

January 22, 1998

HOUSE BILL No. 1131

DIGEST OF HB 1131 (Updated January 20, 1998 1:21 pm - DI 51)

Citations Affected: IC 34-1.

Synopsis: Abatement of drug nuisances. Provides that an action to abate a drug nuisance on property because of drug transactions occurring on the property may be brought by any of the following: (1) The attorney general. (2) The prosecuting attorney of the circuit where the nuisance is located. (3) The corporation counsel or city attorney of a city in which the nuisance is located. (4) An attorney representing a county in which a nuisance is located. (5) A community organization. (6) A property owner. Requires a person bringing a nuisance action to provide notice to a tenant and the owner of record at least 45 days before filing the action to abate a nuisance under this chapter, unless the owner is a party to the action. Requires a person bringing a nuisance action to post a copy of the complaint in a conspicuous place on the property not later than 48 hours after filing the complaint, unless the owner is a party to the action. Requires all tenants or residents of
(Continued next page)

Effective: July 1, 1998.

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January 8, 1998, read first time and referred to Committee on Courts and Criminal Code.
January 21, 1998, amended, reported — Do Pass.

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Digest Continued

a property who may be affected by an order of the court in a nuisance action to be provided reasonable notice as ordered by the court and afforded an opportunity to be heard at all proceedings. Requires a notice of lis pendens to be filed concurrently with the commencement of a nuisance action. Allows a court to issue an injunction or order other equitable relief whether or not an adequate remedy exists at law. Allows a court, after a hearing, to order a tenant with knowledge of the existence of the nuisance to vacate the property within 72 hours after the hearing. Provides that a court may order the owner of the property to submit for court approval a plan for correction to ensure, to the extent reasonably possible, that the property will not again be used for a nuisance if the owner: (1) is a party to the action; and (2) knew of the existence of the nuisance. With certain exceptions, provides that a court may order appropriate relief without proof that a defendant knew of the existence of the nuisance. Provides that evidence of the general reputation of the property is admissible to corroborate testimony based on personal knowledge or observation, or evidence seized during the execution of a search and seizure warrant, but is not sufficient to establish the existence of a nuisance. Provides that evidence that the nuisance had been discontinued at the time of the filing of the complaint or at the time of the hearing does not bar the imposition of appropriate relief by the court. Allows a court to award court costs and reasonable attorney's fees to a community association that is the prevailing plaintiff in a nuisance action.

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January 22, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

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HOUSE BILL No. 1131

A BILL FOR AN ACT to amend the Indiana Code concerning civil law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 34-1-52.7 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 1998]:
4 **Chapter 52.7. Actions for Drug Nuisances**
5 **Sec. 1. As used in this chapter, "community organization"**
6 **means a nonprofit association, nonprofit corporation, or other**
7 **nonprofit organization that:**
8 **(1) is comprised of individuals who reside or work:**
9 **(A) in a building or complex of buildings;**
10 **(B) on a street; or**
11 **(C) in a neighborhood;**
12 **that is located on or within one thousand (1,000) feet of a**
13 **place that is alleged to be a nuisance; and**
14 **(2) has the purpose of benefiting the quality of life in the**
15 **neighborhood.**

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1 **Sec. 2. As used in this chapter, "nuisance" means:**

- 2 (1) the use of a property to commit an act constituting an
3 offense under IC 35-48-4; or
4 (2) an attempt to commit or a conspiracy to commit an act
5 described in subdivision (1).

6 **Sec. 3. As used in this chapter, "property" means a house, a
7 building, a mobile home, or an apartment that is leased for
8 residential or commercial purposes. The term includes:**

- 9 (1) an entire building or complex of buildings; or
10 (2) a mobile home park;

11 and all real property of any nature appurtenant to and used in
12 connection with a house, a building, a mobile home, or an
13 apartment, including all individual rental units and common areas.
14 The term does not include a hotel, motel, or other guest house
15 rented to a transient guest.

16 **Sec. 4. As used in this chapter, "tenant" means a person who
17 leases or resides in a property. The term does not include a person
18 who:**

- 19 (1) owns a mobile home;
20 (2) leases or rents a site in a mobile home park for residential
21 use; and
22 (3) resides in a mobile home park.

23 **Sec. 5. An action to abate a nuisance under this chapter may be
24 initiated by any of the following:**

- 25 (1) The attorney general.
26 (2) The prosecuting attorney of the circuit where the nuisance
27 is located.
28 (3) The corporation counsel or city attorney of a city in which
29 a nuisance is located.
30 (4) An attorney representing a county in which a nuisance is
31 located.
32 (5) A community organization.
33 (6) A property owner.

34 **Sec. 6. (a) A person initiating an action under this chapter shall
35 provide notice at least forty-five (45) days before filing the action
36 to:**

- 37 (1) a tenant; and
38 (2) the owner of record;

39 of a property that a nuisance exists on the property.

40 **(b) The notice required under this section must specify the
41 following:**

- 42 (1) The date and time the nuisance was first discovered.



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1 (2) The location on the property where the nuisance is
2 allegedly occurring.

3 (c) The notice must be:

4 (1) hand delivered; or

5 (2) sent by certified mail;

6 to a tenant and the owner of record.

7 Sec. 7. If the owner of record of a property that is the subject of
8 an action under this chapter initiates or joins into the action under
9 this chapter, the forty-five (45) day prefiling notice period under
10 section 6 of this chapter does not apply to the action.

11 Sec. 8. (a) Notice of a complaint initiating an action under this
12 chapter must be made as provided in the Indiana Rules of Trial
13 Procedure.

