

Subd. 2. **CONDITIONAL HIRING; DISCHARGE.** A school hiring authority may hire an individual pending completion of a background check under subdivision 1 but shall notify the individual that the individual's employment may be terminated based on the result of the background check. A school hiring authority is not liable for failing to hire or for terminating an individual's employment based on the result of a background check under this section.

Subd. 4. **DEFINITIONS.** For purposes of this section:

(a) "School" means a school as defined in section 120.101, subdivision 4, except a home-school, and includes a school receiving tribal contract or grant school aid under section 124.86; school, for the purposes of this section, also means a service cooperative, a special education cooperative, or an education district under section 123.35, and a joint powers district under section 471.59.

(b) "School hiring authority" means the school principal or other person having general control and supervision of the school.

Sec. 2. EFFECTIVE DATE.

Section 1 is effective the day following final enactment.

Presented to the governor May 5, 1997

Signed by the governor May 6, 1997, 2:40 p.m.

CHAPTER 100—S.F.No. 513

An act relating to public nuisance; adding to the acts that constitute a nuisance; modifying nuisance remedies and procedures; amending Minnesota Statutes 1996, sections 617.81, subdivision 2; 617.82; 617.83; and 617.85; repealing Minnesota Statutes 1996, section 617.80, subdivision 6.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1996, section 617.81, subdivision 2, is amended to read:

Subd. 2. **ACTS CONSTITUTING A NUISANCE.** (a) For purposes of sections 617.80 to 617.87, a public nuisance exists upon proof of two or more separate behavioral incidents of one or more of the following, committed within the previous 12 months within the building:

- (1) prostitution or prostitution-related activity committed within the building;
- (2) gambling or gambling-related activity committed within the building;
- (3) keeping or permitting a disorderly house within the building; maintaining a public nuisance in violation of section 609.74, clause (1) or (3);
- (4) permitting a public nuisance in violation of section 609.745;

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(4) ~~(5)~~ unlawful sale, possession, storage, delivery, giving, manufacture, cultivation, or use of controlled substances committed within the building;

~~(5)~~ ~~(6)~~ unlicensed sales of alcoholic beverages committed within the building in violation of section 340A.401;

~~(6)~~ ~~(7)~~ unlawful sales or gifts of alcoholic beverages by an unlicensed person committed within the building in violation of section 340A.503, subdivision 2, clause (1); or

~~(7)~~ ~~(8)~~ unlawful use or possession of a firearm in violation of section 609.66, subdivision 1a, 609.67, or 624.713, committed within the building.

(b) If the building contains more than one rental unit, two or more behavioral incidents must consist of conduct:

(1) anywhere in the building by the same tenant or lessee, or persons acting in conjunction with or under the control of the same tenant or lessee;

(2) by any persons within the same rental unit while occupied by the same tenant or lessee or within two or more rental units while occupied by the same tenant or lessee; or

(3) by the owner of the building or persons acting in conjunction with or under the control of the owner.

(c) Proof of a nuisance exists if each of the elements of the conduct constituting the nuisance is established by clear and convincing evidence.

Sec. 2. Minnesota Statutes 1996, section 617.82, is amended to read:

617.82 AGREED ABATEMENT PLANS; TEMPORARY ORDER.

(a) If the recipient of a notice under section 617.81, subdivision 4, either abates the conduct constituting the nuisance or enters into an agreed abatement plan within 30 days of service of the notice and complies with the agreement within the stipulated time period, the prosecuting attorney may not file a nuisance action on the specified property regarding the nuisance activity described in the notice.

(b) If the recipient fails to comply with the agreed abatement plan, the prosecuting attorney may initiate a complaint for relief in the district court consistent with paragraph (c).

(c) Whenever a prosecuting attorney has cause to believe that a nuisance described in section 617.81, subdivision 2, exists within the jurisdiction the attorney serves, the prosecuting attorney may by verified petition seek a temporary injunction in district court in the county in which the alleged public nuisance exists, provided that at least 30 days have expired since service of the notice required under section 617.81, subdivision 4. No temporary injunction may be issued without a prior show cause notice of hearing to the respondents named in the petition and an opportunity for the respondents to be heard. Upon proof of a nuisance described in section 617.81, subdivision 2, the court shall issue a temporary injunction. Any temporary injunction issued must describe the conduct to be enjoined.

Sec. 3. Minnesota Statutes 1996, section 617.83, is amended to read:

617.83 INJUNCTION; ORDER OF ABATEMENT.

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Upon proof of a nuisance described in section 617.81, subdivision 2, the court shall issue a permanent injunction and enter an order of abatement, except as otherwise provided by section 617.85. The permanent injunction must describe the conduct permanently enjoined. The order of abatement must direct the closing of the building or a portion of it for one year, except as otherwise provided in section 617.84 or 617.85, unless sooner released pursuant to section 617.87. Before an abatement order is enforced against a building or portion of it, the owner must be served with the abatement order and a notice of the right to file a motion under section 617.85 in the same manner that a summons is served under the rules of civil procedure. A copy of the abatement order shall also be posted in a conspicuous place on the building or affected portion.

Sec. 4. Minnesota Statutes 1996, section 617.85, is amended to read:

617.85 NUISANCE; MOTION TO CANCEL LEASE.

Where notice is provided under section 617.81, subdivision 4, that an abatement of a nuisance is sought and the circumstances that are the basis for the requested abatement involved the acts of a commercial or residential tenant or lessee of part or all of a building, the owner of the building that is subject to the abatement proceeding may file before the court that has jurisdiction over the abatement proceeding a motion to cancel the lease or otherwise secure restitution of the premises from the tenant or lessee who has maintained or conducted the nuisance. The owner may assign to the prosecuting attorney the right to file this motion. In addition to the grounds provided in chapter 566, the maintaining or conducting of a nuisance as defined in section 617.81, subdivision 2, by a tenant or lessee, is an additional ground authorized by law for seeking the cancellation of a lease or the restitution of the premises. Service of motion brought under this section must be served in a manner that is sufficient under the Rules of Civil Procedure and chapter 566.

It is no defense to a motion under this section by the owner or the prosecuting attorney that the lease or other agreement controlling the tenancy or leasehold does not provide for eviction or cancellation of the lease upon the ground provided in this section.

Upon a finding by the court that the tenant or lessee has maintained or conducted a nuisance in any portion of the building, the court shall order cancellation of the lease or tenancy and grant restitution of the premises to the owner. The court must not order abatement of the premises if the court:

(a) cancels a lease or tenancy and grants restitution of that portion of the premises to the owner; and

(b) further finds that the acts constituting the nuisance as defined in section 617.81, subdivision 2, were committed by the tenant or lessee whose lease or tenancy has been canceled pursuant to this section and the tenant or lessee was not committing the acts in conjunction with or under the control of the owner.

Sec. 5. REPEALER.

Minnesota Statutes 1996, section 617.80, subdivision 6, is repealed.

Presented to the governor May 5, 1997

Signed by the governor May 6, 1997, 2:42 p.m.

New language is indicated by underline, deletions by ~~strikeout~~.