

SECOND REGULAR SESSION

# HOUSE BILL NO. 2794

## 98TH GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE BUTLER.

6877H.011

D. ADAM CRUMBLISS, Chief Clerk

---

### AN ACT

To amend chapter 67, RSMo, by adding thereto one new section relating to public nuisance, with penalty provisions.

---

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 67, RSMo, is amended by adding thereto one new section, to be  
2 known as section 67.452, to read as follows:

**67.452. 1. As used in this section, the following terms mean:**

2 **(1) "Abuse", the infliction of physical, sexual, or emotional harm or injury;**

3 **(2) "Disability", with respect to a person, a physical or mental impairment that**  
4 **substantially limits one or more of the person's major life activities, a record of having such**  
5 **impairment, or being regarded as having such impairment;**

6 **(3) "Emergency", a sudden or unforeseen situation in which property or human**  
7 **life is in jeopardy that requires immediate action and the prompt summoning of aid;**

8 **(4) "Nuisance", a continuing act or physical condition which is made, permitted,**  
9 **allowed, or continued by any person or legal entity, their agents or servants, or any person**  
10 **or legal entity who aids therein, which is detrimental to the safety, welfare, or convenience**  
11 **of the inhabitants of a city not within a county or any part thereof, or any act or condition**  
12 **so designated by statute or ordinance. Calls to the police for assistance shall not be**  
13 **considered a nuisance including, but not limited to, calls to the police regarding domestic**  
14 **violence, dating violence, sexual assault, or stalking by or on behalf of a person with a**  
15 **disability when the purpose of the call was related to that individual's disability;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (5) "Owner", the person or entity whose name is listed on the last deed recorded  
17 at the office of the recorder of deeds, on the tax records at the office of the assessor, or  
18 person in care, custody, or control of the premises;

19 (6) "Penalize", includes the actual or threatened revocation, suspension, or  
20 nonrenewal of a rental license, the actual or threatened assessment of fines, or the actual  
21 or threatened eviction, or causing the actual or threatened eviction, from leased premises;

22 (7) "Premises", any parcel of property, residential or commercial, and the building  
23 or structure, if any, which is situated on the property, and any portion of the public way  
24 that abuts the parcel of property when it is used in conjunction with the abutting property  
25 for the commission of illegal activity;

26 (8) "Victim of a crime", a person who suffers personal physical injury or death as  
27 a direct result of a crime.

28 2. It is the public policy of this state to ensure that all victims of abuse and crime  
29 and individuals in an emergency are able to contact police or emergency assistance without  
30 penalty. The provisions of this section are intended to shield residents, tenants, and  
31 landlords from penalties that may be levied pursuant to enforcement of an ordinance or  
32 regulation if police or emergency services respond to a residence or tenancy to assist a  
33 victim of abuse or crime or individuals in an emergency. The provisions of this section  
34 shall not prohibit municipalities from enforcing an ordinance or regulation against a  
35 resident, tenant, or landlord where police or emergency services respond to a residence or  
36 tenancy that does not involve assistance to a victim of abuse or crime or individuals in an  
37 emergency.

38 3. (1) In any city not within a county, a public nuisance exists when the premises  
39 are used for one or more of the following incidents within the previous twelve months:

40 (a) The illegal sale, manufacture, storing, possession, distribution, or use of  
41 narcotics or other controlled substances or precursors;

42 (b) The illegal sale, manufacture, storing, possession, distribution, or use of drug  
43 paraphernalia or precursors;

44 (c) The illegal sale, storing, possession, use, or distribution of a firearm, weapon,  
45 or explosive device.

46 (2) In any city not within a county, a public nuisance exists when the premises are  
47 used for two or more of the following incidents within the previous twelve months:

48 (a) Prostitution;

49 (b) Illegal gambling;

50 (c) The illegal sale, distribution, or consumption of alcoholic beverages;

51 (d) Violation of municipal, state, or federal business licensing regulations;

52           (e) Commission of any offense which is punishable by imprisonment of ninety days  
53 or more;

54           (f) Making a false report of a violation of the law to any police officer or other  
55 officer of the law in person, from any police alarm or call box, over the telephone or radio,  
56 by improper use of emergency 911, or by any other means of communication;

57           (g) Any other condition or activity that may constitute a felony under federal, state,  
58 or municipal law which is detrimental to the safety, welfare, or convenience of the  
59 inhabitants of the city not within a county or a part thereof;

60           (h) Incidents of or criminal activity directly related to domestic violence, dating  
61 violence, sexual assault, or stalking shall not be considered incidents to be qualified as a  
62 public nuisance under this section;

63           (i) Calls to the police for assistance shall not be considered a nuisance including,  
64 but not limited to, calls to the police regarding domestic violence, dating violence, sexual  
65 assault, or stalking by or on behalf of a person with a disability if the purpose of the call  
66 was related to that person's disability.

