

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 enjoinder 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; declaring 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 during a
13 certain time period as the site of specified
14 violations is a nuisance and may be abated or enjoined
15 pursuant to specified provisions; providing a property
16 owner an opportunity to remedy a nuisance before
17 specified legal actions may be taken against the
18 property under certain circumstances; amending s.
19 893.138, F.S.; declaring that any place or premises
20 that has been used on more than two occasions during a
21 certain time period as the site of any combination of
22 specified violations is a nuisance and may be abated
23 pursuant to specified provisions; prohibiting a rental
24 property from being abated or subject to forfeiture
25 under certain conditions; providing an effective date.

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

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

60.05 Abatement of nuisances.—

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

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

- (a) The maintaining of a nuisance. ~~†~~
- (b) The operating and maintaining of the place or premises where the nuisance is maintained. ~~†~~
- (c) The owner or agent of the building or ground upon which the nuisance exists. ~~†~~
- (d) The conduct, operation, or maintenance of any business or activity operated or maintained in the building or on the premises in connection with or incident to the maintenance of

51 | the nuisance.

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53 | The injunction shall specify the activities enjoined and may
 54 | ~~shall~~ not preclude the operation of any lawful business not
 55 | conducive to the maintenance of the nuisance complained of. ~~At~~
 56 | ~~least 3 days' notice in writing shall be given defendant of the~~
 57 | ~~time and place of application for the temporary injunction.~~

58 | (3) (a) The defendant shall be given written notice to
 59 | abate the nuisance within 10 days after the issuance of the
 60 | notice. The notice must inform the defendant that an application
 61 | for temporary injunction may be filed if the nuisance is not
 62 | timely abated. If the nuisance is not timely abated, the
 63 | defendant must be given a second written notice that informs the
 64 | defendant that an application for a temporary injunction will be
 65 | filed if the nuisance is not abated within 15 days after the end
 66 | of the initial 10-day period. However, if the defendant responds
 67 | to the first notice in writing within the initial 10-day period,
 68 | and in such response alleges and provides proof that:

69 | 1. Nuisance abatement involves compliance with another law
 70 | of this state and the requirements of such law make nuisance
 71 | abatement within 10 days impossible; or

72 | 2. The terms of an executed contract to perform services
 73 | necessary to abate the nuisance require more than 10 days to
 74 | complete,

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76 | the defendant must be given a second written notice providing
 77 | the defendant with an extended time period to abate the nuisance
 78 | sufficient to comply with such other law or contract terms.

79 | (b) A second notice sent under paragraph (a) must also
 80 | provide the location where the application will be filed and the
 81 | time when it will be filed. If the nuisance is not timely abated
 82 | as provided in the second notice, the application for the
 83 | temporary injunction must be filed as indicated in the notice.

84 | (c) In addition to the information required under
 85 | paragraphs (a) and (b), each notice must:

86 | 1. If applicable, describe the building, booth, tent, or
 87 | place that is an alleged nuisance.

88 | 2. State the activities that led to the nuisance
 89 | allegations.

90 | 3. State the actions necessary to abate the nuisance.

91 | 4. State that costs will be assessed if abatement of the
 92 | nuisance is not completed and if the court determines that the
 93 | nuisance exists.

94 | (d) The notices provided in this subsection must be sent
 95 | by personal service to the owner at his or her address as it
 96 | appears on the latest tax assessment roll or to the tenant of
 97 | such address. If an address is not found for the owner, the
 98 | notices must be sent to the location of the alleged nuisance and
 99 | displayed prominently and conspicuously at that location.

100 | (4)~~(3)~~ Evidence of the general reputation of the alleged

101 nuisance and place is admissible to prove the existence of the
102 nuisance. An ~~No~~ action filed by a citizen may not ~~shall~~ be
103 dismissed unless the court is satisfied that it should be
104 dismissed. Otherwise the action shall continue and the state
105 attorney notified to proceed with it. If the action is brought
106 by a citizen and the court finds that there was no reasonable
107 ground for the action, the costs shall be taxed against the
108 citizen.

