
SUBSTITUTE SENATE BILL 5158

State of Washington

56th Legislature

1999 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Honeyford, Kline, T. Sheldon, Johnson, Winsley and Oke)

Read first time 03/03/1999.

1 AN ACT Relating to declaring buildings used for criminal activity
2 to be a nuisance; adding a new chapter to Title 7 RCW; and prescribing
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

10 (2) "Criminal activity" means a pattern of criminal activity
11 including felonies and misdemeanors.

12 NEW SECTION. **Sec. 2.** Every building or unit within a building
13 used for the purpose of aiding, promoting, or conducting criminal
14 activity, and every building or unit within a building wherein or upon
15 which such acts take place, is a nuisance which shall be enjoined,
16 abated, and prevented, whether it is a public or private nuisance. In
17 a multiunit building only the offending unit shall be declared a

1 nuisance, and only the offending unit shall be enjoined, abated, and
2 prevented.

3 NEW SECTION. **Sec. 3.** Any person with legal standing and who
4 resides, works in, or owns property in the same multifamily building,
5 apartment complex, or within a one-block radius may bring an action as
6 provided for in section 2 of this act by filing a complaint with a law
7 enforcement agency in the county in which the property is located.
8 Such action shall be commenced by the filing of a complaint alleging
9 the facts constituting the nuisance. Such action may also be commenced
10 by any public agency.

11 Any complaint filed under this chapter shall be verified or
12 accompanied by affidavit. For purposes of showing that the owner or
13 his or her agent has had an opportunity to abate the nuisance, the
14 affidavit shall contain a description of all attempts by the applicant
15 to notify and locate the owner of the property or the owner's agent,
16 including at least one attempt to notify the owner or owner's agent by
17 registered mail.

18 In addition, the affidavit shall describe in detail the adverse
19 impact associated with the property on the surrounding neighborhood.
20 "Adverse impact" includes, but is not limited to, the following: Any
21 recent search warrants served on the property where evidence of
22 criminal activity was seized; recent arrests of persons who frequent
23 the property for purposes of criminal activity; a recent increase in
24 the number of complaints made to law enforcement of illegal activity
25 associated with the property which result in arrests for criminal
26 activity; recent increases in arrests for weapons violations of persons
27 who frequent the property; and recent increases in graffiti or garbage
28 in the immediate vicinity.

29 Upon receipt of the complaint, the law enforcement agency shall
30 conduct an investigation into the allegations and, if probable cause is
31 found that a violation of this chapter is occurring, the complaint and
32 results of the investigation shall be filed in the county superior
33 court. After receiving the complaint, the court shall grant a hearing
34 within three business days.

35 NEW SECTION. **Sec. 4.** Upon application for a temporary restraining
36 order or preliminary injunction, the court may, upon a showing of good
37 cause, issue an ex parte restraining order or preliminary injunction,

1 preventing the defendant and all other persons from removing or in any
2 manner interfering with the personal property and contents of the place
3 where the nuisance is alleged to exist and may grant such preliminary
4 equitable relief as is necessary to prevent the continuance or
5 recurrence of the nuisance pending final resolution of the matter on
6 the merits. However, pending the decision, the stock in trade may not
7 be so restrained, but an inventory and full accounting of all business
8 transactions may be required.

9 The restraining order or preliminary injunction may be served by
10 handing to and leaving a copy with any person in charge of the place or
11 residing in the place, or by posting a copy in a conspicuous place at
12 or upon one or more of the principal doors or entrances to the place,
13 or by both delivery and posting. The officer serving the order or
14 injunction shall forthwith make and return into court an inventory of
15 the personal property and contents situated in and used in conducting
16 or maintaining the nuisance. Additionally a copy of the restraining
17 order or preliminary injunction must be sent by registered mail to the
18 owner of the building.

19 Any violation of the order or injunction is a contempt of court,
20 and where such order or injunction is posted, mutilation or removal
21 thereof while the same remains in force is a contempt of court if such
22 posted order or injunction contains a notice to that effect.

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

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

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

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

12 NEW SECTION. **Sec. 8.** A copy of the complaint, together with a
13 notice of the time and place of the hearing of the action shall be
14 served upon the defendant at least one business day before the hearing.
15 Service may also be made by posting the papers in the same manner as is
16 provided for in section 4 of this act. In addition to service by
17 posting, a copy of the complaint must be sent by registered mail to the
18 owner of the building or the agent of the owner. If the hearing is
19 then continued at the request of any defendant, all temporary orders
20 and injunctions shall be extended as a matter of course.

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

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

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

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

34 (c) Will immediately abate any such nuisance that may exist at the
35 building or unit within a building and prevent it from being a nuisance
36 within a period of one year thereafter,

1 the court shall, if satisfied of the owner's good faith, order the
2 building or unit within a building to be delivered to the owner, and no
3 order of abatement shall be entered. If an order of abatement has been
4 entered and the owner subsequently meets the requirements of this
5 subsection, the order of abatement shall be canceled.

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

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

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

16 (3) State that while the order of abatement remains in effect the
17 building or unit within a building shall remain in the custody of the
18 court.

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

22 (1) First, to the fees and costs of the removal and sale;

23 (2) Second, to the allowances and costs of closing and keeping
24 closed the building or unit within a building;

25 (3) Third, to the payment of the plaintiff's costs in the action;
26 and

27 (4) Fourth, the balance, if any, to the owner of the property.

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

33 A building or unit within a building shall not be sold under this
34 section unless the court finds and concludes by clear and convincing
35 evidence that the owner of the building or unit within a building had
36 actual or constructive knowledge or notice of the existence of the
37 nuisance. However, this shall not be construed as limiting or

1 prohibiting the entry of any final order of abatement as provided in
2 this chapter.

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

6 NEW SECTION. **Sec. 13.** Whenever the owner of a building or unit
7 within a building upon which the act or acts constituting the contempt
8 have been committed, or the owner of any interest in the building or
9 unit has been found in contempt of court, and fined in any proceedings
10 under this chapter, the fine is a lien upon the building or unit within
11 a building to the extent of the owner's interest. The lien is
12 enforceable and collectible by execution issued by order of the court.

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

16 NEW SECTION. **Sec. 15.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

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

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