

By the Committee on Criminal Justice; and Senator Perry

591-03672-19

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1                                   A bill to be entitled  
2       An act relating to public nuisances; amending s.  
3       60.05, F.S.; revising notice requirements for the  
4       filing of temporary injunctions relating to the  
5       enjoinment of certain nuisances; extending the period  
6       of notice before a lien may attach to certain real  
7       estate; amending s. 823.05, F.S.; making technical  
8       changes; providing that the use of a location by a  
9       criminal gang, criminal gang members, or criminal gang  
10      associates for criminal gang-related activity is a  
11      public nuisance; declaring that any place or premises  
12      that has been used on more than two occasions within a  
13      certain period as the site of specified violations is  
14      a nuisance and may be abated or enjoined pursuant to  
15      specified provisions; providing a property owner an  
16      opportunity to remedy a nuisance before specified  
17      legal actions may be taken against the property under  
18      certain circumstances; providing an effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22       Section 1. Section 60.05, Florida Statutes, is amended to  
23      read:

24       60.05 Abatement of nuisances.—

25       (1) When any nuisance as defined in s. 823.05 exists, the  
26      Attorney General, state attorney, city attorney, county  
27      attorney, or any citizen of the county may sue in the name of  
28      the state on his or her relation to enjoin the nuisance, the  
29      person or persons maintaining it, and the owner or agent of the

591-03672-19

2019668c1

30 building or ground on which the nuisance exists.

31 (2) The court may allow a temporary injunction without bond  
32 on proper proof being made. If it appears by evidence or  
33 affidavit that a temporary injunction should issue, the court,  
34 pending the determination on final hearing, may enjoin any of  
35 the following:

36 (a) The maintaining of a nuisance.~~†~~

37 (b) The operating and maintaining of the place or premises  
38 where the nuisance is maintained.~~†~~

39 (c) The owner or agent of the building or ground upon which  
40 the nuisance exists.~~†~~

41 (d) The conduct, operation, or maintenance of any business  
42 or activity operated or maintained in the building or on the  
43 premises in connection with or incident to the maintenance of  
44 the nuisance.

45  
46 The injunction shall specify the activities enjoined and shall  
47 not preclude the operation of any lawful business not conducive  
48 to the maintenance of the nuisance complained of.

49 (3) (a) The defendant shall be given written notice to abate  
50 the nuisance within 10 days after the issuance of such notice ~~at~~  
51 ~~least 3 days' notice in writing shall be given defendant of the~~  
52 ~~time and place of application for the temporary injunction. The~~  
53 notice must inform the defendant that an application for  
54 temporary injunction may be filed if the nuisance is not abated.  
55 If the nuisance is not timely abated, the defendant must be  
56 given a second written notice that informs the defendant that an  
57 application for a temporary injunction will be filed if the  
58 nuisance is not abated within 15 days after the end of the

591-03672-19

2019668c1

59 initial 10-day period. This notice also must provide the  
60 location where the application will be filed and the time that  
61 it will be filed. If the nuisance is not timely abated as  
62 provided in the second notice, the application for the temporary  
63 injunction must be filed as indicated in the notice.

64 (b) In addition to the information provided in paragraph  
65 (a), each notice must:

66 1. If applicable, describe the building, booth, tent, or  
67 place that is declared a nuisance;

68 2. State the activities that led to the nuisance being  
69 declared;

70 3. State the actions necessary to abate the nuisance; and

71 4. State that costs will be assessed if abatement of the  
72 nuisance is not completed and if there is a determination by the  
73 court that such nuisance exists.

74 (c) The notices provided in this subsection must be sent by  
75 personal service to the owner at his or her address as it  
76 appears on the latest tax assessment roll or to the tenant of  
77 such address. If an address is not found for the owner, the  
78 notices must be sent to the location of the declared nuisance  
79 and displayed prominently and conspicuously at such location.

80 (d) If a nuisance presents a danger of immediate and  
81 irreparable injury to a person or to the safety of a community,  
82 the notice requirements under paragraph (a) are waived, and only  
83 one notice is required, which must inform the defendant that the  
84 application for a temporary injunction will be filed if the  
85 nuisance is not abated within a designated timeframe of between  
86 24 and 72 hours. The notice also must identify the location  
87 where the application will be filed and time that it will be

591-03672-19

2019668c1

88 filed.

89 (4)~~(3)~~ Evidence of the general reputation of the alleged  
90 nuisance and place is admissible to prove the existence of the  
91 nuisance. No action filed by a citizen shall be dismissed unless  
92 the court is satisfied that it should be dismissed. Otherwise  
93 the action shall continue and the state attorney notified to  
94 proceed with it. If the action is brought by a citizen and the  
95 court finds that there was no reasonable ground for the action,  
96 the costs shall be taxed against the citizen.

97 (5)~~(4)~~ On trial if the existence of a nuisance is shown,  
98 the court shall issue a permanent injunction and order the costs  
99 to be paid by the persons establishing or maintaining the  
100 nuisance and shall adjudge that the costs are a lien on all  
101 personal property found in the place of the nuisance and on the  
102 failure of the property to bring enough to pay the costs, then  
103 on the real estate occupied by the nuisance. A No lien may not  
104 ~~shall~~ attach to the real estate of any other than said persons  
105 unless 15 ~~5~~ days' written notice has been given to the owner or  
106 his or her agent who fails to begin to abate the nuisance within  
107 the 15-day period ~~said 5 days~~. In a proceeding abating a  
108 nuisance pursuant to s. 823.10 or s. 823.05, if a tenant has  
109 been convicted of an offense under chapter 893 or s. 796.07, the  
110 court may order the tenant to vacate the property within 72  
111 hours if the tenant and owner of the premises are parties to the  
112 nuisance abatement action and the order will lead to the  
113 abatement of the nuisance.

