

**HOUSE . . . . . No. 1679**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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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           SECTION 1. Chapter 139 of the general laws, as appearing in the 2002 Official Edition  
2 is hereby amended by adding at the end thereof the following sections:

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

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

12                   Section 23. Whenever there is reason to believe that such a nuisance is kept or  
13 maintained or exists in any town, either the district attorney for the district, or the attorney

14 general, in the name of the commonwealth, or a citizen in his own name, may bring a civil action  
15 perpetually to enjoin the person conducting or maintaining the same, and the owner, lessee or  
16 agent of the building or place in or upon which such nuisance exists and their assignees from  
17 directly or indirectly maintaining or permitting such nuisance.

18           Section 24. The complaint shall join the owner of record of the premises as a party  
19 defendant and shall be filed in the superior court for the county where the nuisance is believed to  
20 exist, and shall be verified by oath of the plaintiff unless filed by the attorney general or a district  
21 attorney. Such proceeding shall have precedence over all other matters upon the docket except  
22 criminal proceedings, election contests and hearings upon actions for other injunctions.

23           Section 25. If upon a hearing, after at least two days' notice to the respondents  
24 of the time and place assigned therefor, the existence of such a nuisance is shown to the  
25 satisfaction of the court or justice, either through verified complaint or through evidence in the  
26 form of affidavits, depositions, oral testimony or otherwise, a temporary injunction shall be  
27 ordered to issue forthwith restraining the maintenance of the nuisance and enjoining the  
28 occupants, owner and all other persons from removing fixtures, furniture, musical instruments  
29 and all other movable property from the premises until further order of the court.

30           Section 26. If upon subsequent hearing the existence of the nuisance shall be  
31 established, the court shall enter a decree permanently enjoining the maintenance thereof,  
32 including in such decree an order of abatement directing the sheriff of the county or his deputy to  
33 enter the building or place where the nuisance existed and to sell all furniture, musical  
34 instruments and movable property used in maintaining the nuisance, in the manner provided for  
35 the sale of chattels under execution, and to remove the same. If it shall appear that the bill of

36 complaint was filed five or more days after notice to the record owner of the premises, and that  
37 he did not proceed forthwith to enforce his rights under section nineteen, such order of abatement  
38 shall further direct the effectual closing of the building or the place and the prohibition of its use  
39 for any purpose for one year, unless sooner released as provided in section eleven. For the  
40 purpose of proving the existence of the nuisance the general reputation of the place shall be  
41 admissible as evidence.

42           Section 27. For removing and selling the movable property in accordance with  
43 the decree of the court the officer shall be entitled to the same fees as for levying upon and  
44 selling like property on execution, and for closing the premises and keeping them closed, a  
45 reasonable sum shall be allowed by the court. The proceeds shall be applied: first, to the fees and  
46 costs of removal and sale; second, to the allowances and costs of so closing and keeping closed  
47 the premises; third, to the payment of the complainants' costs in such proceeding, including a  
48 reasonable attorney's fee to be fixed by the court; fourth, the remainder, if any, to the owner of  
49 the property sold.

50           Section 28. If the owner of any such premises shall pay all costs of the  
51 proceedings, and file with the court a bond with sureties approved by the clerk in the full value  
52 of such premises as ascertained by the court, or, when the court is not in session, by the clerk,  
53 payable to the court and conditioned that the owner of the premises found to be a nuisance will  
54 immediately abate such nuisance and prevent the same from being established or kept therein  
55 within one year thereafter, the court or justice may, if satisfied of the owner's good faith, order  
56 the premises so closed to be delivered to such owner and the order of abatement to be so  
57 modified as to dissolve the order that the premises remain closed for one year; provided, that

58 such modification shall not release such premises from any judgment, lien, penalty or liability to  
59 which it may be subject.

60           Section 29. No action commenced under section six shall be dismissed, except  
61 upon a sworn statement made and filed by the plaintiff and by his attorney setting forth the  
62 reasons for dismissal thereof and upon approval of such dismissal by the court in open court. If  
63 the court is of opinion that the action ought not to be dismissed he may direct the district attorney  
64 to prosecute the case to judgment. If the action was brought by a citizen and the court finds that  
65 there was no reasonable ground therefor, costs may be awarded against the plaintiff.

66           Section 30. All persons found in or upon premises used pursuant to the  
67 provisions of section 21 may be required by a justice of a court of record to recognize, with or  
68 without sureties, to appear as witnesses at any hearing in an action to punish a person for keeping  
69 or maintaining such a nuisance as is described in section four, or for aiding in the maintenance of  
70 such a nuisance in the manner set forth in section twenty, or to enjoin or abate such a nuisance,  
71 and a warrant may be issued to bring such persons before the justice to recognize as aforesaid.