

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

2

SENATE BILL 372
Judiciary II Committee Substitute Adopted 5/12/09

Short Title: Clarification of Nuisance Abatement Laws. (Public)

Sponsors:

Referred to:

March 4, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY TYPES OF NUISANCES WHEREIN OBSCENE OR LEWD MATTER OR OTHER CONDUCT PROHIBITED IS INVOLVED AND TO PROVIDE THAT INDIVIDUALS ENGAGED IN A PATTERN OF STREET GANG ACTIVITY ARE SUBJECT TO INJUNCTIONS PURSUANT TO CHAPTER 19 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 19-1(a) reads as rewritten:

"§ 19-1. What are nuisances under this Chapter.

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of regular and repeated acts of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance."

SECTION 1.1. G.S. 19-1.2 reads as rewritten:

"§ 19-1.2. Types of nuisances.

The following are declared to be nuisances wherein obscene or lewd matter or other conduct prohibited in G.S. 19-1(a) is involved:

- (1) Any and every place in the State where lewd films are publicly exhibited as a predominant ~~and regular~~ course of business, or possessed for the purpose of such ~~exhibition;~~exhibition.
- (2) Any and every place in the State where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such ~~exhibition;~~exhibition.
- (3) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a nuisance under this ~~Article;~~Article.
- (4) Any and every place of business in the State in which lewd publications constitute a principal or substantial part of the stock in ~~trade;~~trade.
- (5) Any and every lewd publication possessed at a place which is a nuisance under this ~~Article;~~Article.
- (6) Every place ~~which, as a regular course of business, which~~ is used for the regular and repeated purposes of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, and every such place in or upon which acts of lewdness, assignation, gambling, the illegal possession or sale of



1 alcoholic beverages, the illegal possession or sale of controlled substances as
2 defined in the North Carolina Controlled Substances Act, or prostitution, are
3 held or occur. Knowledge of, acquiescence to, or participation in the regular
4 and repeated activities proscribed by this Chapter by any person charged
5 with maintaining a nuisance shall be prima facie evidence that the person
6 used the place for the purposes of such activities."

7 **SECTION 2.** G.S. 19-1.1(1a) reads as rewritten:

8 **"§ 19-1.1. Definitions.**

9 As used in this Chapter relating to illegal possession or sale of obscene matter or to the
10 other conduct prohibited in G.S. 19-1(a), the following definitions shall apply:

11 ...

12 (1a) "Knowledge" or "knowledge of such nuisance" means having knowledge of
13 the contents and character of the patently offensive sexual conduct which
14 appears in the lewd matter, or knowledge of the acts of lewdness. With
15 regard to nuisances involving assignation, prostitution, gambling, the illegal
16 possession or sale of alcoholic beverages, the illegal possession or sale of
17 controlled substances as defined in the North Carolina Controlled
18 Substances Act, or repeated acts which create and constitute a breach of the
19 ~~peace,~~peace, or repeated activities or conditions which violate a local
20 ordinance regulating sexually oriented businesses, or evidence that the
21 defendant knew or by the exercise of due diligence should have known of
22 the acts or conduct constitutes proof of knowledge."

23 **SECTION 3.** G.S. 19-1.3 reads as rewritten:

24 **"§ 19-1.3. Personal property as a nuisance; knowledge of nuisance.**

25 The following are also declared to be nuisances, as personal property used in conducting
26 and maintaining a nuisance under this Chapter:

- 27 (1) All moneys paid as admission price to the exhibition of any lewd film found
28 to be a ~~nuisance;~~nuisance.
- 29 (2) All valuable consideration received for the sale of any lewd publication
30 which is found to be a ~~nuisance;~~nuisance.
- 31 (3) All money or other valuable consideration, vehicles, conveyances, or other
32 property received or used in gambling, prostitution, the illegal sale of
33 alcoholic ~~beverages or~~beverages, the illegal sale of substances proscribed
34 under the North Carolina Controlled Substances Act,~~Act,~~ or the operation of
35 a sexually oriented business in violation of G.S. 19-1(b1), as well as the
36 furniture and movable contents of a place used in connection with such
37 prohibited conduct.
- 38 (4) The furniture and movable contents of a place used in connection with
39 conduct prohibited by G.S. 19-1(a), (b), or (b1).

