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NUISANCES Abatement of Nuisances Generally: Provide that a City or County Attorney or Solicitor-General May File an Action to Abate a Public Nuisance or a Drug-Related Nuisance; Provide that These Remedies are Cumulative of Other Remedies

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NUISANCES

Abatement of Nuisances Generally: Provide that a City or County Attorney or Solicitor-General May File an Action to Abate a Public Nuisance or a Drug-Related Nuisance; Provide that These Remedies are Cumulative of Other Remedies

CODE SECTIONS:	O.C.G.A. §§ 41-2-2, 41-3-1 to -2 (amended)
BILL NUMBER:	SB 180
ACT NUMBER:	307
GEORGIA LAWS:	1999 Ga. Laws 467
SUMMARY:	The Act empowers city and county attorneys or solicitors-general to file an action to abate a public nuisance or a nuisance that is created by unlawful sexual or drug-related activity. Prior law provided that only a district attorney could bring such an action. The Act also provides that the Code section relating to drug-related nuisances is cumulative of other remedies and is not to be construed to repeal existing remedies for drug-related nuisances. The Act also empowers city and county attorneys and solicitors-general to civilly prosecute any public nuisance.
EFFECTIVE DATE:	July 1, 1999

History

In 1996, Georgia legislators amended the Code relating to nuisances by adding a Code section that specifically allowed the State or a private citizen to enjoin or abate a nuisance caused by "substantial drug-related activity."[1] The legislature passed a similar law in 1917 that allowed a court to enjoin or abate a nuisance resulting from illegal sexual activity.[2]

Nonetheless, the 1999 legislative session saw the introduction of a new bill modeled after a suggested regulation from the Department of

1. *See* 1996 Ga. Laws 666, § 1, at 667 (formerly found at O.C.G.A. § 41-3-1.1 (1997)).
2. *See* 1917 Ga. Laws 177, § 1, at 178 (formerly found at O.C.G.A. § 41-3-1 (1997)).

Justice that would have added an entirely new section to the Georgia Code addressing "drug-related nuisances."[3] Senator Vincent Fort of the 39th District, Senator Daniel Lee of the 29th District, and Senator Charles Walker of the 22nd District sponsored SB 180 to deal with the "illicit drug crisis in the State of Georgia which is plaguing our neighborhoods and our housing and rental accommodations."[4]

SB 180 drew sharp criticism from lobbyists representing realtors, apartment owners, and the American Civil Liberties Union (ACLU).[5] In response to these groups' concerns, SB 180 underwent significant changes before the House and Senate passed it.[6] Ultimately, the language and size of the Act was greatly reduced. The Act's sponsors insist, however, that the bill's original purpose and effectiveness was not diminished because the Act empowers city and county attorneys or solicitors-general to file an action to abate a public nuisance or drug-related nuisance.[7]

Under the former Code section dealing with nuisances and public nuisances, only a district attorney could file an action on behalf of the state to enjoin or abate a nuisance.[8] According to Senator Fort, because district attorneys must prioritize what cases to file, district attorneys often place a higher priority on criminal prosecution over civil prosecution.[9] Thus, they do not always pursue actions to abate nuisances.[10] By allowing city solicitors, county attorneys, and district attorneys to bring such actions, however, the Act should "greatly

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3. *See* SB 180, as introduced, 1999 Ga. Gen. Assem.; *see also* Telephone Interview with Rep. Nan Orrock, House District No. 56 (Apr. 24, 1999) [hereinafter Orrock Interview]. Representative Orrock introduced an identical bill, HB 405, in the House during the same legislative session. That version never made it out of committee. *See id.*

4. SB 180, as introduced, 1999 Ga. Gen. Assem.

5. *See* Telephone Interview with Sen. Vincent Fort, Senate District No. 39 (May 3, 1999) [hereinafter Fort Interview]; Telephone Interview with Keith Hatcher, Georgia Board of Realtors (May 18, 1999) [hereinafter Hatcher Interview]; Interview with Sen. Daniel Lee, Senate District No. 29 (May 19, 1999) [hereinafter Lee Interview]; Orrock Interview, *supra* note 3. The Georgia Board of Realtors, Apartment Owners Association, and ACLU each opposed the bill in its original form. *See* Fort Interview, *supra*; Hatcher Interview, *supra.*

6. *See* text accompanying *infra* notes 13-60; *see also* Lee Interview, *supra* note 5.

7. *See* Fort Interview, *supra* note 5; Lee Interview, *supra* note 5; Orrock Interview, *supra* note 3.

8. *See* 1980 Ga. Laws 620, § 2, at 621 (formerly found at O.C.G.A. § 42-2-2 (1997)); 1996 Ga. Laws 666, § 2, at 668 (formerly found at O.C.G.A. § 41-3-2 (1997)).