114 (6)~~(5)~~ If the action was brought by the Attorney General, a  
115 state attorney, or any other officer or agency of state  
116 government; if the court finds either before or after trial that

591-03672-19

2019668c1

117 there was no reasonable ground for the action; and if judgment  
118 is rendered for the defendant, the costs and reasonable  
119 attorney's fees shall be taxed against the state.

120 Section 2. Section 823.05, Florida Statutes, is amended to  
121 read:

122 823.05 Places and groups engaged in certain activities  
123 ~~criminal gang-related activity~~ declared a nuisance; abatement  
124 and enjoinder ~~massage establishments engaged in prohibited~~  
125 ~~activity; may be abated and enjoined.~~

126 (1) A person who erects, establishes, continues, maintains,  
127 owns, or leases any of the following is deemed to be maintaining  
128 a nuisance, and the building, erection, place, tent, or booth,  
129 and the furniture, fixtures, and contents of such structure, are  
130 declared a nuisance, and all such places or persons shall be  
131 abated or enjoined as provided in ss. 60.05 and 60.06:

132 (a) ~~A~~ Whoever shall erect, establish, continue, or  
133 ~~maintain, own or lease any~~ building, booth, tent, or place that  
134 ~~which~~ tends to annoy the community or injure the health of the  
135 community, or becomes ~~become~~ manifestly injurious to the morals  
136 or manners of the people as provided ~~described~~ in s. 823.01. ~~or~~

137 (b) A ~~any~~ house or place of prostitution, assignation, or  
138 lewdness. ~~or~~

139 (c) A ~~place or building~~ in which persons engage in ~~where~~  
140 games of chance ~~are engaged~~ in violation of law. ~~or~~

141 (d) A ~~any~~ place where any law of the state is violated,  
142 ~~shall be deemed guilty of maintaining a nuisance, and the~~  
143 ~~building, erection, place, tent or booth and the furniture,~~  
144 ~~fixtures, and contents are declared a nuisance. All such places~~  
145 ~~or persons shall be abated or enjoined as provided in ss. 60.05~~

591-03672-19

2019668c1

146 and ~~60.06~~.

147 (2) (a) As used in this subsection, the terms "criminal  
148 gang," "criminal gang member," "criminal gang associate," and  
149 "criminal gang-related activity" have the same meanings as  
150 provided in s. 874.03.

151 (b) A criminal gang, criminal gang member, or criminal gang  
152 associate who engages in the commission of criminal gang-related  
153 activity is a public nuisance. Any and all such persons shall be  
154 abated or enjoined as provided in ss. 60.05 and 60.06.

155 (c) The use of a location ~~on two or more occasions~~ by a  
156 criminal gang, criminal gang members, or criminal gang  
157 associates for the purpose of engaging in criminal gang-related  
158 activity is a public nuisance. Such use of a location as a  
159 public nuisance shall be abated or enjoined as provided in ss.  
160 60.05 and 60.06.

161 (d) Nothing in this subsection shall prevent a local  
162 governing body from adopting and enforcing laws consistent with  
163 this chapter relating to criminal gangs and gang violence. Where  
164 local laws duplicate or supplement this chapter, this chapter  
165 shall be construed as providing alternative remedies and not as  
166 preempting the field.

167 (e) The state, through the Department of Legal Affairs or  
168 any state attorney, or any of the state's agencies,  
169 instrumentalities, subdivisions, or municipalities having  
170 jurisdiction over conduct in violation of a provision of this  
171 chapter may institute civil proceedings under this subsection.  
172 In any action brought under this subsection, the circuit court  
173 shall proceed as soon as practicable to the hearing and  
174 determination. Pending final determination, the circuit court

591-03672-19

2019668c1

175 may at any time enter such injunctions, prohibitions, or  
176 restraining orders, or take such actions, including the  
177 acceptance of satisfactory performance bonds, as the court may  
178 deem proper.

179 (3) A massage establishment as defined in s. 480.033(7)  
180 that operates in violation of s. 480.0475 or s. 480.0535(2) is  
181 declared a nuisance and may be abated or enjoined as provided in  
182 ss. 60.05 and 60.06.

183 (4) (a) Any place or premises that has been used on more  
184 than two occasions within a 6-month period as the site of any of  
185 the following violations is declared a nuisance and may be  
186 abated or enjoined as provided in ss. 60.05 and 60.06:

187 1. Section 812.019, relating to dealing in stolen property.

188 2. Section 784.011, s. 784.021, s. 784.03, or s. 784.045,  
189 relating to assault and battery.

190 3. Section 810.02, relating to burglary.

191 4. Section 812.014, relating to theft.

192 5. Section 812.131, relating to robbery by sudden  
193 snatching.

194 (b) Notwithstanding any other law, a rental property that  
195 is declared a nuisance under this subsection may not be abated  
196 or subject to forfeiture under the Florida Contraband Forfeiture  
197 Act if the nuisance was committed by someone other than the  
198 owner of the property and the property owner commences  
199 rehabilitation of the property within 30 days after the property  
200 is declared a nuisance and completes the rehabilitation within a  
201 reasonable time thereafter.

202 Section 3. This act shall take effect July 1, 2019.