67           4. (1) Whenever the director of public safety reasonably believes that any premises  
68 constitutes a public nuisance as defined in subsection 3 of this section, the director or his  
69 or her designee shall give written notice to the person or entity who owns or controls the  
70 premises and to the tenants or occupants of the premises accused of the public nuisance.  
71 The notice shall state that the director reasonably believes that a nuisance exists and  
72 identifies the activities or conditions which form the basis of the belief. The notice shall  
73 also set forth reasonable abatement measures which the landlord is required to take within  
74 thirty days of the notice. An owner occupant or tenant shall immediately cease all nuisance  
75 behavior.

76           (2) A copy of the notice shall be sent to the owner and the tenants or occupants of  
77 the premises accused of the public nuisance via first class United States mail. A copy of the  
78 notice shall also be posted in a prominent place on the premises by the neighborhood  
79 stabilization officer, problem property officer, building inspector, or other designee. The  
80 notice shall also provide the owner of the premises and the tenants or occupants of the  
81 premises accused of the public nuisance a reasonable opportunity to meet with a  
82 representative of the city not within a county to discuss the allegations in the notice and the  
83 need for abatement measures.

84           (3) In the event that additional nuisance behavior occurs on the premises which is  
85 different from the behavior which was listed in the notice, the director or his or her  
86 designee may send an "amended notice" to the owner of the premises and the tenants or  
87 occupants of the premises accused of the additional nuisance. The "amended notice" shall

88 be sent via first class United States mail and by posting a copy in a prominent place on the  
89 premises. An additional thirty-day abatement period shall not exist when an "amended  
90 notice" is issued.

91 (4) Any notice of public nuisance that was issued in accordance with a city  
92 ordinance is still in effect and shall be given full faith and credit.

93 5. Any owner occupant, tenant, or person who engages in, encourages, permits, or  
94 otherwise fails to immediately abate the nuisance may be issued a summons for engaging  
95 in a nuisance or maintaining a nuisance. Any owner of residential or commercial units  
96 who does not abate the nuisance within the thirty-day period shall be issued a summons  
97 for failure to abate a nuisance. A defendant who is found guilty of or pleads guilty to a  
98 nuisance offense shall be subject to a fine of not less than one hundred dollars and not  
99 more than five hundred dollars, or any other penalty available by law, including up to  
100 ninety days in jail for the first offense. A defendant who is found guilty of or pleads guilty  
101 to a second nuisance offense shall be subject to a fine of not less than two hundred dollars  
102 and not more than five hundred dollars, or any other penalty available by law, including  
103 up to ninety days in jail. A defendant who is found guilty of or pleads guilty to a third or  
104 subsequent nuisance offense shall be subject to a fine of five hundred dollars, or any other  
105 penalty available by law including up to ninety days in jail. Each occurrence of nuisance  
106 behavior, regardless of proximity in time to any other nuisance violation, shall be deemed  
107 a separate and distinct offense for which a summons may be issued.

108 6. (1) In addition to the issuance of a summons under subsection 4 of this section,  
109 the director of public safety may initiate an administrative hearing in order to abate a  
110 public nuisance as defined in subsection 2 of this section.

111 (2) When an owner of rental residential or commercial property has failed to abate  
112 the nuisance within thirty days of the notice or an owner occupant has failed to  
113 immediately abate the nuisance upon receipt of the notice, the director of public safety or  
114 his or her designee may issue a hearing notice to the owner of the subject premises. The  
115 hearing notice shall be in writing and either sent by first class United States mail or served  
116 in person, not less than twenty days prior to the date of such hearing. A copy of the  
117 hearing notice shall also be posted in a prominent place on the premises, and a written  
118 notice shall be sent by first class United States mail or served in person not less than twenty  
119 days prior to the date of the hearing to the tenants or occupants of the property accused  
120 of the nuisance.

121 (3) An attorney who appears on behalf of any owner shall file a written appearance  
122 with the director of the department of public safety.

123           **(4) Any tenant or occupant of the property accused of the nuisance may be present**  
124 **and provide testimony during the administrative hearing. An attorney who appears on**  
125 **behalf of any tenant or occupant shall file a written appearance with the director of the**  
126 **department of public safety.**

127           **(5) The case for the city not within a county shall be presented by the city**  
128 **counselor.**

129           **(6) The administrative hearing officer may grant continuances only upon a finding**  
130 **of good cause.**

131           **(7) All testimony shall be given under oath or affirmation.**

132           **(8) The administrative hearing officer may issue subpoenas to secure the**  
133 **attendance and testimony of relevant witnesses and the production of relevant documents.**

134           **(9) Section 536.070 shall control the rules of evidence, objections, witnesses, judicial**  
135 **notice, affidavits as evidence, and the transcript requirements of the administrative**  
136 **hearing.**

