

FIRST REGULAR SESSION

HOUSE BILL NO. 999

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCCANN BEATTY.

1997H.011

D. ADAM CRUMBLISS, Chief Clerk

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Section A. Sections 82.1025, 82.1027, and 82.1029, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 82.1025, 82.1027, and 82.1029, to read as follows:

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

2. A parcel of property is a nuisance, if such property adversely affects the property values of a neighborhood or the property value of any property within the neighborhood because the owner of such property allows the property to be in a deteriorated condition, due to neglect or failure to reasonably maintain, violation of a county or municipal building code, standard, or ordinance, abandonment, failure to repair after a fire, flood or some other damage to the property

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.

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

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

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

34 (2) A neighborhood organization, as defined in subdivision (2) of section 82.1027, on
35 behalf of any person or persons who own property within the boundaries of the neighborhood
36 or neighborhoods described in the articles of incorporation or bylaws of the neighborhood
37 organization and who could maintain a nuisance action under this section or under the common
38 law of private nuisance, or on its own behalf with respect to a nuisance on property anywhere
39 within the boundaries of the neighborhood or neighborhoods.

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

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

45 (2) The property owner of record at the last known address of the property owner on file
46 with the county or city, or, if the property owner is a corporation ~~[or other type of]~~, limited
47 liability company, **or other legal entity**, to the property owner's registered agent at the agent's
48 address of record;

49 that a nuisance exists and that legal action may be taken against the owner of the property. If the
50 notice sent by certified mail is returned unclaimed or refused, designated by the post office to be
51 undeliverable, or signed for by a person other than the addressee, then adequate and sufficient
52 notice may be given to the tenant, if any, and the property owner of record by sending a copy of

53 the notice by regular mail to the address of the property owner or registered agent and posting
 54 a copy of the notice on the property where the nuisance allegedly is occurring. A sworn affidavit
 55 by the person who mailed or posted the notice describing the date and manner that notice was
 56 given shall be prima facie evidence of the giving of such notice. The notice shall specify:

- 57 (a) The act or condition that constitutes the nuisance;
- 58 (b) The date the nuisance was first discovered;
- 59 (c) The address of the property and location on the property where the act or condition
 60 that constitutes the nuisance is allegedly occurring or exists; and
- 61 (d) The relief sought in the action.

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

- 64 (1) From personal knowledge, that the neighborhood organization has taken the required
 65 steps to satisfy the notice requirements under this section; and
- 66 (2) Based on reasonable inquiry, that each condition precedent to the filing of the action
 67 under this section has been met.

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

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

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

- 2 (1) "Code **violation**" or "ordinance violation", a violation under the provisions of a
 3 municipal code or ordinance of any home rule city with more than four hundred thousand
 4 inhabitants and located in more than one county, or any city not within a county, which regulates
 5 fire prevention, animal control, noise control, property maintenance, building construction,
 6 health, safety, neighborhood detriment, sanitation, or nuisances;
- 7 (2) "Neighborhood organization"~~[-]~~ :
- 8 (a) A Missouri not-for-profit corporation whose articles of incorporation or bylaws
 9 specify that one of the purposes for which the corporation is organized is the preservation and

10 protection of residential and community property values in a neighborhood or neighborhoods
11 with geographic boundaries that conform to the boundaries of not more than two adjoining
12 neighborhoods recognized by the planning division of the city or county in which the
13 neighborhood or neighborhoods are located provided that the corporation's articles of
14 incorporation or bylaws provide that:

15 ~~[(a)]~~ **a.** The corporation has members;

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

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

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

26 **(c) An organization recognized by the federal Internal Revenue Service as tax**
27 **exempt under the provisions of Internal Revenue Code section 501(c)(3), or the**
28 **corresponding section of any future tax code, which has had a contract to furnish housing**
29 **related services at any point during the five-year period preceding the filing of the action**
30 **with that governing municipality or county, and is in compliance with or completed such**
31 **contract;**

32 (3) "Nuisance", within the boundaries of the neighborhood or neighborhoods described
33 in the articles of incorporation or bylaws of the neighborhood organization, an act or condition
34 knowingly created, performed, maintained, or permitted to exist on private property that
35 constitutes a code **violation** or ordinance violation and that significantly affects the other
36 residents of the neighborhood; and:

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

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

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

82.1029. 1. A neighborhood organization, on behalf of a person or persons who own
2 real estate or reside within one thousand two hundred feet of a property on which there is a
3 condition or activity constituting a code or ordinance violation in the neighborhood or
4 neighborhoods described in the articles of incorporation or the bylaws of the neighborhood

5 organization, or on its own behalf with respect to a code or ordinance violation on property
6 anywhere within the boundaries of the neighborhood or neighborhoods, may seek injunctive and
7 other equitable relief in the circuit court for abatement of a nuisance upon showing:

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (4) The relief sought in the action.

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

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

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

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

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

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

65 9. A proceeding under this section shall:

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

67 (2) Be expedited in every way.

✓