

1 A bill to be entitled
2 An act relating to public nuisances; amending s.
3 60.05, F.S.; authorizing sheriffs to sue to enjoin
4 nuisances; revising notice requirements for the filing
5 of temporary injunctions relating to the enjoinder of
6 certain nuisances; extending the period of notice
7 before a lien may attach to certain real estate;
8 amending s. 823.05, F.S.; making technical changes;
9 declaring that the use of a location by a criminal
10 gang, criminal gang members, or criminal gang
11 associates for criminal gang-related activity is a
12 public nuisance; declaring that any place or premises
13 that has been used on more than two occasions during a
14 certain time period as the site of specified
15 violations is a nuisance and may be abated or enjoined
16 pursuant to specified provisions; providing a property
17 owner an opportunity to remedy a nuisance before
18 specified legal actions may be taken against the
19 property under certain circumstances; amending s.
20 893.138, F.S.; declaring that any place or premises
21 that has been used on more than two occasions during a
22 certain time period as the site of any combination of
23 specified violations is a nuisance and may be abated
24 pursuant to specified provisions; prohibiting a rental
25 property from being abated or subject to forfeiture

26 | under certain conditions; providing an effective date.

27 |

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

29 |

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

32 | 60.05 Abatement of nuisances.—

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

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

44 | (a) The maintaining of a nuisance. †

45 | (b) The operating and maintaining of the place or premises
46 | where the nuisance is maintained. †

47 | (c) The owner or agent of the building or ground upon
48 | which the nuisance exists. †

49 | (d) The conduct, operation, or maintenance of any business
50 | or activity operated or maintained in the building or on the

51 premises in connection with or incident to the maintenance of
52 the nuisance.

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

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

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

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

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

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

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

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

89 2. State the activities that led to the nuisance
90 allegations.

91 3. State the actions necessary to abate the nuisance.

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

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

101 (4)~~(3)~~ Evidence of the general reputation of the alleged
102 nuisance and place is admissible to prove the existence of the
103 nuisance. An ~~No~~ action filed by a citizen may not ~~shall~~ be
104 dismissed unless the court is satisfied that it should be
105 dismissed. Otherwise the action shall continue and the state
106 attorney notified to proceed with it. If the action is brought
107 by a citizen and the court finds that there was no reasonable
108 ground for the action, the costs shall be taxed against the
109 citizen.

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

126 nuisance abatement action and the order will lead to the
 127 abatement of the nuisance.

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

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

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

140 (1) A person who erects, establishes, continues,
 141 maintains, owns, or leases any of the following is deemed to be
 142 maintaining a nuisance, and the building, erection, place, tent,
 143 or booth, and the furniture, fixtures, and contents of such
 144 structure, are declared a nuisance, and all such places or
 145 persons shall be abated or enjoined as provided in ss. 60.05 and
 146 60.06:

147 (a) ~~A~~ Whoever shall erect, establish, continue, or
 148 ~~maintain, own or lease any~~ building, booth, tent, or place that
 149 ~~which~~ tends to annoy the community or injure the health of the
 150 community, or becomes ~~become~~ manifestly injurious to the morals

151 or manners of the people as provided ~~described~~ in s. 823.01, ~~or~~

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

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

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

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

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

170 (c) The use of a location ~~on two or more occasions~~ by a
171 criminal gang, criminal gang members, or criminal gang
172 associates for the purpose of engaging in criminal gang-related
173 activity is a public nuisance. Such use of a location as a
174 public nuisance shall be abated or enjoined as provided in ss.
175 60.05 and 60.06.

176 (d) ~~Nothing in~~ This subsection does not shall prevent a
 177 local governing body from adopting and enforcing laws consistent
 178 with this chapter relating to criminal gangs and gang violence.
 179 Where local laws duplicate or supplement this chapter, this
 180 chapter shall be construed as providing alternative remedies and
 181 not as preempting the field.

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

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

198 (4) (a) Any place or premises that has been used on more
 199 than two occasions within a 6-month period as the site of any of
 200 the following violations is declared a nuisance and may be

201 abated or enjoined as provided in ss. 60.05 and 60.06:

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

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

206 3. Section 810.02, relating to burglary.

207 4. Section 812.014, relating to theft.

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

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

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

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

224 (1) It is the intent of this section to promote, protect,
225 and improve the health, safety, and welfare of the citizens of

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

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

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

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

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

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

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

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

251 (g) On more than two occasions within a 6-month period, as
 252 the site of a violation of any combination of the following:

- 253 1. Section 782.04, relating to murder;
- 254 2. Section 782.051, relating to attempted felony murder;
- 255 3. Section 784.045(1)(a)2., relating to aggravated battery
 256 with a deadly weapon; or
- 257 4. Section 784.021(1)(a), relating to aggravated assault
 258 with a deadly weapon without intent to kill,

259
 260 may be declared to be a public nuisance, and such nuisance may
 261 be abated pursuant to the procedures provided in this section.

262 (3) Any pain-management clinic, as described in s.
 263 458.3265 or s. 459.0137, which has been used on more than two
 264 occasions within a 6-month period as the site of a violation of:

- 265 (a) Section 784.011, s. 784.021, s. 784.03, or s. 784.045,
 266 relating to assault and battery;
- 267 (b) Section 810.02, relating to burglary;
- 268 (c) Section 812.014, relating to theft;
- 269 (d) Section 812.131, relating to robbery by sudden
 270 snatching; or
- 271 (e) Section 893.13, relating to the unlawful distribution
 272 of controlled substances,

273
 274 may be declared to be a public nuisance, and such nuisance may
 275 be abated pursuant to the procedures provided in this section.

276 (4) Any county or municipality may, by ordinance, create
277 an administrative board to hear complaints regarding the
278 nuisances described in subsection (2). Any employee, officer, or
279 resident of the county or municipality may bring a complaint
280 before the board after giving not less than 3 days' written
281 notice of such complaint to the owner of the place or premises
282 at his or her last known address. After a hearing in which the
283 board may consider any evidence, including evidence of the
284 general reputation of the place or premises, and at which the
285 owner of the premises shall have an opportunity to present
286 evidence in his or her defense, the board may declare the place
287 or premises to be a public nuisance as described in subsection
288 (2).

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

294 (a) The maintaining of the nuisance;

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

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

300 (6) An order entered under subsection (5) shall expire

301 after 1 year or at such earlier time as is stated in the order.

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

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

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

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

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

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

350 | (12) Notwithstanding any other law, a rental property that

351 is declared a nuisance under this section may not be abated or
352 subject to forfeiture under the Florida Contraband Forfeiture
353 Act if the nuisance was committed by someone other than the
354 property owner and the property owner commences rehabilitation
355 of the property within 30 days after the property is declared a
356 nuisance and completes the rehabilitation within a reasonable
357 time thereafter.

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