

AMENDED IN SENATE AUGUST 21, 2002  
AMENDED IN SENATE AUGUST 6, 2002  
AMENDED IN SENATE JUNE 10, 2002  
AMENDED IN ASSEMBLY MAY 1, 2002  
AMENDED IN ASSEMBLY APRIL 17, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1868**

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**Introduced by Assembly Member Koretz  
(Principal coauthor: Assembly Member Shelley)  
(Coauthors: Assembly Members Kehoe, Longville, and  
Lowenthal)**

January 31, 2002

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An act to amend Sections 11571, 11573, 11573.5, and 11581 of the Health and Safety Code, and to amend Sections 11226, 11227, and 11230 of the Penal Code, relating to nuisance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1868, as amended, Koretz. Controlled substances: nuisance abatement.

(1) Existing law provides that every building or place used for the purpose of specified unlawful transactions involving controlled substances is a nuisance and if the existence of the nuisance is shown to the satisfaction of a court, the court shall allow a temporary writ of injunction to abate and prevent the continuance of the nuisance.

This bill would provide that a court may issue a temporary restraining order or injunction to enjoin subsequent owners, commercial lessees, or agents who acquire the building or place where the controlled substances nuisance exists with notice of the 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 bill would provide that the order or injunction shall not constitute a title defect, lien, or encumbrance on the real property.

(2) Existing law sets forth various remedies available to a court in a controlled substances nuisance abatement action, including ordering the owner to make cosmetic improvements to the property.

This bill would add to the list of remedies available to a court in a controlled substances nuisance abatement action that of ordering the nuisance defendant to reside in the property until the nuisance is abated, as specified.

(3) Existing law provides that a court may assess a civil penalty not to exceed \$25,000 against a controlled substances nuisance defendant, as specified.

This bill would provide that one-half of the civil penalties collected shall be deposited in the Restitution Fund, the proceeds of which shall be available only upon appropriation by the Legislature to indemnify crime victims who file claims for pecuniary losses they suffer as a direct result of criminal acts, and the other half shall be paid to the city in which the judgment was entered ~~for the enhancement of the city's nuisance abatement efforts,~~ or to the treasurer of the county in which the judgment was entered.

(4) Existing law provides that every building or place used for the purpose of illegal gambling, as defined, lewdness, assignation, or prostitution is a nuisance with respect to which the county district attorney is required, and a city attorney of an incorporated city is authorized, to maintain an action to abate the nuisance.

This bill would provide instead and in addition that the county district attorney and the city attorney of any city and county are authorized to maintain an action to abate a gambling or prostitution nuisance.

(5) Existing law provides that if the existence of a gambling or prostitution nuisance is shown to the satisfaction of a court, the court



shall allow a temporary writ of injunction to abate and prevent the continuance of the nuisance.

This bill would provide that a temporary restraining order or injunction may enjoin subsequent owners, commercial lessees, or agents who acquire the building or place where the gambling or prostitution nuisance exists with notice of the 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 bill would provide that the order or injunction shall not constitute a title defect, lien, or encumbrance on the real property.

(6) Existing law provides that if the existence of a gambling or prostitution nuisance is established in a nuisance abatement action, the court, in lieu of ordering the building or place where the gambling or prostitution nuisance exists closed, may order the person who is responsible for the existence of the nuisance to pay damages, as specified, to be deposited in the Restitution Fund, as specified.

This bill would require that damages be paid to the city or county in whose jurisdiction the nuisance is located.

This bill would additionally provide that the court may assess a civil penalty not to exceed \$25,000 against any and all defendants, based upon the severity of the nuisance and its duration. The bill would provide that one-half of the civil penalties collected shall be deposited in the Restitution Fund, and the other half shall be paid to the city in which the judgment was entered ~~for the enhancement of the city's nuisance abatement efforts,~~ or to the treasurer of the county in which the judgment was entered.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11571 of the Health and Safety Code is  
2 amended to read:

3 11571. Whenever there is reason to believe that a nuisance as  
4 described in Section 11570 is kept, maintained, or exists in any  
5 county, the district attorney of the county, or the city attorney of  
6 any incorporated city or of any city and county, in the name of the



1 people, may, or any citizen of the state resident in the county, in his  
2 or her own name, may maintain an action to abate and prevent the  
3 nuisance and perpetually to enjoin the person conducting or  
4 maintaining it, and the owner, lessee, or agent of the building or  
5 place, in or upon which the nuisance exists, from directly or  
6 indirectly maintaining or permitting the nuisance.

7 SEC. 2. Section 11573 of the Health and Safety Code is  
8 amended to read:

9 11573. (a) If the existence of the nuisance is shown in the  
10 action to the satisfaction of the court or judge, either by verified  
11 complaint or affidavit, the court or judge shall allow a temporary  
12 restraining order or injunction to abate and prevent the  
13 continuance or recurrence of the nuisance.

