



HOUSE BILL No. 5097

September 21, 1995, Introduced by Reps. Scott, Vaughn, Murphy, Hanley, DeHart, Stallworth, Tesanovich, LaForge, Clack, Gagliardi, Cherry, Parks, Pitoniak, DeMars, Walberg, Kilpatrick, Brewer, Leland, Goschka and Prusi and referred to the Committee on Judiciary and Civil Rights.

A bill to create certain civil actions; to provide certain civil remedies for certain drug related nuisances; to impose certain penalties; to grant immunity to certain persons; to prescribe duties for certain state agencies; to create certain revolving funds; and to provide for certain standards of proof.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "drug nuisance abatement act".

3 Sec. 2. As used in this act:

4 (a) "Community organization" means a group, whether or not
5 incorporated, that consists of individuals who reside or work in
6 a building, complex of buildings, street, block, or neighborhood
7 any part of which is located on or within 1,000 feet of the
8 premises alleged to be a drug nuisance and whose purpose is to

1 benefit the quality of life in its neighborhood or community,
2 including providing treatment programs.

3 (b) "Controlled substance" means that term as defined in
4 section 7104 of the public health code, Act No. 368 of the Public
5 Acts of 1978, being section 333.7104 of the Michigan Compiled
6 Laws.

7 (c) "Deliver" and "distribute" mean those terms as defined
8 in section 7105 of the public health code, Act No. 368 of the
9 Public Acts of 1978, being section 333.7105 of the Michigan
10 Compiled Laws.

11 (d) "Drug distribution event" means the unlawful manufacture
12 or delivery of, or possession with intent to manufacture or
13 deliver, a controlled substance or an unlawful attempt or con-
14 spiracy to commit such an act.

15 (e) "Drug nuisance" means premises at which any of the fol-
16 lowing occurred:

17 (i) Three or more separate drug distribution events have
18 occurred within the period of 1 year before the commencement of
19 the civil action under this act.

20 (ii) On 3 or more separate occasions within the period of 1
21 year immediately preceding the commencement of the civil action
22 under this act, 2 or more persons who did not reside on the
23 premises gathered for the principal purpose of unlawfully ingest-
24 ing, injecting, inhaling, or otherwise using a controlled sub-
25 stance, whether or not the controlled substance was unlawfully
26 distributed or purchased at the location.

1 (iii) Any amount of controlled substance has been
2 manufactured, more than 50 marihuana plants have at any 1 time
3 been grown or cultivated, or any controlled substance in an
4 amount of 1 kilogram or more has at any 1 time been unlawfully
5 stored, warehoused, concealed, or otherwise kept.

6 (iv) The premises were used or are being used in any way in
7 furtherance of or to promote or facilitate the commission of a
8 drug distribution event.

9 (f) "Manufacture" and "marihuana" means those terms as
10 defined in section 7106 of the public health code, Act No. 368 of
11 the Public Acts of 1978, being section 333.7106 of the Michigan
12 Compiled Laws.

13 (g) "Owner" means a person in whom is vested the ownership
14 and title of property, and who is the owner of record. Owner
15 includes a local, city, state, or federal governmental entity.

16 (h) "Person" means an individual, corporation, association,
17 partnership, trustee, lessee, agent, assignee, enterprise, gov-
18 ernmental entity, or any other legal entity or group of individu-
19 als associated in fact that is capable of holding a legal or ben-
20 efcial interest in property.

21 (i) "Rehabilitation fund" means the nuisance abatement and
22 neighborhood rehabilitation fund created in section 30.

23 (j) "Residents fund" means the treatment for displaced resi-
24 dents fund created in section 30.

25 Sec. 4. (1) A cause of action is established that is a
26 civil action to enjoin the commission of drug distribution
27 events, to close down and physically secure premises or portions

1 of premises that are drug nuisances, to abate drug nuisances, and
2 to impose civil penalties. An action under this act shall be
3 brought in the circuit court. The circuit court has jurisdiction
4 to order the remedies or relief prescribed by this act.

5 (2) Except as otherwise provided in this act, the civil
6 cause of action established by this act shall be proved by a pre-
7 ponderance of the evidence.

