



General Assembly

January Session, 2013

**Substitute Bill No. 6683**



**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 Section 19a-343 of the general statutes is repealed and the  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*