



**Substitute House Bill No. 6683**

**Public Act No. 13-174**

**AN ACT CONCERNING THE ABATEMENT OF A PUBLIC NUISANCE.**

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

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 Section 19a-343 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

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

(b) The state has the exclusive right to bring an action to abate a public nuisance under this section and sections 19a-343a to 19a-343h, inclusive, as amended by this act, involving any real property or portion thereof, commercial or residential, including single or multifamily dwellings, provided there have been three or more arrests, [or] the issuance of three or more arrest warrants indicating a pattern of criminal activity and not isolated incidents or the issuance of three or more citations for a violation of a municipal ordinance as described

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in subdivision (14) of subsection (c) of this section, for conduct on the property documented by a law enforcement officer for any of the offenses enumerated in subdivisions (1) to [(11)] (14), inclusive, of subsection (c) of this section within the three hundred sixty-five days preceding commencement of the action.

(c) Three or more arrests, [or] the issuance of three or more arrest warrants indicating a pattern of criminal activity and not isolated incidents or the issuance of three or more citations for a violation of a municipal ordinance as described in subdivision (14) of this subsection, for the following offenses shall constitute the basis for bringing an action to abate a public nuisance:

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

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

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

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

(5) Unauthorized sale of alcoholic liquor under section 30-74 or

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disposing of liquor without a permit under section 30-77.

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

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

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

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

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

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

(11) Fire safety violations under section 29-292, subsection (b) of section 29-310, or section 29-315, 29-317, 29-320, 29-325, 29-329, 29-337, 29-349 or 29-357.

(12) Firearm offenses under section 29-35, 53-202aa, 53-203, 53a-211, 53a-212, 53a-216, 53a-217 or 53a-217c.

(13) Illegal manufacture, sale, possession or dispensing of a drug under subdivision (2) of section 21a-108.

(14) Violation of a municipal ordinance resulting in the issuance of a citation for (A) excessive noise on nonresidential real property that significantly impacts the surrounding area, provided the municipality's excessive noise ordinance is based on an objective standard, (B) owning or leasing a dwelling unit that provides residence to an excessive number of unrelated persons resulting in dangerous or unsanitary conditions that significantly impact the safety of the surrounding area, or (C) impermissible operation of (i) a business that

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permits persons who are not licensed pursuant to section 20-206b to engage in the practice of massage therapy, or (ii) a massage parlor, as defined by the applicable municipal ordinance, that significantly impacts the safety of the surrounding area.

Sec. 2. Section 19a-343 of the general statutes, as amended by section 20 of public act 09-177, section 6 of public act 10-54 and sections 3 and 4 of public act 12-60, is repealed and the following is substituted in lieu thereof (*Effective January 1, 2015*):

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

(b) The state has the exclusive right to bring an action to abate a public nuisance under this section and sections 19a-343a to 19a-343h, inclusive, as amended by this act, involving any real property or portion thereof, commercial or residential, including single or multifamily dwellings, provided there have been three or more arrests, [or] the issuance of three or more arrest warrants indicating a pattern of criminal activity and not isolated incidents or the issuance of three or more citations for a violation of a municipal ordinance as described in subdivision (14) of subsection (c) of this section, for conduct on the property documented by a law enforcement officer for any of the offenses enumerated in subdivisions (1) to [(11)] (14), inclusive, of subsection (c) of this section within the three hundred sixty-five days preceding commencement of the action.

(c) Three or more arrests, [or] the issuance of three or more arrest warrants indicating a pattern of criminal activity and not isolated

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incidents or the issuance of three or more citations for a violation of a municipal ordinance as described in subdivision (14) of this subsection, for the following offenses shall constitute the basis for bringing an action to abate a public nuisance:

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

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

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

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

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

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

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

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

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

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

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

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

(12) Firearm offenses under section 29-35, 53-202aa, 53-203, 53a-211, 53a-212, 53a-216, 53a-217 or 53a-217c.

(13) Illegal manufacture, sale, possession or dispensing of a drug under subdivision (2) of section 21a-108.

(14) Violation of a municipal ordinance resulting in the issuance of a citation for (A) excessive noise on nonresidential real property that significantly impacts the surrounding area, provided the municipality's excessive noise ordinance is based on an objective standard, (B) owning or leasing a dwelling unit that provides residence to an excessive number of unrelated persons resulting in dangerous or unsanitary conditions that significantly impact the safety of the surrounding area, or (C) impermissible operation of (i) a business that permits persons who are not licensed pursuant to section 20-206b to engage in the practice of massage therapy, or (ii) a massage parlor, as defined by the applicable municipal ordinance, that significantly impacts the safety of the surrounding area.

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

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

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

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

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

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

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

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

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

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

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

(g) If the defendant is a financial institution and the record owner of the real property, or if the defendant is a financial institution claiming an interest of record pursuant to a bona fide mortgage, assignment of lease or rent, lien or security in the real property and is not determined to be a principal or an accomplice in the conduct constituting the public nuisance, the court shall not enter any order against such defendant. The state shall have the burden of proving by [clear and convincing] a preponderance of the evidence that any such defendant claiming an interest of record under this subsection is a principal or an accomplice in the alleged conduct constituting the public nuisance. Any such defendant may offer evidence by way of an affirmative defense that such defendant has taken reasonable steps to abate the public nuisance, but has been unable to abate the nuisance. Any affirmative defense offered by such defendant shall be proven by a preponderance of the evidence. For the purposes of this subsection, "financial institution" means a bank, as defined in section 36a-2, an out-

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

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

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

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Approved June 24, 2013