

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

# A Bill

**HOUSE BILL**

## 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:

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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."

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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."

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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

1 order of abatement shall be entered as a part of the judgment, which order  
2 shall direct the removal from the building or place of all fixtures and other  
3 movable property used in conducting, maintaining, aiding, or abetting the  
4 nuisance and shall direct their sale in the manner provided for the sale of  
5 chattels under execution.

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

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

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

35 (d) In addition, the court may assess a civil penalty not to exceed

1 five thousand dollars (\$5,000) against any or all of the defendants, based  
2 upon the severity of the nuisance and its duration."

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

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

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

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

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