

FIRST REGULAR SESSION

SENATE BILL NO. 298

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CURLS.

Read 1st time January 17, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0359S.011

AN ACT

To repeal sections 82.1025, 82.1027, and 82.1029, RSMo, and to enact in lieu thereof three new sections relating to nuisance actions in certain political subdivisions.

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

Section A. Sections 82.1025, 82.1027, and 82.1029, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 82.1025,
3 82.1027, and 82.1029, to read as follows:

82.1025. 1. This section applies to a nuisance located within the
2 boundaries of any county of the first classification with a charter form of
3 government and a population greater than nine hundred thousand, in any county
4 of the first classification with more than one hundred ninety-eight thousand but
5 fewer than one hundred ninety-nine thousand two hundred inhabitants, in any
6 county of the first classification with more than seventy-three thousand seven
7 hundred but fewer than seventy-three thousand eight hundred inhabitants, in
8 any county of the first classification with more than ninety-three thousand eight
9 hundred but fewer than ninety-three thousand nine hundred inhabitants, in any
10 home rule city with more than one hundred fifty-one thousand five hundred but
11 fewer than one hundred fifty-one thousand six hundred inhabitants, in any city
12 not within a county and in any city with at least three hundred fifty thousand
13 inhabitants which is located in more than one county.

14 2. A parcel of property is a nuisance, if such property adversely affects the
15 property values of a neighborhood or the property value of any property within
16 the neighborhood because the owner of such property allows the property to be
17 in a deteriorated condition, due to neglect or failure to reasonably maintain,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 violation of a county or municipal building code, standard, or ordinance,
19 abandonment, failure to repair after a fire, flood or some other damage to the
20 property or because the owner or [resident] **occupant** of the property allows
21 clutter on the property such as abandoned automobiles, appliances or similar
22 objects, **or the owner or occupant of the property engages in activity on**
23 **the property or permits others to engage in activity on the property**
24 **that encourages, promotes, or substantially contributes to unlawful**
25 **activity within three hundred feet of the property.** Any property owner
26 who owns property within one thousand two hundred feet of a parcel of property
27 which is alleged to be a nuisance may bring a nuisance action against the
28 offending property owner for the amount of damage created by such nuisance to
29 the value of the petitioner's property, including diminution in value of the
30 petitioner's property, and court costs, provided that the owner of the property
31 which is alleged to be a nuisance has received notification of the alleged nuisance
32 and has had a reasonable opportunity, not to exceed forty-five days, to correct the
33 alleged nuisance. This section is not intended to abrogate, and shall not be
34 construed as abrogating, any remedy available under the common law of private
35 nuisance.

36 3. An action for injunctive relief to abate a nuisance under this section
37 may be brought by:

38 (1) Anyone who owns property within one thousand two hundred feet to
39 a property which is alleged to be a nuisance; or

40 (2) A neighborhood organization, as defined in subdivision (2) of section
41 82.1027, on behalf of any person or persons who own property within the
42 boundaries of the neighborhood or neighborhoods described in the articles of
43 incorporation or bylaws of the neighborhood organization and who could maintain
44 a nuisance action under this section or under the common law of private
45 nuisance, or on its own behalf with respect to a nuisance on property anywhere
46 within the boundaries of the neighborhood or neighborhoods.

47 4. An action shall not be brought under this section until sixty days after
48 the party who brings the action has sent written notice of intent to bring an
49 action under this section by certified mail, return receipt requested, postage
50 prepaid to:

51 (1) The tenant, if any, or to "occupant" if the identity of the tenant cannot
52 be reasonably ascertained, at the property's address; and

53 (2) The property owner of record at the last known address of the property

54 owner on file with the county or city, or, if the property owner is a corporation [or
55 other type of], limited liability company, **or other legal entity**, to the property
56 owner's registered agent at the agent's address of record;
57 that a nuisance exists and that legal action may be taken against the owner of
58 the property. If the notice sent by certified mail is returned unclaimed or
59 refused, designated by the post office to be undeliverable, or signed for by a
60 person other than the addressee, then adequate and sufficient notice may be
61 given to the tenant, if any, and the property owner of record by sending a copy of
62 the notice by regular mail to the address of the property owner or registered
63 agent and posting a copy of the notice on the property where the nuisance
64 allegedly is occurring. A sworn affidavit by the person who mailed or posted the
65 notice describing the date and manner that notice was given shall be prima facie
66 evidence of the giving of such notice. The notice shall specify:

- 67 (a) The act or condition that constitutes the nuisance;
68 (b) The date the nuisance was first discovered;
69 (c) The address of the property and location on the property where the act
70 or condition that constitutes the nuisance is allegedly occurring or exists; and
71 (d) The relief sought in the action.

