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LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete lines 64 - 338

and insert:

initial 10-day period. However, if the defendant responds to the first notice in writing within the initial 10-day period, and in such response alleges and provides proof that:

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



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11 2. The terms of an executed contract to perform services
12 necessary to abate the nuisance require more than 10 days to
13 complete,

14
15 the defendant must be given a second written notice providing
16 the defendant with an extended time period to abate the nuisance
17 sufficient to comply with such other law or contract terms.

18 (b) A second notice sent under paragraph (a) must also
19 provide the location where the application will be filed and the
20 time when it will be filed. If the nuisance is not timely abated
21 as provided in the second notice, the application for the
22 temporary injunction must be filed as indicated in the notice.

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

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

27 2. State the activities that led to the nuisance
28 allegations.

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

30 4. State that costs will be assessed if abatement of the
31 nuisance is not completed and if the court determines that the
32 nuisance exists.

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

39 ~~(4)~~ Evidence of the general reputation of the alleged



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40 nuisance and place is admissible to prove the existence of the
41 nuisance. An ~~No~~ action filed by a citizen may not ~~shall~~ be
42 dismissed unless the court is satisfied that it should be
43 dismissed. Otherwise the action shall continue and the state
44 attorney notified to proceed with it. If the action is brought
45 by a citizen and the court finds that there was no reasonable
46 ground for the action, the costs shall be taxed against the
47 citizen.

48 (5)~~(4)~~ On trial if the existence of a nuisance is shown,
49 the court shall issue a permanent injunction and order the costs
50 to be paid by the persons establishing or maintaining the
51 nuisance and shall adjudge that the costs are a lien on all
52 personal property found in the place of the nuisance and on the
53 failure of the property to bring enough to pay the costs, then
54 on the real estate occupied by the nuisance. A ~~No~~ lien may not
55 ~~shall~~ attach to the real estate of any other than such ~~said~~
56 persons unless a second ~~5 days'~~ written notice has been given in
57 accordance with paragraph (3) (a) to the owner or his or her
58 agent who fails to begin to abate the nuisance within the time
59 specified therein ~~said 5 days~~. In a proceeding abating a
60 nuisance pursuant to s. 823.10 or s. 823.05, if a tenant has
61 been convicted of an offense under chapter 893 or s. 796.07, the
62 court may order the tenant to vacate the property within 72
63 hours if the tenant and owner of the premises are parties to the
64 nuisance abatement action and the order will lead to the
65 abatement of the nuisance.

66 (6)~~(5)~~ If the action was brought by the Attorney General, a
67 state attorney, or any other officer or agency of state
68 government; if the court finds either before or after trial that



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69 there was no reasonable ground for the action; and if judgment
70 is rendered for the defendant, the costs and reasonable attorney
71 ~~attorney's~~ fees shall be taxed against the state.

72 Section 2. Section 823.05, Florida Statutes, is amended to
73 read:

74 823.05 Places and groups engaged in certain activities
75 ~~criminal gang-related activity~~ declared a nuisance; abatement
76 and enjoinder ~~massage establishments engaged in prohibited~~
77 ~~activity; may be abated and enjoined.~~

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

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

89 (b) A ~~any~~ house or place of prostitution, assignation, or
90 lewdness. ~~or~~

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

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



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98 ~~and 60.06.~~

99 (2) (a) As used in this subsection, the terms "criminal
100 gang," "criminal gang member," "criminal gang associate," and
101 "criminal gang-related activity" have the same meanings as
102 provided in s. 874.03.

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

107 (c) The use of a location ~~on two or more occasions~~ by a
108 criminal gang, criminal gang members, or criminal gang
109 associates for the purpose of engaging in criminal gang-related
110 activity is a public nuisance. Such use of a location as a
111 public nuisance shall be abated or enjoined as provided in ss.
112 60.05 and 60.06.

113 (d) ~~Nothing in~~ This subsection does not ~~shall~~ prevent a
114 local governing body from adopting and enforcing laws consistent
115 with this chapter relating to criminal gangs and gang violence.
116 Where local laws duplicate or supplement this chapter, this
117 chapter shall be construed as providing alternative remedies and
118 not as preempting the field.

119 (e) The state, through the Department of Legal Affairs or
120 any state attorney, or any of the state's agencies,
121 instrumentalities, subdivisions, or municipalities having
122 jurisdiction over conduct in violation of a provision of this
123 chapter may institute civil proceedings under this subsection.
124 In any action brought under this subsection, the circuit court
125 shall proceed as soon as practicable to the hearing and
126 determination. Pending final determination, the circuit court



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127 may at any time enter such injunctions, prohibitions, or
128 restraining orders, or take such actions, including the
129 acceptance of satisfactory performance bonds, as the court may
130 deem proper.

131 (3) A massage establishment as defined in s. 480.033(7)
132 which ~~that~~ operates in violation of s. 480.0475 or s.
133 480.0535(2) is declared a nuisance and may be abated or enjoined
134 as provided in ss. 60.05 and 60.06.

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

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

140 2. Section 784.011, s. 784.021, s. 784.03, or s. 784.045,
141 relating to assault and battery.

142 3. Section 810.02, relating to burglary.

143 4. Section 812.014, relating to theft.

144 5. Section 812.131, relating to robbery by sudden
145 snatching.

146 (b) Notwithstanding any other law, a rental property that
147 is declared a nuisance under this subsection may not be abated
148 or subject to forfeiture under the Florida Contraband Forfeiture
149 Act if the nuisance was committed by someone other than the
150 owner of the property and the property owner commences
151 rehabilitation of the property within 30 days after the property
152 is declared a nuisance and completes the rehabilitation within a
153 reasonable time thereafter.