109 (5)~~(4)~~ On trial if the existence of a nuisance is shown,
110 the court shall issue a permanent injunction and order the costs
111 to be paid by the persons establishing or maintaining the
112 nuisance and shall adjudge that the costs are a lien on all
113 personal property found in the place of the nuisance and on the
114 failure of the property to bring enough to pay the costs, then
115 on the real estate occupied by the nuisance. A ~~No~~ lien may not
116 ~~shall~~ attach to the real estate of any other than such ~~said~~
117 persons unless a second ~~5 days~~ written notice has been given in
118 accordance with paragraph (3) (a) to the owner or his or her
119 agent who fails to begin to abate the nuisance within the time
120 specified therein ~~said 5 days~~. In a proceeding abating a
121 nuisance pursuant to s. 823.10 or s. 823.05, if a tenant has
122 been convicted of an offense under chapter 893 or s. 796.07, the
123 court may order the tenant to vacate the property within 72
124 hours if the tenant and owner of the premises are parties to the
125 nuisance abatement action and the order will lead to the

126 abatement of the nuisance.

127 (6)~~(5)~~ If the action was brought by the Attorney General,
 128 a state attorney, or any other officer or agency of state
 129 government; if the court finds either before or after trial that
 130 there was no reasonable ground for the action; and if judgment
 131 is rendered for the defendant, the costs and reasonable attorney
 132 ~~attorney's~~ fees shall be taxed against the state.

133 Section 2. Section 823.05, Florida Statutes, is amended to
 134 read:

135 823.05 Places and groups engaged in certain activities
 136 ~~criminal gang-related activity~~ declared a nuisance; abatement
 137 and enjoinder ~~massage establishments engaged in prohibited~~
 138 ~~activity; may be abated and enjoined.~~

139 (1) A person who erects, establishes, continues,
 140 maintains, owns, or leases any of the following is deemed to be
 141 maintaining a nuisance, and the building, erection, place, tent,
 142 or booth, and the furniture, fixtures, and contents of such
 143 structure, are declared a nuisance, and all such places or
 144 persons shall be abated or enjoined as provided in ss. 60.05 and
 145 60.06:

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

151 (b) A ~~any~~ house or place of prostitution, assignation, or
 152 lewdness. ~~or~~

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

155 (d) A ~~any~~ place where any law of the state is violated,
 156 ~~shall be deemed guilty of maintaining a nuisance, and the~~
 157 ~~building, erection, place, tent or booth and the furniture,~~
 158 ~~fixtures, and contents are declared a nuisance. All such places~~
 159 ~~or persons shall be abated or enjoined as provided in ss. 60.05~~
 160 ~~and 60.06.~~

161 (2) (a) As used in this subsection, the terms "criminal
 162 gang," "criminal gang member," "criminal gang associate," and
 163 "criminal gang-related activity" have the same meanings as
 164 provided in s. 874.03.

165 (b) A criminal gang, criminal gang member, or criminal
 166 gang associate who engages in the commission of criminal gang-
 167 related activity is a public nuisance. ~~Any and~~ All such persons
 168 shall be abated or enjoined as provided in ss. 60.05 and 60.06.

169 (c) The use of a location ~~on two or more occasions~~ by a
 170 criminal gang, criminal gang members, or criminal gang
 171 associates for the purpose of engaging in criminal gang-related
 172 activity is a public nuisance. Such use of a location as a
 173 public nuisance shall be abated or enjoined as provided in ss.
 174 60.05 and 60.06.

175 (d) ~~Nothing in~~ This subsection does not ~~shall~~ prevent a

176 local governing body from adopting and enforcing laws consistent
 177 with this chapter relating to criminal gangs and gang violence.
 178 Where local laws duplicate or supplement this chapter, this
 179 chapter shall be construed as providing alternative remedies and
 180 not as preempting the field.

181 (e) The state, through the Department of Legal Affairs or
 182 any state attorney, or any of the state's agencies,
 183 instrumentalities, subdivisions, or municipalities having
 184 jurisdiction over conduct in violation of a provision of this
 185 chapter may institute civil proceedings under this subsection.
 186 In any action brought under this subsection, the circuit court
 187 shall proceed as soon as practicable to the hearing and
 188 determination. Pending final determination, the circuit court
 189 may at any time enter such injunctions, prohibitions, or
 190 restraining orders, or take such actions, including the
 191 acceptance of satisfactory performance bonds, as the court may
 192 deem proper.

