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LC01041
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2004

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A N A C T

RELATING TO THE ABATEMENT OF NUISANCES

Introduced By: Senators McCaffrey, Pichardo, Goodwin, and Polisen

Date Introduced: February 03, 2004

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 10-1-1 of the General Laws in Chapter 10-1 entitled "Abatement of
2 Nuisances" is hereby amended to read as follows:

3 **10-1-1. Action to abate nuisance -- Contents.** -- Whenever a nuisance is alleged to
4 exist, the attorney general or any citizen of the state may bring an action in the name of the state,
5 upon the relation of the attorney general or of an individual citizen, to abate the nuisance and to
6 perpetually enjoin the person or persons maintaining the nuisance and any or all persons owning
7 any legal or equitable interest in the place from further maintaining or permitting the nuisance
8 either directly or indirectly. ~~The complaint shall be duly sworn to by the complaining party,~~
9 ~~unless brought by the attorney general, and shall set forth the names of the parties, the object of~~
10 ~~the action, a description of the place complained of, and a statement of the facts constituting the~~
11 ~~alleged nuisance.~~

12 SECTION 2. Sections 10-1-2, 10-1-3, 10-1-4, 10-1-5, 10-1-6, 10-1-7, 10-1-8, 10-1-9 and
13 10-1-10 of the General Laws in Chapter 10-1 entitled "Abatement of Nuisances" are hereby
14 repealed.

15 ~~**10-1-2. Filing of action -- Application for temporary injunction.** -- The action shall be~~
16 ~~filed in the superior court of the county in which the nuisance is alleged to exist. Upon the filing~~
17 ~~of the action, application for a temporary injunction may be made to any justice of the superior~~
18 ~~court, and the justice shall order process to issue for a hearing to be held on the application within~~
19 ~~twenty (20) days thereafter. If the court shall not be in session in the county for which the action~~

1 ~~is filed on the date for the hearing, the process shall be made returnable to the court at Providence~~
2 ~~and the hearing shall be held at Providence, unless otherwise agreed by the parties or ordered by~~
3 ~~the court. Notice of the time and place of the hearing of the application for a temporary injunction~~
4 ~~shall be served upon the defendants named in the complaint at least three (3) days before the~~
5 ~~hearing. The hearing shall have precedence over all matters upon the docket.~~

6 ~~**10-1-3. Temporary injunction -- Enforcement.** -- If it shall appear to the court at the~~
7 ~~hearing that the alleged nuisance exists, a temporary injunction shall issue enjoining any and all~~
8 ~~respondents from further maintaining or permitting the nuisance, and from removing any personal~~
9 ~~property from the place where the nuisance is alleged to exist. It shall be within the power of the~~
10 ~~court to require any and all respondents to furnish a bond in a given amount, with or without~~
11 ~~surety, within such time as the court shall direct, conditioned upon the due observance of the~~
12 ~~temporary injunction. Any violation of the temporary injunction or any condition thereof shall be~~
13 ~~contempt of court to be punished as provided in section 10-1-10.~~

14 ~~**10-1-4. Application of rules of equity.** -- Proceedings under this chapter shall follow the~~
15 ~~usual and accepted rules of equity, except as provided in this chapter or otherwise provided by~~
16 ~~statute or rule of court.~~

17 ~~**10-1-5. Evidence of reputation -- Conviction of offenses against decency.** -- In any~~
18 ~~hearing in proceedings under this chapter, evidence of the general reputation of the place, or the~~
19 ~~conviction, whether by trial or plea, including a plea of nolo, of any person of the violation of~~
20 ~~statutes against prostitution, lewdness, or assignation committed in any such place shall be~~
21 ~~admissible for the purposes of proving the existence of the nuisance.~~

22 ~~**10-1-6. Substitution of attorney general for original plaintiff -- Costs against**~~
23 ~~**plaintiff.** -- No action filed under section 10-1-1 shall be dismissed without the consent of the~~
24 ~~attorney general, and if the attorney general is of the opinion that the action ought not to be~~
25 ~~dismissed, he or she may be substituted for the original plaintiff and prosecute the case to a final~~
26 ~~decree. If the action is brought by a person other than the attorney general and the court finds that~~
27 ~~there is no reasonable ground therefor, costs shall be awarded against the plaintiff.~~