40 From and after service of a copy of the notice of hearing of the application for a preliminary
41 injunction, provided for in G.S. 19-2.4 upon the place, or its manager, or acting manager, or
42 person then in charge, all such parties are deemed to have knowledge of the contents of the
43 restraining order and the use of the place occurring thereafter. Where the circumstantial proof
44 warrants a determination that a person had knowledge of the nuisance prior to such service of
45 process, the court may make such finding."

46 **SECTION 4.** G.S. 19-2.1 reads as rewritten:

47 **"§ 19-2.1. Action for abatement; injunction.**

48 Wherever a nuisance is kept, maintained, or exists, as defined in this Article, the Attorney
49 General, district attorney, county, municipality, or any private citizen of the county may
50 maintain a civil action in the name of the State of North Carolina to abate a nuisance under this
51 Chapter, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of

1 any structure or thing adjudged to be a nuisance under this Chapter; provided, however, that no
2 private citizen may maintain such action where the alleged nuisance involves the illegal
3 possession or sale of obscene or lewd matter.

4 Upon request from the Attorney General, district attorney, county or municipality,
5 including the sheriff or chief of police of any county or municipality, the Alcohol Law
6 Enforcement Division of the Department of Crime Control and Public Safety or any other law
7 enforcement agency with jurisdiction may investigate alleged public nuisances and make
8 recommendations regarding actions to abate the public nuisances.

9 If an action is instituted by a private person, the complainant shall execute a bond prior to
10 the issuance of a temporary restraining order or a ~~temporary-preliminary~~ injunction, with good
11 and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than
12 one thousand dollars (\$1,000), to secure to the party enjoined the damages he may sustain if
13 such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or is not
14 maintained, or if it is finally decided that the temporary restraining order or preliminary
15 injunction ought not to have been granted. The party enjoined shall have recourse against said
16 bond for all damages suffered, including damages to his property, person, or character and
17 including reasonable attorney's fees incurred by him in making defense to said action. No bond
18 shall be required of the prosecuting attorney, the Attorney General, county, or municipality,
19 and no action shall be maintained against any public official or public entity, their employees,
20 or agents for investigating or maintaining an action for abatement of a nuisance under the
21 provisions of this Chapter."

22 **SECTION 5.** G.S. 19-2.3 reads as rewritten:

23 **"§ 19-2.3. Temporary order restraining removal of personal property from premises;
24 service; punishment.**

25 Where such application for a preliminary injunction is made, the court may, on application
26 of the complainant showing good cause, issue an ex parte temporary restraining order in
27 accordance with G.S. 1A-1, Rule 65(b), preserving the status quo and restraining the defendant
28 and all other persons from removing or in any manner interfering with any evidence
29 specifically described, or in any manner removing or interfering with the personal property and
30 contents of the place where such nuisance is alleged to exist, until the decision of the court
31 granting or refusing such preliminary injunction and until further order of the court thereon.
32 Nothing herein shall be interpreted to allow the prior restraint of the distribution of any matter
33 or the sale of the stock in trade, but an inventory and full accounting of all business transactions
34 involving alleged obscene or lewd matter thereafter shall be required. The inventory provisions
35 provided by this section shall not apply to nuisances occurring at a private dwelling place
36 unless the court finds the private dwelling place is used for profit.

37 Any person, firm, or corporation enjoined pursuant to this section may file with the court a
38 motion to dissolve any temporary restraining order. Such a motion shall be heard within 24
39 hours of the time a copy of the motion is served on the complaining party, or on the next day
40 the superior courts are open in the district, whichever is later. At such hearing the complaining
41 party shall have the burden of showing why the restraining order should be continued.

42 In the event a temporary restraining order is issued, it may be served in accordance with the
43 provisions of G.S. 1A-1, Rule 4, or may be served by handing to and leaving a copy of such
44 order with any person in charge of such place or residing therein, or by posting a copy thereof
45 in a conspicuous place at or upon one or more of the principal doors or entrances to such place,
46 or by such service under said ~~Rule 4, delivery and posting.~~ Rule 4. The officer serving such
47 temporary restraining order shall forthwith enter upon the property and make and return into
48 court an inventory of the personal property and contents situated in and used in conducting or
49 maintaining such nuisance.

