



General Assembly

February Session, 2012

Raised Bill No. 5489

LCO No. 2055

02055_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING THE ABATEMENT OF A PUBLIC NUISANCE.

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3 repealed and the following is substituted in lieu thereof (*Effective*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) 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, provided there have been three or more arrests,

17 or the issuance of three or more arrest warrants indicating a pattern of
18 criminal activity and not isolated incidents, for conduct on the
19 property documented by a law enforcement officer for any of the
20 offenses enumerated in subdivisions (1) to [(11)] (14), inclusive, of
21 subsection (c) of this section within the three hundred sixty-five days
22 preceding commencement of the action.

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

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

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

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

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

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

46 [(6) Violations of the inciting injury to persons or property law

47 under section 53a-179a.]

48 [(7)] (6) Maintaining a motor vehicle chop shop under section
49 14-149a.

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

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

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

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

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

59 (12) Breach of the peace under section 53a-180aa or 53a-181.

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

62 (14) Violation of a municipal ordinance resulting in the issuance of a
63 citation for (A) excessive noise, (B) public consumption of alcoholic
64 liquor, (C) owning or leasing a dwelling unit that provides residence to
65 an excessive number of unrelated persons, or (D) impermissible
66 operation of an adult-oriented business or massage parlor.

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

69 (a) The Chief State's Attorney or a deputy chief state's attorney,
70 state's attorney or assistant or deputy assistant state's attorney desiring
71 to commence an action to abate a public nuisance shall attach his
72 proposed unsigned writ, summons and complaint to the following
73 documents:

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

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

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

91 (c) If in the application, the state requests the issuance of a
92 temporary ex parte order for the abatement of a public nuisance, the
93 court, or if the court is not in session, any judge of the Superior Court,
94 may grant a temporary ex parte order to abate the public nuisance. The
95 court or judge shall direct the state to give notice and service of such
96 documents, including a copy of the ex parte order, in accordance with
97 subsection (b) of this section. At such hearing, any defendant may
98 show cause why the abatement order shall be modified or vacated. No
99 such ex parte order may be granted unless it appears from the specific
100 facts shown by affidavit and by complaint that there is probable cause
101 to believe that a public nuisance exists and the temporary relief
102 requested is necessary to protect the public health, welfare or safety.
103 Such show cause hearing shall be scheduled within five business days
104 after service is effected by the state. The affidavit may be ordered
105 sealed by the court or judge upon a finding that the state's interest in

106 nondisclosure substantially outweighs the defendant's right to
107 disclosure. A copy of the state's application and the temporary order to
108 cease and desist shall be posted on any outside door to any building on
109 the real property.

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

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

125 (f) The record owner of the real property, any person claiming an
126 interest of record pursuant to a bona fide mortgage, assignment of
127 lease or rent, lien or security in the property and any lessee or tenant
128 whose conduct is alleged to have contributed to the public nuisance
129 shall be made a defendant to the action, except that the state shall
130 exempt as a defendant any owner, lienholder, assignee, lessee, tenant
131 or resident who cooperates with the state in making bona fide efforts
132 to abate the nuisance or any tenant or resident who has been factually
133 uninvolved in the conduct contributing to such public nuisance. If the
134 state exempts as a defendant any record owner or any person claiming
135 an interest of record pursuant to a mortgage, assignment of lease or
136 rent, lien or security in the property, notice of the commencement of a
137 nuisance proceeding shall be given by certified mail, return receipt

138 requested, with a copy of such summons and complaint and a notice of
139 exemption and right to be added as a party to any such person at his
140 usual place of abode or business. Any such exempted person may, at
141 his option, enter an appearance and participate in the nuisance
142 proceeding to protect his property rights. Notice of the commencement
143 of such a public nuisance proceeding shall be given by certified mail to
144 the highest elected official of the municipality in which the real
145 property is located.

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

172 licensed by the Department of Banking.

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

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

196 Sec. 3. Section 19a-343b of the general statutes is repealed and the
197 following is substituted in lieu thereof (*Effective January 1, 2013*):

198 In any proceeding to abate a public nuisance, the state may request
199 such remedies or relief as are reasonably necessary to abate the
200 nuisance including, but not limited to, an order to enjoin any such
201 nuisance and the person or persons conducting or maintaining the
202 same from continuing the same and the owner or agent of the real
203 property or portion thereof upon which such nuisance exists from

204 permitting such building or ground or both to be so used, orders for
205 repair or alteration to the real property or any portion thereof,
206 temporary orders to cease and desist, orders to cease and desist, [or]
207 appointment of a receiver of rents or forfeiture of the real property to
208 the state. In any such action, the court may enter any orders necessary
209 and proper to abate the nuisance.

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>	19a-343b

Statement of Purpose:

To afford greater protections to municipalities and the state when abating public nuisances.

[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.]