



House of Representatives

General Assembly

File No. 697

January Session, 2013

Substitute House Bill No. 6683

House of Representatives, May 2, 2013

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.

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 Section 19a-343 of the general statutes is repealed and the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, 2013*):

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

10 (b) The state has the exclusive right to bring an action to abate a
11 public nuisance under this section and sections 19a-343a to 19a-343h,
12 inclusive, as amended by this act, involving any real property or
13 portion thereof, commercial or residential, including single or
14 multifamily dwellings, provided there have been three or more arrests,

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

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

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

38 (3) Transmission of gambling information under section 53-278b or
39 53-278d or maintaining of a gambling premises under section 53-278e.

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

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

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

50 [(7)] (6) Maintaining a motor vehicle chop shop under section
51 14-149a.

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

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

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

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

58 (11) Fire safety violations under section 29-292, subsection (b) of
59 section 29-310, or section 29-315, 29-317, 29-320, 29-325, 29-329, 29-337,
60 29-349 or 29-357.

61 (12) Firearm offenses under section 29-35, 53-202aa, 53-203, 53a-211,
62 53a-212, 53a-216, 53a-217 or 53a-217c.

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

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

75 surrounding area.

76 Sec. 2. Section 19a-343 of the general statutes, as amended by section
77 20 of public act 09-177, section 6 of public act 10-54 and sections 3 and
78 4 of public act 12-60, is repealed and the following is substituted in lieu
79 thereof (*Effective January 1, 2015*):

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

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

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

106 (1) Prostitution under section 53a-82, 53a-83, 53a-86, 53a-87, 53a-88

107 or 53a-89.

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

115 (3) Transmission of gambling information under section 53-278b or
116 53-278d or maintaining of a gambling premises under section 53-278e.

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

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

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

127 [(7)] (6) Maintaining a motor vehicle chop shop under section
128 14-149a.

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

130 (8) Murder or manslaughter under section 53a-54a, 53a-54b, 53a-55,
131 53a-56 or 53a-56a.

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

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

135 (11) Fire safety violations under section 29-292, subsection (b) of
136 section 29-310, or section 29-315, 29-320, 29-329, 29-337, 29-349 or 29-
137 357.

138 (12) Firearm offenses under section 29-35, 53-202aa, 53-203, 53a-211,
139 53a-212, 53a-216, 53a-217 or 53a-217c.

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

142 (14) Violation of a municipal ordinance resulting in the issuance of a
143 citation for (A) excessive noise on nonresidential real property that
144 significantly impacts the surrounding area, (B) owning or leasing a
145 dwelling unit that provides residence to an excessive number of
146 unrelated persons resulting in dangerous or unsanitary conditions that
147 significantly impact the safety of the surrounding area, or (C)
148 impermissible operation of (i) a business that permits persons who are
149 not licensed pursuant to section 20-206b to engage in the practice of
150 massage therapy, or (ii) a massage parlor, as defined by the applicable
151 municipal ordinance, that significantly impacts the safety of the
152 surrounding area.

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

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

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

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

166 thereof.

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

177 (c) If in the application, the state requests the issuance of a
178 temporary ex parte order for the abatement of a public nuisance, the
179 court, or if the court is not in session, any judge of the Superior Court,
180 may grant a temporary ex parte order to abate the public nuisance. The
181 court or judge shall direct the state to give notice and service of such
182 documents, including a copy of the ex parte order, in accordance with
183 subsection (b) of this section. At such hearing, any defendant may
184 show cause why the abatement order shall be modified or vacated. No
185 such ex parte order may be granted unless it appears from the specific
186 facts shown by affidavit and by complaint that there is probable cause
187 to believe that a public nuisance exists and the temporary relief
188 requested is necessary to protect the public health, welfare or safety.
189 Such show cause hearing shall be scheduled within five business days
190 after service is effected by the state. The affidavit may be ordered
191 sealed by the court or judge upon a finding that the state's interest in
192 nondisclosure substantially outweighs the defendant's right to
193 disclosure. A copy of the state's application and the temporary order to
194 cease and desist shall be posted on any outside door to any building on
195 the real property.

196 (d) Such a public nuisance proceeding shall be deemed a civil action
197 and venue shall lie in the superior court for the judicial district within
198 which the real property alleged to constitute a public nuisance is

199 located. Service of process shall be made in accordance with chapter
200 896. In addition, service of process may be made by an inspector of the
201 Division of Criminal Justice or sworn member of a local police
202 department or the Division of State Police.

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

211 (f) The record owner of the real property, any person claiming an
212 interest of record pursuant to a bona fide mortgage, assignment of
213 lease or rent, lien or security in the property and any lessee or tenant
214 whose conduct is alleged to have contributed to the public nuisance
215 shall be made a defendant to the action, except that the state shall
216 exempt as a defendant any owner, lienholder, assignee, lessee, tenant
217 or resident who cooperates with the state in making bona fide efforts
218 to abate the nuisance or any tenant or resident who has been factually
219 uninvolved in the conduct contributing to such public nuisance. If the
220 state exempts as a defendant any record owner or any person claiming
221 an interest of record pursuant to a mortgage, assignment of lease or
222 rent, lien or security in the property, notice of the commencement of a
223 nuisance proceeding shall be given by certified mail, return receipt
224 requested, with a copy of such summons and complaint and a notice of
225 exemption and right to be added as a party to any such person at his
226 usual place of abode or business. Any such exempted person may, at
227 his option, enter an appearance and participate in the nuisance
228 proceeding to protect his property rights. Notice of the commencement
229 of such a public nuisance proceeding shall be given by certified mail to
230 the highest elected official of the municipality in which the real
231 property is located.