8 Sec. 6. (1) A civil action for temporary, preliminary, or
9 permanent injunctive relief or for a penalty prescribed by this
10 act may be brought by any of the following:

11 (a) The municipal or corporation counsel representing a
12 municipal or county governing body that has jurisdiction over the
13 location at which the alleged drug nuisance exists.

14 (b) The attorney general or county prosecutor having juris-
15 diction over the premises at which the alleged drug nuisance
16 exists.

17 (c) A community organization.

18 (d) An individual who resides, is employed full- or
19 part-time at the site of a business premises, or owns or operates
20 a business premises, on or within 1,000 feet of any alleged drug
21 nuisance.

22 (2) An action under this act shall be brought against the
23 owner and may also be brought against an individual who is a
24 landlord, tenant, manager, operator, or supervisor of the
25 premises alleged to be a drug nuisance. In addition, the court
26 has in rem jurisdiction over the premises alleged to be a drug
27 nuisance, and the complaint initiating an action under this act

1 shall name as a defendant the premises involved, describing them
2 by block, lot number, and street address, or by other appropriate
3 means.

4 (3) A person shall not be required to post a bond or secur-
5 ity as a condition of initiating or prosecuting an action under
6 this act.

7 (4) An individual who completes an affidavit stating that
8 the affiant is preparing to initiate an action under this act may
9 request that the office of the register of deeds promptly provide
10 without charge the name and address of all owners of the premises
11 as reflected upon the current county records. The office of the
12 register of deeds shall be reimbursed for the cost of providing
13 this information from the rehabilitation fund.

14 (5) The person in whose name the premises involved are
15 recorded in the office of the register of deeds is presumed to be
16 the owner of the premises.

17 (6) Evidence that an individual was the manager, operator,
18 supervisor, or in any other way in charge of the premises
19 involved at the time conduct constituting the drug nuisance is
20 alleged to have been committed raises a rebuttable presumption
21 that he or she was an agent or employee of the owner, landlord,
22 or lessee of the premises.

23 Sec. 8. (1) A complaint initiating an action under this act
24 shall be personally served and notice to all defendants shall be
25 provided. After filing an affidavit that personal service cannot
26 be had after due diligence on 1 or more defendants within 20 days
27 after the filing of the complaint, the plaintiff may mail a copy

1 of the complaint to the defendant by certified mail, restricted
2 delivery, return receipt requested to the clerk of court, and
3 affix a copy of the complaint conspicuously to the premises
4 alleged to be a drug nuisance. Service is complete 5 days after
5 filing with the court proof that the complaint was mailed and an
6 affidavit stating that a copy of the complaint has been affixed
7 to the premises.

8 (2) A tenant or resident of premises that are used in whole
9 or in part as a business, home, residence, or dwelling, other
10 than a transient guest of a guest house, hotel, or motel, who may
11 be affected by an order issued under this act shall be provided
12 reasonable notice as ordered by the court and shall be afforded
13 an opportunity to be heard at all hearings.

14 (3) Notice of lis pendens shall be filed concurrently with
15 the commencement of the action in the office of the register of
16 deeds.

17 Sec. 10. If a court determines in its discretion that the
18 plaintiff bringing an action under this act has failed to prose-
19 cute the matter with reasonable diligence, the court may substi-
20 tute as plaintiff a consenting person if that person would have
21 been authorized under this act to initiate the action.

22 Sec. 12. (1) The court shall hear an action for injunctive
23 relief or a civil penalty under this act on an expedited basis.

24 (2) The court shall not grant a continuance except for com-
25 pelling and extraordinary reasons, or on the application of a
26 prosecuting agency for good cause shown.

1 (3) The court shall not stay the civil proceedings pending
2 the disposition of a related criminal proceeding except for
3 compelling and extraordinary reasons or except upon the applica-
4 tion of a prosecuting attorney for good cause shown.

5 (4) The court shall not dismiss an action under this act for
6 want of prosecution unless the court is clearly convinced that
7 the interests of justice require a dismissal. If the court
8 determines that a dismissal is necessary, the dismissal shall be
9 without prejudice to the right of the plaintiff or any other
10 person authorized to bring an action under this act to reinsti-
11 tute the action.