28 ~~**10-1-7. Decree and order of abatement -- Sale of property.** -- If the existence of a~~
29 ~~nuisance shall finally be admitted or established in any proceeding under this chapter, a decree~~
30 ~~permanently enjoining the maintenance thereof shall be entered, and, in addition thereto, an order~~
31 ~~of abatement shall be entered, directing the sheriff of the county, or his or her deputies, to enter~~
32 ~~the place where the nuisance exists and to sell and remove, in the manner provided for the sale of~~
33 ~~goods and chattels under execution, all personal property used in maintaining the nuisance, unless~~
34 ~~the owner of the personal property shall prove to the satisfaction of the court that he or she had no~~

1 ~~knowledge and by the exercise of reasonable diligence could not have learned of the maintenance~~
2 ~~of the nuisance before the filing of the complaint, and the court may further direct that the place~~
3 ~~where the nuisance exists shall be kept closed for all purposes for a period of one year unless~~
4 ~~otherwise ordered. The proceeds of any sale under this section shall be applied first to the~~
5 ~~payment of all costs incurred in connection with the proceedings brought under this chapter in~~
6 ~~connection with the nuisance, and secondly to the payment of a reasonable counsel fee for the~~
7 ~~plaintiff, and any balance remaining shall be paid to the owner of the property so sold.~~

8 ~~**10-1-8. Dissolution of order to keep closed.** --- (a) The owner or lessor of any place~~
9 ~~ordered closed pursuant to section 10-1-7 may, at any time, have the order to keep the place~~
10 ~~closed dissolved upon the payment of all costs incurred and upon the filing of a bond in such sum~~
11 ~~and with such surety as shall be fixed and approved by the court, conditioned upon the immediate~~
12 ~~abatement of the nuisance and against any further maintenance thereof, provided the owner or~~
13 ~~lessor shall prove to the satisfaction of the court that he or she had no knowledge and by the~~
14 ~~exercise of reasonable diligence could not have learned of the existence of the nuisance before the~~
15 ~~commencement of the action.~~

16 ~~(b) The dissolution of the order to keep the place closed shall not release the place from~~
17 ~~any judgment, lien, penalty, or liability, to which it may be subject by law. If any person shall~~
18 ~~break and enter or use a place ordered closed pursuant to section 10-1-7, he or she shall be~~
19 ~~punished for contempt as provided in section 10-1-10.~~

20 ~~**10-1-9. Proceedings after conviction in criminal proceedings.** --- In case the existence~~
21 ~~of a nuisance, as defined in sections 11-30-1 and 11-30-2, is established in criminal proceedings,~~
22 ~~the attorney general may proceed under this chapter to enforce the provisions and penalties of this~~
23 ~~chapter, and the finding of the defendant guilty in such criminal proceedings, unless reversed or~~
24 ~~set aside, shall be conclusive evidence as against the defendant as to the existence of a nuisance in~~
25 ~~proceedings under this chapter.~~

26 ~~**10-1-10. Proceedings and punishment for contempt.** --- In case any person fails to~~
27 ~~comply with any order of the court or is otherwise in contempt of court under the provisions of~~
28 ~~this chapter, the court may try and punish the offender. Contempt proceedings shall be~~
29 ~~commenced by filing with the clerk of the court a complaint under oath, setting forth the facts,~~
30 ~~and the court shall thereupon cite the offender to appear and answer to the complaint. Any person~~
31 ~~found guilty of contempt of court under the provisions of this chapter shall be punished by a fine~~
32 ~~of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100) and by~~
33 ~~imprisonment in the adult correctional institutions for not less than three (3) months nor more~~
34 ~~than six (6) months.~~

1 SECTION 3. Chapter 10-1 of the General Laws entitled "Abatement of Nuisances" is
2 hereby amended by adding thereto the following sections:

3 **10-1-2.1. Definitions.** – As used in this section:

4 (1) "Building" means, except as otherwise provided in this section, any building or
5 structure that is used or intended to be used for residential purposes. "Building" includes, but is
6 not limited to, a building or structure in which any floor is used for retail stores, shops,
7 salesrooms, markets, or similar commercial uses, or for offices, banks, civic administration
8 activities, professional services, or similar business or civic uses, and in which the other floors are
9 used, or designed and intended to be used, for residential purposes.

