

HOUSE No. 1691

By Mr. Quinn of Dartmouth, petition of John F. Quinn and Thomas P. Kennedy relative to the definition of common nuisance. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO THE DEFINITION OF A COMMON NUISANCE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 139 of the general laws, as appearing in the 2002 Official
2 Edition is hereby amended by adding at the end thereof the
3 following sections:—

4 Section 21. Every building, part of a building, tenement or place
5 used for a residential or commercial purpose, whether occupied or
6 vacant, that is maintained and/or managed in such a manner so as to
7 interfere with the quiet enjoyment of the surrounding premises,
8 public ways and public open spaces or not maintained and/or man-
9 aged in a manner that is substantially similar to the majority of the
10 properties in the surrounding census tract or is inconsistent with the
11 use as permitted by local zoning by-law shall be deemed a nuisance.

12 Section 22. Whoever keeps or maintains such a nuisance shall be
13 punished by a fine of not less than one hundred nor more than one
14 thousand dollars and by imprisonment for not less than three months
15 nor more than three years.

16 Section 23. Whenever there is reason to believe that such a nui-
17 sance is kept or maintained or exists in any town, either the district
18 attorney for the district, or the attorney general, in the name of the
19 Commonwealth, or a citizen in his own name, may bring a civil
20 action perpetually to enjoin the person conducting or maintaining the
21 same, and the owner, lessee or agent of the building or place in or
22 upon which such nuisance exists and their assignees from directly or
23 indirectly maintaining or permitting such nuisance.

24 Section 24. The complaint shall join the owner of record of the
25 premises as a party defendant and shall be filed in the superior court

26 for the county where the nuisance is believed to exist, and shall be
27 verified by oath of the plaintiff unless filed by the attorney general
28 or a district attorney. Such proceeding shall have precedence over all
29 other matters upon the docket except criminal proceedings, election
30 contests and hearings upon actions for other injunctions.

31 Section 25. If upon a hearing, after at least two days' notice to the
32 respondents of the time and place assigned therefor, the existence of
33 such a nuisance is shown to the satisfaction of the court or justice,
34 either through verified complaint or through evidence in the form of
35 affidavits, depositions, oral testimony or otherwise, a temporary
36 injunction shall be ordered to issue forthwith restraining the mainte-
37 nance of the nuisance and enjoining the occupants, owner and all
38 other persons from removing fixtures, furniture, musical instruments
39 and all other movable property from the premises until further order
40 of the court.

41 Section 26. If upon subsequent hearing the existence of the nui-
42 sance shall be established, the court shall enter a decree permanently
43 enjoining the maintenance thereof, including in such decree an order
44 of abatement directing the sheriff of the county or his deputy to enter
45 the building or place where the nuisance existed and to sell all furni-
46 ture, musical instruments and movable property used in maintaining
47 the nuisance, in the manner provided for the sale of chattels under
48 execution, and to remove the same. If it shall appear that the bill of
49 complaint was filed five or more days after notice to the record
50 owner of the premises, and that he did not proceed forthwith to
51 enforce his rights under section nineteen, such order of abatement
52 shall further direct the effectual closing of the building or the place
53 and the prohibition of its use for any purpose for one year, unless
54 sooner released as provided in section eleven. For the purpose of
55 proving the existence of the nuisance the general reputation of the
56 place shall be admissible as evidence.

57 Section 27. For removing and selling the movable property in
58 accordance with the decree of the court the officer shall be entitled
59 to the same fees as for levying upon and selling like property on exe-
60 cution, and for closing the premises and keeping them closed, a rea-
61 sonable sum shall be allowed by the court. The proceeds shall be
62 applied:— first, to the fees and costs of removal and sale; second, to
63 the allowances and costs of so closing and keeping closed the
64 premises; third, to the payment of the complainants' costs in such

65 proceeding, including a reasonable attorney's fee to be fixed by the
66 court; fourth, the remainder, if any, to the owner of the property sold.

67 Section 28. If the owner of any such premises shall pay all costs
68 of the proceedings, and file with the court a bond with sureties
69 approved by the clerk in the full value of such premises as ascer-
70 tained by the court, or, when the court is not in session, by the clerk,
71 payable to the court and conditioned that the owner of the premises
72 found to be a nuisance will immediately abate such nuisance and
73 prevent the same from being established or kept therein within one
74 year thereafter, the court or justice may, if satisfied of the owner's
75 good faith, order the premises so closed to be delivered to such
76 owner and the order of abatement to be so modified as to dissolve
77 the order that the premises remain closed for one year; provided, that
78 such modification shall not release such premises from any judg-
79 ment, lien, penalty or liability to which it may be subject.

80 Section 29. No action commenced under section six shall be dis-
81 missed, except upon a sworn statement made and filed by the plain-
82 tiff and by his attorney setting forth the reasons for dismissal thereof
83 and upon approval of such dismissal by the court in open court. If
84 the court is of opinion that the action ought not to be dismissed he
85 may direct the district attorney to prosecute the case to judgment. If
86 the action was brought by a citizen and the court finds that there was
87 no reasonable ground therefor, costs may be awarded against the
88 plaintiff.

89 Section 30. All persons found in or upon premises used pursuant
90 to the provisions of section 21 may be required by a justice of a
91 court of record to recognize, with or without sureties, to appear as
92 witnesses at any hearing in an action to punish a person for keeping
93 or maintaining such a nuisance as is described in section four, or for
94 aiding in the maintenance of such a nuisance in the manner set forth
95 in section twenty, or to enjoin or abate such a nuisance, and a war-
96 rant may be issued to bring such persons before the justice to recog-
97 nize as aforesaid.