72 5. When a neighborhood organization files a suit under this section, an
73 officer of the neighborhood organization or its counsel shall certify to the court:

74 (1) From personal knowledge, that the neighborhood organization has
75 taken the required steps to satisfy the notice requirements under this section;
76 and

77 (2) Based on reasonable inquiry, that each condition precedent to the
78 filing of the action under this section has been met.

79 6. A neighborhood organization may not bring an action under this section
80 if, at the time of filing suit, the neighborhood organization [or any of its directors
81 own] **owns** real estate, or [have] **has** an interest in a trust or a corporation or
82 other limited liability company that owns real estate, in the city or county in
83 which the nuisance is located with respect to which real property taxes are
84 delinquent [or a notice of violation of a city code or ordinance has been issued and
85 served and is outstanding] **at the time suit is filed, and the real estate has**
86 **been owned by the neighborhood organization and the real property**
87 **taxes have been delinquent continuously for a one-year period**
88 **preceding the date suit is filed, or if the neighborhood organization has**
89 **been found guilty of a property code violation, as defined in**

90 **subdivision (1) of section 82.1027, within a one-year period preceding**
91 **the date suit is filed.**

92 7. This section is not intended to abrogate, and shall not be construed as
93 abrogating, any remedy available under the common law of private nuisance.

82.1027. As used in sections 82.1027 to 82.1030, the following terms
2 mean:

3 (1) "Code or ordinance violation", a violation under the provisions of a
4 municipal code or ordinance of any home rule city with more than four hundred
5 thousand inhabitants and located in more than one county, or any city not within
6 a county, which regulates fire prevention, animal control, noise control, property
7 maintenance, building construction, health, safety, neighborhood detriment,
8 sanitation, or nuisances;

9 (2) "Neighborhood organization"[,]:

10 (a) A Missouri not-for-profit corporation whose articles of incorporation
11 or bylaws specify that one of the purposes for which the corporation is organized
12 is the preservation and protection of residential and community property values
13 in a neighborhood or neighborhoods with geographic boundaries that conform to
14 the boundaries of not more than two adjoining neighborhoods recognized by the
15 planning division of the city or county in which the neighborhood or
16 neighborhoods are located provided that the corporation's articles of incorporation
17 or bylaws provide that:

18 [(a)] a. The corporation has members;

19 [(b)] b. Membership shall be open to all persons who own residential real
20 estate or who reside in the neighborhood or neighborhoods described in the
21 corporation's articles of incorporation or bylaws subject to reasonable restrictions
22 on membership to protect the integrity of the organization; however, membership
23 may not be conditioned upon payment of monetary consideration in excess of
24 twenty-five dollars per year; and

25 [(c)] c. Only members who own residential real estate or who reside in
26 the neighborhood or neighborhoods described in the corporation's articles of
27 incorporation or bylaws may elect directors or serve as a director;

28 (b) **An organization recognized as a neighborhood association by**
29 **the city or county in which the neighborhood or neighborhoods are**
30 **located; or**

31 (c) **An organization recognized by the federal Internal Revenue**
32 **Service as tax exempt under the provisions of Internal Revenue Code**

33 **section 501(c)(3), or the corresponding section of any future tax code,**
34 **which has had a contract to furnish housing related services at any**
35 **point during the five-year period preceding the filing of the action with**
36 **that governing municipality or county, and is in compliance with or**
37 **completed such contract;**

38 (3) "Nuisance", within the boundaries of the neighborhood or
39 neighborhoods described in the articles of incorporation or bylaws of the
40 neighborhood organization, an act or condition knowingly created, performed,
41 maintained, or permitted to exist on private property that constitutes a code or
42 ordinance violation and that significantly affects the other residents of the
43 neighborhood; and:

44 (a) Diminishes the value of the neighboring property; or

45 (b) Is injurious to the public health, safety, security, or welfare of
46 neighboring residents or businesses; or

47 (c) Impairs the reasonable use or peaceful enjoyment of other property in
48 the neighborhood.

