

HOUSE BILL No. 4269

February 11, 1997, Introduced by Reps. Scott, Freeman, Hale, McBryde, Hanley, Schauer, DeHart, Goschka, Bogardus, Gire, Dalman, Willard, Vaughn, Kelly, Byl, Murphy, Richner, Leland, McManus, Rison, Thomas, Schermesser, Cherry, Prusi, Curtis, Owen, Dobronski, Green, Geiger, Rocca, Kukuk, Kaza, Voorhees, Gagliardi, Mathieu, Emerson, Price, Parks, Hood, Quarles and Perricone and referred to the Committee on Judiciary.

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, 1978 PA 368, MCL
5 333.7104.

6 (c) "Deliver" and "distribute" mean those terms as defined
7 in section 7105 of the public health code, 1978 PA 368, MCL
8 333.7105.

9 (d) "Drug distribution event" means unlawfully manufacturing
10 or delivering, or possession with intent to unlawfully manufac-
11 ture or deliver, a controlled substance or an unlawful attempt or
12 conspiracy to commit such an act.

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

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

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

25 (iii) Any amount of controlled substance has been manufac-
26 tured, more than 50 marihuana plants have at any 1 time been
27 grown or cultivated, or any controlled substance in an amount of

1 1 kilogram or more has at any 1 time been unlawfully stored,
2 warehoused, concealed, or otherwise kept.

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

6 (f) "Manufacture" and "marihuana" means those terms as
7 defined in section 7106 of the public health code, 1978 PA 368,
8 MCL 333.7106.

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

12 (h) "Person" means an individual, corporation, association,
13 partnership, trustee, lessee, agent, assignee, enterprise, gov-
14 ernmental entity, or any other legal entity or group of individu-
15 als that is capable of holding a legal or beneficial interest in
16 property.

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

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

21 Sec. 4. (1) A cause of action is established that is a
22 civil action to enjoin the commission of drug distribution
23 events, to close and physically secure premises or portions of
24 premises that are drug nuisances, to abate drug nuisances, and to
25 impose civil penalties. An action under this act shall be
26 brought in the circuit court. The circuit court has jurisdiction
27 to order the remedies or relief prescribed by this act.

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

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

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

10 (b) The attorney general or county prosecutor having juris-
11 diction over the premises at which the alleged drug nuisance
12 exists.

13 (c) A community organization.

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

18 (2) An action under this act shall be brought against the
19 owner and may also be brought against an individual who is a
20 landlord, tenant, manager, operator, or supervisor of the
21 premises alleged to be a drug nuisance. In addition, the court
22 has in rem jurisdiction over the premises alleged to be a drug
23 nuisance, and the complaint initiating an action under this act
24 shall name as a defendant the premises involved, describing them
25 by block, lot number, and street address, or by other appropriate
26 means.

1 (3) A person shall not be required to post a bond or
2 security as a condition of initiating or prosecuting an action
3 under this act.

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

11 (5) The person in whose name the premises involved are
12 recorded in the office of the register of deeds is presumed to be
13 the owner of the premises.

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

20 Sec. 8. (1) A complaint initiating an action under this act
21 shall be personally served on all defendants. After filing an
22 affidavit that personal service cannot be had after due diligence
23 on 1 or more defendants within 20 days after the filing of the
24 complaint, the plaintiff may mail a copy of the complaint to the
25 defendant by certified mail, restricted delivery, return receipt
26 requested to the clerk of court, and affix a copy of the
27 complaint conspicuously to the premises alleged to be a drug

1 nuisance. Service is complete 5 days after filing with the court
2 proof that the complaint was mailed and an affidavit stating that
3 a copy of the complaint has been affixed to the premises.

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

10 (3) Notice of lis pendens shall be filed concurrently with
11 the commencement of the action in the office of the register of
12 deeds.

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

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

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

23 (3) The court shall not stay the civil proceedings pending
24 the disposition of a related criminal proceeding except for com-
25 pelling and extraordinary reasons or except upon the application
26 of a prosecuting attorney for good cause shown.