9. *See* Fort Interview, *supra* note 5.

10. *See id.*

increase the arsenal that neighborhoods have available to pursue drug nuisances in court."[11]

However, other than increasing the number of governmental attorneys who can bring an action to enjoin or abate nuisances, the Act does not significantly alter the law defining drug-related nuisances.[12]

SB 180

Introduction

The original version of SB 180 would have added a fourth chapter to Title 41 of the Code. It would have defined drug-related nuisances and provided a specific procedure for citizens, the Attorney General, and county and city attorneys to "abate, enjoin, and prevent the continuance of a drug-related nuisance."[13] SB 180 originally contained seven pages of text and was modeled after the Department of Justice's suggested guidelines for creating drug-nuisance laws.[14]

As introduced, SB 180 began with general declarations about the drug crisis in the state and the negative effect drug-related activity has had on neighborhoods and communities.[15] The bill declared that "currently, there are inadequate incentives for property owners to take a more active role in preventing the continued or recurrent use of their property for" drug-related purposes.[16] SB 180, as introduced, defined the terms "drug-related nuisance," "illegal activities relating to drugs," and "property," as well as other terms.[17]

The bill provided that an action to enjoin or abate a drug-related nuisance could be brought by filing a complaint in the superior court, in the jurisdiction in which the property exists.[18] The complaint was to include affidavits describing evidence that drug-related activity had

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11. Orrock Interview, *supra* note 3. Representative Orrock explained that the Act could allow cities and counties in Georgia to assign a solicitor or county attorney to prosecute exclusively drug-related nuisances. *See id.* She noted that neighborhoods and communities will likely find their local solicitors and prosecutors more responsive to their complaints, and this should greatly reduce the number of drug-related nuisances within Georgia. *See id.*

12. *Compare* O.C.G.A. § 41-3-1.1 (Supp. 1999), *with* 1996 Ga. Laws 666, § 1 (formerly found at O.C.G.A. § 41-3-1.1 (1997)); *see also* Fort Interview, *supra* note 5.

13. SB 180, as introduced, 1999 Ga. Gen. Assem.

14. *See id.*; Orrock Interview, *supra* note 3.

15. *See* SB 180, as introduced, 1999 Ga. Gen. Assem.

16. *Id.*

17. *Id.*

18. *See id.*

taken place on a certain property and describing how the drug-related activity adversely impacted the surrounding neighborhood.[19] The complaint also was to include an affidavit "setting out attempts to notify the owner of the property of the illegal activities."[20] The complaining party would have had to provide evidence of its attempt to give notification by certified mail "not more than 60 days nor less than 30 days prior to filing the complaint."[21]

The bill also would have required that the complaint be supported by an affidavit from "at least two individuals residing on or owning real property within 1,000 feet of the property alleged to be a drug-related nuisance."[22] The two witnesses would have had to attest that they witnessed or had evidence of drug-related activity taking place on the property.[23] The bill also would have authorized the courts to issue an injunction to abate a drug-related nuisance.[24] The bill, as introduced, would have established that a plaintiff must prove his or her claim "by a preponderance of [the] evidence."[25] The bill would have allowed for remedies including an injunction to restrain and abate the nuisance, actual damages, and any other relief the court deemed necessary.[26]

The bill specified that a court could award private damages, assess the costs and fees to the defendant, suspend any governmental subsidies payable to the owner of the property, impose civil fines for failing to correct the problem, and order the owner to clean up the property and make repairs.[27]

Consideration by Senate Judiciary Committee

The Senate Judiciary Committee offered a substitute to SB 180 that added numerous changes to limit the bill's reach.[28] For example, the Committee added a provision repealing Code section 41-3-1.1, relating

19. *See id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. *See id.*
24. *See id.*
25. *Id.*
26. *See id.*
27. *See id.*
28. *Compare* SB 180, as introduced, 1999 Ga. Gen. Assem., *with* SB 180 (SCS), 1999 Ga. Gen. Assem.

to drug nuisances.[29] The Committee also redefined the term "property," limiting its definition to include only real property or an interest in real property that is used or has been used for residential purposes, or that has a structure upon it that was built and intended for residential purposes.[30] The Committee substitute added the requirement that a plaintiff who brings an action under this provision must make "reasonable and diligent" attempts to notify the owner of the property of the drug-related activities taking place on the property.[31]

