

State of Arkansas
84th General Assembly
Regular Session, 2003

A Bill

SENATE BILL 770

By: Senator Salmon

For An Act To Be Entitled

AN ACT AUTHORIZING CITIES OF FIRST AND SECOND
CLASS TO CREATE CRIMINAL NUISANCE ABATEMENT
BOARDS; ESTABLISHING APPEAL PROCEDURES; AND FOR
OTHER PURPOSES.

Subtitle

AN ACT AUTHORIZING CITIES OF FIRST AND
SECOND CLASS TO CREATE CRIMINAL NUISANCE
ABATEMENT BOARDS; ESTABLISHING APPEAL
PROCEDURES.

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

SECTION 1. Legislative Intent.

It is the intent of the General Assembly to promote, protect, and improve the health, safety, and welfare of the citizens of the municipalities of this state by authorizing the creation of criminal nuisance abatement boards with authority to impose remedies, administrative fines, and other non criminal penalties in order to provide an equitable, expeditious, effective, and inexpensive method of abating public nuisance as defined by state law.

SECTION 2. Creation of criminal nuisance abatement board.

(a) Any city of first or second class may, by ordinance, create a quasi judicial board to hear complaints regarding places or premises used as public or common nuisance as defined by Arkansas Code § 5-74-109, § 14-54-1502, and § 16-105-402 or that are used for prostitution as defined by Arkansas Code § 5-70-102.



1 **(b) A criminal nuisance abatement board created under this act shall**
2 **be composed of five (5) citizens of the creating city who shall be appointed**
3 **by the governing body of the city.**

4 **(c) The governing body of the city shall select one (1) of the members**
5 **of the board to call the first meeting and serve as chair at the first**
6 **meeting.**

7 **(d)(1) At the first meeting, members of the board shall draw lots so**
8 **that one (1) member shall serve a three-year term, two (2) members shall**
9 **serve a four-year term, and two (2) members shall serve a five-year term.**

10 **(2) All successors appointed to the board shall serve one (1)**
11 **five-year term.**

12 **(e) The members shall elect a chair and any other officers needed to**
13 **conduct the business of the board.**

14 **(f) The governing body of the city shall provide necessary staff for**
15 **the board.**

16 **(g) The board may promulgate rules and regulations needed to conduct**
17 **the hearings on the complaints concerning places and premises used as public**
18 **or common nuisances.**

19
20 **SECTION 3. Filing of complaint with board.**

21 **(a)(1) Any employee, officer, or resident of the city may bring a**
22 **sworn complaint before the board against the owner of a place or premises**
23 **that may constitute a nuisance.**

24 **(2) A hearing shall be conducted after the owner of the place or**
25 **premises has been given ten (10) calendar days notice of the hearing.**

26 **(b) The notice shall:**

27 **(1) Be provided to the owner of the place or premises according**
28 **to the Arkansas Rules of Civil Procedure 4(d); and**

29 **(2) Include a copy of the complaint and a copy of the ordinance**
30 **creating the criminal nuisance abatement board.**

31 **(c) If notice of the hearing is made by personal service, the notice**
32 **may be served by a certified law enforcement officer or a certified court**
33 **process server.**

34
35 **SECTION 4. Hearing and board findings.**

36 **(a) At the hearing:**

1 (1) The board may consider any evidence, including evidence of
2 the general reputation of the place or premises; and

3 (2) The owner of the premises shall have an opportunity to
4 present evidence in his or her defense.

5 (b) All witnesses at a hearing shall be sworn.

6 (c) After the hearing, the board may declare the place or premises to
7 be a public nuisance as defined by Arkansas Code §§ 5-74-109, 14-54-1502, and
8 16-105-402 or that are used for prostitution as defined by Arkansas Code § 5-
9 70-102.

10 (c) After declaring a place or premises a nuisance the board shall
11 make a factual determination as to the reasons why the board finds that a
12 public nuisance exists.

13 (d) The sworn testimony and the board findings shall become a part of
14 the record.

15
16 SECTION 5. Order of abatement.

17 (a) If the board declares a place or premises to be a public nuisance,
18 it may enter an order requiring the owner of such place or premises to adopt
19 such procedure as may be appropriate under the circumstances to abate any
20 such nuisance.

