

2 **HB 1648** - S COMM AMD  
3 By Committee on Law & Justice

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5 Strike everything after the enacting clause and insert the  
6 following:

7 NEW SECTION. **Sec. 1.** The definitions in this section apply  
8 throughout this chapter unless the context clearly requires otherwise.

9 (1) "Building" includes, but is not limited to, any structure or  
10 any separate part or portion thereof, whether permanent or not, or the  
11 ground itself.

12 (2) "Gang" means a group that: (a) Consists of three or more  
13 persons; (b) has identifiable leadership or an identifiable name, sign,  
14 or symbol; and (c) on an ongoing basis, regularly conspires and acts in  
15 concert mainly for criminal purposes.

16 (3) "Street gang activity" means any activity that occurs within a  
17 gang or advances a gang purpose.

18 NEW SECTION. **Sec. 2.** Every building or unit within a building  
19 used for the purpose of aiding, promoting, or conducting criminal  
20 street gang activity, and every building or unit within a building  
21 wherein or upon which such acts take place, is a nuisance which shall  
22 be enjoined, abated, and prevented, whether it is a public or private  
23 nuisance.

24 NEW SECTION. **Sec. 3.** Any person with legal standing and who  
25 resides, works in, or owns property in the same multifamily building,  
26 apartment complex, or within a one-block radius may bring an action as  
27 provided for in section 2 of this act by filing a complaint with a law  
28 enforcement agency in the county in which the property is located.  
29 Such action shall be commenced by the filing of a complaint alleging  
30 the facts constituting the nuisance.

31 Any complaint filed under this chapter shall be verified or  
32 accompanied by affidavit. For purposes of showing that the owner or  
33 his or her agent has had an opportunity to abate the nuisance, the

1 affidavit shall contain a description of all attempts by the applicant  
2 to notify and locate the owner of the property or the owner's agent.

3 In addition, the affidavit shall describe in detail the adverse  
4 impact associated with the property on the surrounding neighborhood.  
5 "Adverse impact" includes, but is not limited to, the following: Any  
6 search warrants served on the property where evidence of criminal  
7 activity was seized; arrests of persons who frequent the property for  
8 violation of criminal laws; increased volume of traffic associated with  
9 the property; and the number of complaints made to law enforcement of  
10 illegal activity associated with the property.

11 Upon receipt of the complaint, the law enforcement agency shall  
12 conduct an investigation into the allegations and, if probable cause is  
13 found that a violation of this chapter is occurring, the complaint and  
14 results of the investigation shall be filed in the county superior  
15 court. After receiving the complaint, the court shall grant a hearing  
16 within three business days.

17 NEW SECTION. **Sec. 4.** Upon application for a temporary restraining  
18 order or preliminary injunction, the court may, upon a showing of good  
19 cause, issue an ex parte restraining order or preliminary injunction,  
20 preventing the defendant and all other persons from removing or in any  
21 manner interfering with the personal property and contents of the place  
22 where the nuisance is alleged to exist and may grant such preliminary  
23 equitable relief as is necessary to prevent the continuance or  
24 recurrence of the nuisance pending final resolution of the matter on  
25 the merits. However, pending the decision, the stock in trade may not  
26 be so restrained, but an inventory and full accounting of all business  
27 transactions may be required.

28 The restraining order or preliminary injunction may be served by  
29 handing to and leaving a copy with any person in charge of the place or  
30 residing in the place, or by posting a copy in a conspicuous place at  
31 or upon one or more of the principal doors or entrances to the place,  
32 or by both delivery and posting. The officer serving the order or  
33 injunction shall forthwith make and return into court an inventory of  
34 the personal property and contents situated in and used in conducting  
35 or maintaining the nuisance.

36 Any violation of the order or injunction is a contempt of court,  
37 and where such order or injunction is posted, mutilation or removal

1   thereof while the same remains in force is a contempt of court if such  
2   posted order or injunction contains a notice to that effect.

3       NEW SECTION.   **Sec. 5.** A temporary restraining order or preliminary  
4   injunction shall not issue under this chapter except upon the giving of  
5   a bond or security by the applicant, in the sum that the court deems  
6   proper, but not less than one thousand dollars, for the payment of such  
7   costs and damages as may be incurred or suffered by any party who is  
8   found to have been wrongfully restrained or enjoined. A bond or  
9   security shall not be required of the state of Washington, municipal  
10  corporations, or political subdivisions of the state of Washington.

11       NEW SECTION.   **Sec. 6.** An action under this chapter shall have  
12  precedence over all other actions, except prior matters of the same  
13  character, actions under chapter 7.43 RCW, criminal proceedings,  
14  election contests, hearings on temporary restraining orders and  
15  injunctions, and actions to forfeit vehicles used in violation of the  
16  uniform controlled substances act.

17       NEW SECTION.   **Sec. 7.** (1) If the complaint under this chapter is  
18  filed by a citizen, the complaint shall not be dismissed by the citizen  
19  for want of prosecution except upon a sworn statement made by the  
20  citizen and the citizen's attorney, if the citizen has one. The  
21  statement shall set forth the reasons why the action should be  
22  dismissed. The case shall only be dismissed if so ordered by the  
23  court.

