
SUBSTITUTE HOUSE BILL 2414

State of Washington

61st Legislature

2010 Regular Session

By House Judiciary (originally sponsored by Representatives Johnson, O'Brien, Ross, Finn, Haler, Klippert, Taylor, Crouse, Angel, Ericksen, Roach, Kristiansen, Hinkle, Chandler, Seaquist, Walsh, Warnick, Rodne, Smith, Nealey, Short, Hope, Ericks, Lias, Campbell, Morrell, Kelley, Maxwell, Sullivan, Conway, Bailey, Schmick, and Hurst)

READ FIRST TIME 02/03/10.

1 AN ACT Relating to abatement of nuisances involving criminal street
2 gang activity; 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 separate part or portion thereof, whether permanent or not, or the
9 ground itself.

10 (2) "Criminal street gang activity" means a pattern of criminal
11 street gang activity as defined in RCW 9.94A.030.

12 NEW SECTION. **Sec. 2.** Every building or unit within a building
13 used for the purpose of aiding, promoting, or conducting criminal
14 street gang activity is a nuisance that must be enjoined, abated, and
15 prevented, whether it is a public or private nuisance. In a multiunit
16 building, only the offending unit may be declared a nuisance, and only
17 the offending unit must be enjoined, abated, and prevented. Nothing in
18 this chapter applies to property used for the purpose of, or activity

1 involved in, providing health services, food and financial assistance,
2 treatment, counseling, training, religious services, education, civic
3 involvement, or any social service or charitable assistance.

4 NEW SECTION. **Sec. 3.** (1) Any person who resides, works in, or
5 owns property in the same multifamily building, apartment complex, or
6 within a one-block radius of the property where the nuisance is alleged
7 to exist may bring an action under this chapter by filing a complaint
8 in the county superior court in which the property is located alleging
9 the facts constituting the nuisance. The action may also be brought by
10 any public agency.

11 (2) Any complaint filed under this chapter must be verified or
12 accompanied by an affidavit. A copy of the complaint and affidavit
13 must be served on the occupant and the owner of the property according
14 to the rules of civil procedure. In addition to showing that the
15 occupant and the owner or his or her agent has had an opportunity to
16 abate the nuisance, the affidavit must contain a description of all
17 attempts by the applicant to notify and locate the occupant and the
18 owner of the property or the owner's agent, including at least one
19 attempt to notify the occupant and the owner or owner's agent by
20 registered mail.

21 (3) The affidavit filed under subsection (2) of this section must
22 describe in detail the adverse impact associated with the property on
23 the surrounding neighborhood. For the purposes of this chapter,
24 "adverse impact" includes, but is not limited to, the following:
25 Seizure of property pursuant to search warrants issued as a result of
26 criminal street gang activity; recent arrests of persons who frequent
27 the property for purposes of criminal street gang activity; a recent
28 increase in the number of complaints made to law enforcement of illegal
29 activity associated with the property which result in arrests for
30 criminal street gang activity; and recent increases in arrests for
31 weapons violations of persons who frequent the property.

32 (4) Upon receipt of the complaint filed under this chapter, the
33 court shall grant a hearing as soon as practicable as required by
34 section 6 of this act.

35 (5) Upon request by a complainant who has filed or intends to file
36 an action under this chapter and to the extent permitted under chapter

1 42.56 RCW, a law enforcement agency shall provide the complainant with
2 any relevant information in the agency's possession concerning the
3 property that is the subject of the complainant's action.

4 NEW SECTION. **Sec. 4.** (1) Upon application for a temporary
5 restraining order or preliminary injunction, the court may, upon a
6 showing of good cause, issue an ex parte restraining order or
7 preliminary injunction, preventing the occupant and all other persons,
8 other than the legal owner, from removing or in any manner interfering
9 with the personal property and contents of the place where the nuisance
10 is alleged to exist and may grant preliminary equitable relief as is
11 necessary to prevent the continuance or recurrence of the nuisance
12 pending final resolution of the matter on the merits. Such ex parte
13 restraining order or preliminary injunction may remain in effect no
14 more than fifteen days from the date of issuance, except as provided in
15 section 8 of this act.

16 (2) The restraining order or preliminary injunction issued under
17 subsection (1) of this section must be served on the occupant and the
18 owner personally or leaving a copy with any person of suitable age and
19 discretion who is in charge of the property or residing at the
20 property. Where such a person cannot with reasonable diligence be
21 served as described, the restraining order or preliminary injunction
22 may be served by posting a copy in a conspicuous place on the property
23 and by thereafter mailing a copy by registered mail to the person to be
24 served at his or her usual mailing address. The officer serving the
25 order or injunction shall make and return to the court an inventory of
26 the personal property and contents situated in and used in conducting
27 or maintaining the nuisance. Additionally, a copy of the restraining
28 order or preliminary injunction must be sent by registered mail to the
29 occupant and the owner of the building.

30 NEW SECTION. **Sec. 5.** Before issuing a temporary restraining order
31 or preliminary injunction under this chapter, a court may require the
32 applicant to give a bond or security, in the sum that the court deems
33 proper, for the payment of costs and damages that may be incurred or
34 suffered by any party who is found to have been wrongfully restrained
35 or enjoined. A bond or security is not required of the state of

1 Washington, municipal corporations, or political subdivisions of the
2 state of Washington.

3 NEW SECTION. **Sec. 6.** An action under this chapter has precedence
4 over all other actions, except prior matters of the same character,
5 actions under chapter 7.43 RCW, criminal proceedings, election
6 contests, hearings on temporary restraining orders and injunctions,
7 child dependency hearings, foreclosures by a legal owner, actions to
8 forfeit vehicles used in violation of the uniform controlled substances
9 act, and any other case determined to be a priority by statute or by
10 the court.

