

## CHAPTER 2020-130

### Committee Substitute for Committee Substitute for House Bill No. 625

An act relating to public nuisances; amending s. 60.05, F.S.; authorizing sheriffs to sue to enjoin nuisances; revising notice requirements for the filing of temporary injunctions relating to the enjoinder of certain nuisances; extending the period of notice before a lien may attach to certain real estate; amending s. 823.05, F.S.; making technical changes; declaring that the use of a location by a criminal gang, criminal gang members, or criminal gang associates for criminal gang-related activity is a public nuisance; declaring that any place or premises that has been used on more than two occasions during a certain time period as the site of specified violations is a nuisance and may be abated or enjoined pursuant to specified provisions; providing a property owner an opportunity to remedy a nuisance before specified legal actions may be taken against the property under certain circumstances; amending s. 893.138, F.S.; declaring that any place or premises that has been used on more than two occasions during a certain time period as the site of any combination of specified violations is a nuisance and may be abated pursuant to specified provisions; prohibiting a rental property from being abated or subject to forfeiture under certain conditions; providing an effective date.

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

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, sheriff, 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 time and place of application for the temporary injunction.~~

(3)(a) The defendant shall be given written notice to abate the nuisance within 10 days after the issuance of the notice. The notice must inform the defendant that an application for temporary injunction may be filed if the nuisance is not timely abated. If the nuisance is not timely abated, the defendant must be given a second written notice that informs the defendant that an application for a temporary injunction will be filed if the nuisance is not abated within 15 days after the end of the 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

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

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

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

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

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

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

3. State the actions necessary to abate the nuisance.

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

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

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

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

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

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

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

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

(a) A ~~Whoever shall erect, establish, continue, or maintain, own or lease any building, booth, tent, or place~~ that ~~which~~ tends to annoy the community

or injure the health of the community, or becomes ~~become~~ manifestly injurious to the morals or manners of the people as provided ~~described~~ in s. 823.01, ~~or~~

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

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

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

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

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

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

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

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

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

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

1. Section 812.019, relating to dealing in stolen property.
2. Section 784.011, s. 784.021, s. 784.03, or s. 784.045, relating to assault and battery.
3. Section 810.02, relating to burglary.
4. Section 812.014, relating to theft.
5. Section 812.131, relating to robbery by sudden snatching.

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

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

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

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

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

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

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

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

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

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

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

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

1. Section 782.04, relating to murder;

2. Section 782.051, relating to attempted felony murder;

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

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

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

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

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

(b) Section 810.02, relating to burglary;

(c) Section 812.014, relating to theft;

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

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

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

(4) Any county or municipality may, by ordinance, create an administrative board to hear complaints regarding the nuisances described in subsection (2). Any employee, officer, or resident of the county or municipality may bring a complaint before the board after giving not less than 3 days' written notice of such complaint to the owner of the place or premises at his or her last known address. After a hearing in which the board may consider any evidence, including evidence of the general reputation of the place or premises, and at which the owner of the premises shall have an

opportunity to present evidence in his or her defense, the board may declare the place or premises to be a public nuisance as described in subsection (2).

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

(a) The maintaining of the nuisance;

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

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

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

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

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

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

(10) As used in this section, the term “controlled substance” includes any substance sold in lieu of a controlled substance in violation of s. 817.563 or any imitation controlled substance defined in s. 817.564.

(11) The provisions of this section may be supplemented by a county or municipal ordinance. The ordinance may include, but is not limited to, provisions that establish additional penalties for public nuisances, including fines not to exceed \$250 per day; provide for the payment of reasonable costs, including reasonable attorney fees associated with investigations of and hearings on public nuisances; provide for continuing jurisdiction for a period of 1 year over any place or premises that has been or is declared to be a public nuisance; establish penalties, including fines not to exceed \$500 per day for recurring public nuisances; provide for the recording of orders on public nuisances so that notice must be given to subsequent purchasers, successors in interest, or assigns of the real property that is the subject of the order; provide that recorded orders on public nuisances may become liens against the real property that is the subject of the order; and provide for the foreclosure of property subject to a lien and the recovery of all costs, including reasonable attorney fees, associated with the recording of orders and foreclosure. No lien created pursuant to the provisions of this section

may be foreclosed on real property which is a homestead under s. 4, Art. X of the State Constitution. Where a local government seeks to bring an administrative action, based on a stolen property nuisance, against a property owner operating an establishment where multiple tenants, on one site, conduct their own retail business, the property owner shall not be subject to a lien against his or her property or the prohibition of operation provision if the property owner evicts the business declared to be a nuisance within 90 days after notification by registered mail to the property owner of a second stolen property conviction of the tenant. The total fines imposed pursuant to the authority of this section shall not exceed \$15,000. Nothing contained within this section prohibits a county or municipality from proceeding against a public nuisance by any other means.

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

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

Approved by the Governor June 29, 2020.

Filed in Office Secretary of State June 29, 2020.