12 Sec. 14. (1) A person authorized to bring a civil action
13 for injunctive relief under this act may file a complaint seeking
14 preliminary injunctive relief by alleging that the premises are a
15 drug nuisance. Upon receipt of the complaint, the court shall
16 order a preliminary hearing that shall be held not later than 30
17 days after the date of the order. Plaintiff shall serve the
18 owners of the premises as provided in section 8 not less than 5
19 days before the hearing. If service cannot be completed in time
20 to give the owners the minimum notice required by this subsec-
21 tion, the court may set a new hearing date.

22 (2) The court shall issue an order to close the premises
23 involved or the appropriate portion if all of the following cir-
24 cumstances exist:

25 (a) The premises are a drug nuisance.

1 (b) At least 30 days before the filing of the complaint
2 seeking preliminary injunctive relief, the owner or the owner's
3 agent was notified by certified letter of the drug nuisance.

4 (c) The public health, safety, or welfare immediately
5 requires a preliminary closing order.

6 (3) The preliminary closing order shall direct actions nec-
7 essary to physically secure the premises, or an appropriate por-
8 tion of the premises, against use for any purpose. The prelimi-
9 nary closing order shall also restrain the defendant and all per-
10 sons from removing or interfering with the furniture, fixtures,
11 and movable or personal property located on the premises.

12 (4) If the court finds that the premises are a drug nuisance
13 but that immediate closing of the premises is not required as
14 prescribed by subsection (2), the court may enjoin the drug nui-
15 sance and issue an order restraining the defendants and all other
16 persons conducting, maintaining, aiding, abetting, or permitting
17 drug distribution events constituting the drug nuisance.
18 Additionally, the court may issue an order appointing a temporary
19 receiver to manage or operate the premises. A temporary receiver
20 has those powers and duties specifically authorized in
21 section 26.

22 (5) In determining whether the public health, safety, or
23 welfare immediately requires a preliminary closing order, the
24 court shall consider any relevant evidence presented concerning
25 any attendant circumstances, including, but not limited to,
26 whether the alleged drug distribution events or related
27 activities involved the use or threat of violence at or near the

1 site alleged to be a drug nuisance, and whether the alleged drug
2 distribution events involved distribution or sale of a controlled
3 substance by or to a juvenile.

4 Sec. 16. (1) Upon order of the court, preliminary restrain-
5 ing and closing orders shall be enforced by the sheriff or the
6 local police department.

7 (2) An officer serving a temporary closing order or a tempo-
8 rary restraining order shall file with the court an inventory of
9 the personal property on the closed premises and shall be allowed
10 to enter the premises to make the inventory. The inventory shall
11 provide an accurate representation of the personal property
12 including, but not limited to, photographs of furniture, fix-
13 tures, and other personal or movable property.

14 (3) An officer serving a preliminary closing order shall
15 demand all people present on the closed premises to vacate the
16 premises or a portion of the premises immediately unless the
17 court orders otherwise. The premises or portion of the premises
18 shall be securely locked and all keys shall be held by the agency
19 closing the premises.

20 (4) When a preliminary closing order or a preliminary
21 restraining order is served, an officer shall post a copy of the
22 closing or restraining order in a conspicuous place or upon 1 or
23 more of the principal doors at entrances of the premises. In
24 addition, if a preliminary closing order has been granted, an
25 officer shall affix, in a conspicuous place or upon 1 or more of
26 the principal entrances of the premises, a printed notice that
27 the entire premises or portion of the premises is closed by court

1 order. The notice shall contain the legend "closed by court
2 order" in block lettering of sufficient size to be observed by an
3 individual attempting to enter the premises. The printed notice
4 shall also include the date of the order, the court that issued
5 the order, and the name of the office or agency posting the
6 notice. If a preliminary restraining order has been granted, the
7 officer shall affix, in the same manner, a notice stating that
8 certain activity is prohibited by court order and that removal of
9 furniture, fixtures, or other personal or movable property is
10 prohibited by court order.