24       (2) In case of failure to prosecute the action with reasonable  
25  diligence, or at the request of the plaintiff, the court, in its  
26  discretion, may substitute any other citizen consenting to be  
27  substituted for the plaintiff.

28       NEW SECTION.   **Sec. 8.** A copy of the complaint, together with a  
29  notice of the time and place of the hearing of the action shall be  
30  served upon the defendant at least one business day before the hearing.  
31  Service may also be made by posting the papers in the same manner as is  
32  provided for in section 4 of this act. If the hearing is then  
33  continued at the request of any defendant, all temporary orders and  
34  injunctions shall be extended as a matter of course.

1        NEW SECTION.    **Sec. 9.**    (1) Except as provided in subsection (2) of  
2 this section, if the existence of the nuisance is established in the  
3 action, an order of abatement shall be entered as part of the final  
4 judgment in the case. Plaintiff's costs in the action, including those  
5 of abatement, are a lien upon the building or unit within a building.  
6 The lien is enforceable and collectible by execution issued by order of  
7 the court.

8        (2) If the court finds and concludes that the owner of the building  
9 or unit within a building:

10        (a) Had no knowledge of the existence of the nuisance or has been  
11 making reasonable efforts to abate the nuisance;

12        (b) Has not been guilty of any contempt of court in the  
13 proceedings; and

14        (c) Will immediately abate any such nuisance that may exist at the  
15 building or unit within a building and prevent it from being a nuisance  
16 within a period of one year thereafter,  
17 the court shall, if satisfied of the owner's good faith, order the  
18 building or unit within a building to be delivered to the owner, and no  
19 order of abatement shall be entered. If an order of abatement has been  
20 entered and the owner subsequently meets the requirements of this  
21 subsection, the order of abatement shall be canceled.

22        NEW SECTION.    **Sec. 10.**    Any final order of abatement issued under  
23 this chapter shall:

24        (1) Direct the removal of all personal property subject to seizure  
25 and forfeiture under RCW 69.50.505 or other law from the building or  
26 unit within a building, and direct their disposition under the  
27 forfeiture provisions of RCW 69.50.505 or other law;

28        (2) Provide for the immediate closure of the building or unit  
29 within a building against its use for any purpose, and for keeping it  
30 closed for a period of one year unless released sooner as provided in  
31 this chapter; and

32        (3) State that while the order of abatement remains in effect the  
33 building or unit within a building shall remain in the custody of the  
34 court.

35        NEW SECTION.    **Sec. 11.**    In all actions brought under this chapter,  
36 the proceeds and all moneys forfeited under the forfeiture provisions  
37 of RCW 69.50.505 or other law shall be applied as follows:

- 1 (1) First, to the fees and costs of the removal and sale;  
2 (2) Second, to the allowances and costs of closing and keeping  
3 closed the building or unit within a building;  
4 (3) Third, to the payment of the plaintiff's costs in the action;  
5 and  
6 (4) Fourth, the balance, if any, to the owner of the property.

7 If the proceeds of the sale of items subject to seizure and  
8 forfeiture do not fully discharge all of the costs, fees, and  
9 allowances, the building or unit within a building shall then also be  
10 sold under execution issued upon the order of the court, and the  
11 proceeds of the sale shall be applied in a like manner.

12 A building or unit within a building shall not be sold under this  
13 section unless the court finds and concludes by clear and convincing  
14 evidence that the owner of the building or unit within a building had  
15 actual or constructive knowledge or notice of the existence of the  
16 nuisance. However, this shall not be construed as limiting or  
17 prohibiting the entry of any final order of abatement as provided in  
18 this chapter.

19 NEW SECTION. **Sec. 12.** An intentional violation of a restraining  
20 order, preliminary injunction, or order of abatement under this chapter  
21 is a contempt of court as provided in chapter 7.21 RCW.

22 NEW SECTION. **Sec. 13.** Whenever the owner of a building or unit  
23 within a building upon which the act or acts constituting the contempt  
24 have been committed, or the owner of any interest in the building or  
25 unit has been found in contempt of court, and fined in any proceedings  
26 under this chapter, the fine is a lien upon the building or unit within  
27 a building to the extent of the owner's interest. The lien is  
28 enforceable and collectible by execution issued by order of the court.

29 NEW SECTION. **Sec. 14.** The abatement of a nuisance under this  
30 chapter does not prejudice the right of any person to recover damages  
31 for its past existence.

32 NEW SECTION. **Sec. 15.** If any provision of this act or its  
33 application to any person or circumstance is held invalid, the  
34 remainder of the act or the application of the provision to other  
35 persons or circumstances is not affected.

1        NEW SECTION.    **Sec. 16.**    Sections 1 through 15 of this act  
2 constitute a new chapter in Title 7 RCW."

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6        On page 1, line 2 of the title, after "nuisance;" strike the  
7 remainder of the title and insert "adding a new chapter to Title 7 RCW;  
8 and prescribing penalties."

9        EFFECT:    (1) Changes the definition of gangs; (2) requires the  
10 action be brought by an individual with legal standing living or  
11 working or owning property in the same multifamily unit, apartment  
12 complex, or within a one-block radius; and (3) complaints are filed  
13 with law enforcement rather than the court.

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