

By Senator Perry

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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; 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 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; amending s. 893.138, F.S.;
19 declaring that any place or premises that has been
20 used on more than two occasions during a certain
21 period as the site of any combination of specified
22 violations is a nuisance and may be abated pursuant to
23 specified procedures; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Section 60.05, Florida Statutes, is amended to
28 read:

29 60.05 Abatement of nuisances.—

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

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

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

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

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

46 (d) The conduct, operation, or maintenance of any business
47 or activity operated or maintained in the building or on the
48 premises in connection with or incident to the maintenance of
49 the nuisance.

50
51 The injunction shall specify the activities enjoined and may
52 ~~shall~~ not preclude the operation of any lawful business not
53 conducive to the maintenance of the nuisance complained of. ~~At~~
54 ~~least 3 days' notice in writing shall be given defendant of the~~
55 ~~time and place of application for the temporary injunction.~~

56 (3) (a) The defendant shall be given written notice to abate
57 the nuisance within 10 days after the issuance of the notice.
58 The notice must inform the defendant that an application for

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59 temporary injunction may be filed if the nuisance is not timely
60 abated. If the nuisance is not timely abated, the defendant must
61 be given a second written notice that informs the defendant that
62 an application for a temporary injunction will be filed if the
63 nuisance is not abated within 15 days after the end of the
64 initial 10-day period. This notice also must provide the
65 location where the application will be filed and the time when
66 it will be filed. If the nuisance is not timely abated as
67 provided in the second notice, the application for the temporary
68 injunction must be filed as indicated in the notice.

69 (b) In addition to the information required under paragraph
70 (a), each notice must:

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

73 2. State the activities that led to the nuisance being
74 declared;

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

76 4. State that costs will be assessed if abatement of the
77 nuisance is not completed and if the court determines that the
78 nuisance exists.

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

85 (d) If a nuisance presents a danger of immediate and
86 irreparable injury to a person or to the safety of a community,
87 the notice requirements under paragraph (a) are waived, and only

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88 one notice is required, which must inform the defendant that the
89 application for a temporary injunction will be filed if the
90 nuisance is not abated within a designated timeframe of between
91 24 and 72 hours. The notice also must identify the location
92 where the application will be filed and the time when it will be
93 filed.

94 (4)~~(3)~~ Evidence of the general reputation of the alleged
95 nuisance and place is admissible to prove the existence of the
96 nuisance. An ~~No~~ action filed by a citizen may not ~~shall~~ be
97 dismissed unless the court is satisfied that it should be
98 dismissed. Otherwise the action shall continue and the state
99 attorney notified to proceed with it. If the action is brought
100 by a citizen and the court finds that there was no reasonable
101 ground for the action, the costs shall be taxed against the
102 citizen.

103 (5)~~(4)~~ On trial if the existence of a nuisance is shown,
104 the court shall issue a permanent injunction and order the costs
105 to be paid by the persons establishing or maintaining the
106 nuisance and shall adjudge that the costs are a lien on all
107 personal property found in the place of the nuisance and on the
108 failure of the property to bring enough to pay the costs, then
109 on the real estate occupied by the nuisance. A ~~No~~ lien may not
110 ~~shall~~ attach to the real estate of any other than such ~~said~~
111 persons unless 15 ~~5~~ days' written notice has been given to the
112 owner or his or her agent who fails to begin to abate the
113 nuisance within the 15-day period ~~said 5 days~~. In a proceeding
114 abating a nuisance pursuant to s. 823.10 or s. 823.05, if a
115 tenant has been convicted of an offense under chapter 893 or s.
116 796.07, the court may order the tenant to vacate the property

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117 within 72 hours if the tenant and owner of the premises are
 118 parties to the nuisance abatement action and the order will lead
 119 to the abatement of the nuisance.

120 (6)~~(5)~~ If the action was brought by the Attorney General, a
 121 state attorney, or any other officer or agency of state
 122 government; if the court finds either before or after trial that
 123 there was no reasonable ground for the action; and if judgment
 124 is rendered for the defendant, the costs and reasonable attorney
 125 ~~attorney's~~ fees shall be taxed against the state.