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

26 SEC. 3. Section 11573.5 of the Health and Safety Code is  
27 amended to read:

28 11573.5. (a) At the time of application for issuance of a  
29 temporary restraining order or injunction pursuant to Section  
30 11573, if proof of the existence of the nuisance depends, in whole  
31 or part, upon the affidavits of witnesses who are not peace officers,  
32 upon a showing of prior threats of violence or acts of violence by  
33 any defendant or other person, the court may issue orders to protect  
34 those witnesses, including, but not limited to, nondisclosure of the  
35 name, address, or any other information which may identify those  
36 witnesses.

37 (b) A temporary restraining order or injunction issued pursuant  
38 to Section 11573 may include closure of the premises pending trial  
39 when a prior order or injunction does not result in the abatement  
40 of the nuisance. The duration of the order or injunction shall be



1 within the court's discretion. In no event shall the total period of  
2 closure pending trial exceed one year. Prior to ruling on a request  
3 for closure the court may order that some or all of the rent  
4 payments owing to the defendant be placed in an escrow account  
5 for a period of up to 90 days or until the nuisance is abated. If the  
6 court subsequently orders a closure of the premises, the money in  
7 the escrow account shall be used to pay for relocation assistance  
8 pursuant to subdivision (d). In ruling upon a request for closure,  
9 whether for a defined or undefined duration, the court shall  
10 consider all of the following factors:

11 (1) The extent and duration of the nuisance at the time of the  
12 request.

13 (2) Prior efforts by the defendant to comply with previous court  
14 orders to abate the nuisance.

15 (3) The nature and extent of any effect which the nuisance has  
16 upon other persons, such as residents or businesses.

17 (4) Any effect of prior orders placing displaced residents' or  
18 occupants' rent payments into an escrow account upon the  
19 defendant's efforts to abate the nuisance.

20 (5) The effect of granting the request upon any resident or  
21 occupant of the premises who is not named in the action, including  
22 the availability of alternative housing or relocation assistance, the  
23 pendency of any action to evict a resident or occupant, and any  
24 evidence of participation by a resident or occupant in the nuisance  
25 activity.

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

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



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

4 (1) Priority for senior citizens, physically handicapped  
5 persons, or persons otherwise suffering from a permanent or  
6 temporary disability for claims against money for relocation  
7 assistance.

8 (2) Order the local agency seeking closure pursuant to this  
9 section to make reasonable attempts to seek additional sources of  
10 funds for relocation assistance to displaced tenants, if deemed  
11 necessary.

12 (3) Appoint a receiver to oversee the disbursement of  
13 relocation assistance funds, whose services shall be paid from the  
14 escrow fund.

15 (4) Where a defendant has paid relocation assistance pursuant  
16 to subdivision (d), the escrow account under subdivision (b) may  
17 be released to the defendant and no appointment under paragraph  
18 (3) shall be made.

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

22 (A) Capital improvements to the property, such as security  
23 gates.

24 (B) Improved interior or exterior lighting.

25 (C) Security guards.

26 (D) Posting of signs.

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

29 (F) Attending property management training programs.

30 (G) Making cosmetic improvements to the property.

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

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



1 SEC. 4. Section 11581 of the Health and Safety Code is  
2 amended to read:

3 11581. (a) If the existence of the nuisance is established in the  
4 action, an order of abatement shall be entered as a part of the  
5 judgment, which order shall direct the removal from the building  
6 or place of all fixtures, musical instruments, and other movable  
7 property used in conducting, maintaining, aiding, or abetting the  
8 nuisance and shall direct their sale in the manner provided for the  
9 sale of chattels under execution.

10 (b) (1) The order shall provide for the effectual closing of the  
11 building or place against its use for any purpose, and for keeping  
12 it closed for a period of one year. This subdivision is intended to  
13 give priority to closure. Any alternative to closure may be  
14 considered only as provided in this section.

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

19 (3) One-half of the civil penalties collected pursuant to this  
20 section shall be deposited in the Restitution Fund in the State  
21 Treasury, the proceeds of which shall be available only upon  
22 appropriation by the Legislature to indemnify persons filing  
23 claims pursuant to Article 1 (commencing with Section 13959) of  
24 Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code  
25 and one-half of the civil penalties collected shall be paid to the city  
26 in which the judgment was entered ~~for the enhancement of the~~  
27 ~~city's nuisance abatement efforts~~, if the action was brought by the  
28 city attorney or city prosecutor. If the action was brought by a  
29 district attorney, one-half of the civil penalties collected shall be  
30 paid to the treasurer of the county in which the judgment was  
31 entered.

32 (c) (1) If the court finds that any vacancy resulting from  
33 closure of the building or place may create a nuisance or that  
34 closure is otherwise harmful to the community, in lieu of ordering  
35 the building or place closed, the court may order the person who  
36 is responsible for the existence of the nuisance, or the person who  
37 knowingly permits controlled substances to be unlawfully sold,  
38 served, stored, kept, or given away in or from a building or place  
39 he or she owns, to pay damages in an amount equal to the fair  
40 market rental value of the building or place for one year to the city



1 or county in whose jurisdiction the nuisance is located for the  
2 purpose of carrying out their drug abuse treatment, prevention, and  
3 education programs. If awarded to a city, eligible programs may  
4 include those developed as a result of cooperative programs  
5 among schools, community agencies, and the local law  
6 enforcement agency. These funds shall not be used to supplant  
7 existing city, county, state, or federal resources used for drug  
8 prevention and education programs.