14 (b) Except in an action under this chapter in which the owner of
15 record of the property that is the subject of the action initiates or
16 joins the action as a party, not later than forty-eight (48) hours
17 after filing a complaint under this chapter, the person initiating an
18 action under this chapter shall post a copy of the complaint in a
19 conspicuous place on the property alleged by the complaint to be
20 a nuisance.

21 Sec. 9. (a) Not more than twenty (20) days after the filing of a
22 complaint and the filing of an affidavit that personal service on the
23 defendant cannot be had after due diligence, the person initiating
24 the action may cause a copy of the complaint to be mailed to the
25 defendant by certified mail, restricted delivery, return receipt to
26 the clerk of court requested. Service is considered completed after
27 filing with the court proof of the mailing and an affidavit that a
28 copy of the complaint has been posted on the property alleged to be
29 a nuisance.

30 (b) All tenants or residents of a property that is used in whole or
31 in part as a business, home, residence, or dwelling, other than
32 transient guests of a guest house, hotel, or motel, who may be
33 affected by an order issued under this chapter must be:

34 (1) provided reasonable notice as ordered by the court having
35 jurisdiction over the nuisance action; and

36 (2) afforded an opportunity to be heard at all proceedings in
37 the action.

38 (c) Notice of lis pendens shall be filed concurrently with the
39 initiation of an action under this chapter.

40 Sec. 10. (a) Except as otherwise provided under rules adopted
41 by the Indiana supreme court, upon the filing of a complaint
42 initiating an action under this chapter, the court shall schedule a

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1 hearing not later than twenty (20) days after the filing date.

2 (b) Service of process must be made upon the owner of the
3 property alleged to be a nuisance under section 6 of this chapter at
4 least five (5) days before the hearing. If service cannot be
5 completed in time to give the owner the minimum notice required
6 by this subsection, the court may set a new hearing date.

7 Sec. 11. The court may issue an injunction or order other
8 equitable relief under this chapter regardless of whether an
9 adequate remedy exists at law.

10 Sec. 12. Notwithstanding any other provision of law, and in
11 addition to or as a component of a remedy ordered under section
12 11 of this chapter, the court, after a hearing, may order a tenant
13 with knowledge of the existence of a nuisance on the property
14 leased by the tenant to vacate the property within seventy-two (72)
15 hours after the issuance of the order.

16 Sec. 13. (a) The court, after a hearing, may grant a judgment of
17 restitution or the possession of the property to the owner if:

- 18 (1) the owner and tenant are parties to the action; and
19 (2) the tenant has failed to obey an order issued under section
20 11 or 12 of this chapter.

21 (b) If the court orders the owner to have possession of the
22 property, the court shall require the sheriff to execute the order of
23 possession not later than five (5) days after the order is issued.

24 (c) If the owner is awarded possession of the property, the
25 owner may seek an order from the court allowing removal of a
26 tenant's personal property under IC 32-7-6.

27 Sec. 14. The court may order the owner of the property to
28 submit for court approval a plan for correction to ensure, to the
29 extent reasonably possible, that the property will not again be used
30 for a nuisance if the owner:

- 31 (1) is a party to the action; and
32 (2) knew of the existence of the nuisance.

33 Sec. 15. Except as provided in sections 12 and 14 of this chapter,
34 the court may order appropriate relief under this chapter without
35 proof that a defendant knew of the existence of the nuisance.

36 Sec. 16. In any action brought under this chapter:

- 37 (1) evidence of the general reputation of the property is
38 admissible to corroborate testimony based on personal
39 knowledge or observation, or evidence seized during the
40 execution of a search and seizure warrant, but is not sufficient
41 to establish the existence of a nuisance under this chapter; and
42 (2) evidence that the nuisance had been discontinued at the

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1 **time of the filing of the complaint or at the time of the hearing**
2 **does not bar the imposition of appropriate relief by the court**
3 **under sections 11 through 15 of this chapter.**
4 **Sec. 17. The court may award court costs and reasonable**
5 **attorney's fees to a community association that is the prevailing**
6 **plaintiff in an action brought under this chapter.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1131, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, between lines 32 and 33, begin a new line block indented and insert:

"(6) A property owner."

Page 3, between lines 5 and 6, begin a new paragraph and insert:

"Sec. 7. If the owner of record of a property that is the subject of an action under this chapter initiates or joins into the action under this chapter, the forty-five (45) day prefiling notice period under section 6 of this chapter does not apply to the action. "

Page 3, line 6, delete "7." and insert "8."

Page 3, line 9, delete "Not" and insert **"Except in an action under this chapter in which the owner of record of the property that is the subject of the action initiates or joins the action as a party, not"**.

Page 3, line 13, delete "8." and insert "9."

Page 3, line 32, delete "9." and insert "10."

Page 3, line 41, delete "10." and insert "11."

Page 4, line 2, delete "11." and insert "12."

Page 4, line 4, delete "10" and insert "11".

Page 4, line 8, delete "12." and insert "13."

Page 4, line 12, delete "10 or 11" and insert **"11 or 12"**.

Page 4, line 19, delete "13." and insert "14."

Page 4, line 25, delete "14." and insert "15."

Page 4, line 25, delete "11 and 13" and insert **"12 and 14"**.

Page 4, line 28, delete "15." and insert "16."

Page 4, line 37, delete "10 through 14" and insert **"11 through 15"**.

Page 4, line 38, delete "16." and insert "17."

and when so amended that said bill do pass.

(Reference is to House Bill 1131 as introduced.)

DVORAK, Chair

Committee Vote: yeas 10, nays 0.



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