10 (2) "Public nuisance" means, for purposes of this chapter, that which is deemed to be a
11 public nuisance at common law. It shall also mean that which is dangerous to human life or
12 detrimental to health, including, but not limited to, buildings that are a menace to the public
13 health, welfare or safety; that are structurally unsafe, unsanitary, or not provided with adequate
14 safe egress; that constitute a fire hazard; that are otherwise no longer fit and habitable; or that, in
15 relation to its existing use, constitute a hazard to the public health, welfare or safety by reason of
16 inadequate maintenance, dilapidation, obsolescence or abandonment.

17 (3) "Abate" or "abatement" in connection with any building means the removal or
18 correction of any conditions that constitute a public nuisance and the making of any other
19 improvements that are needed to effect a rehabilitation of the building that is consistent with
20 maintaining safe and habitable conditions over its remaining useful life. "Abatement" does not
21 include the closing or boarding up of any building that is found to be a public nuisance.

22 (4) "Interested party" means any owner, mortgagee, lien holder, tenant, or person that
23 possesses an interest of record in any property that becomes subject to the jurisdiction of a court
24 pursuant to this section, and any applicant for the appointment of a receiver pursuant to this
25 section.

26 (5) "Neighbor" means any owner of property, including, but not limited to, any person
27 who is purchasing property by land installment contract or under a duly executed purchase
28 contract, that is located within five hundred (500) feet of any property that becomes subject to the
29 jurisdiction of a court pursuant to this section, and any occupant of a building that is so located.

30 (6) "Tenant" has the same meaning as in R.I. general laws section 34-18-11.

31 **10-1-3.1. Filing of action -- Complaint.** – (a) The complaint shall be duly sworn to by
32 the complaining party, unless brought by the attorney general, and shall set forth the names of the
33 parties, the object of the action, a description of the place complained of, and a statement of the
34 facts constituting the alleged nuisance. The action shall be filed in the superior court of the

1 county in which the nuisance is alleged to exist.

2 (b) Attempts to notify owner. -- The complaint shall contain a description of what
3 attempts, if any, have been made by the plaintiff or any other person or entity to notify the owner
4 of the property of the nuisance or resulting adverse impact.

5 (c) Adverse impact. – The complaint or an affidavit attached thereto shall describe the
6 adverse impact associated with the nuisance upon the surrounding neighborhood. Adverse
7 impact includes, without limitation, the presence of any one or more of the following conditions:

8 (1) Diminished property value.

9 (2) Increased fear of residents to walk through and in public areas, including sidewalks
10 and streets.

11 (3) Increased volume of vehicular and pedestrian traffic to and from the property.

12 (4) An increase in the number of ambulance or police calls to the property that are related
13 to illegal activity.

14 (5) Increased noise, bothersome solicitors or approaches by persons wishing to engage in
15 illegal activity on or near the property.

16 (6) The display of dangerous weapons on or near the property.

17 (7) The discharge of firearms on or near the property.

18 (8) Search warrants served on tenants or occupants of the property that resulted in the
19 seizure of drugs.

20 (9) Investigative purchases of drugs on or near the property by law enforcement officers.

21 (10) Arrests of person on or near the property for violation of criminal laws.

22 (11) Fire safety code violations relating to the property.

23 (12) Housing code violations relating to the property.

24 (13) Health code violations relating to the property.

25 (14) Accumulated trash and refuse in common areas on or adjacent to the property.

26 (15) An unsecured entryway on the property.