11 (5) An individual who without lawful authority mutilates or
12 removes an order or notice posted in accordance with subsection
13 (4) is guilty of a misdemeanor.

14 Sec. 18. (1) An officer serving a preliminary closing order
15 as provided in section 16 shall provide outreach information and
16 referral materials to all residents of the premises who are
17 present on how to obtain alcohol and other drug rehabilitation
18 treatment.

19 (2) Not less than 10 days before the removal of an individ-
20 ual as provided in this act, the court shall provide notice of
21 the removal to local alcohol and other drug counseling or treat-
22 ment agencies, the local child welfare agency, and other appro-
23 priate social service agencies.

24 (3) A 1-page summary of the information and materials speci-
25 fied in subsection (1) shall be posted next to a preliminary
26 closing order or preliminary restraining order posted in
27 accordance with section 16.

1 (4) The department of public health or its designee shall
2 prepare the materials described in subsection (1) and shall dis-
3 seminate them to all sheriffs' departments and local police
4 departments that are empowered to enforce closing orders under
5 this act.

6 Sec. 20. (1) If the premises that are a drug nuisance
7 include multiple residences, dwellings, or business establish-
8 ments, a preliminary or permanent closing order issued pursuant
9 to this act shall, so far as is practicable, be limited to that
10 portion of the entire premises necessary to abate the nuisance
11 and prevent the recurrence of drug distribution events.

12 Sec. 22 In addition to other relief expressly authorized by
13 this act, the court may order a defendant who knew or had reason
14 to know of a drug nuisance to provide relocation assistance to a
15 tenant ordered to vacate premises as provided in this act, if the
16 court determines that the tenant was not involved in a drug dis-
17 tribution event constituting the nuisance and did not knowingly
18 aid in the commission of the drug distribution event. Relocation
19 assistance shall be in the amount necessary to cover moving
20 costs, security deposits for utilities and comparable housing,
21 lost rent, and other expenses that the court determines are fair
22 and reasonable as a result of the court's order to close premises
23 or a portion of premises as provided in this act.

24 Sec. 24. (1) At any time before trial, the court upon
25 application of a defendant may vacate or modify a closing order,
26 after notice to the person bringing the action under this act, if
27 the defendant shows by clear and convincing evidence that he or

1 she was not involved in the commission of a drug distribution
2 event constituting the nuisance, and he or she does all of the
3 following:

4 (a) Provides a bond in an amount equal to the assessed
5 value, for property tax purposes, of the premises or portion of
6 the premises subject to the closure order, or an amount fixed by
7 the court, and the court determines that the public safety or
8 welfare will be adequately protected.

9 (b) Submits clear and convincing proof to the court that the
10 drug nuisance has been satisfactorily abated and will not recur.
11 In determining whether the drug nuisance has been satisfactorily
12 abated and will not recur, the court shall consider the nature,
13 severity, and duration of the nuisance and other relevant factors
14 including, but not limited to, all of the following:

15 (i) Whether the defendant through the exercise of reasonable
16 diligence should have known that drug distribution events were
17 occurring on the premises, and whether the defendant took neces-
18 sary and appropriate steps to prevent the commission of the drug
19 distribution events.

20 (ii) Whether the defendant has in good faith initiated an
21 eviction or removal action under the expedited eviction of drug
22 traffickers act against tenants or other persons who committed
23 drug distribution events on the premises, immediately upon learn-
24 ing of a factual basis for initiating an eviction or removal
25 action.

26 (iii) Whether the defendant has developed an abatement plan
27 that has been agreed to by the person bringing the action under

1 this act and that has been approved by the court. The abatement
2 plan may provide for 1 or more of the following:

3 (A) Hiring an on-site manager to prevent the recurrence of
4 drug distribution events.

5 (B) Making capital improvements to the property, such as
6 security gates.

7 (C) Installing improved interior or exterior lighting.

8 (D) Employing security guards.

9 (E) Installing electronic security or visual monitoring
10 systems.

11 (F) Establishing tenant-approved security procedures.

12 (G) Attending property management training programs.

13 (H) Making cosmetic improvements to the property.

