

FIRST REGULAR SESSION

# HOUSE BILL NO. 471

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BUTLER.

0680H.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 known as section 67.452, to read as follows:

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

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

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

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

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

**(5) "Penalize", includes, but is not limited to, the actual or threatened revocation, suspension, or nonrenewal of a rental license; the actual or threatened assessment of fines; the actual or threatened eviction, or causing the actual or threatened eviction, from leased premises;**

**(6) "Premises", any parcel of property, residential or commercial; a building or structure, if any, situated on the property; and any portion of the public way that abuts the**

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 property if the public way is used in conjunction with the abutting property for the  
18 commission of illegal activity;

19 (7) "Public nuisance", a continuing act or physical condition that is made,  
20 permitted, allowed, or continued by any person or legal entity, a person's or legal entity's  
21 agent or servant, or any person or legal entity who aids therein that is detrimental to the  
22 safety, welfare, or convenience of the inhabitants of a city not within a county, or any part  
23 thereof, or any act or condition so designated by statute or ordinance. Certain calls to the  
24 police for assistance shall not be considered a public nuisance including, but not limited  
25 to, calls to the police regarding domestic violence, dating violence, sexual assault, or  
26 stalking by or on behalf of a person with a disability if the purpose of the call was related  
27 to that individual's disability;

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

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

40 3. In any city not within a county, a public nuisance exists if the premises are used  
41 for:

42 (1) One or more of the following incidents within the previous twelve months:

43 (a) The illegal sale, manufacture, storage, possession, distribution, or use of  
44 narcotics or other controlled substances or precursors;

45 (b) The illegal sale, manufacture, storage, possession, distribution, or use of drug  
46 paraphernalia or precursors; or

47 (c) The illegal sale, storage, possession, use, or distribution of a firearm, weapon,  
48 or explosive device; or

49 (2) Two or more of the following incidents within the previous twelve months:

50 (a) Prostitution;

51 (b) Illegal gambling;

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

- 53           (d) Violation of municipal, state, or federal business licensing regulations;
- 54           (e) Commission of any offense which is punishable by imprisonment of ninety days
- 55 or more;
- 56           (f) Making a false report of a violation of the law to any police officer or other
- 57 officer of the law in person, from any police alarm or call box, over the telephone or radio,
- 58 by improper use of emergency 911, or by any other means of communication; or
- 59           (g) Any other condition or activity that may constitute a felony under federal, state,
- 60 or municipal law that is detrimental to the safety, welfare, or convenience of the
- 61 inhabitants of the city not within a county or a part thereof.

62

63 However, incidents of or criminal activity directly related to domestic violence, dating

64 violence, sexual assault, or stalking shall not be considered incidents of a public nuisance

65 under this section. Calls to the police for assistance shall not be considered a public

66 nuisance including, but not limited to, calls to the police regarding domestic violence,

67 dating violence, sexual assault, or stalking by or on behalf of a person with a disability if

68 the purpose of the call was related to that person's disability.

69           4. (1) Whenever the director of public safety reasonably believes that any premises

70 constitute a public nuisance under subsection 3 of this section, the director or the director's

71 designee shall give written notice to the owner of the premises and to the tenants or

72 occupants of the premises accused of the public nuisance. The notice shall state that the

73 director reasonably believes a public nuisance exists and shall identify the activities or

74 conditions that form the basis of the belief. The notice shall also set forth reasonable

75 abatement measures that the landlord is required to take within thirty days of the notice.

76 An owner-occupant or tenant shall immediately cease all public nuisance behavior.

77           (2) A copy of the notice shall be sent to the owner and the tenants or occupants of

78 the premises accused of the public nuisance via first-class United States mail. A copy of

79 the notice shall also be posted in a prominent place on the premises by the neighborhood

80 stabilization officer, problem property officer, building inspector, or other designee. The

81 notice shall also provide the owner of the premises and the tenants or occupants of the

82 premises accused of the public nuisance a reasonable opportunity to meet with a

83 representative of the city not within a county to discuss the allegations in the notice and the

84 need for abatement measures.

85           (3) In the event that additional nuisance behavior occurs on the premises that is

86 different from the behavior listed in the notice, the director or the director's designee may

87 send an "amended notice" to the owner of the premises and the tenants or occupants of the

88 premises accused of the additional nuisance. The "amended notice" shall be sent via first-

89 class United States mail and a copy posted in a prominent place on the premises. An  
90 additional thirty-day abatement period shall not be given if an "amended notice" is issued.

91 (4) Any notice of public nuisance issued in accordance with a city ordinance is still  
92 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 public nuisance may be issued a summons for  
95 engaging in a public nuisance or maintaining a public nuisance. Any owner of residential  
96 or commercial units who does not abate the public nuisance within the thirty-day period  
97 shall be issued a summons for failure to abate a public nuisance. A defendant who is found  
98 guilty of or pleads guilty to a public nuisance offense shall be subject to a fine of not less  
99 than one hundred dollars and not more than five hundred dollars or any other penalty  
100 available by law, including up to ninety days in jail for the first offense. A defendant who  
101 is found guilty of or pleads guilty to a second public nuisance offense shall be subject to a  
102 fine of not less than two hundred dollars and not more than five hundred dollars or any  
103 other penalty available by law, including up to ninety days in jail. A defendant who is  
104 found guilty of or pleads guilty to a third or subsequent public nuisance offense shall be  
105 subject to a fine of five hundred dollars or any other penalty available by law, including  
106 up to ninety days in jail. Each occurrence of public nuisance behavior, regardless of  
107 proximity in time to any other public nuisance violation, shall be deemed a separate and  
108 distinct offense for which a summons may be issued.

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

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

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

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

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

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

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

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

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

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

142           (11) Upon conclusion of a hearing, the administrative hearing officer shall issue  
143 findings of fact, conclusions of law, and order of the hearing officer setting forth the facts  
144 and law which support the hearing officer's public nuisance determination.

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

152           (13) The order shall inform the respondent of his or her right to seek judicial  
153 review of the hearing officer's final determination, as provided under sections 536.100 to  
154 536.140.

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

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

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

160 (c) A copy of the order.

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

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

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

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

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

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

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

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

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

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

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

205 (c) Payment of reasonable attorney's fees;

206 (d) Payment of court costs;

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

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

✓