9 (2) For purposes of this subdivision, the actual amount of rent  
10 being received for the rental of the building or place, or the  
11 existence of any vacancy therein, may be considered, but shall not  
12 be the sole determinant of the fair market rental value. Expert  
13 testimony may be used to determine the fair market rental value.

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

15 SEC. 5. Section 11226 of the Penal Code is amended to read:

16 11226. Whenever there is reason to believe that a nuisance as  
17 defined in this article is kept, maintained or is in existence in any  
18 county, the district attorney, in the name of the people of the State  
19 of California, or the city attorney of an incorporated city or any city  
20 and county may, or any citizen of the state resident within the  
21 county, in his or her own name may, maintain an action in equity  
22 to abate and prevent the nuisance and to perpetually enjoin the  
23 person conducting or maintaining it, and the owner, lessee or agent  
24 of the building, or place, in or upon which the nuisance exists, from  
25 directly or indirectly maintaining or permitting it.

26 The complaint in the action shall be verified unless filed by the  
27 district attorney or the city attorney.

28 SEC. 6. Section 11227 of the Penal Code is amended to read:

29 11227. (a) Whenever the existence of a nuisance is shown in  
30 an action brought under this article to the satisfaction of the court  
31 or judge thereof, either by verified complaint or affidavit, the court  
32 or judge shall allow a temporary restraining order or injunction to  
33 abate and prevent the continuance or recurrence of the nuisance.

34 (b) A temporary restraining order or injunction may enjoin  
35 subsequent owners, commercial lessees, or agents who acquire the  
36 building or place where the nuisance exists with notice of the order  
37 or injunction, ~~except that the~~ *specifying that the owner of the*  
38 *property subject to the temporary restraining order or injunction*  
39 *shall notify any prospective purchaser, commercial lessee, or other*  
40 *successor in interest of the existence of the order or injunction, and*



1 *of its application to successors in interest, prior to entering into*  
2 *any agreement to sell or lease the property. The temporary*  
3 *restraining order or injunction shall not constitute a title defect,*  
4 *lien, or encumbrance on the real property.*

5 SEC. 7. Section 11230 of the Penal Code is amended to read:

6 11230. (a) (1) If the existence of a nuisance is established in  
7 an action as provided in this article, an order of abatement shall be  
8 entered as a part of the judgment in the case, directing the removal  
9 from the building or place of all fixtures, musical instruments and  
10 movable property used in conducting, maintaining, aiding or  
11 abetting the nuisance, and directing the sale thereof in the manner  
12 provided for the sale of chattels under execution, and the effectual  
13 closing of the building or place against its use for any purpose, and  
14 that it be kept closed for a period of one year, unless sooner  
15 released. If the court finds that any vacancy resulting from closure  
16 of the building or place may create a nuisance or that closure is  
17 otherwise harmful to the community, in lieu of ordering the  
18 building or place closed, the court may order the person who is  
19 responsible for the existence of the nuisance to pay damages in an  
20 amount equal to the fair market rental value of the building or place  
21 for one year to the city or county in whose jurisdiction the nuisance  
22 is located. The actual amount of rent being received for the rental  
23 of the building or place, or the existence of any vacancy therein,  
24 may be considered, but shall not be the sole determinant of the fair  
25 market rental value. Expert testimony may be used to determine  
26 the fair market rental value.

27 (2) While the order remains in effect as to closing, the building  
28 or place is and shall remain in the custody of the court.

29 (3) For removing and selling the movable property, the officer  
30 is entitled to charge and receive the same fees as he or she would  
31 for levying upon and selling like property on execution.

32 (4) For closing the premises and keeping them closed, a  
33 reasonable sum shall be allowed by the court.

34 (b) The court may assess a civil penalty not to exceed  
35 twenty-five thousand dollars (\$25,000) against any and all of the  
36 defendants, based upon the severity of the nuisance and its  
37 duration.

38 (c) One-half of the civil penalties collected pursuant to this  
39 section shall be deposited in the Restitution Fund in the State  
40 Treasury, the proceeds of which shall be available for



1 appropriation by the Legislature to indemnify persons filing  
2 claims pursuant to Article 1 (commencing with Section 13959) of  
3 Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code  
4 and one-half of the civil penalties collected shall be paid to the city  
5 in which the judgment was entered ~~for the enhancement of the~~  
6 ~~city's nuisance abatement efforts~~, if the action was brought by the  
7 city attorney or city prosecutor. If the action was brought by a  
8 district attorney, one-half of the civil penalties collected shall be  
9 paid to the treasurer of the county in which the judgment was  
10 entered.

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