

By the Committees on Rules; and Community Affairs; and 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.; authorizing sheriffs to enjoin public
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 period as the site of specified violations is
15 a nuisance and may be abated or enjoined pursuant to
16 specified provisions; providing a property owner an
17 opportunity to remedy a nuisance before specified
18 legal actions may be taken against the property under
19 certain circumstances; amending s. 893.138, F.S.;
20 declaring that any place or premises that has been
21 used on more than two occasions during a certain
22 period as the site of any combination of specified
23 violations may be declared to be a nuisance and may be
24 abated pursuant to specified procedures; providing a
25 property owner an opportunity to remedy a nuisance
26 before specified legal actions may be taken against
27 the property under certain circumstances; providing an
28 effective date.
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30 Be It Enacted by the Legislature of the State of Florida:

31
32 Section 1. Section 60.05, Florida Statutes, is amended to
33 read:

34 60.05 Abatement of nuisances.—

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

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

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

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

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

51 (d) The conduct, operation, or maintenance of any business
52 or activity operated or maintained in the building or on the
53 premises in connection with or incident to the maintenance of
54 the nuisance.

55
56 The injunction shall specify the activities enjoined and may
57 ~~shall~~ not preclude the operation of any lawful business not
58 conducive to the maintenance of the nuisance complained of. ~~At~~

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59 ~~least 3 days' notice in writing shall be given defendant of the~~
60 ~~time and place of application for the temporary injunction.~~

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

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

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

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

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

87 (c) In addition to the information required under

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88 paragraphs (a) and (b), each notice must:

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

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

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

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

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

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

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

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

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

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

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

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

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146 declared a nuisance, and all such places or persons shall be
147 abated or enjoined as provided in ss. 60.05 and 60.06:

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

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

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

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

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

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

171 (c) The use of a location ~~on two or more occasions~~ by a
172 criminal gang, criminal gang members, or criminal gang
173 associates for the purpose of engaging in criminal gang-related
174 activity is a public nuisance. Such use of a location as a

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175 public nuisance shall be abated or enjoined as provided in ss.
176 60.05 and 60.06.

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

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

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

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

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

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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 to
219 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.

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- 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.

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262 (3) Any pain-management clinic, as described in s. 458.3265
263 or s. 459.0137, which has been used on more than two occasions
264 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 an
277 administrative board to hear complaints regarding the nuisances
278 described in subsection (2). Any employee, officer, or resident
279 of the county or municipality may bring a complaint before the
280 board after giving not less than 3 days' written notice of such
281 complaint to the owner of the place or premises at his or her
282 last known address. After a hearing in which the board may
283 consider any evidence, including evidence of the general
284 reputation of the place or premises, and at which the owner of
285 the premises shall have an opportunity to present evidence in
286 his or her defense, the board may declare the place or premises
287 to be a public nuisance as described in subsection (2).

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

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291 appropriate under the circumstances to abate any such nuisance
292 or it may enter an order immediately prohibiting:

293 (a) The maintaining of the nuisance;

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

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

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

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

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

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

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

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

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

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

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