

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

SENATE BILL

463

By: Senator Gordon

For An Act To Be Entitled

"AN ACT TO AMEND CHAPTER 105 OF TITLE 16 OF THE ARKANSAS CODE TO DECLARE CERTAIN BUILDINGS, STRUCTURES, AND PLACES A COMMON NUISANCE; TO ESTABLISH PENALTIES THEREFOR; AND FOR OTHER PURPOSES."

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

SECTION 1. Chapter 105 of Title 16 of the Arkansas Code is hereby amended by adding an additional subchapter at the end thereof to read as follows:

"16-105-401. This Act shall be called 'The Arkansas Drug Abatement Act of 1989'.

16-105-402. Common Nuisance. Any store, shop, warehouse, dwelling house, building, boat, airplane or any place whatever, used for the purpose of unlawfully selling, storing, keeping, manufacturing, using, or giving away any controlled substance, precursor, or analog specified in Arkansas Code 5-64-101 et seq. is declared detrimental to the public morals and shall be deemed a common nuisance which shall be enjoined, abated, and prevented, and for which costs of abatement and damages may be recovered.

16-105-403. Action to abate; injunction. Whenever there is reason to believe such a common nuisance is kept, maintained or exists in any county, the district attorney of the county, in the name of the people, may, or the city attorney of any incorporated city, or any citizen of the State, resident of the county, in his or her own name, may maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee or agent of the building or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting the nuisance.

16-105-404. Verification of complaint. Unless filed by the district

attorney, or the city attorney of an incorporated city, the complaint in the action shall be verified.

16-105-405. Temporary injunction. If the existence of the nuisance is shown in the action to the satisfaction of the court or judge, the court or judge shall allow a temporary writ of injunction to abate and prevent the continuance or recurrence of the nuisance. The notice requirements of Arkansas Rule of Civil Procedure 65 shall be followed in maintaining this action.

16-105-406. Bond. On granting the temporary writ the court or judge shall require a bond on the part of the applicant to the effect that the applicant will pay to the defendant enjoined such damages, not exceeding an amount to be specified, as the defendant sustains by reason of the injunction if the court finally decides that the applicant was not entitled to the injunction. No bond shall be required where the proceeding is instituted by the prosecuting attorney or city attorney.

16-105-407. Precedence of action. The action shall have precedence over all other actions, except criminal proceedings, election contests, and hearings on injunctions.

16-105-408. Dismissal for want of prosecution. If the complaint is filed by a citizen it shall not be dismissed by him or for want of prosecution except upon a sworn statement made by him and his attorney, setting forth the reasons why the action should be dismissed, and by dismissal ordered by the court.

16-105-409. Costs. If the action is brought by a citizen and the court finds there was no reasonable ground or cause for the action, the costs shall be taxed against him.

16-105-410. Order of abatement; lien for costs. If the existence of the nuisance is established in the action, an order of abatement shall be entered as part of the judgment in the case, and plaintiff's costs in the action are a lien upon the building or place. The lien is enforceable and collectible by execution issued by order of the court.

16-105-411. Violation of injunction or abatement order; penalty. A violation or disobedience of the injunction or order for abatement is punishable as a contempt of court by a fine of not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not less than one nor more than six months, or by both.

16-105-412. Removal and sale of property; closing of building or place; penalty; damages; fair market rental value. (a) If the existence of the nuisance is established in the action, an order of abatement shall be entered as a part of the judgment, which order shall direct the removal from the building or place of all fixtures, musical instruments, and other movable property used in conducting, maintaining, aiding, or abetting the nuisance and shall direct their sale in the manner provided for the sale of chattels under execution.

(b) The order shall provide for the effectual closing of the building or place against its use for any purpose, and for keeping it closed for a period of one year. This subdivision is intended to give priority to closure. Any alternative to closure may be considered only as provided in this section.

In addition, the court may assess a civil penalty not to exceed five thousand dollars (\$5,000) against any or all of the defendants, based upon the severity of the nuisance and its duration.

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

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

16-105-413. Court custody of building or place. While the order of abatement remains in effect, the building or place is in the custody of the court.

16-105-414. Fees; removal and sale of property; closing of building or place. For removing and selling the movable property, the city, county, or responsible law enforcement agency is entitled to charge and receive the same fees as would be charged and received for levying upon and selling like property on execution; and for closing the premises and keeping them closed, a reasonable sum shall be allowed by the court.

16-105-415. Disposition of proceeds of sale. The proceeds of the sale of the movable property shall be applied as follows:

First - To the fees and costs of the removal and sale.

Second - To the allowances and costs of closing and keeping closed the building or place.

Third - To the payment of the plaintiff's costs in the action.

Fourth - The balance, if any, to the owner of the property.

16-105-416. Release of building to owner. (a) If the owner of the building or place has not been guilty of any contempt of court in the proceedings, and appears and pays all costs, fees, and allowances that are a lien on the building or place and files a bond in the full value of the property conditioned that the owner will immediately abate any nuisance that may exist at the building or place and prevent it from being established or kept thereat within a period of one year thereafter, the court, or judge may, if satisfied of the owner's good faith, order the building or place to be delivered to the owner, and the order of abatement cancelled so far as it may relate to the property.

(b) The release of property under the provisions of this subsection does not release it from any judgment, lien, penalty, or liability to which it may be subject.

16-105-417. Lien of fine. Whenever the owner of a building or place upon which the act or acts constituting the contempt have been committed, or the owner of any interest therein, has been guilty of a contempt of court, and fined in any proceedings under this Act, the fine is a lien upon the building or place to the extent of his interest in it.

The lien is enforceable and collectible by execution issued by order of the court."

SECTION 2. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 3. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 4. Emergency. It is hereby found and determined by the General Assembly that buildings, locations, and places where drugs are used are a common nuisance and are proliferating in our State; that it is essential that local governments be authorized to abate such nuisances to prevent lawlessness and deterioration in neighborhoods and locales within their jurisdiction; that this Act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.