

## CHAPTER 45.

[ S. B. 12. ]

## CIVIL PROCEDURE—NUISANCES.

AN ACT relating to nuisances; amending section 14, page 81, Laws of 1875, section 1248, Code 1881 and RCW 7.48.250; amending section 15, page 81, Laws of 1875, section 1249, Code 1881 and RCW 7.48.260; amending section 17, page 81, Laws of 1875, section 1251, Code 1881 and RCW 7.48.270; amending section 251, chapter 249, Laws of 1909 and RCW 9.66.040; and repealing section 16, page 81, Laws of 1875, Code 1881, section 1250 and RCW 7.48.261, and declaring an emergency.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. Section 14, page 81, Laws of 1875, section 1248 of the Code of 1881 and RCW 7.48.250 are each amended to read as follows:

RCW 7.48.250  
amended.

Whoever is convicted of erecting, causing or contriving a public or common nuisance as described in this chapter, or at common law, when the same has not been modified or repealed by statute, where no other punishment therefor is specially provided, shall be punished by a fine not exceeding one thousand dollars, and the court with or without such fine, may order such nuisance to be abated, and issue a warrant as hereinafter provided: *Provided*, That orders and warrants of abatement shall not be issued by justices of the peace.

Nuisances.  
Penalty—  
Abatement.

Proviso.

SEC. 2. Section 15, page 81, Laws of 1875, section 1249, Code 1881 and RCW 7.48.260 are each amended to read as follows:

RCW 7.48.260  
amended.

When, upon indictment or information, complaint or action, any person is adjudged guilty of a nuisance, if it be in superior court the court may in addition to the fine imposed, if any, or to the judgment for damages or costs, for which a separate execution may issue, order that such nuisance be abated, or removed at the expense of the defendant, and after inquiry into and estimating, as nearly as may be,

Nuisances.  
Warrant of  
abatement.

the sum necessary to defray the expenses of such abatement, the court may issue a warrant therefor: *Provided*, That if the conviction was had in a justice court, the justice of the peace shall not issue the order and warrant of abatement, but on application therefor, shall transfer the cause to the superior court which shall proceed to try the issue of abatement in the same manner as if the action had been originally commenced therein.

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RCW 7.48.270 amended.

SEC. 3. Section 17, page 81, Laws of 1875, section 1251, Code 1881 and RCW 7.48.270 are each amended to read as follows:

Nuisances. Stay of warrant.

Instead of issuing such warrant, the court may order the same to be stayed upon motion of the defendant, and upon his entering into a bond in such sum and with such surety as the court may direct to the state, conditioned either that the defendant will discontinue said nuisance, or that within a time limited by the court, and not exceeding six months, he will cause the same to be abated and removed, as either is directed by the court, and upon his default to perform the condition of his bond, the same shall be forfeited, and the court, upon being satisfied of such default, may order such warrant forthwith to issue, and an order to show cause why judgment should not be entered against the sureties of said bond.

RCW 9.66.040 amended.

SEC. 4. Section 251, chapter 249, Laws of 1909 and RCW 9.66.040 are each amended to read as follows:

Abatement of nuisance.

Any court or magistrate before whom there may be pending any proceeding for a violation of RCW 9.66.030, shall, in addition to any fine or other punishment which it may impose for such violation, order such nuisance abated, and all property unlawfully used in the maintenance thereof destroyed by the sheriff at the cost of the defendant: *Provided*, That if the conviction was had in a justice court, the

Proviso.

justice of the peace shall not issue the order and warrant of abatement, but on application therefor, shall transfer the cause to the superior court which shall proceed to try the issue of abatement in the same manner as if the action had been originally commenced therein.

SEC. 5. Section 16, page 81, Laws of 1875, section 1250, Code 1881 and RCW 7.48.261 are each repealed. Repeal.

SEC. 6. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. Emergency.

Passed the Senate January 24, 1957.

Passed the House February 28, 1957.

Approved by the Governor March 8, 1957.

*(The above measure, being remedial legislation introduced at the request of the Statute Law Committee, was accompanied by the following explanatory note.)* Explanatory note.

This bill is a companion to the bill which was submitted for the purpose of deleting obsolete language relating to terms and vacations of court as it appears in various sections of the territorial laws.

It is submitted as a separate bill because the law of nuisance is partly criminal in nature. Only one section, RCW 7.48.270, is concerned with the deletion of language relating to terms and vacations of court. That section likewise contains language relating to the issuance of orders and warrants of abatement by justices of the peace, a practice which is disapproved in *State v. Schaffer*, 31 Wash. 305, on the ground that Article IV, section 6 of the state Constitution specially enumerates actions to prevent and abate a nuisance "so as to fall within the exclusive original jurisdiction of the superior courts . . ." This and other sections of the 1875 law as well as 1909 c 249 § 251, are herein proposed for amendment or repeal, deleting the language authorizing the issuance and enforcement of orders and warrants of abatement by justices of the peace, and adding language to carry out the construction of the *Schaffer* case, *supra*.

The repealed section, Code 1881 § 1250, RCW 7.48.261, provided as follows:

"When the conviction is had upon an action before a justice of the peace, and no appeal is taken, the justice, after estimating as aforesaid, the sum necessary to defray the expenses of removing or abating the nuisance, may issue a like warrant."