

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 783
Corrected Copy 4/21/95
Third Edition Engrossed 5/10/95
House Committee Substitute Favorable 6/19/95

Short Title: Drug Nuisance/Forfeiture/AB.

(Public)

Sponsors:

Referred to:

April 20, 1995

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

The General Assembly of North Carolina enacts:

Section 1. G.S. 19-2.1 reads as rewritten:

"§ 19-2.1. Action for abatement; injunction.

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

If an action is instituted by a private person, the complainant shall execute a bond prior to the issuance of a restraining order or a temporary injunction, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than

1 one thousand dollars (\$1,000), to secure to the party enjoined the damages he may sustain
2 if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or
3 is not maintained, or if it is finally decided that the temporary restraining order or
4 preliminary injunction ought not to have been granted. The party enjoined shall have
5 recourse against said bond for all damages suffered, including damages to his property,
6 person, or character and including reasonable attorney's fees incurred by him in making
7 defense to said action. No bond shall be required of the prosecuting ~~attorney or~~ attorney,
8 the Attorney General, county, or municipality, and no action shall be maintained against
9 the public official or public entity for ~~his~~ the official action."

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

12 "**§ 19-6.1. Forfeiture of real property.**

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

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

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

28 (2) If the court finds that one or more of the owners did not participate in
29 maintaining the nuisance on the property or did not have written notice
30 from the plaintiff prior to the action that the nuisance existed or was
31 maintained on the property, the court shall not order forfeiture of the
32 property immediately upon judgment. However, if after judgment and
33 an order directing the defendants to abate the nuisance, the nuisance
34 either continues, begins again, or otherwise recurs within five years of
35 the order and the defendants have not made good faith efforts to abate
36 the nuisance, the plaintiff may petition the court for forfeiture. Upon
37 such petition, the defendant owner or owners shall be given notice and
38 an opportunity to appear and be heard at a hearing to determine the
39 continuation or recurrence of the nuisance. If, in this hearing (i) the
40 plaintiff establishes by clear and convincing evidence that the nuisance,
41 with the owner's or owners' knowledge, has either continued, begun
42 again, or otherwise recurred, and (ii) the defendants fail to establish that

1 they have made and are continuing to make good faith efforts to abate
2 the nuisance, the court shall order that the property be forfeited.

3 For the purposes of this section, factors which may evidence good faith by the
4 defendant to abate the nuisance include but are not limited to (i) cooperation with
5 law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the
6 illegal possession or sale of narcotic drugs and an action to evict a tenant for any
7 violations of the lease provision; (iii) a criminal record check of prospective tenants; and
8 (iv) reference checks of prior residency of prospective tenants.

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

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

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

31 Sec. 3. This act becomes effective December 1, 1995, and applies to nuisances
32 existing on or after that date.