

HOUSE BILL NO. 1538

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BUTLER.

4110H.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 any 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) If 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) A copy of the order.

160 **7. Failure to comply with an order to abate a public safety public 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 public nuisance exists and orders that the**
167 **abatement of the public nuisance requires closure of the subject premises, the following**
168 **shall 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 public 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, whether commercial or residential, that had previously been**
180 **exempt from, or "grandfathered in", and not subject to compliance with current health,**
181 **safety, zoning, property maintenance, and building codes of the city not within a county**
182 **shall be deemed to have forfeited that status and shall be in complete compliance with all**
183 **applicable city, state, and federal health, safety, property maintenance, and building codes.**
184 **The property shall be subject to a full occupancy inspection. No occupancy shall occur**
185 **unless all code violations are abated; and**

186 **(4) Any licenses, variances, permits, or certificates, whether business, occupancy,**
187 **or building code, that 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's 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.**