

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 528
SENATE BILL 783

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, 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 one thousand dollars (\$1,000), to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or is not maintained, or if it is finally decided that the temporary restraining order or preliminary injunction ought not to have been granted. The party enjoined shall have recourse against said bond for all damages suffered, including damages to his property, person, or character and including reasonable attorney's fees incurred by him in making defense to said action. No bond shall be required of the prosecuting ~~attorney~~ ~~or attorney,~~ the Attorney General, county, or municipality, and no action shall be maintained against the public official or public entity for ~~his~~ ~~the~~ official action."

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

"§ 19-6.1. Forfeiture of real property.

In all actions where a preliminary injunction, permanent injunction, or an order of abatement is issued pursuant to this Article in which the nuisance consists of or includes at least two prior occurrences within five years of the illegal possession or sale of narcotic drugs as defined in G.S. 90-87(17), the real property on which the nuisance exists or is maintained is subject to forfeiture in accordance with this section.

If all of the owners of the property are defendants in the action, the plaintiff, other than a plaintiff who is a private citizen, may request forfeiture of the real property as

part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant owners is established, upon judgment against the defendant or defendants, the court shall order forfeiture as follows:

- (1) If the court finds by clear and convincing evidence that all the owners either (i) have participated in maintaining the nuisance on the property, or (ii) had written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property and have not made good faith efforts to stop the nuisance from occurring or recurring, the court shall order that the property be forfeited;
- (2) If the court finds that one or more of the owners did not participate in maintaining the nuisance on the property or did not have written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property, the court shall not order forfeiture of the property immediately upon judgment. However, if after judgment and an order directing the defendants to abate the nuisance, the nuisance either continues, begins again, or otherwise recurs within five years of the order and the defendants have not made good faith efforts to abate the nuisance, the plaintiff may petition the court for forfeiture. Upon such petition, the defendant owner or owners shall be given notice and an opportunity to appear and be heard at a hearing to determine the continuation or recurrence of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and convincing evidence that the nuisance, with the owner's or owners' knowledge, has either continued, begun again, or otherwise recurred, and (ii) the defendants fail to establish that they have made and are continuing to make good faith efforts to abate the nuisance, the court shall order that the property be forfeited.

For the purposes of this section, factors which may evidence good faith by the defendant to abate the nuisance include but are not limited to (i) cooperation with law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the illegal possession or sale of narcotic drugs and an action to evict a tenant for any violations of the lease provision; (iii) a criminal record check of prospective tenants; and (iv) reference checks of prior residency of prospective tenants.

Upon an order of forfeiture, title to the property shall vest in the school board of the county in which the property is located. If at the time of forfeiture the property is subject to a lien or security interest of a person not participating in the maintenance of the nuisance, the school board shall either (i) pay an amount to that person satisfying the lien or security interest; or (ii) sell the property and satisfy the lien or security interest from the proceeds of the sale and additional monies, if necessary. If the property is not subject to any lien or security interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located. If the plaintiff files a notice of lis pendens, any person purchasing or obtaining an interest in the property thereafter

shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in the property upon a judgment of forfeiture in favor of the plaintiff.

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

Sec. 3. This act becomes effective December 1, 1995, and applies to nuisances existing on or after that date.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives