

16102048D

HOUSE BILL NO. 244

Offered January 13, 2016

Prefiled December 30, 2015

A *BILL to amend the Code of Virginia by adding in Title 48 a chapter numbered 3, consisting of sections numbered 48-18 through 48-22, relating to breach of the peace; nuisance.*

 Patron—Ward

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 48 a chapter numbered 3, consisting of sections numbered 48-18 through 48-22, as follows:

CHAPTER 3.**BREACH OF THE PEACE.****§ 48-18. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Breach of the peace" means an act that disturbs the public order, including homicide, assault, affray, communication of a threat, unlawful possession of a dangerous or deadly weapon, and unlawful discharge of a firearm.

"Nuisance" means any real property, building, place, or ground, including the furniture, fixtures, and contents thereof, where repeated acts constituting breaches of the peace are conducted or permitted to occur.

"Person" means an individual, partnership, firm, association, corporation, or other legal entity.

§ 48-19. Nuisance; action for injunction and order of abatement.

A. The attorney for the Commonwealth, the attorney for the locality, or any citizen of the locality may maintain a civil action in the circuit court for the jurisdiction in which a nuisance is alleged to exist to abate the nuisance, enjoin the maintenance of the nuisance, and enjoin the use of any building or property adjudged to be a nuisance.

B. Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the locality in which the property is located.

C. If a private person institutes an action for abatement under subsection A, the complainant shall execute a bond prior to the issuance of a temporary injunction, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than \$1,000, to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, not prosecuted to final judgment, dismissed, or not maintained or if it is finally decided that the preliminary injunction ought not to have been granted. The party enjoined shall have recourse against said bond for all damages suffered, including damages to his property, person, or character, and including reasonable attorney fees incurred by him in making defense to said action.

D. No bond shall be required of an attorney for the Commonwealth or for the locality.

E. No action shall be maintained against any public official or public entity or its employees or agents for investigating or maintaining an action for abatement of a nuisance under the provisions of this chapter.

§ 48-20. Notice of hearing on preliminary injunction; consolidation.

A. A copy of the complaint, together with a notice of the time and place of the hearing of the application for a preliminary injunction, shall be served upon the defendant at least five days before such hearing. The place or real property may also be served by posting such papers.

B. Once a building or parcel of real property or its owner, manager, person then in charge, or lessee is served with a copy of the notice of the hearing, every such party will be deemed to have knowledge of the contents of the application for a preliminary injunction and of the use of the property occurring thereafter. Where the circumstantial proof warrants a determination that a person knew or by the exercise of due diligence should have known of the nuisance prior to such service of process, the court may make such finding.

C. Before or after the commencement of the hearing, the court, on application of any party or on its own motion, may order the trial of the action on the merits to be advanced and consolidated with the hearing on the application for the preliminary injunction. However, the defendant shall be entitled to a jury trial if requested.

§ 48-21. Hearing on the preliminary injunction; issuance.

A. At any hearing upon the merits, evidence of the general reputation of the building or property

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59 *constituting the alleged nuisance and of the occupants of and visitors to the building or property is*
60 *admissible for the purpose of proving the existence of such nuisance.*

61 *B. If upon hearing, the allegations of the complaint are sustained to the satisfaction of the court, the*
62 *court shall issue a preliminary injunction restraining the defendant and any other person from*
63 *continuing the nuisance and effectually enjoining its use thereafter for the purpose of conducting any*
64 *such nuisance. The court may, in its discretion, order the closure of the property pending trial on the*
65 *merits.*

66 ***§ 48-22. Trial; order of abatement; permanent injunction.***

67 *A. In an action under this chapter, if the existence of a nuisance is admitted or established, an order*
68 *of abatement shall be entered as a part of the judgment in the case. The judgment and order shall*
69 *perpetually enjoin the defendant and any other person from further maintaining the nuisance at the*
70 *place complained of, and the defendant from maintaining such nuisance elsewhere within the*
71 *Commonwealth.*

72 *B. After notice of a preliminary or permanent injunction, every successive owner of property who*
73 *neglects to abate a continuing nuisance upon or in the use of such property, created by a former owner,*
74 *is liable therefor in the same manner as the one who first created it.*

75 *C. The abatement of a nuisance shall not prejudice the right of any person to recover damages for*
76 *the past existence of the nuisance.*

77 *D. If an order of abatement is violated, the attorney for Commonwealth may commence an action of*
78 *forfeiture consistent with § 19.2-386.1.*