
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)