

ASSEMBLY BILL

No. 313

Introduced by Assembly Member Zettel

February 8, 1999

An act to add Section 3494.5 to the Civil Code, relating to nuisance.

LEGISLATIVE COUNSEL'S DIGEST

AB 313, as introduced, Zettel. Public nuisance: sealed affidavits.

Existing law authorizes a public prosecutor to bring a civil action to abate a public nuisance, as defined.

This bill would provide that any initial pleading for a temporary restraining order or preliminary injunction to abate a public nuisance may be supported by affidavits filed under seal if the pleading is filed by a public prosecutor; the action is to abate a public nuisance based upon street gang activity, and the affiant fears for his or her safety and requests his or her statement and identity to be sealed.

The bill would further provide that if an affidavit is filed under seal pursuant to this bill, the court shall keep the affidavit sealed, unless the interests of justice require unsealing upon proceedings for a permanent injunction or other further proceedings. Before unsealing the affidavit, the court would be required to give notice to the prosecutor and to the affiant, and may take the testimony of the affiant in camera prior to unsealing. Testimony taken in camera would be required to remain sealed unless good cause appears to unseal that testimony. If the initial pleading is uncontested

and the court thereafter issues a permanent order, the affidavit would be required to remain sealed.

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

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

1 SECTION 1. Section 3494.5 is added to the Civil Code,
2 to read:

3 3494.5. (a) Any initial pleading for a temporary
4 restraining order or preliminary injunction to abate a
5 public nuisance, as defined in Section 3480, may be
6 supported by affidavits filed under seal if all of the
7 following conditions exist:

8 (1) The pleading is filed by a public prosecutor.

9 (2) The action is to abate a public nuisance based upon
10 street gang activity.

11 (3) The affiant fears for his or her safety and requests
12 his or her statement and identity to be sealed.

13 (b) If an affidavit is filed under seal pursuant to this
14 section, the court shall keep the affidavit sealed unless the
15 interests of justice require unsealing upon proceedings
16 for a permanent injunction or other further proceedings.
17 Before unsealing such an affidavit, the court shall give
18 notice to the prosecutor and to the affiant. The court may
19 take the testimony of the affiant in camera prior to
20 unsealing. Testimony taken in camera shall remain sealed
21 unless good cause appears to unseal that testimony. If the
22 initial pleading is uncontested and the court thereafter
23 issues a permanent order, the affidavit shall remain
24 sealed.

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