The Committee also added a requirement that a complaint filed under the new Code section include any data known to the plaintiff regarding police and government efforts to correct the drug-related nuisance.[32] The Committee substitute further required the plaintiff to allege that drug-related incidents occurred within eighteen months, resulting in three or more indictments, accusations by prosecuting attorneys, or convictions of one or more illegal drug-related activities.[33] This addition to the bill would have changed the then-existing law, which required "six or more separate incidents resulting in drug-related indictments involving violations occurring within a twelve month period on the same parcel of real property."[34]

The Committee substitute also provided that a court may only issue a preliminary injunction if it determined at a hearing that the plaintiff is substantially likely to prove his or her case.[35] Finally, the substitute would have required that the court review any preliminary injunction it issues after thirty days.[36] The Committee substitute deleted language that would have allowed a court to order a trial on the merits in conjunction with a preliminary injunction hearing.[37]

The bill's sponsors had little comment regarding these changes, in contrast to the more significant modifications made in a later

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29. *See* SB 180 (SCS), 1999 Ga. Gen. Assem.
30. *See id.*
31. *Id.*
32. *See id.*
33. *See id.*
34. *Compare id. with* 1996 Ga. Laws 666, § 1, at 667 (codified at O.C.G.A. § 41-3-1.1 (Supp. 1999)).
35. *See* SB 180 (SCS), 1999 Ga. Gen. Assem.
36. *See id.*
37. *See id.*

substitute.[38] However, Senator Lee explained that some of the Committee's changes strengthened the bill's notice requirement.[39]

From Senate Committee Substitute to Senate Floor Substitute and Amendment

The Chairman of the Senate Judiciary Committee assigned SB 180 to a subcommittee composed of Senators Fort, Lee, and Greg Hecht of the 34th District.[40] The subcommittee met with the Georgia Realtors Association, Apartment Owners Association, and the ACLU, among other organizations, to address these groups' concerns about the bill.[41] Among these concerns were "protecting private property rights," while at the same time cleaning up crack houses.[42] The groups also expressed concern with potential constitutional problems they believed the bill created.[43] The groups worried that the bill might violate the takings clause by empowering the state to seize property without due process.[44]

The subcommittee also considered whether SB 180 would significantly change the then-existing drug-nuisance law.[45] The subcommittee concluded that the existing law already allowed the state to enjoin and abate drug nuisances and believed that it was unnecessary to create a whole new bill for this purpose.[46] Senator Fort countered that, while existing law already allowed for the prosecution of drug-related nuisances, the General Assembly should improve neighborhood and community access to the legal system to combat drug-related nuisances.[47] Thus, the Committee offered a floor

38. *See* Fort Interview, *supra* note 5; Lee Interview, *supra* note 5. *Compare* SB 180 (SCS), 1999 Ga. Gen. Assem., *with* SB 180 (SCSFA), 1999 Ga. Gen. Assem.

39. *See* Lee Interview, *supra* note 5.

40. *See* Fort Interview, *supra* note 5; Lee Interview, *supra* note 5. Senator Lee explained that the bill was sent to a subcommittee for the purpose of responding to the numerous groups that had voiced concern about the bill. *See id.*

41. *See* Fort Interview, *supra* note 5.

42. Hatcher Interview, *supra* note 5. Mr. Hatcher admitted that some neighborhoods have been plagued with drug activity, but insisted that his organization also wanted to ensure that the bill did not unnecessarily "diminish the property rights of others." *Id.* According to Mr. Hatcher, Code section 41-3-1.1 and the general nuisance statutes already provided citizens and the state with adequate means to clean up neighborhoods, and his group was therefore opposed to SB 180 in its original form. *See id.*

43. *See* Fort Interview, *supra* note 5; Lee Interview, *supra* note 5.

44. *See* Fort Interview, *supra* note 5; Lee Interview, *supra* note 5.

45. *See* Fort Interview, *supra* note 5; Hatcher Interview, *supra* note 5.

46. *See* Fort Interview, *supra* note 5; Lee Interview, *supra* note 5.

47. *See* Fort Interview, *supra* note 5.

amendment to the Committee substitute that increased the number of government attorneys with authority to bring such actions.[48]

The floor amendment completely deleted the proposed addition of a new chapter addressing drug-related nuisances, and instead amended Code section 41-2-2 and 41-3-2 to provide that a complaint to abate a general nuisance or a public nuisance may be filed by the solicitor-general, city attorney, or county attorney, in addition to the district attorney.[49] It also amended Code section 41-3-1.1 to provide that this Code section's remedies are cumulative of any other remedies and therefore do not repeal any other existing remedies for drug-related nuisances.[50] On March 10, 1999, the Senate unanimously passed SB 180 in its amended form.[51]

From Passage in the Senate to House Committee Substitute

Members of the House Committee on Judiciary offered a Committee substitute to SB 180 for consistency that deleted the word "district" in the proposed amendment to Code section 41-3-2.[52] The Committee substitute also changed the phrase "district attorney" to "attorney" to reflect the bill's purpose of allowing attorneys other than the district attorney to file a complaint under that Code section.[53]

The Act

The Act allows a "district attorney, solicitor-general, city attorney, or county attorney on behalf of the public" to file a complaint to enjoin

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48. *Compare* SB 180 (SCS), 1999 Ga. Gen. Assem., *with* SB 180 (SCSFA), 1999 Ga. Gen. Assem.