14 (I) Providing, at no cost, suitable space and facilities for
15 a local enforcement agency to establish a police substation or
16 mini-station on or near the site of the drug nuisance.

17 (J) Establishing a program designed to enhance security and
18 prevent the recurrence of drug distribution events on or near the
19 premises involved.

20 (2) If the court accepts a bond pursuant to
21 subsection (1)(a) and conduct constituting a drug nuisance
22 recurs, the bond is forfeited unless the court finds compelling
23 and extraordinary reasons why forfeiture would not be in the
24 interests of justice. Money forfeited pursuant to this section
25 shall be paid into the rehabilitation fund.

26 Sec. 26. (1) If the court finds after trial that premises
27 are a drug nuisance, the court shall grant permanent injunctive

1 relief and shall issue the necessary orders to abate the drug
2 nuisance and to prevent to the extent reasonably possible the
3 recurrence of the drug nuisance. The court's order may include,
4 but need not be limited to, provisions doing all of the
5 following:

6 (a) Directing the sheriff or other appropriate agency to
7 seize from the premises all material, equipment, and instrumen-
8 talities used in the creation and maintenance of the drug nui-
9 sance and to sell the property. The net proceeds of the sale,
10 after the deduction of all lawful expenses, shall be paid into
11 the rehabilitation fund and the residents fund.

12 (b) Authorizing the plaintiffs to make repairs, renovations,
13 and construction and structural alterations or to take other
14 actions necessary to bring the premises into compliance with all
15 applicable housing, building, fire, zoning, health, and safety
16 codes, ordinances, rules, regulations, or statutes. Expenditures
17 may be filed as a lien against the property.

18 (c) Directing the closing of the premises, or an appropriate
19 portion of the premises, to the extent necessary to abate the
20 nuisance, and directing the officer or agency enforcing the clo-
21 sure order to post a copy of the judgment and a printed notice of
22 the closing order conforming to the requirements of section
23 16(4). The closing directed by the judgment shall be for a
24 period of time determined by the court and shall not be for a
25 period of more than 1 year from the posting of the judgment.

26 (d) Suspending or revoking a business, professional,
27 operational, or liquor license.

1 (e) Ordering the suspension of a state, city, or local
2 governmental subsidy payable to the owners of the property, such
3 as tenant assistance payments to landlords, until the nuisance is
4 satisfactorily abated.

5 (f) Appointing a temporary receiver to manage or operate the
6 premises for as long as the court determines is necessary to
7 abate the nuisance. A receiver appointed under this section has
8 the powers and duties ordered by the court which may include, but
9 are not limited to, all of the following:

10 (i) Collecting, holding, and dispersing the proceeds of all
11 rents due from all tenants.

12 (ii) Leasing or renting portions of the premises involved.

13 (iii) Making or authorizing other persons to make necessary
14 repairs or to maintain the property.

15 (iv) Hiring security or other personnel necessary for the
16 safe and proper operation of the premises.

17 (v) Retaining counsel to prosecute or defend suits arising
18 from his or her management of the premises.

19 (vi) Expending money from the collected rents in furtherance
20 of his or her powers.

21 (2) A receiver appointed by the court pursuant to this sec-
22 tion or section 14 shall be sworn and shall affirm faithfully and
23 fairly to discharge the trust committed to him or her. To ensure
24 that the receiver faithfully discharges his or her duties, the
25 court making the appointment may require the receiver to post a
26 bond in an amount fixed by the court.

1 Sec. 28. (1) If the court finds after trial that premises
2 are a drug nuisance, the court shall order the closure of the
3 premises or an appropriate portion of the premises as provided in
4 section 26, unless the court is clearly convinced that a vacancy
5 resulting from the closure would exacerbate rather than abate the
6 nuisance or would be extraordinarily harmful to the community or
7 the public interest.

8 (2) The court at any time after trial may vacate the provi-
9 sions of the judgment that directed the closing of the premises
10 or any portion of the premises if the defendant submits clear and
11 convincing proof to the court that the drug nuisance has been
12 satisfactorily abated and is not likely to recur. In determining
13 whether the drug nuisance has been satisfactorily abated and is
14 not likely to recur, the court shall consider the nature, severi-
15 ty, and duration of the drug nuisance and all other relevant fac-
16 tors including, but not limited to, those factors set forth in
17 section 24.

