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SENATE BILL NO. 535

Offered January 22, 1996

A *BILL to amend and reenact §§ 18.2-258 and 18.2-258.01 of the Code of Virginia, relating to nuisances.*

Patrons—Marsh; Delegate: McEachin

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 18.2-258 and 18.2-258.01 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-258. Certain premises deemed common nuisance; penalty.

A. Any office, store, shop, restaurant, dance hall, theater, poolroom, clubhouse, storehouse, warehouse, dwelling house, apartment, building of any kind, vehicle, vessel, boat, or aircraft, which with the knowledge of the owner, lessor, agent of any such lessor, manager, chief executive officer, operator, or tenant thereof, is frequented by persons under the influence of illegally obtained controlled substances or marijuana, as defined in § 54.1-3401, or for the purpose of illegally obtaining possession of, manufacturing or distributing controlled substances or marijuana, or is used for the illegal possession, manufacture or distribution of controlled substances or marijuana, shall be deemed a common nuisance. Any such owner, lessor, agent of any such lessor, manager, chief executive officer, operator, or tenant who knowingly permits, establishes, keeps or maintains such a common nuisance is guilty of a Class 1 misdemeanor and, for a second or subsequent offense, a Class 6 felony. In addition, after due notice and opportunity to be heard on the part of any owner, lessor, or a lienholder not involved in the original offense, by a proceeding similar to that in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2 and upon proof of guilty knowledge, a court may order that such house, motor vehicle, aircraft, boat, vessel, or other premises, or any room or part thereof, be closed, but the court may, upon the owner or lessor giving bond in the penalty of not less than \$500 and with security to be approved by the court, conditioned that the premises shall not be used for unlawful purposes, turn the same over to its owner or lessor; or proceeding may be had in equity as provided in § 18.2-258.01.

B. The penalties provided in this section shall be in addition to any other penalty *or civil right of action* provided by law, including immediate termination of a rental agreement as provided in § 55-248.31.

C. In no civil or in rem proceeding under the provisions of this section shall judgment be entered against the owner, lessor, or lienholder of property unless it is proved: (i) that he knew of the unlawful use of the property and (ii) that he had the right, because of such unlawful use, to enter and repossess the property.

§ 18.2-258.01. Enjoining nuisances involving illegal drug transactions.

The attorney for the Commonwealth, or any citizen of the county, city, or town, where such a nuisance as is described in § 18.2-258 exists, may, in addition to the remedies given in and punishment imposed by this chapter, maintain a suit in equity in the name of the Commonwealth to enjoin the same; provided, however, the attorney for the Commonwealth shall not be required to prosecute any suit brought by a citizen under this section. In every case where the bill charges, on the knowledge or belief of complainant, and is sworn to by two witnesses, that a nuisance exists as described in § 18.2-258, a temporary injunction may be granted as soon as the bill is presented to the court provided reasonable notice has been given. The injunction shall enjoin and restrain any owners, tenants, their agents, employees, and any other person from contributing to or maintaining the nuisance and may impose such other requirements as the court deems appropriate. If, after hearing, the court finds that the material allegations of the bill are true, although the premises complained of may not then be unlawfully used, it shall continue the injunction against such persons or premises for such period of time as it deems appropriate, with the right to dissolve the injunction upon a proper showing by the owner of the premises. *The court may award to the citizen who brought a suit pursuant to this section, costs and reasonable attorney's fees.*

INTRODUCED

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