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# ENGROSSED HOUSE BILL No. 1131

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DIGEST OF HB 1131 (Updated February 18, 1998 1:14 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 prosecuting attorney of the circuit where the nuisance is located. (2) The corporation counsel or city attorney of a city in which the nuisance is located. (3) An attorney representing a county in which a nuisance is located. (4) The 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 a property who may be affected by an order of  
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**Effective:** July 1, 1998.

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(SENATE SPONSORS — MEEKS, ZAKAS, ALEXA)

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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.  
January 27, 1998, read second time, amended, ordered engrossed.  
January 28, 1998, engrossed. Read third time, passed. Yeas 98, nays 0.

#### SENATE ACTION

February 3, 1998, read first time and referred to Committee on Judiciary.  
February 19, 1998, amended, reported favorably — Do Pass.

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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 that created 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.

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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.

## HOUSE ENROLLED ACT No. 1131

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

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

SECTION 1. IC 34-19-3 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

**Chapter 3. Actions for Drug Nuisances**

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

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

**Sec. 2. As used in this chapter, "property" means a house, a building, a mobile home, or an apartment that is leased for residential or commercial purposes. The term includes:**

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

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

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**Sec. 3.** As used in this chapter, "tenant" means a person who leases or resides in a property. The term does not include a person who:

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

**Sec. 4.** An action to abate a nuisance under this chapter may be initiated by any of the following:

- (1) The prosecuting attorney of the circuit where the nuisance is located.
- (2) The corporation counsel or city attorney of a city in which a nuisance is located.
- (3) An attorney representing a county in which a nuisance is located.
- (4) The property owner.

**Sec. 5.** (a) A person initiating an action under this chapter shall provide notice at least forty-five (45) days before filing the action to:

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

of a property that a nuisance exists on the property.

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

- (1) The date and time the nuisance was first discovered.
- (2) The location on the property where the nuisance is allegedly occurring.

(c) The notice must be:

- (1) hand delivered; or
- (2) sent by certified mail;

to a tenant and the owner of record.

(d) A person initiating an action under this chapter shall:

- (1) at the time notice is provided under this section, produce all evidence in the person's possession or control of the existence of a nuisance; and
- (2) if requested by the owner, assist the owner in the production of witness and physical evidence.

**Sec. 6.** 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 pre-filing notice period under section 5 of this chapter does not apply to the action.

**Sec. 7.** (a) Notice of a complaint initiating an action under this

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chapter must be made as provided in the Indiana Rules of Trial Procedure.

(b) 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 later than forty-eight (48) hours after filing a complaint under this chapter, the person initiating an action under this chapter shall post a copy of the complaint in a conspicuous place on the property alleged by the complaint to be a nuisance.

Sec. 8. (a) Not more than twenty (20) days after the filing of a complaint and the filing of an affidavit that personal service on the defendant cannot be had after due diligence, the person initiating the action may cause a copy of the complaint to be mailed to the defendant by certified mail, restricted delivery, return receipt to the clerk of court requested. Service is considered completed after filing with the court proof of the mailing and an affidavit that a copy of the complaint has been posted on the property alleged to be a nuisance.

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

- (1) provided reasonable notice as ordered by the court having jurisdiction over the nuisance action; and
- (2) afforded an opportunity to be heard at all proceedings in the action.

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

Sec. 9. (a) Except as otherwise provided under rules adopted by the Indiana supreme court, upon the filing of a complaint initiating an action under this chapter, the court shall schedule a hearing not later than twenty (20) days after the filing date.

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

Sec. 10. The court may issue an injunction or order other equitable relief under this chapter regardless of whether an adequate remedy exists at law.

Sec. 11. Notwithstanding any other provision of law, and in addition to or as a component of a remedy ordered under section



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10 of this chapter, the court, after a hearing, may order a tenant that created a nuisance on the property leased by the tenant to vacate the property within seventy-two (72) hours after the issuance of the order.

**Sec. 12. (a)** The court, after a hearing, may grant a judgment of restitution or the possession of the property to the owner if:

- (1) the owner and tenant are parties to the action; and
- (2) the tenant has failed to obey an order issued under section 10 or 11 of this chapter.

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

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

**Sec. 13.** The 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.

**Sec. 14.** Except as provided in sections 11 and 13 of this chapter, the court may order appropriate relief under this chapter without proof that a defendant knew of the existence of the nuisance.

**Sec. 15.** In any action brought under this chapter:

- (1) 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 under this chapter; and
- (2) 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 under sections 10 through 14 of this chapter.

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