27 **10-1-4.1. Application for temporary injunction. –** Upon the filing of the action,
28 application for a temporary injunction may be made to any justice of the superior court, and the
29 justice shall order process to issue for a hearing to be held on the application within twenty (20)
30 days thereafter. If the court shall not be in session in the county for which the action is filed on
31 the date for the hearing, the process shall be made returnable to the court at Providence and the
32 hearing shall be held at Providence, unless otherwise agreed by the parties or ordered by the
33 court. Notice of the time and place of the hearing of the application for a temporary injunction
34 shall be served upon the defendants named in the complaint at least three (3) days before the

1 hearing. The hearing shall have precedence over all matters upon the docket.

2 **10-1-5.1. Temporary injunction -- Enforcement.** – If it shall appear to the court at the
3 hearing that the alleged nuisance exists, the court shall enter an order preliminarily enjoining the
4 nuisance and granting such other relief as the court may deem to be appropriate, including
5 declaratory relief, mandatory orders, or any other relief deemed necessary to accomplish the
6 purposes of the injunction or order and enforce the same, and the court may retain jurisdiction of
7 the case for the purpose of enforcing its orders.

8 **10-1-6.1. Existence of a public nuisance and order of abatement.** – (a) If the existence
9 of a nuisance shall finally be admitted or established in any proceeding under this chapter, a
10 decree permanently enjoining the maintenance thereof shall be entered, and, in addition thereto,
11 an order of abatement shall be entered. The order may grant actual damages, declaratory relief,
12 mandatory orders or any other relief deemed necessary to accomplish the purposes of the
13 injunction or order and enforce the same, and the court may retain jurisdiction of the case for the
14 purpose of enforcing its orders.

15 (b) Additional remedies. – If the existence of a nuisance is found, the court shall have the
16 power additionally to fashion any one or more of the following remedies:

17 (1) Assess costs of the action against the defendant.

18 (2) Assess a civil penalty against the defendant of not less than five hundred dollars
19 (\$500) nor more than ten thousand dollars (\$10,000) when a governmental agency is a plaintiff in
20 the action.

21 (3) Order the owner to clean up the property and make repairs upon the property.

22 (4) Suspend or revoke any business, professional, operational or liquor license.

23 (5) Order the owner to make additional reasonable expenditures upon the property,
24 including, but not limited to, installing secure locks on doors, increasing lighting in common
25 areas and using videotaped surveillance of the property and adjacent alleyways, sidewalks and
26 parking lot.

27 (6) Order all rental income from the property to be placed in an escrow account with the
28 court for up to ninety (90) days or until the nuisance is abated.

29 (7) Order all rental income for the property transferred to a trustee, to be appointed by the
30 court, who shall be empowered to use the rental income to make reasonable expenditures upon
31 the property in order to abate the nuisance.

32 (8) Order the suspension of any state, city or local governmental subsidies payable to the
33 owners of the property, such as tenant assistance payments to landlords, until the nuisance is
34 abated.

1 (9) Allow the plaintiff to seal the property with the cost of sealing payable by the
2 defendant.

3 (10) Order the defendant to pay the plaintiff the cost of the suit, including reasonable
4 attorney fees.

5 (11) Order the parties to show cause why a receiver should not be appointed to perform
6 any work and to furnish any material that reasonably may be required to abate the public
7 nuisance.

8 (c) Factors to consider. - In making an order under subsection (b), the court shall
9 consider, among others, the following factors:

10 (1) The number of people residing at the property.

11 (2) The proximity of the property to other residential structures.

12 (3) The number of times the property has been cited for housing code or health code
13 violations.

14 (4) The number of times the property has been cited for fire safety code violations.

15 (5) The number of times the owner has been notified of drug-related problems at the
16 property.

17 (6) The extent and duration of the nuisance at the time of the order.

18 (7) Prior efforts or lack of effort by the defendant to abate the nuisance.

19 (8) The availability of alternative housing for tenants of the building.

20 (9) The extent of concern about the nuisance that has been expressed by nearby residents
21 or visitors to the area.