232 (g) If the defendant is a financial institution and the record owner of
233 the real property, or if the defendant is a financial institution claiming
234 an interest of record pursuant to a bona fide mortgage, assignment of
235 lease or rent, lien or security in the real property and is not determined
236 to be a principal or an accomplice in the conduct constituting the
237 public nuisance, the court shall not enter any order against such
238 defendant. The state shall have the burden of proving by [clear and
239 convincing] a preponderance of the evidence that any such defendant
240 claiming an interest of record under this subsection is a principal or an
241 accomplice in the alleged conduct constituting the public nuisance.
242 Any such defendant may offer evidence by way of an affirmative
243 defense that such defendant has taken reasonable steps to abate the
244 public nuisance, but has been unable to abate the nuisance. Any
245 affirmative defense offered by such defendant shall be proven by a
246 preponderance of the evidence. For the purposes of this subsection,
247 "financial institution" means a bank, as defined in section 36a-2, an out-
248 of-state bank, as defined in section 36a-2, an institutional lender or any
249 subsidiary or affiliate of such bank, out-of-state bank or institutional
250 lender that directly or indirectly acquires the real property pursuant to
251 strict foreclosure, foreclosure by sale or deed-in-lieu of foreclosure, and
252 with the intent of ultimately transferring the property, or other lender
253 licensed by the Department of Banking.

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

260 (i) At the evidentiary hearing upon the public nuisance complaint,
261 the state shall have the burden of proving, by [clear and convincing] a
262 preponderance of the evidence, the existence of a public nuisance upon
263 the real property as provided in section 19a-343, as amended by this
264 act. If the state [presents clear and convincing] establishes by a
265 preponderance of the evidence that there have been three or more

266 arrests, [or] the issuance of three or more arrest warrants indicating a
 267 pattern of criminal activity and not isolated incidents or the issuance of
 268 three or more citations for a violation of a municipal ordinance as
 269 described in subdivision (14) of subsection (c) of section 19a-343, as
 270 amended by this act, for conduct on the real property or any portion
 271 thereof documented by a law enforcement officer for any of the
 272 offenses enumerated in subdivisions (1) to [(11)] (14), inclusive, of
 273 subsection (c) of section 19a-343, as amended by this act, within the
 274 three hundred sixty-five days preceding commencement of the action,
 275 such evidence shall create a rebuttable presumption of the existence of
 276 a public nuisance. Any defendant may offer evidence by way of an
 277 affirmative defense that such defendant has taken reasonable steps to
 278 abate the public nuisance, but has been unable to abate the nuisance.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2013	19a-343
Sec. 2	January 1, 2015	19a-343
Sec. 3	October 1, 2013	19a-343a

Statement of Legislative Commissioners:

In section 1(c)(12), "53-202a" was changed to "53-202aa" for accuracy and in section 2(c)(12), "53-202a" was changed to "53-202aa" for accuracy.

JUD *Joint Favorable Subst. -LCO*

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:** None**Explanation**

The bill expands provisions that allow the state to file civil suit under nuisance abatement law. Such suits do not result in sanctions that include fines and therefore there is no anticipated fiscal impact to this bill.

The Out Years**State Impact:** None**Municipal Impact:** None

OLR Bill Analysis

sHB 6683

AN ACT CONCERNING THE ABATEMENT OF A PUBLIC NUISANCE.

SUMMARY:

The current public 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, the law allows courts to order the property closed until the nuisance is eliminated.

This bill broadens the circumstances in which the nuisance law applies. It adds various firearm-related offenses and other crimes to the public nuisance abatement statutes. It also adds certain municipal ordinance violations to these statutes, and makes a corresponding change by allowing the state to file nuisance abatement suits when three or more citations for such violations are issued at a property within a year.

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 the alleged facts are true) to a preponderance of the evidence (it is more likely than not that the alleged 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 also makes changes concerning financial institutions with

an interest of record in a property at which a public nuisance occurs, including lowering the state’s burden to prove that the institution had criminal responsibility for the nuisance.

The bill also makes minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2013, except certain technical changes are effective January 1, 2015.

PUBLIC NUISANCES

Applicable Crimes and Violations

The bill expands the grounds under which courts can close a property or take various other actions until a nuisance is abated (see BACKGROUND) by adding the following crimes to the nuisance abatement statutes:

1. various firearms-related crimes: carrying a handgun without a permit; firearms trafficking; unlawful discharge of firearms; possession of a sawed-off shotgun or silencer; stealing a firearm; criminal use of a firearm or electronic defense weapon; criminal possession of a firearm or electronic defense weapon; criminal possession of a handgun;
2. illegal manufacture, sale, possession, or dispensing of prescription drugs; and
3. third degree assault (the public nuisance 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; and

3. impermissible operation of a business that allows unlicensed people to practice massage therapy, or a 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. various prostitution-related offenses;
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, murder with special circumstances, and certain degrees of manslaughter;
9. assault (various degrees);
10. first degree and aggravated first degree sexual assault; and
11. various fire safety violations.

FINANCIAL INSTITUTION DEFENDANTS

By law, courts may not issue a public nuisance abatement order against a financial institution that owns the property or claims 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 a financial institution claiming an interest of record in the property as specified above was a principal or accomplice to the alleged conduct. It specifies that they can offer the same affirmative defenses as other defendants (i.e., that they have taken reasonable steps to abate the nuisance but were unable to do so).

BACKGROUND

Sanctions for Public Nuisance

The law authorizes various types of temporary and permanent relief to abate a public nuisance. 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.

Among other things, the court can (1) appoint a receiver to manage and operate the property while a nuisance action is pending; (2) order the closing of the property or some part of it; (3) 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 (4) impose civil fines or imprisonment for certain intentional violations. The court maintains jurisdiction until it appears the nuisance no longer exists (CGS § 19a-343 et seq.).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 44 Nay 0 (04/16/2013)