82.1029. 1. A neighborhood organization, on behalf of a person or persons
2 who own real estate or reside within one thousand two hundred feet of a property
3 on which there is a condition or activity constituting a code or ordinance violation
4 in the neighborhood or neighborhoods described in the articles of incorporation
5 or the bylaws of the neighborhood organization, or on its own behalf with respect
6 to a code or ordinance violation on property anywhere within the boundaries of
7 the neighborhood or neighborhoods, may seek injunctive and other equitable relief
8 in the circuit court for abatement of a nuisance upon showing:

9 (1) The notice requirements of this section have been satisfied; and

10 (2) The nuisance exists and has not been abated.

11 2. An action under this section shall not be brought until:

12 (1) Sixty days after the neighborhood organization sends written notice
13 by certified mail, return receipt requested, postage prepaid, to the appropriate
14 municipal code enforcement agency of the neighborhood organization's intent to
15 bring an action under this section, together with a copy of the notice the
16 neighborhood organization sent or attempted to send to the property owner in
17 compliance with subdivision (2) of subsection 2 of this section; and

18 (2) Sixty days after the neighborhood organization sends notice by first
19 class prepaid postage certified mail, return receipt requested, to:

20 (a) The tenant, if any, or to "occupant" if the identity of the tenant cannot

21 be reasonably ascertained, at the property's address; and

22 (b) The property owner of record at the last known address of the property
23 owner on file with the county or city, or, if the property owner is a corporation [or
24 other type of], limited liability company, **or other legal entity**, to the property
25 owner's registered agent at the registered agent's address of record;

26 that a nuisance exists and that legal action may be taken if the nuisance is not
27 abated. If the notice sent by certified mail is returned unclaimed or refused,
28 designated by the post office to be undeliverable, or signed for by a person other
29 than the addressee, then adequate and sufficient notice may be given to the
30 tenant, if any, and the property owner of record by sending a copy of the notice
31 by regular mail to the address of the property owner or registered agent and
32 posting a copy of notice on the property where the nuisance allegedly is occurring.

33 3. A sworn affidavit by the person who mailed or posted the notice
34 describing the date and manner that notice was given shall be prima facie
35 evidence of the giving of such notice.

36 4. The notice required by this section shall specify:

37 (1) The act or condition that constitutes the nuisance;

38 (2) The date the nuisance was first discovered;

39 (3) The address of the property and location on the property where the act
40 or condition that constitutes the nuisance is allegedly occurring or exists; and

41 (4) The relief sought in the action.

42 5. In filing a suit under this section, an officer of the neighborhood
43 organization or its counsel shall certify to the court:

44 (1) From personal knowledge, that the neighborhood organization has
45 taken the required steps to satisfy the notice requirements under this section;
46 and

47 (2) Based on reasonable inquiry, that each condition precedent to the
48 filing of the action under this section has been met.

49 6. An action may not be brought under this section based on an alleged
50 violation of a particular code provision or ordinance if there is then pending
51 against the property or the owner of the property a notice of violation with
52 respect to such code provision or ordinance issued by an appropriate municipal
53 code enforcement agency unless such notice of violation has been pending for
54 more than forty-five days and the condition or activity that gave rise to the
55 violation has not been abated. This subsection shall not preclude an action under
56 this section where the appropriate municipal code enforcement agency has

57 declined to issue a notice of violation against the property or the property owner.

58 7. A neighborhood organization may not bring an action under this section
59 if, at the time of filing suit, the neighborhood organization [or any of its directors
60 own] **owns** real estate, or [have] **has** an interest in a trust or a corporation or
61 other limited liability company that owns real estate, in the city or county in
62 which the nuisance is located with respect to which real property taxes are
63 delinquent [or a notice of violation of a city code or ordinance has been issued and
64 served and is outstanding] **at the time suit is filed, and the real estate has**
65 **been owned by the neighborhood organization and the real property**
66 **taxes have been delinquent continuously for a one-year period**
67 **preceding the date suit is filed, or if the neighborhood organization has**
68 **been found guilty of a property code violation, as defined in**
69 **subdivision (1) of section 82.1027, within a one-year period preceding**
70 **the date suit is filed.**

71 8. A copy of the notice of citation issued by the city that shows the date
72 the citation was issued shall be prima facie evidence of whether and for how long
73 a citation has been pending against the property or the property owner.

74 9. A proceeding under this section shall:

75 (1) Be heard at the earliest practicable date; and

76 (2) Be expedited in every way.

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