126 Section 2. Section 823.05, Florida Statutes, is amended to
 127 read:

128 823.05 Places and groups engaged in certain activities
 129 ~~criminal gang-related activity~~ declared a nuisance; abatement
 130 and enjoinder ~~massage establishments engaged in prohibited~~
 131 ~~activity; may be abated and enjoined.-~~

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

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

143 (b) A ~~any~~ house or place of prostitution, assignation, or
 144 lewdness. ~~or~~

145 (c) A place or building in which persons engage in ~~where~~

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146 games of chance ~~are engaged~~ in violation of law. ~~or~~

147 (d) A ~~any~~ place where any law of the state is violated,
148 ~~shall be deemed guilty of maintaining a nuisance, and the~~
149 ~~building, erection, place, tent or booth and the furniture,~~
150 ~~fixtures, and contents are declared a nuisance. All such places~~
151 ~~or persons shall be abated or enjoined as provided in ss. 60.05~~
152 ~~and 60.06.~~

153 (2) (a) As used in this subsection, the terms "criminal
154 gang," "criminal gang member," "criminal gang associate," and
155 "criminal gang-related activity" have the same meanings as
156 provided in s. 874.03.

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

161 (c) The use of a location ~~on two or more occasions~~ by a
162 criminal gang, criminal gang members, or criminal gang
163 associates for the purpose of engaging in criminal gang-related
164 activity is a public nuisance. Such use of a location as a
165 public nuisance shall be abated or enjoined as provided in ss.
166 60.05 and 60.06.

167 (d) ~~Nothing in~~ This subsection does not shall prevent a
168 local governing body from adopting and enforcing laws consistent
169 with this chapter relating to criminal gangs and gang violence.
170 Where local laws duplicate or supplement this chapter, this
171 chapter shall be construed as providing alternative remedies and
172 not as preempting the field.

173 (e) The state, through the Department of Legal Affairs or
174 any state attorney, or any of the state's agencies,

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175 instrumentalities, subdivisions, or municipalities having
176 jurisdiction over conduct in violation of a provision of this
177 chapter may institute civil proceedings under this subsection.
178 In any action brought under this subsection, the circuit court
179 shall proceed as soon as practicable to the hearing and
180 determination. Pending final determination, the circuit court
181 may at any time enter such injunctions, prohibitions, or
182 restraining orders, or take such actions, including the
183 acceptance of satisfactory performance bonds, as the court may
184 deem proper.

185 (3) A massage establishment as defined in s. 480.033(7)
186 which ~~that~~ operates in violation of s. 480.0475 or s.
187 480.0535(2) is declared a nuisance and may be abated or enjoined
188 as provided in ss. 60.05 and 60.06.

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

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

194 2. Section 784.011, s. 784.021, s. 784.03, or s. 784.045,
195 relating to assault and battery.

196 3. Section 810.02, relating to burglary.

197 4. Section 812.014, relating to theft.

198 5. Section 812.131, relating to robbery by sudden
199 snatching.

200 (b) Notwithstanding any other law, a rental property that
201 is declared a nuisance under this subsection may not be abated
202 or subject to forfeiture under the Florida Contraband Forfeiture
203 Act if the nuisance was committed by someone other than the

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204 owner of the property and the property owner commences
205 rehabilitation of the property within 30 days after the property
206 is declared a nuisance and completes the rehabilitation within a
207 reasonable time thereafter.

208 Section 3. Section 893.138, Florida Statutes, is amended to
209 read:

210 893.138 Local administrative action to abate certain
211 activities declared ~~drug-related, prostitution-related, or~~
212 ~~stolen-property-related~~ public nuisances and ~~criminal-gang~~
213 ~~activity.~~

214 (1) It is the intent of this section to promote, protect,
215 and improve the health, safety, and welfare of the citizens of
216 the counties and municipalities of this state by authorizing the
217 creation of administrative boards with authority to impose
218 administrative fines and other noncriminal penalties in order to
219 provide an equitable, expeditious, effective, and inexpensive
220 method of enforcing ordinances in counties and municipalities
221 under circumstances when a pending or repeated violation
222 continues to exist.