22 (10) The owner's involvement in the nuisance.

23 **10-1-7.1. Appointment of receiver. -- (a) Before appointing a receiver to perform any**
24 work to abate a public nuisance under this chapter, the court shall conduct a hearing at which any
25 mortgagee of record or lien holder of record, or other interested party in the order of his or her
26 priority of interest in title shall be offered the opportunity to undertake the work and to furnish the
27 materials as are necessary to abate the public nuisance. The court shall require the party selected
28 to demonstrate the ability promptly to undertake the work required, to provide the judge with a
29 viable financial and construction plan for the rehabilitation of the building, and to post security
30 for the performance of the work. All amounts expended by the party toward abating the public
31 nuisance shall be a lien on the property if the expenditures were approved in advance by the court
32 and if the party desires such a lien. The lien shall bear the interest, and shall be payable upon the
33 terms approved by the court. The lien shall have the same priority as the mortgage of a receiver,
34 as set forth in section 10-1-9, if a certified copy of the court order that approved the expenses, the

1 interest and the terms of payment of the lien, and a description of the property in question are
2 filed for record, within thirty (30) days of the date of issuance of the order, in the office of the
3 recorder of deeds of the municipality in which the property is located. If the court determines at
4 the hearing that no party can undertake the work and furnish the materials required to abate the
5 public nuisance, or if the court determines at any time after the hearing that any party who is
6 undertaking corrective work pursuant to this chapter cannot or will not proceed, or has not
7 proceeded with due diligence, the judge may appoint a receiver to take possession and control of
8 the property. The receiver shall be appointed in the manner provided in subsection (e).

9 (b) No person shall be appointed a receiver unless he or she first has provided the court
10 with a viable financial and construction plan for the rehabilitation of the property in question and
11 has demonstrated the capacity and expertise to perform the required work in a satisfactory
12 manner. Prior to the appointment of a receiver the court may grant access to the property in
13 question to any person who applies to be appointed the receiver of the property, for the limited
14 purpose of developing a viable financial and construction plan for the rehabilitation of the
15 property which shall include the items set forth in section 10-1-8. The appointed receiver may be
16 a financial institution that possesses an interest of record in the property, a nonprofit corporation
17 that is duly organized and has as one of its goals the improvement of housing conditions for low
18 and moderate income persons in the municipality in which the property in question is located, or
19 any other qualified property manager who certifies that any rehabilitation of the property in
20 question will not result in the long-term displacement of low and moderate income persons.

21 **10-1-8.1. Court determinations required. --** Prior to ordering any work or the
22 furnishing of any materials to abate a public nuisance under this chapter, the court shall review
23 the submitted financial and construction plan and shall make all of the following findings:

24 (1) The estimated cost of the labor, materials, and any other development costs required
25 to abate the public nuisance;

26 (2) The estimated income and expenses of the property after the furnishing of the
27 materials and the completion of the repairs and improvements;

28 (3) The need for conditions and availability of any financing that is necessary for the
29 performance of the work and the furnishing of the materials;

30 (4) If repair and rehabilitation of the building are not found to be feasible, the cost of
31 demolition of the building, or the portions of the building that constitute the public nuisance.

32 **10-1-9.1. Receiver's bond -- Power and duties. --** Before proceeding with his or her
33 duties, any receiver appointed by the court shall post a bond in an amount designated by the
34 court, but not exceeding the value of the building involved at the time of the appointment of the

1 receiver as determined by the judge. The court may empower the receiver to do any or all of the
2 following:

3 (1) Take possession and control of the property, operate and manage the property,
4 establish and collect rents and income, lease and rent the property, and evict tenants;

5 (2) Pay all expenses of operating and conserving the property, including, but not limited
6 to, the cost of electricity, gas, water, sewerage, heating fuel, repairs and supplies, custodian
7 services, taxes and assessments and insurance premiums, and hire and pay reasonable
8 compensation to a managing agent;

9 (3) Pay pre-receivership mortgages or installments of them and other liens;