18 Sec. 30. (1) The nuisance abatement and neighborhood reha-
19 bilitation fund is created as a separate fund within the state
20 treasury. The state treasurer shall pay into the rehabilitation
21 fund money appropriated and made available by the state on an
22 annual basis for the purpose of funding local drug nuisance
23 abatement, drug prevention, education, and housing and neighbor-
24 hood rehabilitation programs.

25 (2) The treatment for displaced residents fund is created as
26 a separate fund within the state treasury. The state treasurer
27 shall pay into the residents fund money appropriated and made

1 available by the state for the purpose of providing drug and
2 alcohol rehabilitation treatment to residents that have been dis-
3 placed pursuant to this act. The residents fund shall be admin-
4 istered by the department of public health or its designee.

5 (3) The funds created in this section shall not be used to
6 supplant existing municipal, county, state, or federal resources
7 for the courts, nuisance abatement, drug prevention, education,
8 housing and neighborhood rehabilitation, or treatment programs.

9 (4) The state treasurer may receive money or other assets
10 for deposit into the rehabilitation fund and residents fund. The
11 state treasurer shall direct the investment of the money.

12 (5) At the end of the fiscal year, money in the rehabilita-
13 tion fund and the residents fund shall remain in the funds and
14 shall not revert to the general fund.

15 Sec. 32. (1) If the court finds after trial that premises
16 are a drug nuisance, the court shall impose a civil penalty
17 against a defendant who knowingly conducted, maintained, aided,
18 abetted, or permitted a drug nuisance. The penalty shall be
19 \$25,000.00 or the market value of the entire premises involved,
20 whichever amount is greater. If the court finds, based on the
21 evidence, that imposing the penalty would constitute a miscar-
22 riage of justice under the totality of the circumstances, the
23 court may lower the penalty amount to the extent necessary to
24 avoid a miscarriage of justice.

25 (2) Either of the following is prima facie evidence that the
26 defendant knowingly permitted the drug nuisance:

1 (a) The defendant failed to initiate an eviction action as
2 authorized by the expedited eviction of drug traffickers act
3 against a tenant after being notified by certified or registered
4 mail of the tenant's drug distribution events committed on the
5 leased premises.

6 (b) Within 2 years before the occurrence of the instant drug
7 nuisance, a closure order was vacated under section 28.

8 (3) The court at any time shall waive, suspend, or revoke an
9 unpaid civil penalty imposed under this section if the court is
10 satisfied that all of the following are true:

11 (a) The defendant against whom the penalty is imposed has
12 not violated an order issued under this act.

13 (b) The defendant transfers title to the premises to the
14 plaintiff or a community organization approved by the court, if
15 the organization is a nonprofit incorporated organization or
16 association that is exempt from taxation under section 501(c) of
17 the internal revenue code of 1986, 26 U.S.C. 501, and that is
18 authorized by its corporate charter or bylaws to rehabilitate,
19 restore, maintain, manage, or operate commercial or residential
20 premises. Unless otherwise agreed to by the recipient organiza-
21 tion, the defendant shall personally retain all state and local
22 tax liability, and the obligation attaches to any other real
23 property in the same county owned by the defendant.

24 (4) A civil penalty imposed under this section shall be col-
25 lected and distributed as follows:

26 (a) Ten percent of the penalties shall be retained by the
27 court to offset the costs of collection.

1 (b) Half of the balance collected under this section shall
2 be deposited in the rehabilitation fund.

3 (c) The other half of the balance shall be deposited in the
4 residents fund.

5 Sec. 34. (1) At any time before or after trial, the parties
6 to an action under this act may negotiate and agree to a fair
7 settlement of the dispute, subject to the disapproval of the
8 court.

9 (2) On application of a plaintiff, the court may vacate a
10 closing order if the defendant has transferred title to the
11 premises to the plaintiff or a community organization approved by
12 the court, if the community organization is a nonprofit incorpo-
13 rated organization or association that is exempt from taxation
14 under section 501(c) of the internal revenue code of 1986,
15 26 U.S.C. 501, and that is authorized by its corporate charter or
16 bylaws to rehabilitate, restore, maintain, manage, or operate
17 commercial or residential premises. If the title is transferred
18 in accordance with this subsection, the requirements for prere-
19 lease inspection set forth in section 40 do not apply.