21 (b) The order may include, but is not limited to, the following:

22 (1) Prohibit the maintaining of the nuisance;

23 (2) Prohibit the operating or maintaining of the place or
24 premises, including the closure of the place or premises or any part of the
25 premises for a longer than the effective date of the order;

26 (3) Prohibit the conduct, operation, or maintenance of any
27 business or activity on the premises which is conducive to the nuisance;

28 (4) Order the eviction of tenants of the place or premises who
29 are responsible for the criminal conduct or allows or permits another to
30 commit the criminal conduct;

31 (5) Order the owner of the place or premises or the owner's
32 agents to perform criminal background checks of tenants before renting the
33 property; or

34 (6) Order the owner to bring the place or premises into
35 compliance with state and local safety codes before allowing the reoccupation
36 of the property.

1 (c) The order must include a statement stating that violations of this
2 order may be punishable by a fine of not more than two hundred fifty dollars
3 (\$250) for each day that violations of the order continue or that the public
4 nuisance continues to exist.

5
6 SECTION 6. Effective date of an order.

7 (a) A finding or order entered pursuant to this act shall become
8 effective seven (7) calendar days after the order has been posted on the
9 subject premises and mailed to the owner's last known address by first class
10 mail.

11 (b) The order shall expire after one (1) year after the effective date
12 or at such earlier time as is stated in the order.

13 (c) The order may be stayed pending appeal to circuit court pursuant
14 to this act.

15
16 SECTION 7. Appeals to circuit court.

17 (a) Within thirty (30) days after an order or decision has been
18 entered by the board according to the provisions in this act, any party may
19 appeal to the circuit court for a de novo review on the record.

20 (b) If an appeal is filed, the decision or order of the board shall
21 remain in effect unless stayed by the circuit court.

22
23 SECTION 8. Violations of orders or continuations of nuisance.

24 (a) If an order that has not been entered is violated, the board on
25 its own or pursuant to a complaint may hold a hearing on whether or not a
26 public nuisance continues to exist or has been violated.

27 (b) If the board finds that the public nuisance continues to exist or
28 that the order has been violated, the board may impose a civil penalty of not
29 more than two hundred fifty (\$250) for each day that the order is violated or
30 that the nuisance continues to exist.

31 (c) Before such a hearing may be held, the owner must be given ten
32 (10) calendar days notice in writing of the hearing according to methods
33 stated in the Arkansas Rules of Civil Procedure 4(d).

34 (d) The notice must state that if the board finds that the nuisance
35 continues to exist or that the order has been violated, the board may impose
36 a fine of not more than two hundred fifty dollars (\$250) for each day that

1 the order has been violated or that the nuisance has continued to exist.

2 (e) The maximum amount of a civil penalty that may be imposed is ten
3 thousand dollars (\$10,000).

4 (f) In addition to a civil penalty, the board may award costs of a
5 successful complainant not to exceed one thousand dollars (\$1000).

6 (g) All civil penalties imposed shall be used by the local police
7 department for nuisance abatement purposes.

8 (h) Any civil penalty or costs awarded by the board may be appealed to
9 the circuit court within thirty (30) days.

10 (i) Any order imposing costs or civil penalties not appealed to
11 circuit court may be filed with the Circuit Clerk's office and constitute a
12 judgment of record and a lien against the nuisance property.

13
14 SECTION 9. Supplemental measure.

15 (a) This act does not restrict the right of any person or government
16 official from proceeding against a public nuisance by any other means.

17 (b) This act is supplemental to all other laws and any other powers of
18 a city of first or second class.

19
20 SECTION 10. Immunity.

21 (a) The board, its individual members, and city employees assisting
22 the board are immune from suit or action for their activities in discharge of
23 their duties under this act to the full extent of judicial immunity.

24 (b) Except for perjury and false swearing, complainants and witnesses
25 are absolutely immune from suit or action for all communications with the
26 board and all statements made within the nuisance abatement process.

27
28 SECTION 11. EMERGENCY CLAUSE. It is found and determined by the
29 General Assembly of the State of Arkansas that municipalities in the state
30 have the authority to create criminal nuisance abatement boards; that this
31 act is needed to provide proper procedures for the boards and procedures for
32 appeals to the circuit court; and that this act is immediately necessary
33 because without proper procedures citizens of the state could be harmed by
34 actions of the board without recourse to the circuit courts. Therefore, an
35 emergency is declared to exist and this act being immediately necessary for
36 the preservation of the public peace, health, and safety shall become

1 effective on:

2 (1) The date of its approval by the Governor;

3 (2) If the bill is neither approved nor vetoed by the Governor,
4 the expiration of the period of time during which the Governor may veto the
5 bill; or

6 (3) If the bill is vetoed by the Governor and the veto is
7 overridden, the date the last house overrides the veto.