

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 783  
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Short Title: Drug Nuisance/Forfeiture/AB.

(Public)

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Sponsors: Senators Gulley, Ballantine, Rand, Hoyle, Davis, Lucas, and East.

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Referred to: Judiciary II/Election Laws

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April 20, 1995

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE FOR THE FORFEITURE OF PROPERTY OWNED BY  
3 PERSONS PARTICIPATING IN NUISANCES ON THE PROPERTY INVOLVING  
4 THE SALE OR USE OF NARCOTIC DRUGS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 19-2.1 reads as rewritten:  
7 "**§ 19-2.1. Action for abatement; injunction.**

8 Wherever a nuisance is kept, maintained, or exists, as defined in this Article, the  
9 Attorney General, district attorney, county, municipality, or any private citizen of the  
10 county may maintain a civil action in the name of the State of North Carolina to abate a  
11 nuisance under this Chapter, perpetually to enjoin all persons from maintaining the same,  
12 and to enjoin the use of any structure or thing adjudged to be a nuisance under this  
13 Chapter; provided, however, that no private citizen may maintain such action where the  
14 alleged nuisance involves the illegal possession or sale of obscene or lewd matter.

15 If an action is instituted by a private person, the complainant shall execute a bond  
16 prior to the issuance of a restraining order or a temporary injunction, with good and  
17 sufficient surety to be approved by the court or clerk thereof, in the sum of not less than  
18 one thousand dollars (\$1,000), to secure to the party enjoined the damages he may sustain

1 if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or  
2 is not maintained, or if it is finally decided that the temporary restraining order or  
3 preliminary injunction ought not to have been granted. The party enjoined shall have  
4 recourse against said bond for all damages suffered, including damages to his property,  
5 person, or character and including reasonable attorney's fees incurred by him in making  
6 defense to said action. No bond shall be required of the prosecuting ~~attorney or~~ attorney,  
7 the Attorney General, county, or municipality, and no action shall be maintained against  
8 the public official or public entity for ~~his~~ the official action."

9       Sec. 2. Article 1 of Chapter 19 of the General Statutes is amended by adding a  
10 new section to read:

11 **"§ 19-6.1. Forfeiture of real property.**

12       In all actions brought pursuant to this Article in which the nuisance consists of or  
13 includes at least two occurrences of the illegal possession or sale of narcotic drugs as  
14 defined in G.S. 90-87(17), the real property on which the nuisance exists or is maintained  
15 is subject to forfeiture in accordance with this section.

16       If all of the owners of the property are defendants in the action, the plaintiff, other  
17 than a plaintiff who is a private citizen, may request forfeiture of the real property as part  
18 of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant  
19 owners is established, upon judgment against the defendant or defendants, the court shall  
20 order forfeiture as follows:

21       (1) If the court finds that all the owners either (i) have participated in  
22 maintaining the nuisance on the property, or (ii) had written notice from  
23 the plaintiff prior to the action that the nuisance existed or was  
24 maintained on the property and have not made good faith efforts to stop  
25 the nuisance from occurring or recurring, the court shall order that the  
26 property be forfeited;

27       (2) If the court finds that one or more of the owners did not participate in  
28 maintaining the nuisance on the property or did not have written notice  
29 from the plaintiff prior to the action that the nuisance existed or was  
30 maintained on the property, the court shall not order forfeiture of the  
31 property immediately upon judgment. However, if after judgment and  
32 an order directing the defendants to abate the nuisance, the nuisance  
33 either continues, begins again, or otherwise recurs and the defendants  
34 have not made good faith efforts to abate the nuisance, the plaintiff may  
35 petition the court for forfeiture. Upon such petition, the defendant  
36 owner or owners shall be given notice and an opportunity to appear and  
37 be heard at a hearing to determine the continuation or recurrence of the  
38 nuisance. If, in this hearing (i) the plaintiff establishes that the nuisance,  
39 with or without the owner's or owners' knowledge, has either continued,  
40 begun again, or otherwise recurred, and (ii) the defendants fail to  
41 establish that they have made and are continuing to make good faith  
42 efforts to abate the nuisance, the court shall order that the property be  
43 forfeited.

1     Upon an order of forfeiture, title to the property shall vest in the school board of the  
2 county in which the property is located. If at the time of forfeiture the property is subject  
3 to a lien or security interest of a person not participating in the maintenance of the  
4 nuisance, the school board shall either (i) pay an amount to that person satisfying the lien  
5 or security interest; or (ii) sell the property and satisfy the lien or security interest from  
6 the proceeds of the sale and additional monies, if necessary. If the property is not subject  
7 to any lien or security interest at the time of forfeiture, the school board may hold,  
8 maintain, lease, sell, or otherwise dispose of the property as it sees fit.

9     Upon the filing of the action, the plaintiff may file a notice of lis pendens in the  
10 official records of the county where the property is located. If the plaintiff files a notice  
11 of lis pendens, any person purchasing or obtaining an interest in the property thereafter  
12 shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in  
13 the property upon a judgment of forfeiture in favor of the plaintiff.

14     If in the same action in which real property is forfeited the court finds that a tenant or  
15 occupant of the property participated in or maintained the nuisance, the lease or other title  
16 under which the tenant or occupant holds is void, and the right of possession vests in the  
17 new owner. Upon forfeiture, the rights of innocent tenants occupying separate units of  
18 the property who were not involved in the nuisance at the time the action was filed shall  
19 be in accordance with any relevant lease provisions in effect at the time or, in the absence  
20 of relevant lease provisions, in accordance with the law applying to other tenants or  
21 occupants of property that is sold, foreclosed upon, or otherwise obtained by new  
22 owners."

23     Sec. 3. G.S. 19-7 reads as rewritten:

24     "**§ 19-7. How order of abatement may be canceled.**

25     If the owner appears and pays all cost of the proceeding and files a bond, with sureties  
26 to be approved by the clerk, in the full value of the property, to be ascertained by the  
27 court, or, in vacation, by the clerk of the superior court, conditioned that he will  
28 immediately abate said nuisance, and prevent the same from being established or kept  
29 within a period of one year thereafter, the court may, if satisfied of his good faith, order  
30 the premises closed under the order of abatement to be delivered to said owner, and said  
31 order of abatement canceled so far as same may relate to said property; and if the  
32 proceeding be a civil action, and said bond be given and costs therein paid before  
33 judgment and order of abatement, the action shall be thereby abated as to said building  
34 only. The release of the property under the provisions of this section shall not release it  
35 from any judgment, lien, penalty, or liability to which it may be subject by law."

36     Sec. 4. This act becomes effective December 1, 1995, and applies to nuisances  
37 existing on or after that date.