



House of Representatives

File No. 616

General Assembly

February Session, 2012 **(Reprint of File No. 544)**

Substitute House Bill No. 5489
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 2, 2012

***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3 repealed and the following is substituted in lieu thereof (*Effective*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 or
20 the issuance of three or more citations for a violation of a municipal
21 ordinance as described in subdivision (13) of subsection (c) of this
22 section, for conduct on the property documented by a law enforcement
23 officer for any of the offenses enumerated in subdivisions (1) to [(11)]
24 (14), inclusive, of subsection (c) of this section within the three
25 hundred sixty-five days preceding commencement of the action.

26 (c) Three or more arrests, [or] the issuance of three or more arrest
27 warrants indicating a pattern of criminal activity and not isolated
28 incidents or the issuance of three or more citations for a violation of a
29 municipal ordinance as described in subdivision (13) of this
30 subsection, for the following offenses shall constitute the basis for
31 bringing an action to abate a public nuisance:

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

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

41 (3) Transmission of gambling information under section 53-278b or
42 53-278d or maintaining of a gambling premises under section 53-278e.

43 (4) Offenses for the sale of controlled substances, possession of
44 controlled substances with intent to sell, or maintaining a drug factory
45 under section 21a-277, 21a-278 or 21a-278a or use of the property by
46 persons possessing controlled substances under section 21a-279.

47 Nothing in this section shall prevent the state from also proceeding
48 against property under section 21a-259 or 54-36h.

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

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

53 [(7)] (6) Maintaining a motor vehicle chop shop under section
54 14-149a.

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

56 (8) Murder or manslaughter under section 53a-54a, 53a-54b, 53a-55,
57 53a-56 or 53a-56a.

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

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

61 (11) Fire safety violations under section 29-292, subsection (b) of
62 section 29-310, or section 29-315, 29-320, 29-329, 29-337, 29-349 or 29-
63 357.

64 (12) Sale or delivery of alcoholic liquor to an intoxicated person or a
65 habitual drunkard under section 30-86.

66 (13) Violation of a municipal ordinance resulting in the issuance of a
67 citation for (A) excessive noise on nonresidential real property that
68 significantly impacts the surrounding area, (B) owning or leasing a
69 dwelling unit that provides residence to an excessive number of
70 unrelated persons resulting in dangerous or unsanitary conditions that
71 significantly impact the safety of the surrounding area, or (C)
72 impermissible operation of a (i) business that permits unlicensed
73 personnel to engage in the practice of massage therapy, or (ii) massage
74 parlor, as defined pursuant to a municipal ordinance, that significantly

75 impacts the safety of the surrounding area.

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

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

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

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

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

100 (c) If in the application, the state requests the issuance of a
101 temporary ex parte order for the abatement of a public nuisance, the
102 court, or if the court is not in session, any judge of the Superior Court,
103 may grant a temporary ex parte order to abate the public nuisance. The
104 court or judge shall direct the state to give notice and service of such
105 documents, including a copy of the ex parte order, in accordance with

106 subsection (b) of this section. At such hearing, any defendant may
107 show cause why the abatement order shall be modified or vacated. No
108 such ex parte order may be granted unless it appears from the specific
109 facts shown by affidavit and by complaint that there is probable cause
110 to believe that a public nuisance exists and the temporary relief
111 requested is necessary to protect the public health, welfare or safety.
112 Such show cause hearing shall be scheduled within five business days
113 after service is effected by the state. The affidavit may be ordered
114 sealed by the court or judge upon a finding that the state's interest in
115 nondisclosure substantially outweighs the defendant's right to
116 disclosure. A copy of the state's application and the temporary order to
117 cease and desist shall be posted on any outside door to any building on
118 the real property.