137           **(10) No violation shall be established except upon proof by a preponderance of the**  
138 **evidence; provided, however, that a violation notice, or a copy thereof, issued and signed**  
139 **in accordance with section three shall be prima facie evidence of the correctness of the facts**  
140 **specified therein.**

141           **(11) Upon conclusion of a hearing, the administrative hearing officer shall issue**  
142 **findings of fact, conclusions of law, and order of the hearing officer setting forth the facts**  
143 **and law which support his or her nuisance determination.**

144           **(12) In the event that a nuisance is found to exist, the administrative hearing officer**  
145 **shall require that the owner implement reasonable measures designed to prevent the**  
146 **recurrence of the nuisance activity. Those measures may include, but are not limited to,**  
147 **making security improvements to the premises, hiring of licensed and insured security**  
148 **personnel, appointment of a receiver, the initiation and execution of eviction proceedings**  
149 **against tenants who engage in the nuisance behavior, or the closing and boarding of the**  
150 **premises for a period not to exceed one year.**

151           **(13) The order shall inform the respondent of his or her right to seek judicial**  
152 **review of the hearing officer's final determination, as provided in sections 536.100 to**  
153 **536.140.**

154           **(14) The record of all hearings before an administrative hearing officer shall**  
155 **include:**

156           **(a) A record of the testimony presented at the hearing, which may be made by tape**  
157 **recording, digital recording, or other appropriate means;**

158           **(b) All exhibits submitted as evidence at the hearing; and**

159 (c) A copy of the order.

160 7. Failure to comply with an order to abate a public safety nuisance under  
161 subsections 1 to 6 of this section shall be a violation of these sections, and any person who  
162 fails to comply with the order shall be subject to a fine of not less than one hundred dollars  
163 nor more than five hundred dollars for each day the court finds the person to be in  
164 noncompliance. In addition to a fine, the court may sentence the person to not more than  
165 ninety days imprisonment.

166 8. If the hearing officer determines that a nuisance exists and orders that the  
167 abatement of the nuisance requires closure of the subject premises, the following shall  
168 apply:

169 (1) If the building is at any time occupied during the order of closure, the building  
170 shall be deemed a nuisance in accordance with any property maintenance code and  
171 condemned in accordance with the laws of the city not within a county that apply to  
172 condemned buildings. All the allowable remedies to the city not within a county shall  
173 apply to the violation of a nuisance abatement order;

174 (2) Prior to occupancy of the premises, whether commercial or residential, the  
175 property shall be inspected by the appropriate city, state, and federal inspectors. The  
176 subject premises shall be in compliance with all applicable city, state, and federal health,  
177 safety, property maintenance, and building codes. No occupancy shall occur unless all code  
178 violations are abated;

179 (3) Any property, commercial or residential, which had previously been exempt  
180 from or "grandfathered in" and not subject to compliance with current health, safety,  
181 zoning, property maintenance, and building codes of the city not within a county will be  
182 deemed to have forfeited that status and shall be in complete compliance with all applicable  
183 city, state, and federal health, safety, property maintenance, and building codes. The  
184 property shall be subject to a full occupancy inspection. No occupancy shall occur unless  
185 all code violations are abated; and

186 (4) Any licenses, variances, permits, or certificates, whether business, occupancy,  
187 or building code, which pertain to the subject premises and were in effect at the time of an  
188 order of closure of the premises are deemed revoked or abandoned.

189 9. (1) No ordinance enacted by a city not within a county shall penalize a resident,  
190 tenant, or landlord for a contact made for police or emergency assistance by or on behalf  
191 of a victim of abuse, a victim of a crime, or an individual in an emergency, if the contact  
192 was made based upon the reasonable belief of the person making the contact that  
193 intervention or emergency assistance was necessary to prevent the perpetration or

194 escalation of or to respond to the abuse, crime, or emergency, or if the intervention or  
195 emergency assistance was actually needed in response to the abuse, crime or emergency.

196 (2) If a city not within a county enforces or attempts to enforce an ordinance  
197 against a resident, tenant, or landlord in violation of subdivision 1 of this subsection, the  
198 resident, tenant, or landlord may bring a civil action for a violation of this section and seek  
199 an order from a court of competent jurisdiction for any of the following remedies:

200 (a) An order requiring the city not within a county to cease and desist the unlawful  
201 practice;

202 (b) Payment of compensatory damages, provided that a resident, tenant, or  
203 landlord shall make a reasonable effort to mitigate any damages;

204 (c) Payment of reasonable attorney fees;

205 (d) Payment of court costs;

206 (e) Other equitable relief including, but not limited to, reinstating a rental license  
207 or rental permit, as the court may deem appropriate.

208 10. This section preempts any local ordinance or regulation insofar as it is  
209 inconsistent with this section, irrespective of the effective date of the ordinance or  
210 regulation.

✓