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**HEALTH AND SAFETY CODE - HSC**

**DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT [11000 - 11651]** ( *Division 10 repealed and added by Stats. 1972, Ch. 1407.* )

**CHAPTER 10. Control of Users of Controlled Substances [11550 - 11594]** ( *Chapter 10 added by Stats. 1972, Ch. 1407.* )

**ARTICLE 3. Abatement [11570 - 11587]** ( *Article 3 added by Stats. 1972, Ch. 1407.* )

**11570.** Every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance, precursor, or analog specified in this division, and every building or place wherein or upon which those acts take place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.

(*Amended by Stats. 1986, Ch. 1043, Sec. 1.5.*)

**11571.** If there is reason to believe that a nuisance, as described in Section 11570, is kept, maintained, or exists in any county, the district attorney or county counsel of the county, or the city attorney of any incorporated city or of any city and county, in the name of the people, may, or any citizen of the state resident in the county, in his or her own name, may, maintain an action to abate and prevent the nuisance and to perpetually 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.

(*Amended by Stats. 2010, Ch. 570, Sec. 3. (AB 1502) Effective January 1, 2011.*)

**11571.1.** (a) Nothing in this article shall prevent a local governing body from adopting and enforcing laws, consistent with this article, relating to drug abatement. Where local laws duplicate or supplement this article, this article shall be construed as providing alternative remedies and not preempting the field.

(b) Nothing in this article shall prevent a tenant from receiving relief against a forfeiture of a lease pursuant to Section 1179 of the Code of Civil Procedure.

(*Repealed and added by Stats. 2009, Ch. 244, Sec. 7. (AB 530) Effective January 1, 2010.*)

**11571.5.** For purposes of this article, an action to abate a nuisance may be taken by the city attorney or city prosecutor of the city within which the nuisance exists, is kept, or is maintained. An action by a city attorney or city prosecutor shall be accorded the same precedence as an action maintained by the district attorney of the county.

(*Added by Stats. 1986, Ch. 182, Sec. 1.*)

**11572.** Unless filed by the district attorney, or the city attorney of an incorporated city, the complaint in the action shall be verified.

(*Amended by Stats. 1987, Ch. 1076, Sec. 3.*)

**11573.** (a) If the existence of the nuisance is shown in the action to the satisfaction of the court or judge, either by verified complaint or affidavit, the court or judge shall allow a temporary restraining order or injunction to abate and prevent the continuance or recurrence of the nuisance.

(b) A temporary restraining order or injunction may enjoin subsequent owners, commercial lessees, or agents who acquire the building or place where the nuisance exists with notice of the temporary restraining order or injunction, specifying that the owner of the property subject to the temporary restraining order or injunction shall notify any prospective purchaser, commercial lessee, or other successor in interest of the existence of the order or injunction, and of its application to successors in interest, prior to entering into any agreement to sell or lease the property. The temporary restraining order or injunction shall not constitute a title defect, lien, or encumbrance on the real property.

**11573.5.** (a) At the time of application for issuance of a temporary restraining order or injunction pursuant to Section 11573, if proof of the existence of the nuisance depends, in whole or part, upon the affidavits of witnesses who are not peace officers, upon a showing of prior threats of violence or acts of violence by any defendant or other person, the court may issue orders to protect those witnesses, including, but not limited to, nondisclosure of the name, address, or any other information which may identify those witnesses.

(b) A temporary restraining order or injunction issued pursuant to Section 11573 may include closure of the premises pending trial when a prior order or injunction does not result in the abatement of the nuisance. The duration of the order or injunction shall be within the court's discretion. In no event shall the total period of closure pending trial exceed one year. Prior to ruling on a request for closure the court may order that some or all of the rent payments owing to the defendant be placed in an escrow account for a period of up to 90 days or until the nuisance is abated. If the court subsequently orders a closure of the premises, the money in the escrow account shall be used to pay for relocation assistance pursuant to subdivision (d). In ruling upon a request for closure, whether for a defined or undefined duration, the court shall consider all of the following factors:

- (1) The extent and duration of the nuisance at the time of the request.
- (2) Prior efforts by the defendant to comply with previous court orders to abate the nuisance.
- (3) The nature and extent of any effect which the nuisance has upon other persons, such as residents or businesses.
- (4) Any effect of prior orders placing displaced residents' or occupants' rent payments into an escrow account upon the defendant's efforts to abate the nuisance.
- (5) The effect of granting the request upon any resident or occupant of the premises who is not named in the action, including the availability of alternative housing or relocation assistance, the pendency of any action to evict a resident or occupant, and any evidence of participation by a resident or occupant in the nuisance activity.

(c) In making an order of closure pursuant to this section, the court may order the premises vacated and may issue any other orders necessary to effectuate the closure. However, all tenants who may be affected by the order shall be provided reasonable notice and an opportunity to be heard at all hearings regarding the closure request prior to the issuance of any order.

(d) In making an order of closure pursuant to this section, the court shall order the defendant to provide relocation assistance to any tenant ordered to vacate the premises, provided the court determines that the tenant was not actively involved in the nuisance activity. The relocation assistance ordered to be paid by the defendant shall be in the amount necessary to cover moving costs, security deposits for utilities and comparable housing, adjustment in any lost rent, and any other reasonable expenses the court may deem fair and reasonable as a result of the court's order.

