

By the Committee on Community Affairs; and Senator Perry

578-03051-20

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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 may be declared to be a nuisance and may be
23 abated pursuant to specified procedures; providing a
24 property owner an opportunity to remedy a nuisance
25 before specified legal actions may be taken against
26 the property under certain circumstances; providing an
27 effective date.

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

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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 the nuisance.

The injunction shall specify the activities enjoined and may ~~shall~~ not preclude the operation of any lawful business not conducive to the maintenance of the nuisance complained of. ~~At least 3 days' notice in writing shall be given defendant of the~~

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59 ~~time and place of application for the temporary injunction.~~

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

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

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

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

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

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

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

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

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

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

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

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

111 (5)-(4) On trial if the existence of a nuisance is shown,
112 the court shall issue a permanent injunction and order the costs
113 to be paid by the persons establishing or maintaining the
114 nuisance and shall adjudge that the costs are a lien on all
115 personal property found in the place of the nuisance and on the
116 failure of the property to bring enough to pay the costs, then

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117 on the real estate occupied by the nuisance. A No lien may not
118 ~~shall~~ attach to the real estate of any other than such said
119 persons unless a second 5-days' written notice has been given in
120 accordance with paragraph (3) (a) to the owner or his or her
121 agent who fails to begin to abate the nuisance within the time
122 specified therein said 5 days. In a proceeding abating a
123 nuisance pursuant to s. 823.10 or s. 823.05, if a tenant has
124 been convicted of an offense under chapter 893 or s. 796.07, the
125 court may order the tenant to vacate the property within 72
126 hours if the tenant and owner of the premises are parties to the
127 nuisance abatement action and the order will lead to the
128 abatement of the nuisance.

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

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

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

141 (1) A person who erects, establishes, continues, maintains,
142 owns, or leases any of the following is deemed to be maintaining
143 a nuisance, and the building, erection, place, tent, or booth,
144 and the furniture, fixtures, and contents of such structure, are
145 declared a nuisance, and all such places or persons shall be

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146 abated or enjoined as provided in ss. 60.05 and 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 gang
167 associate who engages in the commission of criminal gang-related
168 activity is a public nuisance. ~~Any and~~ All such persons shall be
169 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.

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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 property.
203 2. Section 784.011, s. 784.021, s. 784.03, or s. 784.045,

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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 to
218 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:

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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. 458.3265

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262 or s. 459.0137, which has been used on more than two occasions
263 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,

272
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 an
276 administrative board to hear complaints regarding the nuisances
277 described in subsection (2). Any employee, officer, or resident
278 of the county or municipality may bring a complaint before the
279 board after giving not less than 3 days' written notice of such
280 complaint to the owner of the place or premises at his or her
281 last known address. After a hearing in which the board may
282 consider any evidence, including evidence of the general
283 reputation of the place or premises, and at which the owner of
284 the premises shall have an opportunity to present evidence in
285 his or her defense, the board may declare the place or premises
286 to be a public nuisance as described in subsection (2).

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

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291 or it may enter an order immediately prohibiting:

292 (a) The maintaining of the nuisance;

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

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

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

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

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

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

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

314 (11) The provisions of this section may be supplemented by
315 a county or municipal ordinance. The ordinance may include, but
316 is not limited to, provisions that establish additional
317 penalties for public nuisances, including fines not to exceed
318 \$250 per day; provide for the payment of reasonable costs,
319 including reasonable attorney fees associated with

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320 investigations of and hearings on public nuisances; provide for
321 continuing jurisdiction for a period of 1 year over any place or
322 premises that has been or is declared to be a public nuisance;
323 establish penalties, including fines not to exceed \$500 per day
324 for recurring public nuisances; provide for the recording of
325 orders on public nuisances so that notice must be given to
326 subsequent purchasers, successors in interest, or assigns of the
327 real property that is the subject of the order; provide that
328 recorded orders on public nuisances may become liens against the
329 real property that is the subject of the order; and provide for
330 the foreclosure of property subject to a lien and the recovery
331 of all costs, including reasonable attorney fees, associated
332 with the recording of orders and foreclosure. No lien created
333 pursuant to the provisions of this section may be foreclosed on
334 real property which is a homestead under s. 4, Art. X of the
335 State Constitution. Where a local government seeks to bring an
336 administrative action, based on a stolen property nuisance,
337 against a property owner operating an establishment where
338 multiple tenants, on one site, conduct their own retail
339 business, the property owner shall not be subject to a lien
340 against his or her property or the prohibition of operation
341 provision if the property owner evicts the business declared to
342 be a nuisance within 90 days after notification by registered
343 mail to the property owner of a second stolen property
344 conviction of the tenant. The total fines imposed pursuant to
345 the authority of this section shall not exceed \$15,000. Nothing
346 contained within this section prohibits a county or municipality
347 from proceeding against a public nuisance by any other means.

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

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

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