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

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

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

21 (a) The premises are a drug nuisance.

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

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

1 (3) The preliminary closing order shall direct actions
2 necessary to physically secure the premises, or an appropriate
3 portion of the premises, against use for any purpose. The pre-
4 liminary closing order shall also restrain the defendant and all
5 persons from removing or interfering with the furniture, fix-
6 tures, and movable or personal property located on the premises.

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

17 (5) In determining whether the public health, safety, or
18 welfare immediately requires a preliminary closing order, the
19 court shall consider any relevant evidence presented concerning
20 any attendant circumstances, including, but not limited to,
21 whether the alleged drug distribution events or related activi-
22 ties involved the use or threat of violence at or near the site
23 alleged to be a drug nuisance and whether the alleged drug dis-
24 tribution events involved distribution or sale of a controlled
25 substance by or to a juvenile.

1 Sec. 16. (1) Upon order of the court, preliminary
2 restraining and closing orders shall be enforced by the sheriff
3 or the local police department.

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

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

17 (4) When a preliminary closing order or a preliminary
18 restraining order is served, an officer shall post a copy of the
19 closing or restraining order in a conspicuous place or upon 1 or
20 more of the principal doors at entrances of the premises. In
21 addition, if a preliminary closing order has been granted, an
22 officer shall affix, in a conspicuous place or upon 1 or more of
23 the principal entrances of the premises, a printed notice that
24 the entire premises or portion of the premises is closed by court
25 order. The notice shall contain the legend "closed by court
26 order" in block lettering of sufficient size to be observed by an
27 individual attempting to enter the premises. The printed notice

1 shall also include the date of the order, the court that issued
2 the order, and the name of the office or agency posting the
3 notice. If a preliminary restraining order has been granted, the
4 officer shall affix, in the same manner, a notice stating that
5 certain activity is prohibited by court order and that removal of
6 furniture, fixtures, or other personal or movable property is
7 prohibited by court order.

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

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

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

21 (3) A 1-page summary of the information and materials speci-
22 fied in subsection (1) shall be posted next to a preliminary
23 closing order or preliminary restraining order posted in accord-
24 ance with section 16.

25 (4) The department of community health or its designee shall
26 prepare the materials described in subsection (1) and shall
27 disseminate them to all sheriffs' departments and local police

1 departments that are empowered to enforce closing orders under
2 this act.

3 Sec. 20. If the premises that are a drug nuisance include
4 multiple residences, dwellings, or business establishments, a
5 preliminary or permanent closing order issued pursuant to this
6 act shall, so far as is practicable, be limited to that portion
7 of the entire premises necessary to abate the nuisance and pre-
8 vent the recurrence of drug distribution events.

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

21 Sec. 24. (1) At any time before trial, the court upon
22 application of a defendant may vacate or modify a closing order,
23 after notice to the person bringing the action under this act, if
24 the defendant shows by clear and convincing evidence that he or
25 she was not involved in the commission of a drug distribution
26 event constituting the nuisance, and he or she does all of the
27 following:

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

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

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

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

23 (iii) Whether the defendant has developed an abatement plan
24 that has been agreed to by the person bringing the action under
25 this act and that has been approved by the court. The abatement
26 plan may provide for 1 or more of the following:

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

3 (B) Making capital improvements to the property, such as
4 security gates.

5 (C) Installing improved interior or exterior lighting.

6 (D) Employing security guards.

7 (E) Installing electronic security or visual monitoring
8 systems.

9 (F) Establishing tenant-approved security procedures.

10 (G) Attending property management training programs.

11 (H) Making cosmetic improvements to the property.

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

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

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

24 Sec. 26. (1) If the court finds after trial that premises
25 are a drug nuisance, the court shall grant permanent injunctive
26 relief and shall issue the necessary orders to abate the drug
27 nuisance and to prevent to the extent reasonably possible the

1 recurrence of the drug nuisance. The court's order may include,
2 but need not be limited to, provisions doing all of the
3 following:

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

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

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

24 (d) Suspending or revoking a business, professional, oper-
25 ational, or liquor license.