193 (3) A massage establishment as defined in s. 480.033(7)
 194 which ~~that~~ operates in violation of s. 480.0475 or s.
 195 480.0535(2) is declared a nuisance and may be abated or enjoined
 196 as provided in ss. 60.05 and 60.06.

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

201 1. Section 812.019, relating to dealing in stolen
 202 property.

203 2. Section 784.011, s. 784.021, s. 784.03, or s. 784.045,
 204 relating to assault and battery.

205 3. Section 810.02, relating to burglary.

206 4. Section 812.014, relating to theft.

207 5. Section 812.131, relating to robbery by sudden
 208 snatching.

209 (b) Notwithstanding any other law, a rental property that
 210 is declared a nuisance under this subsection may not be abated
 211 or subject to forfeiture under the Florida Contraband Forfeiture
 212 Act if the nuisance was committed by someone other than the
 213 owner of the property and the property owner commences
 214 rehabilitation of the property within 30 days after the property
 215 is declared a nuisance and completes the rehabilitation within a
 216 reasonable time thereafter.

217 Section 3. Section 893.138, Florida Statutes, is amended
 218 to read:

219 893.138 Local administrative action to abate certain
 220 activities declared ~~drug-related, prostitution-related, or~~
 221 ~~stolen-property-related~~ public nuisances ~~and criminal gang~~
 222 ~~activity.~~—

223 (1) It is the intent of this section to promote, protect,
 224 and improve the health, safety, and welfare of the citizens of
 225 the counties and municipalities of this state by authorizing the

226 creation of administrative boards with authority to impose
 227 administrative fines and other noncriminal penalties in order to
 228 provide an equitable, expeditious, effective, and inexpensive
 229 method of enforcing ordinances in counties and municipalities
 230 under circumstances when a pending or repeated violation
 231 continues to exist.

232 (2) Any place or premises that has been used:

233 (a) On more than two occasions within a 6-month period, as
 234 the site of a violation of s. 796.07;

235 (b) On more than two occasions within a 6-month period, as
 236 the site of the unlawful sale, delivery, manufacture, or
 237 cultivation of any controlled substance;

238 (c) On one occasion as the site of the unlawful possession
 239 of a controlled substance, where such possession constitutes a
 240 felony and that has been previously used on more than one
 241 occasion as the site of the unlawful sale, delivery,
 242 manufacture, or cultivation of any controlled substance;

243 (d) By a criminal gang for the purpose of conducting
 244 criminal gang activity as defined by s. 874.03;

245 (e) On more than two occasions within a 6-month period, as
 246 the site of a violation of s. 812.019 relating to dealing in
 247 stolen property; ~~or~~

248 (f) On two or more occasions within a 6-month period, as
 249 the site of a violation of chapter 499; or

250 (g) On more than two occasions within a 6-month period, as

251 the site of a violation of any combination of the following:
252 1. Section 782.04, relating to murder;
253 2. Section 782.051, relating to attempted felony murder;
254 3. Section 784.045(1)(a)2., relating to aggravated battery
255 with a deadly weapon; or
256 4. Section 784.021(1)(a), relating to aggravated assault
257 with a deadly weapon without intent to kill,
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259 may be declared to be a public nuisance, and such nuisance may
260 be abated pursuant to the procedures provided in this section.
261 (3) Any pain-management clinic, as described in s.
262 458.3265 or s. 459.0137, which has been used on more than two
263 occasions within a 6-month period as the site of a violation of:
264 (a) Section 784.011, s. 784.021, s. 784.03, or s. 784.045,
265 relating to assault and battery;
266 (b) Section 810.02, relating to burglary;
267 (c) Section 812.014, relating to theft;
268 (d) Section 812.131, relating to robbery by sudden
269 snatching; or
270 (e) Section 893.13, relating to the unlawful distribution
271 of controlled substances,
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273 may be declared to be a public nuisance, and such nuisance may
274 be abated pursuant to the procedures provided in this section.
275 (4) Any county or municipality may, by ordinance, create