(e) At the hearing to order closure pursuant to this section, the court may make the following orders with respect to any displaced tenant not actively involved in the nuisance:

- (1) Priority for senior citizens, physically handicapped persons, or persons otherwise suffering from a permanent or temporary disability for claims against money for relocation assistance.
- (2) Order the local agency seeking closure pursuant to this section to make reasonable attempts to seek additional sources of funds for relocation assistance to displaced tenants, if deemed necessary.
- (3) Appoint a receiver to oversee the disbursement of relocation assistance funds, whose services shall be paid from the escrow fund.
- (4) Where a defendant has paid relocation assistance pursuant to subdivision (d), the escrow account under subdivision (b) may be released to the defendant and no appointment under paragraph (3) shall be made.

(f) (1) The remedies set forth pursuant to this section shall be in addition to any other existing remedies for nuisance abatement actions, including, but not limited to, the following:

- (A) Capital improvements to the property, such as security gates.
- (B) Improved interior or exterior lighting.
- (C) Security guards.

(D) Posting of signs.

(E) Owner membership in neighborhood or local merchants' associations.

(F) Attending property management training programs.

(G) Making cosmetic improvements to the property.

(H) Requiring the owner or person in control of the property to reside in the property until the nuisance is abated. The order shall specify the number of hours per day or per week the owner or person in control of the property must be physically present in the property. In determining this amount, the court shall consider the nature and severity of the nuisance.

(2) At all stages of an action brought pursuant to this article, the court has equitable powers to order steps necessary to remedy the problem and enhance the abatement process.

*(Amended by Stats. 2002, Ch. 1057, Sec. 3. Effective January 1, 2003.)*

**11574.** On granting the temporary writ the court or judge shall require an undertaking 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.

*(Amended by Stats. 1982, Ch. 517, Sec. 275.)*

**11575.** The action shall have precedence over all other actions, except criminal proceedings, election contests, hearings on injunctions, and actions to forfeit vehicles under this division.

*(Repealed and added by Stats. 1972, Ch. 1407.)*

**11575.5.** In any action for abatement instituted pursuant to this article, all evidence otherwise authorized by law, including evidence of reputation in a community, as provided in the Evidence Code, shall be admissible to prove the existence of a nuisance.

*(Added by Stats. 1988, Ch. 1525, Sec. 2.)*

**11576.** 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.

*(Repealed and added by Stats. 1972, Ch. 1407.)*

**11577.** In case of failure to prosecute the action with reasonable diligence, or at the request of the plaintiff, the court, in its discretion, may substitute any other citizen consenting thereto for the plaintiff.

*(Added by Stats. 1972, Ch. 1407.)*

**11578.** 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.

*(Added by Stats. 1972, Ch. 1407.)*

**11579.** 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.

*(Added by Stats. 1972, Ch. 1407.)*

**11580.** 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 five hundred dollars (\$500) nor more than ten thousand dollars (\$10,000), or by imprisonment in the county jail for not less than one nor more than six months, or by both.

A contempt may be based on a violation of any court order including failure to pay relocation assistance. Notwithstanding any other provision of law, any fines assessed for contempt shall first be held by the court and applied to satisfaction of the court's order for relocation assistance pursuant to subdivision (d) of Section 11573.5.

Evidence concerning the duration and repetitive nature of the violations shall be considered by the court in determining the contempt penalties.

*(Amended by Stats. 1988, Ch. 1525, Sec. 3.)*

**11581.** (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) (1) 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.

(2) In addition, the court may assess a civil penalty not to exceed twenty-five thousand dollars (\$25,000) against any or all of the defendants, based upon the severity of the nuisance and its duration.

(3) One-half of the civil penalties collected pursuant to this section shall be deposited in the Restitution Fund in the State Treasury, the proceeds of which shall be available only upon appropriation by the Legislature to indemnify persons filing claims pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, and one-half of the civil penalties collected shall be paid to the city in which the judgment was entered, if the action was brought by the city attorney or city prosecutor. If the action was brought by a district attorney, one-half of the civil penalties collected shall be paid to the treasurer of the county in which the judgment was entered.

(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 drug abuse treatment, 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 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.

(d) This section shall become operative on January 1, 1996.

*(Amended by Stats. 2003, Ch. 62, Sec. 183. Effective January 1, 2004.)*

**11582.** While the order of abatement remains in effect, the building or place is in the custody of the court.

*(Added by Stats. 1972, Ch. 1407.)*

**11583.** For removing and selling the movable property, the officer is entitled to charge and receive the same fees as he would 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.

*(Added by Stats. 1972, Ch. 1407.)*

**11584.** 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.

*(Added by Stats. 1972, Ch. 1407.)*

**11585.** If the proceeds of the sale of the movable property do not fully discharge all of the costs, fees, and allowances, the building and place shall then also be sold under execution issued upon the order of the court or judge and the proceeds of the sale shall be applied in like manner.

*(Added by Stats. 1972, Ch. 1407.)*

**11586.** (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 canceled so far as it may relate to the property.

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

*(Amended by Stats. 1982, Ch. 517, Sec. 276.)*

**11587.** 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 division, 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.

*(Added by Stats. 1972, Ch. 1407.)*