154 Section 3. Section 893.138, Florida Statutes, is amended to
155 read:



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156 893.138 Local administrative action to abate certain
157 activities declared ~~drug-related, prostitution-related, or~~
158 ~~stolen-property-related~~ public nuisances ~~and criminal gang~~
159 ~~activity.~~-

160 (1) It is the intent of this section to promote, protect,
161 and improve the health, safety, and welfare of the citizens of
162 the counties and municipalities of this state by authorizing the
163 creation of administrative boards with authority to impose
164 administrative fines and other noncriminal penalties in order to
165 provide an equitable, expeditious, effective, and inexpensive
166 method of enforcing ordinances in counties and municipalities
167 under circumstances when a pending or repeated violation
168 continues to exist.

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

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

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

175 (c) On one occasion as the site of the unlawful possession
176 of a controlled substance, where such possession constitutes a
177 felony and that has been previously used on more than one
178 occasion as the site of the unlawful sale, delivery,
179 manufacture, or cultivation of any controlled substance;

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

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



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

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

189 1. Section 782.04, relating to murder;

190 2. Section 782.051, relating to attempted felony murder;

191 3. Section 784.045(1)(a)2., relating to aggravated battery
192 with a deadly weapon; or

193 4. Section 784.021(1)(a), relating to aggravated assault
194 with a deadly weapon without intent to kill,

195
196 may be declared to be a public nuisance, and such nuisance may
197 be abated pursuant to the procedures provided in this section.

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

201 (a) Section 784.011, s. 784.021, s. 784.03, or s. 784.045,
202 relating to assault and battery;

203 (b) Section 810.02, relating to burglary;

204 (c) Section 812.014, relating to theft;

205 (d) Section 812.131, relating to robbery by sudden
206 snatching; or

207 (e) Section 893.13, relating to the unlawful distribution
208 of controlled substances,

209
210 may be declared to be a public nuisance, and such nuisance may
211 be abated pursuant to the procedures provided in this section.

212 (4) Any county or municipality may, by ordinance, create an
213 administrative board to hear complaints regarding the nuisances



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214 described in subsection (2). Any employee, officer, or resident
215 of the county or municipality may bring a complaint before the
216 board after giving not less than 3 days' written notice of such
217 complaint to the owner of the place or premises at his or her
218 last known address. After a hearing in which the board may
219 consider any evidence, including evidence of the general
220 reputation of the place or premises, and at which the owner of
221 the premises shall have an opportunity to present evidence in
222 his or her defense, the board may declare the place or premises
223 to be a public nuisance as described in subsection (2).

224 (5) If the board declares a place or premises to be a
225 public nuisance, it may enter an order requiring the owner of
226 such place or premises to adopt such procedure as may be
227 appropriate under the circumstances to abate any such nuisance
228 or it may enter an order immediately prohibiting:

229 (a) The maintaining of the nuisance;

230 (b) The operating or maintaining of the place or premises,
231 including the closure of the place or premises or any part
232 thereof; or

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

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

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

242 (8) The board may bring a complaint under s. 60.05 seeking



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243 temporary and permanent injunctive relief against any nuisance
244 described in subsection (2).

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

247 (10) As used in this section, the term "controlled
248 substance" includes any substance sold in lieu of a controlled
249 substance in violation of s. 817.563 or any imitation controlled
250 substance defined in s. 817.564.

251 (11) The provisions of this section may be supplemented by
252 a county or municipal ordinance. The ordinance may include, but
253 is not limited to, provisions that establish additional
254 penalties for public nuisances, including fines not to exceed
255 \$250 per day; provide for the payment of reasonable costs,
256 including reasonable attorney fees associated with
257 investigations of and hearings on public nuisances; provide for
258 continuing jurisdiction for a period of 1 year over any place or
259 premises that has been or is declared to be a public nuisance;
260 establish penalties, including fines not to exceed \$500 per day
261 for recurring public nuisances; provide for the recording of
262 orders on public nuisances so that notice must be given to
263 subsequent purchasers, successors in interest, or assigns of the
264 real property that is the subject of the order; provide that
265 recorded orders on public nuisances may become liens against the
266 real property that is the subject of the order; and provide for
267 the foreclosure of property subject to a lien and the recovery
268 of all costs, including reasonable attorney fees, associated
269 with the recording of orders and foreclosure. No lien created
270 pursuant to the provisions of this section may be foreclosed on
271 real property which is a homestead under s. 4, Art. X of the



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272 State Constitution. Where a local government seeks to bring an
273 administrative action, based on a stolen property nuisance,
274 against a property owner operating an establishment where
275 multiple tenants, on one site, conduct their own retail
276 business, the property owner shall not be subject to a lien
277 against his or her property or the prohibition of operation
278 provision if the property owner evicts the business declared to
279 be a nuisance within 90 days after notification by registered
280 mail to the property owner of a second stolen property
281 conviction of the tenant. The total fines imposed pursuant to
282 the authority of this section shall not exceed \$15,000. Nothing
283 contained within this section prohibits a county or municipality
284 from proceeding against a public nuisance by any other means.

285 (12) Notwithstanding any other law, a rental property that
286 is declared a nuisance under this section may not be abated or
287 subject to forfeiture under the Florida Contraband Forfeiture
288 Act if the nuisance was committed by someone other than the
289 owner of the property and the property owner commences
290 rehabilitation of the property within 30 days after the property
291 is declared a nuisance and completes the rehabilitation within a
292 reasonable time thereafter.

293
294 ===== T I T L E A M E N D M E N T =====

295 And the title is amended as follows:

296 Delete line 23

297 and insert:

298 specified procedures; providing a property owner an
299 opportunity to remedy a nuisance before specified
300 legal actions may be taken against the property under



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301

certain circumstances; providing an effective date.