276 an administrative board to hear complaints regarding the
277 nuisances described in subsection (2). Any employee, officer, or
278 resident of the county or municipality may bring a complaint
279 before the board after giving not less than 3 days' written
280 notice of such complaint to the owner of the place or premises
281 at his or her last known address. After a hearing in which the
282 board may consider any evidence, including evidence of the
283 general reputation of the place or premises, and at which the
284 owner of the premises shall have an opportunity to present
285 evidence in his or her defense, the board may declare the place
286 or premises to be a public nuisance as described in subsection
287 (2).

288 (5) If the board declares a place or premises to be a
289 public nuisance, it may enter an order requiring the owner of
290 such place or premises to adopt such procedure as may be
291 appropriate under the circumstances to abate any such nuisance
292 or it may enter an order immediately prohibiting:

293 (a) The maintaining of the nuisance;

294 (b) The operating or maintaining of the place or premises,
295 including the closure of the place or premises or any part
296 thereof; or

297 (c) The conduct, operation, or maintenance of any business
298 or activity on the premises which is conducive to such nuisance.

299 (6) An order entered under subsection (5) shall expire
300 after 1 year or at such earlier time as is stated in the order.

301 (7) An order entered under subsection (5) may be enforced
302 pursuant to the procedures contained in s. 120.69. This
303 subsection does not subject a municipality that creates a board
304 under this section, or the board so created, to any other
305 provision of chapter 120.

306 (8) The board may bring a complaint under s. 60.05 seeking
307 temporary and permanent injunctive relief against any nuisance
308 described in subsection (2).

309 (9) This section does not restrict the right of any person
310 to proceed under s. 60.05 against any public nuisance.

311 (10) As used in this section, the term "controlled
312 substance" includes any substance sold in lieu of a controlled
313 substance in violation of s. 817.563 or any imitation controlled
314 substance defined in s. 817.564.

315 (11) The provisions of this section may be supplemented by
316 a county or municipal ordinance. The ordinance may include, but
317 is not limited to, provisions that establish additional
318 penalties for public nuisances, including fines not to exceed
319 \$250 per day; provide for the payment of reasonable costs,
320 including reasonable attorney fees associated with
321 investigations of and hearings on public nuisances; provide for
322 continuing jurisdiction for a period of 1 year over any place or
323 premises that has been or is declared to be a public nuisance;
324 establish penalties, including fines not to exceed \$500 per day
325 for recurring public nuisances; provide for the recording of

326 orders on public nuisances so that notice must be given to
327 subsequent purchasers, successors in interest, or assigns of the
328 real property that is the subject of the order; provide that
329 recorded orders on public nuisances may become liens against the
330 real property that is the subject of the order; and provide for
331 the foreclosure of property subject to a lien and the recovery
332 of all costs, including reasonable attorney fees, associated
333 with the recording of orders and foreclosure. No lien created
334 pursuant to the provisions of this section may be foreclosed on
335 real property which is a homestead under s. 4, Art. X of the
336 State Constitution. Where a local government seeks to bring an
337 administrative action, based on a stolen property nuisance,
338 against a property owner operating an establishment where
339 multiple tenants, on one site, conduct their own retail
340 business, the property owner shall not be subject to a lien
341 against his or her property or the prohibition of operation
342 provision if the property owner evicts the business declared to
343 be a nuisance within 90 days after notification by registered
344 mail to the property owner of a second stolen property
345 conviction of the tenant. The total fines imposed pursuant to
346 the authority of this section shall not exceed \$15,000. Nothing
347 contained within this section prohibits a county or municipality
348 from proceeding against a public nuisance by any other means.

349 (12) Notwithstanding any other law, a rental property that
350 is declared a nuisance under this section may not be abated or

351 subject to forfeiture under the Florida Contraband Forfeiture
352 Act if the nuisance was committed by someone other than the
353 property owner and the property owner commences rehabilitation
354 of the property within 30 days after the property is declared a
355 nuisance and completes the rehabilitation within a reasonable
356 time thereafter.

357 Section 4. This act shall take effect July 1, 2020.