1 Any violation of such temporary restraining order is a contempt of court, and where such
2 order is posted, mutilation or removal thereof, while the same remains in force, is a contempt of
3 court, provided such posted order contains therein a notice to that effect."

4 **SECTION 6.** G.S. 19-3(a) reads as rewritten:

5 "(a) The action provided for in this Chapter ~~shall~~shall, on application of either of the
6 parties, be set down for trial at the first term of the court and shall have precedence over all
7 other cases except crimes, election contests, or injunctions."

8 **SECTION 7.** G.S. 19-6 reads as rewritten:

9 **"§ 19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement;
10 invalidation of lease.**

11 Lewd matter is contraband, and there are no property rights therein. All personal property,
12 including all money and other considerations, declared to be a nuisance under the provisions of
13 G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government
14 and are recoverable as damages in the county wherein such matter is sold, exhibited or
15 otherwise used. Such property including moneys may be traced to and shall be recoverable
16 from persons who, under G.S. 19-2.4, have knowledge of the nuisance at the time such moneys
17 are received by them.

18 Upon judgment against the defendant or defendants in legal proceedings brought pursuant
19 to this Article, an accounting shall be made by such defendant or defendants of all moneys
20 received by them which have been declared to be a nuisance under this Article. An amount
21 equal to the sum of all moneys estimated to have been taken in as gross income from such
22 unlawful commercial activity shall be forfeited to the general funds of the city and county
23 governments wherein such activity took place, to be shared equally, as a forfeiture of the fruits
24 of an unlawful enterprise, and as partial restitution for damages done to the public welfare;
25 provided, however, that no provision of this Article shall authorize the recovery of any moneys
26 or gross income received from the sale of any book, magazine, or exhibition of any motion
27 picture prior to the issuance of a preliminary injunction. Where the action is brought pursuant
28 to this Article, special injury need not be proven, and the costs of abatement are a lien on both
29 the real and personal property used in maintaining the nuisance. Costs of abatement include,
30 but are not limited to, reasonable attorney's fees and court costs.

31 Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official
32 records of the county where the property is located.

33 If it is judicially found after an adversary hearing pursuant to this Article that a tenant or
34 occupant of a building or tenement, under a lawful title, uses such place for the purposes of
35 lewdness, assignation, prostitution, gambling, sale or possession of illegal alcoholic beverages
36 or substances proscribed under the North Carolina Controlled Substances Act, or repeated acts
37 which create and constitute a breach of the ~~peace,~~peace, or repeated acts or omissions that
38 violate a local ordinance regulating sexually oriented businesses, or such use makes void the
39 lease or other title under which he holds, at the option of the owner, and, without any act of the
40 owner, causes the right of possession to revert and vest in such owner.

41 The clear proceeds of civil penalties and forfeitures provided for in this section, except for
42 penalties and properties that accrue to local governments instead of the State, shall be remitted
43 to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

44 **SECTION 8.** G.S. 19-6.1 reads as rewritten:

45 **"§ 19-6.1. Forfeiture of real property.**

46 In all actions where a preliminary injunction, permanent injunction, or an order of
47 abatement is issued pursuant to this Article in which the nuisance consists of or includes at least
48 two prior occurrences within five years of the manufacture, possession with intent to sell, or
49 sale of controlled substances as defined by the North Carolina Controlled Substances Act, two
50 prior occurrences of the possession of any controlled substance included within Schedule I or II
51 of that Act, or two prior convictions within five years of violation of G.S. 14-72.7, the real

1 property on which the nuisance exists or is maintained is subject to forfeiture in accordance
2 with this section. In the case of the two prior convictions of G.S. 14-72.7, the convictions shall
3 not arise out of the same transaction or occurrence.

