

AMENDED IN SENATE MARCH 24, 2008

**SENATE BILL**

**No. 1126**

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**Introduced by Senator Cedillo**

January 28, 2008

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An act to amend Section 186.22a of the Penal Code, relating to criminal street gangs.

LEGISLATIVE COUNSEL'S DIGEST

SB 1126, as amended, Cedillo. Criminal street gangs: nuisances: damages.

Existing law authorizes any prosecuting attorney to maintain an action for money damages for injuries caused by a nuisance created by a criminal street gang, as specified. Under existing law, only assets derived from the criminal activity being abated or enjoined could be collected from the criminal street gang or its members to pay for the money damages award.

This bill would remove that restriction and allow the collection of any assets of the criminal street gang or persons who knew or should have known of the unlawful acts to pay for the money damages award, as specified.

*Under existing law, only persons who knew or should have known of the unlawful acts are personally liable for the payment of damages.*

*This bill would instead provide that only members of the criminal street gang who created, maintained, or contributed to the creation or maintenance of the nuisance are personally liable for the money damages awarded.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 186.22a of the Penal Code is amended  
2 to read:

3 186.22a. (a) Every building or place used by members of a  
4 criminal street gang for the purpose of the commission of the  
5 offenses listed in subdivision (e) of Section 186.22 or any offense  
6 involving dangerous or deadly weapons, burglary, or rape, and  
7 every building or place wherein or upon which that criminal  
8 conduct by gang members takes place, is a nuisance which shall  
9 be enjoined, abated, and prevented, and for which damages may  
10 be recovered, whether it is a public or private nuisance.

11 (b) Any action for injunction or abatement filed pursuant to  
12 subdivision (a), including an action filed by the Attorney General,  
13 shall proceed according to the provisions of Article 3 (commencing  
14 with Section 11570) of Chapter 10 of Division 10 of the Health  
15 and Safety Code, except that all of the following shall apply:

16 (1) The court shall not assess a civil penalty against any person  
17 unless that person knew or should have known of the unlawful  
18 acts.

19 (2) No order of eviction or closure may be entered.

20 (3) All injunctions issued shall be limited to those necessary to  
21 protect the health and safety of the residents or the public or those  
22 necessary to prevent further criminal activity.

23 (4) Suit may not be filed until 30-day notice of the unlawful use  
24 or criminal conduct has been provided to the owner by mail, return  
25 receipt requested, postage prepaid, to the last known address.

26 (c) Whenever an injunction is issued pursuant to subdivision  
27 (a), or Section 3479 of the Civil Code, to abate gang activity  
28 constituting a nuisance, the Attorney General or any district  
29 attorney or any prosecuting city attorney may maintain an action  
30 for money damages on behalf of the community or neighborhood  
31 injured by that nuisance. Any money damages awarded shall be  
32 paid by or collected from assets of the criminal street gang or its  
33 members. ~~Only persons who knew or should have known of the~~  
34 ~~unlawful acts~~ *Only members of the criminal street gang who*  
35 *created, maintained, or contributed to the creation or maintenance*  
36 *of the nuisance* shall be personally liable for the payment of the  
37 damages awarded. In a civil action for damages brought pursuant  
38 to this subdivision, the Attorney General, district attorney, or city

1 attorney may use, but is not limited to the use of, the testimony of  
2 experts to establish damages suffered by the community or  
3 neighborhood injured by the nuisance. The damages recovered  
4 pursuant to this subdivision shall be deposited into a separate  
5 segregated fund for payment to the governing body of the city or  
6 county in whose political subdivision the community or  
7 neighborhood is located, and that governing body shall use those  
8 assets solely for the benefit of the community or neighborhood  
9 that has been injured by the nuisance.

10 (d) No nonprofit or charitable organization which is conducting  
11 its affairs with ordinary care or skill, and no governmental entity,  
12 shall be abated pursuant to subdivisions (a) and (b).

13 (e) Nothing in this chapter shall preclude any aggrieved person  
14 from seeking any other remedy provided by law.

15 (f) (1) Any firearm, ammunition which may be used with the  
16 firearm, or any deadly or dangerous weapon which is owned or  
17 possessed by a member of a criminal street gang for the purpose  
18 of the commission of any of the offenses listed in subdivision (e)  
19 of Section 186.22, or the commission of any burglary or rape, may  
20 be confiscated by any law enforcement agency or peace officer.

21 (2) In those cases where a law enforcement agency believes that  
22 the return of the firearm, ammunition, or deadly weapon  
23 confiscated pursuant to this subdivision, is or will be used in  
24 criminal street gang activity or that the return of the item would  
25 be likely to result in endangering the safety of others, the law  
26 enforcement agency shall initiate a petition in the superior court  
27 to determine if the item confiscated should be returned or declared  
28 a nuisance.

29 (3) No firearm, ammunition, or deadly weapon shall be sold or  
30 destroyed unless reasonable notice is given to its lawful owner if  
31 his or her identity and address can be reasonably ascertained. The  
32 law enforcement agency shall inform the lawful owner, at that  
33 person's last known address by registered mail, that he or she has  
34 30 days from the date of receipt of the notice to respond to the  
35 court clerk to confirm his or her desire for a hearing and that the  
36 failure to respond shall result in a default order forfeiting the  
37 confiscated firearm, ammunition, or deadly weapon as a nuisance.

38 (4) If the person requests a hearing, the court clerk shall set a  
39 hearing no later than 30 days from receipt of that request. The  
40 court clerk shall notify the person, the law enforcement agency

1 involved, and the district attorney of the date, time, and place of  
2 the hearing.

3 (5) At the hearing, the burden of proof is upon the law  
4 enforcement agency or peace officer to show by a preponderance  
5 of the evidence that the seized item is or will be used in criminal  
6 street gang activity or that return of the item would be likely to  
7 result in endangering the safety of others. All returns of firearms  
8 shall be subject to Section 12021.3.

9 (6) If the person does not request a hearing within 30 days of  
10 the notice or the lawful owner cannot be ascertained, the law  
11 enforcement agency may file a petition that the confiscated firearm,  
12 ammunition, or deadly weapon be declared a nuisance. If the items  
13 are declared to be a nuisance, the law enforcement agency shall  
14 dispose of the items as provided in Section 12028.