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

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

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

229 (c) On one occasion as the site of the unlawful possession
230 of a controlled substance, where such possession constitutes a
231 felony and that has been previously used on more than one
232 occasion as the site of the unlawful sale, delivery,

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233 manufacture, or cultivation of any controlled substance;
234 (d) By a criminal gang for the purpose of conducting
235 criminal gang activity as defined by s. 874.03;
236 (e) On more than two occasions within a 6-month period, as
237 the site of a violation of s. 812.019 relating to dealing in
238 stolen property; ~~or~~
239 (f) On two or more occasions within a 6-month period, as
240 the site of a violation of chapter 499; ~~or~~
241 (g) On more than two occasions within a 6-month period, as
242 the site of a violation of any combination of the following:
243 1. Section 782.04, relating to murder;
244 2. Section 782.051, relating to attempted felony murder;
245 3. Section 784.045(1)(a)2., relating to aggravated battery
246 with a deadly weapon; or
247 4. Section 784.021(1)(a), relating to aggravated assault
248 with a deadly weapon without intent to kill,
249
250 may be declared to be a public nuisance, and such nuisance may
251 be abated pursuant to the procedures provided in this section.
252 (3) Any pain-management clinic, as described in s. 458.3265
253 or s. 459.0137, which has been used on more than two occasions
254 within a 6-month period as the site of a violation of:
255 (a) Section 784.011, s. 784.021, s. 784.03, or s. 784.045,
256 relating to assault and battery;
257 (b) Section 810.02, relating to burglary;
258 (c) Section 812.014, relating to theft;
259 (d) Section 812.131, relating to robbery by sudden
260 snatching; or
261 (e) Section 893.13, relating to the unlawful distribution

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262 of controlled substances,

263

264 may be declared to be a public nuisance, and such nuisance may
265 be abated pursuant to the procedures provided in this section.

266 (4) Any county or municipality may, by ordinance, create an
267 administrative board to hear complaints regarding the nuisances
268 described in subsection (2). Any employee, officer, or resident
269 of the county or municipality may bring a complaint before the
270 board after giving not less than 3 days' written notice of such
271 complaint to the owner of the place or premises at his or her
272 last known address. After a hearing in which the board may
273 consider any evidence, including evidence of the general
274 reputation of the place or premises, and at which the owner of
275 the premises shall have an opportunity to present evidence in
276 his or her defense, the board may declare the place or premises
277 to be a public nuisance as described in subsection (2).

278 (5) If the board declares a place or premises to be a
279 public nuisance, it may enter an order requiring the owner of
280 such place or premises to adopt such procedure as may be
281 appropriate under the circumstances to abate any such nuisance
282 or it may enter an order immediately prohibiting:

283 (a) The maintaining of the nuisance;

284 (b) The operating or maintaining of the place or premises,
285 including the closure of the place or premises or any part
286 thereof; or

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

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

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

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

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

301 (10) As used in this section, the term "controlled
302 substance" includes any substance sold in lieu of a controlled
303 substance in violation of s. 817.563 or any imitation controlled
304 substance defined in s. 817.564.

305 (11) The provisions of this section may be supplemented by
306 a county or municipal ordinance. The ordinance may include, but
307 is not limited to, provisions that establish additional
308 penalties for public nuisances, including fines not to exceed
309 \$250 per day; provide for the payment of reasonable costs,
310 including reasonable attorney fees associated with
311 investigations of and hearings on public nuisances; provide for
312 continuing jurisdiction for a period of 1 year over any place or
313 premises that has been or is declared to be a public nuisance;
314 establish penalties, including fines not to exceed \$500 per day
315 for recurring public nuisances; provide for the recording of
316 orders on public nuisances so that notice must be given to
317 subsequent purchasers, successors in interest, or assigns of the
318 real property that is the subject of the order; provide that
319 recorded orders on public nuisances may become liens against the

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320 real property that is the subject of the order; and provide for
321 the foreclosure of property subject to a lien and the recovery
322 of all costs, including reasonable attorney fees, associated
323 with the recording of orders and foreclosure. No lien created
324 pursuant to the provisions of this section may be foreclosed on
325 real property which is a homestead under s. 4, Art. X of the
326 State Constitution. Where a local government seeks to bring an
327 administrative action, based on a stolen property nuisance,
328 against a property owner operating an establishment where
329 multiple tenants, on one site, conduct their own retail
330 business, the property owner shall not be subject to a lien
331 against his or her property or the prohibition of operation
332 provision if the property owner evicts the business declared to
333 be a nuisance within 90 days after notification by registered
334 mail to the property owner of a second stolen property
335 conviction of the tenant. The total fines imposed pursuant to
336 the authority of this section shall not exceed \$15,000. Nothing
337 contained within this section prohibits a county or municipality
338 from proceeding against a public nuisance by any other means.
339 Section 4. This act shall take effect July 1, 2020.