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CS/CS/HB 625

2020 Legislature

1  
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

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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

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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,

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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.

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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

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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

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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.

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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



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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

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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

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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.

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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

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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

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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

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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.