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

- 8 (1) If the court finds by clear and convincing evidence that all the owners either
9 (i) have participated in maintaining the nuisance on the property, or (ii) prior
10 to the action had written notice from the plaintiff, or any governmental agent
11 or entity authorized to bring an action pursuant to this Chapter, that the
12 nuisance existed or was maintained on the property and have not made good
13 faith efforts to stop the nuisance from occurring or recurring, the court shall
14 order that the property be forfeited;
- 15 (2) If the court finds that one or more of the owners did not participate in
16 maintaining the nuisance on the property or did not have written notice from
17 the plaintiff prior to the action that the nuisance existed or was maintained
18 on the property, the court shall not order forfeiture of the property
19 immediately upon judgment. However, if after judgment and an order
20 directing the defendants to abate the nuisance, the nuisance either continues,
21 begins again, or otherwise recurs within five years of the order and the
22 defendants have not made good faith efforts to abate the nuisance, the
23 plaintiff may petition the court for forfeiture. Upon such petition, the
24 defendant owner or owners shall be given notice and an opportunity to
25 appear and be heard at a hearing to determine the continuation or recurrence
26 of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and
27 convincing evidence that the nuisance, with the owner's or owners'
28 knowledge, has either continued, begun again, or otherwise recurred, and (ii)
29 the defendants fail to establish that they have made and are continuing to
30 make good faith efforts to abate the nuisance, the court shall order that the
31 property be forfeited.

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

38 Upon an order of forfeiture, title to the property shall vest in the school board of the county
39 in which the property is located. If at the time of forfeiture the property is subject to a lien or
40 security interest of a person not participating in the maintenance of the nuisance, the school
41 board shall either (i) pay an amount to that person satisfying the lien or security interest; or (ii)
42 sell the property and satisfy the lien or security interest from the proceeds of the sale. If the
43 property is not subject to any lien or security interest at the time of forfeiture, the school board
44 may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

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

50 If in the same action in which real property is forfeited the court finds that a tenant or
51 occupant of the property participated in or maintained the nuisance, the lease or other title

1 under which the tenant or occupant holds is void, and the right of possession vests in the new
2 owner. Upon forfeiture, the rights of innocent tenants occupying separate units of the property
3 who were not involved in the nuisance at the time the action was filed shall be in accordance
4 with any relevant lease provisions in effect at the time or, in the absence of relevant lease
5 provisions, in accordance with the law applying to other tenants or occupants of property that is
6 sold, foreclosed upon, or otherwise obtained by new owners."

7 **SECTION 9.** G.S. 14-50.24 is repealed.

8 **SECTION 10.** Chapter 14 of the General Statutes is amended by adding a new
9 Article to read:

10 "Article 13B.

11 "North Carolina Street Gang Nuisance Abatement Act.

12 **"§ 14-50.31. Short title.**

13 This Article shall be known and may be cited as the "North Carolina Street Gang Nuisance
14 Abatement Act."

15 **"§ 14-50.32. Real property used by criminal street gangs declared a public nuisance;**
16 **abatement.**

17 (a) Public Nuisance. – Any real property that is erected, established, maintained,
18 owned, leased, or used by any criminal street gang for the purpose of conducting criminal street
19 gang activity, as defined in G.S. 14-50.16, shall constitute a public nuisance and may be abated
20 as provided by Article 1 of Chapter 19 of the General Statutes.

21 (b) Innocent Activities. – The provisions of this section shall not apply to real property
22 used for criminal street gang activity where the owner or person who has legal possession of
23 the real property does not have actual knowledge that the real property is being used for
24 criminal street gang activity.

25 **"§ 14-50.33. Street gangs declared a public nuisance.**

26 (a) A street gang, as defined in G.S. 14-50.16(b), which regularly associates in street
27 gang activities, as defined in G.S. 14-50.16(c), constitutes a public nuisance. For the purposes
28 of this section, "regularly" means at least five times in a period not more than 12 months.

29 (b) Any person who regularly associates with others to engage in street gang activity, as
30 defined in G.S. 14-50.16, may be made a defendant in a suit, brought pursuant to Chapter 19 of
31 the General Statutes, to abate any public nuisance resulting from street gang activity.

32 (c) If the court finds that a public nuisance exists under this section, the court may enter
33 an order enjoining the defendant in the suit from engaging in gang activities and impose other
34 reasonable requirements to prevent the defendant or a gang from engaging in future gang
35 activities."

36 **SECTION 11.** This act becomes effective October 1, 2009, and applies to offenses
37 committed and abatement actions commenced on or after that date.