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

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

134 (f) The record owner of the real property, any person claiming an
135 interest of record pursuant to a bona fide mortgage, assignment of
136 lease or rent, lien or security in the property and any lessee or tenant
137 whose conduct is alleged to have contributed to the public nuisance
138 shall be made a defendant to the action, except that the state shall

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

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

173 public nuisance prior to the commencement of an action under the
174 provisions of this section. For the purposes of this subsection,
175 "financial institution" means a bank, as defined in section 36a-2, an out-
176 of-state bank, as defined in section 36a-2, an institutional lender or any
177 subsidiary or affiliate of such bank, out-of-state bank or institutional
178 lender that directly or indirectly acquires the real property pursuant to
179 strict foreclosure, foreclosure by sale or deed-in-lieu of foreclosure, and
180 with the intent of ultimately transferring the property, or other lender
181 licensed by the Department of Banking.

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

188 (i) At the evidentiary hearing upon the public nuisance complaint,
189 the state shall have the burden of proving, by [clear and convincing] a
190 preponderance of the evidence, the existence of a public nuisance upon
191 the real property as provided in section 19a-343, as amended by this
192 act. If the state presents [clear and convincing] a preponderance of the
193 evidence that there have been three or more arrests, or the issuance of
194 three or more arrest warrants indicating a pattern of criminal activity
195 and not isolated incidents or the issuance of three or more citations for
196 a violation of a municipal ordinance as described in subdivision (13) of
197 subsection (c) of section 19a-343, as amended by this act, for conduct
198 on the real property or any portion thereof documented by a law
199 enforcement officer for any of the offenses enumerated in subdivisions
200 (1) to [(11)] (14), inclusive, of subsection (c) of section 19a-343, as
201 amended by this act, within the three hundred sixty-five days
202 preceding commencement of the action, such evidence shall create a
203 rebuttable presumption of the existence of a public nuisance. Any
204 defendant may offer evidence by way of an affirmative defense that
205 such defendant has taken reasonable steps to abate the public
206 nuisance, but has been unable to abate the nuisance.

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

209 (a) A landlord or lessor of a [dwelling] residential or nonresidential
210 unit subject to the provisions of chapter 830 or 832, an owner of such a
211 unit, or the agent of such landlord, lessor or owner is guilty of criminal
212 lockout when, without benefit of a court order, he or she deprives: [a]
213 (1) A tenant, as defined in subsection (l) of section 47a-1, of access to
214 [his dwelling] such tenant's residential unit or [his personal]
215 possessions; or (2) a lessee of access to such lessee's nonresidential unit
216 or possessions.

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

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

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.

House "A" adds provisions regarding the abatement of a public nuisance and does not result in a fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5489 (as amended by House "A")******AN ACT CONCERNING THE ABATEMENT OF A PUBLIC NUISANCE AND CRIMINAL LOCKOUT.*****SUMMARY:**

This bill adds additional crimes, as well as certain municipal ordinance violations, to the public nuisance abatement statutes and broadens the circumstances in which the law applies.

The current 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. The bill also allows the state to file such suits when three or more citations have been issued for violations of certain types of municipal ordinances. Among other things, the nuisance abatement law allows courts to 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.

*House Amendment "A":

1. allows the state to bring a nuisance abatement action for three or more citations for certain violations of municipal ordinances;
2. deletes provisions in the original file that added to the nuisance abatement statutes (a) breach of the peace from activity on nonresidential property that significantly impacts the surrounding area's safety and (b) sale or delivery of alcohol to a minor;
3. narrows another provision to citations involving illegal operation of massage-oriented businesses rather than any adult-oriented businesses that impact safety; and
4. makes minor, technical, and conforming changes.

EFFECTIVE DATE: January 1, 2013

PUBLIC NUISANCES

Applicable Crimes and Violations

The bill adds to the public nuisance statutes (1) sale or delivery of alcohol to an intoxicated person or habitual drunkard and (2) 3rd degree assault (the law already includes various other degrees of assault). It also adds to the nuisance abatement law the following violations of municipal ordinances that result in citations:

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 a (a) business that allows unlicensed people to practice massage therapy or (b) massage parlor (as defined in the ordinance) that significantly impacts the surrounding area's safety.

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 of existing offenses (e.g., using a building for purposes of prostitution or illegal liquor sales).

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. "Financial institutions" for this purpose include banks, out-of-state banks, and institutional lenders and their subsidiaries and affiliates that directly or indirectly acquire a property through foreclosure proceedings and intend to re-sell it, or other lenders licensed by the Banking Department.

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 courts 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)