20 Sec. 36. Whenever an action for injunctive relief or penal-
21 ties brought under this act terminates in a settlement or judg-
22 ment favorable to the plaintiff, the plaintiff is entitled to
23 recover the actual cost of the suit, including, but not limited
24 to, reasonable attorney fees and all expenses and disbursements
25 by the plaintiff and any other governmental entity in investigat-
26 ing, bringing, maintaining, and enforcing the action and related

1 court orders. All defendants are jointly and severally liable
2 for the payment of taxed costs imposed under this section.

3 Sec. 38. A judgment awarding a permanent injunction under
4 this act is a lien upon the premises declared to be a drug
5 nuisance. A judgment against a defendant imposing a civil pen-
6 alty or bill of taxed costs under this act is a lien upon the
7 real estate owned by the defendant at the time the penalty was
8 imposed and upon real estate the defendant subsequently acquires
9 for a period of 10 years after the date of the judgment.

10 Sec. 40. (1) Subject to section 34 and unless the court
11 expressly orders otherwise, premises or portion of premises
12 closed under this act shall not be released or opened unless
13 inspected and found to be in compliance with applicable local or
14 state housing, building, fire, zoning, health and safety codes,
15 ordinances, rules, regulations, or statutes. If the inspection
16 reveals a violation of a code, ordinance, rule, regulation, or
17 statute, the court shall issue an order or grant relief that is
18 necessary to bring the premises or a portion of the premises into
19 compliance. The court may order the premises or a portion of the
20 premises to remain closed pending the completion of the necessary
21 repair or modification, even if the order of closure would then
22 exceed the 1-year time limit prescribed in section 26.

23 (2) The court may authorize a person or government official
24 to enter premises or a portion of premises closed pursuant to
25 this act to inspect or make a repair or modification necessary to
26 abate the nuisance or to bring the premises or a portion of the
27 premises into compliance with applicable housing, building, fire,

1 zoning, health or safety code, ordinance, rule, regulation, or
2 statute.

3 Sec. 42. A cause of action or remedy authorized by this act
4 is in addition to any other causes of action or remedies.

5 Sec. 44. (1) In an action brought under this act, all rele-
6 vant evidence, including evidence of the use or threat of vio-
7 lence, evidence of reputation in a community, and prior efforts
8 or lack of efforts by the defendant to abate the drug nuisance,
9 is admissible to prove the existence of a drug nuisance.

10 (2) If a criminal prosecution or adjudication proceeding
11 involving the drug distribution event constituting the drug nui-
12 sance results in a criminal conviction or adjudication of delin-
13 quency, the conviction or adjudication creates a rebuttable pre-
14 sumption that the drug distribution event occurred. Evidence or
15 testimony admitted in the criminal or juvenile proceedings,
16 including transcripts or a court reporter's notes of the tran-
17 scripts of the adult or juvenile criminal proceedings, whether or
18 not they have been transcribed, may be admitted in the civil
19 action brought under this act.

20 (3) Notwithstanding any other provision of this act, if the
21 hearing of a criminal proceeding that did not result in an adju-
22 dication of delinquency has been closed in accordance with
23 section 17 of chapter XIIA of Act No. 288 of the Public Acts of
24 1939, being section 712A.17 of the Michigan Compiled Laws, the
25 court in a civil action brought under this act may order the evi-
26 dence or records to be opened if the court finds that the

1 evidence or records are relevant to the fair disposition of the
2 civil action.

3 (4) If proof of the existence of the drug nuisance depends,
4 in whole or in part, upon an affidavit or testimony of a witness
5 who is not a peace officer, the court may, upon a showing of a
6 prior threat of violence or act of violence by any defendant or
7 any other person, issue an order to protect that witness includ-
8 ing, but not limited to, the nondisclosure of the name, address,
9 or other information that may identify the witness.

