



# House of Representatives

**File No. 829**

General Assembly

January Session, 2013

**(Reprint of File No. 697)**

Substitute House Bill No. 6683  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
May 17, 2013

## ***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 Section 19a-343 of the general statutes is repealed and the  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, provided the  
68 municipality's excessive noise ordinance is based on an objective  
69 standard, (B) owning or leasing a dwelling unit that provides residence  
70 to an excessive number of unrelated persons resulting in dangerous or  
71 unsanitary conditions that significantly impact the safety of the  
72 surrounding area, or (C) impermissible operation of (i) a business that  
73 permits persons who are not licensed pursuant to section 20-206b to  
74 engage in the practice of massage therapy, or (ii) a massage parlor, as

75 defined by the applicable municipal ordinance, that significantly  
76 impacts the safety of the surrounding area.

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79 4 of public act 12-60, is repealed and the following is substituted in lieu  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

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

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

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

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

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

116 (3) Transmission of gambling information under section 53-278b or  
117 53-278d or maintaining of a gambling premises under section 53-278e.

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

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

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

128 [(7)] (6) Maintaining a motor vehicle chop shop under section  
129 14-149a.

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

131 (8) Murder or manslaughter under section 53a-54a, 53a-54b, 53a-55,  
132 53a-56 or 53a-56a.

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

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

136 (11) Fire safety violations under section 29-292, subsection (b) of  
137 section 29-310, or section 29-315, 29-320, 29-329, 29-337, 29-349 or 29-  
138 357.

139 (12) Firearm offenses under section 29-35, 53-202aa, 53-203, 53a-211,  
140 53a-212, 53a-216, 53a-217 or 53a-217c.

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

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

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

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

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

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

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

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

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

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

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

232 the highest elected official of the municipality in which the real  
233 property is located.

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

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

262 (i) At the evidentiary hearing upon the public nuisance complaint,  
263 the state shall have the burden of proving, by [clear and convincing] a  
264 preponderance of the evidence, the existence of a public nuisance upon

265 the real property as provided in section 19a-343, as amended by this  
 266 act. If the state [presents clear and convincing] establishes by a  
 267 preponderance of the evidence that there have been three or more  
 268 arrests, [or] the issuance of three or more arrest warrants indicating a  
 269 pattern of criminal activity and not isolated incidents or the issuance of  
 270 three or more citations for a violation of a municipal ordinance as  
 271 described in subdivision (14) of subsection (c) of section 19a-343, as  
 272 amended by this act, for conduct on the real property or any portion  
 273 thereof documented by a law enforcement officer for any of the  
 274 offenses enumerated in subdivisions (1) to [(11)] (14), inclusive, of  
 275 subsection (c) of section 19a-343, as amended by this act, within the  
 276 three hundred sixty-five days preceding commencement of the action,  
 277 such evidence shall create a rebuttable presumption of the existence of  
 278 a public nuisance. Any defendant may offer evidence by way of an  
 279 affirmative defense that such defendant has taken reasonable steps to  
 280 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

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.

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**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.

House "A" makes clarifying changes that do not result in a fiscal impact.

**The Out Years**

**State Impact:** None

**Municipal Impact:** None

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**OLR Bill Analysis****sHB 6683 (as amended by House "A")\*****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 in 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.

\*House Amendment "A" specifies that violations of excessive noise ordinances are subject to nuisance abatement actions only if the ordinance is based on an objective standard.

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.)

The bill 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, as long as the ordinance is based

on an objective standard;

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)

Planning and Development Committee

Joint Favorable

Yea 17 Nay 0 (05/14/2013)