they have taken reasonable steps to abate the nuisance, but were unable to do so.

The bill also allows court to issue nuisance abatement orders against financial institutions that own or claim an interest of record in a property where a nuisance occurred, if the institution (1) knew about the nuisance, or should have known about it by exercising reasonable diligence and (2) did not try to abate it before the state brought the case.

CRIMINAL LOCKOUT

Under current law, it is a class C misdemeanor for a landlord, unit owner, or one of their agents to prevent a residential tenant from gaining access to the rented dwelling unit or his or her personal possessions, unless the action is taken pursuant to a court order.

The bill expands this crime to include such actions against nonresidential tenants. It also increases the maximum penalty for the crime by making it a class B misdemeanor. Class B misdemeanors are punishable by up to six months' imprisonment, up to a \$1,000 fine, or both. Class C misdemeanors are punishable by up to three months' imprisonment, up to a \$500 fine, or both.

BACKGROUND

3rd Degree Assault

By law, a person commits 3rd degree assault when he or she (1) with intent to cause physical injury to another person, causes such injury to that person or to a third person; (2) recklessly causes serious physical injury to another person; or (3) with criminal negligence, causes physical injury to another person by means of a deadly weapon,

dangerous instrument, or electronic defense weapon (CGS § 53a-61).

Sanctions for Public Nuisance

The law authorizes various types of temporary and permanent relief in public nuisance abatement actions. For example, the state can apply for a temporary “ex parte” order when its sworn complaint and affidavit show that the nuisance poses a danger to the public health, welfare, or safety. Within specified time frames after issuing such an order, the court must hold a hearing to decide whether the order remains in place or whether other temporary orders should be entered.

The court can appoint a receiver to manage and operate the property while a nuisance action is pending. Among other things, the court can also (1) order the closing of the property or some part of it; (2) authorize the state to bring the property into compliance with state and local building, fire, health, housing, or similar codes, and order the defendant to pay the costs; and (3) impose civil fines or imprisonment for certain intentional violations. The court maintains ongoing jurisdiction until it appears the nuisance no longer exists (CGS § 19a-343 *et seq.*).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 44 Nay 0 (04/02/2012)