11 NEW SECTION. **Sec. 7.** (1) If the complaint under this chapter is
12 filed by a citizen, the complaint may not be dismissed by the citizen
13 for want of prosecution except upon a sworn statement made by the
14 citizen and the citizen's attorney, if the citizen has one. The
15 statement must set forth the reasons why the action should be
16 dismissed. The case may only be dismissed if so ordered by the court.

17 (2) In case of failure to prosecute the action with reasonable
18 diligence, or at the request of the plaintiff, the court may substitute
19 any other citizen consenting to be substituted for the plaintiff.

20 NEW SECTION. **Sec. 8.** A copy of the complaint, together with a
21 notice of the time and place of the hearing of the action, must be
22 served upon the occupant and the owner at least six business days
23 before the hearing and as provided for in section 4 of this act. If
24 the hearing is continued at the request of any defendant, all temporary
25 orders and injunctions must be extended upon the showing of good cause.

26 NEW SECTION. **Sec. 9.** (1) Except as provided in subsection (2) of
27 this section, if the existence of the nuisance is established in the
28 action, an order of abatement must be entered as part of the final
29 judgment in the case. The plaintiff's costs in the action, including
30 those of abatement, are a lien upon the building or unit within a
31 building to the extent of the owner's interest. The lien must be filed
32 as a judgment summary stating the name of the owner and the legal
33 description of the real property. The lien must be recorded and
34 enforced as a judgment summary.

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

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

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

7 (c) Will immediately make reasonable efforts to abate any such
8 nuisance that may exist at the building or unit within a building and
9 prevent it from being a nuisance within a period of one year
10 thereafter, the court shall, if satisfied with the occupant's or the
11 owner's good faith, order the building or unit within a building to be
12 delivered to the occupant or the owner, and no order of abatement may
13 be entered. If an order of abatement has been entered and the occupant
14 or the owner subsequently meets the requirements of this subsection,
15 the order of abatement must be canceled.

16 (3) For the purposes of determining whether the occupant or owner
17 of the building or unit within a building made reasonable efforts to
18 abate the nuisance, the court shall consider such factors as whether
19 the occupant or owner:

20 (a) Terminated or attempted to terminate the tenancy or lease of a
21 tenant or leaseholder where the nuisance is occurring if the tenant or
22 leaseholder is involved in the criminal street gang activity;

23 (b) Placed restrictions on the rental agreement or lease;

24 (c) Adopted feasible measures on the property to try to prevent the
25 criminal street gang activity;

26 (d) Cooperated with law enforcement to attempt to stop the criminal
27 street gang activity; and

28 (e) Made other efforts the court finds relevant.

29 (4) If the court finds there is insufficient evidence to establish
30 the existence of the nuisance, the court may order the person who filed
31 the complaint to pay the occupant and the owner their reasonable
32 attorneys' fees and costs to defend the action, any loss of rent or
33 revenue experienced as a result of the action, restraining order, or
34 preliminary injunction, and damages up to five hundred dollars each.

35 NEW SECTION. **Sec. 10.** Any final order of abatement issued under
36 this chapter must:

1 (1) Direct the removal of all personal property subject to seizure
2 and forfeiture under RCW 69.50.505 or other law from the building or
3 unit within a building, and direct the commencement of proceedings to
4 forfeit the property under the forfeiture provisions of RCW 69.50.505
5 or other law;

6 (2) If the building or unit is not subject to the interests of
7 innocent occupants or innocent legal owners, provide for the immediate
8 closure of the building or unit within a building against its use for
9 any purpose, and for keeping it closed for a period of one year unless
10 released sooner as provided in this chapter; and

11 (3) State that while the order of abatement remains in effect the
12 building or unit within a building must remain in the custody of the
13 court.

14 NEW SECTION. **Sec. 11.** (1) In all actions brought under this
15 chapter, the proceeds and all moneys forfeited under the forfeiture
16 provisions of RCW 69.50.505 or other law must be applied as follows:

17 (a) First, to the fees and costs of the removal and sale;

18 (b) Second, to the allowances and costs of closing and keeping
19 closed the building or unit within a building;

20 (c) Third, to the payment of the plaintiff's costs in the action;
21 and

22 (d) Fourth, the balance, if any, to the owner of the forfeited
23 property.

24 (2)(a) Except as provided in (b) of this subsection, if the
25 proceeds of the sale of items subject to seizure and forfeiture do not
26 fully discharge all of the costs, fees, and allowances, the building or
27 unit within a building must be sold under execution issued upon the
28 order of the court, and the proceeds of the sale must be applied in a
29 like manner.

30 (b) A building or unit within a building may not be sold under this
31 section unless the court finds and concludes by clear and convincing
32 evidence that the owner of the building or unit within a building had
33 knowledge or notice of the existence of the nuisance. However, this
34 subsection may not be construed as limiting or prohibiting the entry of
35 any final order of abatement as provided in this chapter.

1 NEW SECTION. **Sec. 12.** Whenever the owner of a building or unit
2 within a building has been found in contempt of court and fined in any
3 proceedings under this chapter, the fine is a lien upon the building or
4 unit within a building to the extent of the owner's interest. The lien
5 must be filed as a judgment summary stating the name of the owner and
6 the legal description of the real property. The lien must be recorded
7 and enforced as a judgment summary.

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

11 NEW SECTION. **Sec. 14.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 15.** Sections 1 through 14 of this act
16 constitute a new chapter in Title 7 RCW.

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