

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senator Gordon**

A BILL ACT 1187 OF 1991
SENATE BILL 610

For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS DRUG
9 ABATEMENT ACT, ARKANSAS CODE ANNOTATED §§ 16-105-401 ET
10 SEQ.; AND FOR OTHER PURPOSES."

11

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

13

14 SECTION 1. Arkansas Code Annotated §16-105-403 is amended to read as
15 follows:

16 "16-105-403. Action to abate - Permanent injunction.

17 Whenever there is reason to believe such a common nuisance is kept,
18 maintained, or exists in any county, the prosecuting attorney of the county,
19 in the name of the people, or the city attorney of any incorporated city, or
20 any citizen of the state, resident of the county, in his or her own name, may
21 maintain an action to abate and prevent the nuisance and perpetually to enjoin
22 the person conducting or maintaining it, and the owner, lessee, or agent of
23 the building or place, in or upon which the nuisance exists, from directly or
24 indirectly maintaining or permitting the nuisance."

25

26 SECTION 2. Arkansas Code Annotated §16-105-404 is amended to read as
27 follows:

28 "16-105-404. Verification of complaint.

29 Unless filed by the prosecuting attorney, or the city attorney of an
30 incorporated city, the complaint in the action shall be verified."

31

32 SECTION 3. Arkansas Code Annotated §16-105-412 is amended to read as
33 follows:

34 "16-105-412. Order of abatement - Civil penalty - Damages.

35 (a) If the existence of the nuisance is established in the action, an
36 order of abatement shall be entered as a part of the judgment, which order

1 shall direct the removal from the building or place of all fixtures and other
2 movable property used in conducting, maintaining, aiding, or abetting the
3 nuisance and shall direct their sale in the manner provided for the sale of
4 chattels under execution.

5 (b) The order shall provide for any appropriate equitable relief as
6 determined by the court to be necessary to abate said nuisance and may further
7 provide, if determined to be the least restrictive alternative available to
8 effectively accomplish said abatement, for the effectual closing of the
9 building or place for such period of time as is determined to be necessary by
10 the court as adequate to abate said nuisance. An alternative to closure may
11 be considered only as provided in this section.

12 (c) (1) If the court finds that any vacancy resulting from closure of
13 the building or place may create a nuisance or that closure is otherwise
14 harmful to the community, in lieu of ordering the building or place closed,
15 the court may order the person who is responsible for the existence of the
16 nuisance, or the person who knowingly permits controlled substances to be
17 unlawfully sold, served, stored, kept, or given away in or from a building or
18 place he or she owns, to pay damages in an amount equal to the fair market
19 rental value of the building or place for such period of time as determined
20 appropriate by the court to the city or county in whose jurisdiction the
21 nuisance is located for the purpose of carrying out their drug prevention and
22 education programs. If awarded to a city, eligible programs may include those
23 developed as a result of cooperative programs among schools, community
24 agencies, and the local enforcement agency. If awarded to a county, funds
25 shall be used for those programs that are part of any county program in place
26 or used by the county law enforcement agency. These funds shall not be used
27 to supplant existing city, county, state, or federal resources used for drug
28 prevention and education programs.

29 (2) For purposes of this subsection, the actual amount of rent
30 being received for the rental of the building or place, or the existence of
31 any vacancy therein, may be considered, but shall not be the sole determinant
32 of the fair market rental value. Expert testimony may be used to determine
33 the fair market rental value.

34 (d) In addition, the court may assess a civil penalty not to exceed
35 five thousand dollars (\$5,000) against any or all of the defendants, based

1 upon the severity of the nuisance and its duration."

2

3 SECTION 4. All provisions of this act of a general and permanent nature
4 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
5 Revision Commission shall incorporate the same in the Code.

6

7 SECTION 5. If any provision of this act or the application thereof to
8 any person or circumstance is held invalid, such invalidity shall not affect
9 other provisions or applications of the act which can be given effect without
10 the invalid provision or application, and to this end the provisions of this
11 act are declared to be severable.

12

13 SECTION 6. All laws and parts of laws in conflict with this act are
14 hereby repealed.

15

16 SECTION 7. EMERGENCY CLAUSE. It is hereby found and determined by the
17 Seventy-Eighth General Assembly that there has been a recent Pulaski County
18 court case, City of Little Rock v. Jessie Martain, a.k.a. Jessie Hall, which
19 indicated that there should be additional equitable remedies available to the
20 judge to abate nuisances. That because of the above-referenced case, and
21 because of the need to fight the war on drugs, an emergency is hereby declared
22 to exist, and this act, being necessary for the preservation of the public
23 peace, health and safety, shall become effective immediately upon passage.

24

25 APPROVED: 4/10/91

26

27

28

29

30

31