

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 431

Short Title: Drug Nuisance/Forfeiture/AB.

(Public)

Sponsors: Representatives Thompson; Berry, Black, Brawley, Buchanan, Capps, Culp, Gardner, Justus, Kiser, McMahan, Mercer, K. Miller, Pulley, Richardson, Robinson, Russell, Shaw, and Sherrill.

Referred to: Judiciary I.

March 9, 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, police department, police chief, sheriff, sheriff's department, 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, municipality, police department, police chief, sheriff, or
9 sheriff's department, and no action shall be maintained against the public official or
10 public entity for his-the official action."

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

13 **"§ 19-6.1. Forfeiture of real property.**

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

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

23 (1) If the court finds that all the owners have participated in maintaining the
24 nuisance on the property or had knowledge prior to the action that the
25 nuisance existed or was maintained on the property, the court shall order
26 that the property be forfeited;

27 (2) If the court finds that one or more of the owners had no knowledge prior
28 to the action that the nuisance existed or was maintained on the
29 property, the court shall not order forfeiture of the property immediately
30 upon judgment. However, if after judgment and an order directing the
31 defendants to abate the nuisance, the nuisance either continues, begins
32 again, or otherwise recurs, the plaintiff may petition the court for
33 forfeiture. Upon such petition, the defendant owner or owners shall be
34 given notice and an opportunity to appear and be heard at a hearing to
35 determine the continuation or recurrence of the nuisance. If, in this
36 hearing the plaintiff establishes that the nuisance, with or without the
37 owner's or owners' knowledge, has either continued, begun again, or
38 otherwise recurred, the court shall order that the property be forfeited.

39 Upon an order of forfeiture, title to the property shall vest in the municipality or
40 county in which the property is located. If at the time of forfeiture the property is subject
41 to a lien or security interest of a person not participating in the maintenance of the
42 nuisance, the municipality or county shall either (i) pay an amount to that person
43 satisfying the lien or security interest; or (ii) sell the property and satisfy the lien or

1 security interest from the proceeds of the sale and additional monies, if necessary. If the
2 property is not subject to any lien or security interest at the time of forfeiture, the
3 municipality or county may hold, maintain, lease, sell, or otherwise dispose of the
4 property as it sees fit.

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

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

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

20 "**§ 19-7. How order of abatement may be canceled.**

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

32 This section shall not apply to actions in which the alleged nuisance consists of or
33 includes the illegal possession or sale of narcotic drugs as defined in G.S. 90-87(17), and
34 in which the plaintiff seeks forfeiture of the real property pursuant to G.S. 19-6.1."

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