49. *Compare* SB 180, as introduced, 1999 Ga. Gen. Assem., *with* SB 180 (SCSFA), 1999 Ga. Gen. Assem.

50. *Compare* SB 180 (SCS), 1999 Ga. Gen. Assem., *with* SB 180 (SCSFA), 1999 Ga. Gen. Assem.

51. *See* Georgia Senate Voting Record, SB 180 (Mar. 10, 1999). The final vote was 55 in favor and zero opposed, with one abstention. *See id.*

52. *Compare* SB 180 (SCSFA), 1999 Ga. Gen. Assem., *with* SB 180 (HCS), 1999 Ga. Gen. Assem.

53. *See* SB 180 (HCS), 1999 Ga. Gen. Assem. The House passed SB 180 on March 23, 1999. *See* State of Georgia Final Composite Status Sheet, May 3, 1999. The final vote was 108 in favor and zero opposed, with 72 abstentions. *See* Georgia House of Representatives Voting Record, SB 180 (Mar. 23, 1999). The House sent the bill back to the Senate for approval of the House's changes, and the Senate unanimously agreed to the House substitute on March 24, 1999. *See* State of Georgia Final Composite Status Sheet, May 3, 1999.

or abate a nuisance or public nuisance.[54] The Act further amends Code section 41-2-2 by replacing the word "petition" with the word "complaint."[55] The Act also provides that the Code provisions dealing with drug-related nuisances are cumulative of other remedies and do not repeal other existing remedies.[56]

However, other than increasing the number of government attorneys who can bring an action to enjoin or abate nuisances, the Act does not significantly alter Georgia law defining drug-related activity.[57] Although the Act is a significantly "scaled . . . back"[58] version of the original bill, the sponsors believe that it will achieve the intended purpose of making it easier to civilly prosecute drug-related nuisances by increasing the number of government attorneys who can bring actions to abate nuisances.[59] Sponsors say it is now more likely that local communities will pursue such actions.[60]

Although most of the debate on the bill focused on drug-related nuisances, the Act empowers government attorneys to bring actions against any public nuisance within their jurisdiction.[61]

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54. *Compare* 1980 Ga. Laws 620, § 2, at 621 (formerly found at O.C.G.A. § 41-2-2 (1997)), *and* 1996 Ga. Laws 666, § 2, at 668 (formerly found at O.C.G.A. § 41-3-2 (1997)), *with* O.C.G.A. §§ 41-2-2, 41-3-2 (Supp. 1999). Code section 41-3-2 specifically allows for an action to enjoin or abate a nuisance defined in Code sections 41-3-1 and -1.1, which deal with illegal sexual and drug-related activity. *See* O.C.G.A. §§ 41-3-1, -1.1 (Supp. 1999). Although drug-related nuisances are specifically mentioned by reference in Code section 41-3-2, sponsors of SB 180 insist that an action to abate a drug-related nuisance could also be brought under the public nuisance law which is codified in Code sections 41-2-1 and -2. *See id.* §§ 41-2-1 to -2, 41-3-2; *see also* Fort Interview, *supra* note 5.

55. *Compare* 1980 Ga. Laws 620, § 2, at 721 (formerly found at O.C.G.A. § 41-2-2 (1997)), *with* SB 180 (SCSFA), 1999 Ga. Gen. Assem.

56. *See* O.C.G.A. § 41-3-1.1(d) (Supp. 1999).

57. *Compare id.* § 41-3-1.1, *with* 1996 Ga. Laws 666, § 1 (formerly found at O.C.G.A. § 41-3-1.1 (1997)); *see also* Fort Interview, *supra* note 5.

58. Record of Proceedings on the Senate Floor (Mar. 10, 1999) (remarks by Sen. Fort) (available in Georgia State University College of Law Library).

59. *See* Fort Interview, *supra* note 5; Lee Interview, *supra* note 5; Orrock Interview, *supra* note 3.

60. *See* Fort Interview, *supra* note 5; Lee Interview, *supra* note 5; Orrock Interview, *supra* note 3.

61. *See* O.C.G.A. § 41-2-2 (Supp. 1999); *see also* Fort Interview, *supra* note 5.