26 (e) Ordering the suspension of a state, city, or local
27 governmental subsidy payable to the owners of the property, such

1 as tenant assistance payments to landlords, until the nuisance is
2 satisfactorily abated.

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

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

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

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

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

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

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

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

25 Sec. 28. (1) If the court finds after trial that premises
26 are a drug nuisance, the court shall order the closure of the
27 premises or an appropriate portion of the premises as provided in

1 section 26, unless the court is clearly convinced that a vacancy
2 resulting from the closure would exacerbate rather than abate the
3 nuisance or would be extraordinarily harmful to the community or
4 the public interest.

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

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

22 (2) The treatment for displaced residents fund is created as
23 a separate fund within the state treasury. The state treasurer
24 shall pay into the residents fund money appropriated and made
25 available by the state for the purpose of providing drug and
26 alcohol rehabilitation treatment to residents that have been
27 displaced pursuant to this act. The residents fund shall be

1 administered by the department of community health or its
2 designee.

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

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

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

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

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

25 (a) The defendant failed to initiate an eviction action as
26 authorized by the expedited eviction of drug traffickers act
27 against a tenant after being notified by certified or registered

1 mail of the tenant's drug distribution events committed on the
2 leased premises.

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

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

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

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

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

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

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

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

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

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

17 Sec. 36. If an action for injunctive relief or penalties
18 brought under this act terminates in a settlement or judgment
19 favorable to the plaintiff, the plaintiff is entitled to recover
20 the actual cost of the action, including, but not limited to,
21 reasonable attorney fees and all expenses and disbursements by
22 the plaintiff and any other governmental entity in investigating,
23 bringing, maintaining, and enforcing the action and related court
24 orders. All defendants are jointly and severally liable for the
25 payment of taxed costs imposed under this section.

26 Sec. 38. A judgment awarding a permanent injunction under
27 this act is a lien upon the premises declared to be a drug

1 nuisance. A judgment against a defendant imposing a civil
2 penalty or bill of taxed costs under this act is a lien upon the
3 real estate owned by the defendant, at the time the penalty was
4 imposed and upon real estate the defendant subsequently acquires,
5 for a period of 10 years after the date of the judgment.

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

19 (2) The court may authorize a person or government official
20 to enter premises or a portion of premises closed pursuant to
21 this act to inspect or make a repair or modification necessary to
22 abate the nuisance or to bring the premises or a portion of the
23 premises into compliance with an applicable housing, building,
24 fire, zoning, health or safety code, ordinance, rule, regulation,
25 or statute.

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

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

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

19 (3) Notwithstanding any other provision of this act, if the
20 hearing of a criminal proceeding that did not result in an adju-
21 dication of delinquency has been closed in accordance with
22 section 17 of chapter XIIA of 1939 PA 288, MCL 712a.17, the court
23 in a civil action brought under this act may order the evidence
24 or records to be opened if the court finds that the evidence or
25 records are relevant to the fair disposition of the civil
26 action.

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

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

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

24 Sec. 48. (1) A court-ordered closing of premises or a por-
25 tion of premises under this act does not constitute an act of
26 possession, ownership, or control by the court, the plaintiff, or

1 a government official or entity responsible for enforcing the
2 court order.

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

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

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

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

1 facie evidence that the owner knowingly gave permission to engage
2 in conduct constituting the drug nuisance.

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

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

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

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

1 Sec. 56. This act does not take effect unless all of the
2 following bills of the 89th Legislature are enacted into law:

3 (a) Senate Bill No. _____ or House Bill No. _____ (request
4 no. 00940'97 a).

5 (b) Senate Bill No. _____ or House Bill No. _____ (request
6 no. 00941'97).

7 (c) Senate Bill No. _____ or House Bill No. _____ (request
8 no. 00942'97).