10 (4) Perform or enter into contracts for the performance of all work and the furnishing of
11 materials necessary to abate, and obtain financing for the abatement of, the public nuisance;

12 (5) Pursuant to court order, remove and dispose of any personal property abandoned,
13 stored, or otherwise located on the property that creates a dangerous or unsafe condition or that
14 constitutes a violation of housing regulations or ordinances;

15 (6) Obtain mortgage insurance for the receiver's mortgage from any agency of the federal
16 government or private mortgage insurance company;

17 (7) Enter into any agreement and do those things necessary to maintain and preserve the
18 property and comply with all housing and building regulations and ordinances;

19 (8) Give the custody of the property and the opportunity to abate the nuisance and operate
20 the property to the owner, or any mortgagee or any lien holder of record;

21 (9) Issue notes and secure them by a mortgage bearing interest upon terms and conditions
22 as the court may approve. When sold or transferred by the receiver in return for valuable
23 consideration in money, material, labor, or services, the notes or certificates shall be freely
24 transferable. If within sixty (60) days of the issuance of a secured note, the mortgage is filed for
25 record in the office of the municipal recorder of the municipality in which the property is located,
26 it shall be a first lien upon the property and shall be superior to any claims of the receiver and to
27 all prior or subsequent liens and encumbrances except taxes and assessments. Priority among the
28 receiver's mortgages shall be determined by the order in which they are recorded.

29 **10-1-10.1. Evidence of reputation -- Conviction of offenses against decency. -- In any**
30 **hearing of proceedings under this chapter, evidence of the general reputation of the place, or the**
31 **conviction, whether by trial or plea, including a plea of nolo, of any person of the violation of**
32 **statutes prohibiting the sale, distribution or use of controlled substances or prohibiting**
33 **prostitution, lewdness, or assignation committed in any such place shall be admissible for the**
34 **purposes of proving the existence of the nuisance.**

1 **10-1-11.1. Application of rules of equity.** – Proceedings under this chapter shall follow
2 the usual and accepted rules of equity, except as provided in this chapter or otherwise provided by
3 statute or rule of court.

4 **10-1-12.1. Proceedings and punishment for contempt.** – (a) In case any person fails to
5 comply with any order of the court or is otherwise in contempt of court under the provisions of
6 this chapter, the court may try and punish the offender. Contempt proceedings shall be
7 commenced by filing with the clerk of the court a complaint under oath, setting forth the facts,
8 and the court shall thereupon cite the offender to appear and answer to the complaint. Any person
9 found guilty of contempt of court under the provisions of this chapter shall be punished by a fine
10 of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) and by
11 imprisonment in the adult correctional institutions for not less than three (3) months nor more
12 than six (6) months.

13 (b) Additional orders. – In addition, upon finding that a defendant has willfully violated a
14 court order issued under this subchapter, the court shall be also empowered to issue any
15 additional orders necessary to abate the nuisance.

16 **10-1-13.1. Substitution of attorney general for original plaintiff -- Costs against**
17 **plaintiff.** – No action filed under section 10-1-1 shall be dismissed without the consent of the
18 attorney general, and if the attorney general is of the opinion that the action ought not to be
19 dismissed, he or she may be substituted for the original plaintiff and prosecute the case to a final
20 decree. If a person other than the attorney general brings the action and the court finds that there
21 is no reasonable ground therefor, costs shall be awarded against the plaintiff.

22 **10-1-14.1. Proceedings after conviction in criminal proceedings.** – In case the
23 existence of a nuisance, as defined in sections 11-30-1 and 11-30-2, is established in criminal
24 proceedings, the attorney general may proceed under this chapter to enforce the provisions and
25 penalties of this chapter, and the finding of the defendant guilty in such criminal proceedings,
26 unless reversed or set aside, shall be conclusive evidence as against the defendant as to the
27 existence of a nuisance in proceedings under this chapter.

28 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO THE ABATEMENT OF NUISANCES

- 1 This act would revise the procedures for the abatement of nuisances.
- 2 This act would take effect upon passage.

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