10 (5) A law enforcement agency may make available to a person
11 seeking to secure compliance with this act a police report,
12 edited portion of a police report, forensic laboratory report, or
13 edited portion of a forensic laboratory report concerning drug
14 distribution events committed on or within the premises
15 involved. A law enforcement agency may also make an officer
16 available to testify as a fact or expert witness in a civil
17 action under this act. The agency shall not disclose this infor-
18 mation if, in the agency's opinion, disclosure would jeopardize
19 an investigation, prosecution, or other proceeding or if disclo-
20 sure would violate a federal or state statute.

21 Sec. 46. A civil action may be brought under this act, and
22 the court may find the existence of a drug nuisance, even if a
23 drug distribution event used to establish the existence of the
24 drug nuisance has not resulted in an arrest, prosecution, convic-
25 tion, or adjudication of delinquency.

26 Sec. 48. (1) A court-ordered closing of premises or a
27 portion of premises under this act does not constitute an act of

1 possession, ownership, or control by the court, the plaintiff, or
2 a government official or entity responsible for enforcing the
3 court order.

4 (2) A person bringing, maintaining, or enforcing a civil
5 action or order issued in accordance with this act is immune from
6 civil liability that might otherwise be incurred for theft of,
7 loss of, damage to, or injury to premises constituting the drug
8 nuisance or a fixture, furniture, or personal or movable property
9 located at the premises.

10 Sec. 50. A person who, in good faith, institutes, partici-
11 pates in, or testifies in, or encourages a person to institute,
12 participate in, or testify in, a civil action under this act or
13 who, in good faith, provides information relied upon by a person
14 in instituting or participating in a civil action under this act
15 is immune from civil liability that might otherwise be incurred
16 or imposed.

17 Sec. 52. (1) A person whose business or property has been
18 damaged by a drug nuisance may bring a separate civil action for
19 actual damages in the circuit court against a person who know-
20 ingly conducted, maintained, aided, abetted, or permitted the
21 drug distribution event constituting the drug nuisance.

22 (2) In an action for damages under this section, the failure
23 of an owner or landlord to initiate an eviction action against a
24 tenant in accordance with the provisions of the expedited evic-
25 tion of drug traffickers act, if the owner or landlord has been
26 notified by a person who is authorized to bring an action under
27 this act by certified or registered mail of the tenant's drug

1 distribution events committed on the leased premises, is prima
2 facie evidence that the owner knowingly gave permission to engage
3 in conduct constituting the drug nuisance.

4 (3) In an action for damages under this section, expert tes-
5 timony may be used to determine the amount of actual damage or
6 loss incurred because of the drug nuisance.

7 (4) If an action for damages under this section terminates
8 in a settlement or judgment favorable to the plaintiff, the
9 plaintiff is entitled to recover the actual cost of the suit,
10 including, but not limited to, reasonable attorney fees and all
11 expenses and disbursements by the plaintiff in investigating,
12 bringing, and maintaining the action. All defendants are jointly
13 and severally liable for the payments of taxed costs imposed
14 under this section.

15 (5) In an action for damages under this section, evidence
16 admitted or admissible in a civil action for injunctive relief or
17 penalty under this act is admissible.

18 Sec. 54. If title to property is transferred to a neighbor-
19 hood or community organization as provided in section 32 or in a
20 negotiated settlement of an action under this act, and subject to
21 the approval of the court in which the civil action was initi-
22 ated, the property may be used to house an alcohol or other drug
23 prevention, education, or intervention program, or licensed alco-
24 hol and other drug counseling, treatment or rehabilitation
25 program. The property is not exempt from the requirements of an
26 applicable zoning, fire, safety, or health code, ordinance, rule,
27 regulation, or statute.

1 Sec. 56. This act shall not take effect unless all of the
2 following bills of the 88th Legislature are enacted into law:

3 (a) Senate Bill No. _____ or House Bill No. _____ (request
4 no. 00032'95 a).

5 (b) Senate Bill No. _____ or House Bill No. 5099 (request
6 no. 00033'95).

7 (c) Senate Bill No. _____ or House Bill No. 5098 (request
8 no. 00034'95).