

HOUSE No. 1679

The Commonwealth of Massachusetts

PRESENTED BY:

John F. Quinn

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the definition of a common nuisance.

PETITION OF:

NAME:

John F. Quinn

DISTRICT/ADDRESS:

9th Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1691 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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 is hereby amended by
2 adding at the end thereof the following sections:

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

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

11 Section 23. Whenever there is reason to believe that such a nuisance is kept or maintained or exists in any
12 town, either the district attorney for the district, or the attorney general, in the name of the commonwealth, or a
13 citizen in his own name, may bring a civil action perpetually to enjoin the person conducting or maintaining the
14 same, and the owner, lessee or agent of the building or place in or upon which such nuisance exists and their
15 assignees from directly or indirectly maintaining or permitting such nuisance.

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

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

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

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

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

43 Section 28. If the owner of any such premises shall pay all costs of the proceedings, and file with the court
44 a bond with sureties approved by the clerk in the full value of such premises as ascertained by the court, or, when
45 the court is not in session, by the clerk, payable to the court and conditioned that the owner of the premises found to
46 be a nuisance will immediately abate such nuisance and prevent the same from being established or kept therein
47 within one year thereafter, the court or justice may, if satisfied of the owner's good faith, order the premises so
48 closed to be delivered to such owner and the order of abatement to be so modified as to dissolve the order that the
49 premises remain closed for one year; provided, that such modification shall not release such premises from any
50 judgment, lien, penalty or liability to which it may be subject.

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

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