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**Judiciary Committee**

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**SSB 5695**

**Title:** An act relating to declaring buildings used for criminal activity to be a nuisance.

**Brief Description:** Declaring buildings used for criminal activity to be a nuisance.

**Sponsors:** Senate Committee on Judiciary (originally sponsored by Senators Honeyford, Winsley, Mulliken, Johnson, T. Sheldon, Zarelli, Oke and Rasmussen).

**Brief Summary of Substitute Bill**

- Creates a criminal activity nuisance law.

**Hearing Date:** 4/3/03

**Staff:** Trudes Tango Hutcheson (786-7384).

**Background:**

A variety of public and private nuisance actions are available to stop activity that is illegal, dangerous, or disruptive to neighboring property owners and the general public. Nuisance laws cover such activities as prostitution, exhibition of lewd films, fighting, and breach of the peace. Although nuisance has traditionally developed through common law, the Legislature has enacted specific statutes to deal with certain kinds of nuisances.

For instance, the Legislature enacted a drug nuisance law allowing for private or public prosecution of an abatement action against a drug related nuisance. Any building or unit within a building that is used for the purpose of unlawfully manufacturing, delivering, selling, storing, or giving away illegal drugs, and any building or unit where such acts take place is a nuisance. A person may bring an action to abate the nuisance by filing a complaint in superior court. The complaint must be verified or accompanied by an affidavit that, among other things, describes the adverse impact associated with the property on the surrounding neighborhood.

If the existence of the nuisance is established in the action, the court may order an abatement of the nuisance which shall, among other things: (a) direct the removal of all personal property subject to seizure and forfeiture under the drug forfeiture laws, and (b) provide for the immediate closure of the building or unit against its use for any purpose for a period of

one year, unless released sooner. A defendant can avoid an abatement order by satisfying certain criteria.

In a recent case, the Washington State Court of Appeals (Court) found that the drug nuisance law was not unconstitutional *on its face* because the statute does not operate an unconstitutional takings by its mere enactment. However, the Court found that the statute, as applied to the facts in the particular case, was an unconstitutional taking of property and violated the defendant's right to due process. *City of Seattle v. McCoy*, 101 Wn. App. 815 (2000).

### **Summary of Bill:**

A criminal activity nuisance law is created with provisions similar to those found in the drug nuisance law. A building or unit within a building that is used for the purpose of aiding, promoting, or conducting criminal activity, and a building or unit where such acts take place, is a nuisance. Criminal activity means "a pattern of criminal activity including felonies and misdemeanors." In a multi-unit building, only the offending unit shall be declared a nuisance.

Any person with legal standing and who resides, works in, or owns property in the same multifamily building, apartment complex, or within a one-block radius may bring a nuisance action by filing a complaint with a law enforcement agency in the county where the property is located. A public agency may also commence an action.

Law enforcement must investigate the allegations in the complaint. If there is probable cause that a violation of the act is occurring, the complaint must be filed in the county superior court. After receiving the complaint, the court shall grant a hearing within five business days or seven calendar days.

The complaint must be verified or accompanied by an affidavit that describes the adverse impact associated with the property on the surrounding neighborhood. "Adverse impact" includes, but is not limited to: (a) any recent search warrants served on the property where evidence of criminal activity was seized; (b) recent arrests of persons who frequent the property for purposes of criminal activity; (c) a recent increase in the number of complaints made to law enforcement of illegal activity associated with the property which result in arrests; (d) recent increases in arrests for weapons violations of persons who frequent the property; and (e) recent increases in graffiti or garbage in the immediate vicinity.

The complaint and affidavit must be served on the property owner, if different from the current occupant, at least three business days before the hearing. There are various provisions regarding service of the complaint. For purposes of showing that the owner has had an opportunity to abate the nuisance, the affidavit shall contain a description of all attempts to notify and locate the owner, including at least one attempt to notify the owner by registered mail.

If existence of the nuisance is established in the action, an order of abatement must be entered. The order of abatement shall: (a) direct the removal and forfeiture of all personal property subject to seizure and forfeiture under the drug laws or other laws from the building

or unit; and (b) if the building or unit is not subject to the interests of innocent legal owners, provide for the immediate closure of the building or unit against its use for any purpose for a period of one year unless released sooner. While the abatement order is in effect, the building or unit remains in the custody of the court.

If the court finds and concludes that the owner of the building or unit: (a) had no knowledge of the existence of the nuisance or has been making reasonable efforts to abate the nuisance; (b) has not been guilty of any contempt of court in the proceedings; and (c) will immediately abate any such nuisance at the building or unit and prevent it from being a nuisance within a period of one year thereafter, then the court shall, if satisfied of the owner's good faith, order the building or unit to be delivered to the owner and no abatement order shall be entered. If an order of abatement has been entered and the owner subsequently meets these requirements, the order of abatement shall be canceled.

The bill contains specific provisions for how proceeds of any forfeiture shall be distributed. Generally, the proceeds shall be applied:

- first to satisfy the fees and costs of the removal and sale;
- second to the allowances and costs of closing and keeping the building or unit closed;
- third to the payment of the plaintiff's costs; and
- fourth, the balance, if any, to the owner of the property.

If the proceeds do not fully satisfy the costs, fees, and allowances, the building or unit may be sold, provided that the court finds by clear and convincing evidence that the owner of the building or unit had actual or constructive knowledge or notice of the existence of the nuisance.

Provisions are created regarding temporary restraining orders and preliminary injunctions. The court may issue an ex parte restraining order or preliminary injunction to prevent the defendant and all other persons, other than the legal owner, from removing personal property and contents of the place where the nuisance is alleged to exist. A temporary restraining order or preliminary injunction may not be issued unless the person requesting it posts a bond or security of at least \$1,000. An intentional violation of a restraining order, preliminary injunction, or abatement order is punishable as contempt of court.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.