

FIRST REGULAR SESSION

HOUSE BILL NO. 1258

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE OWEN.

2662H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 67.399, 82.1025, 82.1026, 82.1027, and 82.1031, RSMo, and to enact in lieu thereof six new sections relating to nuisance actions.

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

Section A. Sections 67.399, 82.1025, 82.1026, 82.1027, and 82.1031, RSMo, are
2 repealed and six new sections enacted in lieu thereof, to be known as sections 67.399, 67.452,
3 82.1025, 82.1026, 82.1027, and 82.1031, to read as follows:

67.399. 1. The governing body of any municipality or county with a charter form of
2 government and with more than one million inhabitants may, by ordinance, establish a
3 semiannual registration fee not to exceed two hundred dollars which shall be charged to the
4 owner of any parcel of residential property improved by a residential structure, or commercial
5 property improved by a structure containing multiple dwelling units, that is vacant, has been
6 vacant for at least six months, and is characterized by violations of applicable housing codes
7 established by such municipality.

8 2. The municipality shall designate a municipal officer to investigate any property
9 that may be subject to the registration fee. The officer shall report [~~his~~] **such officer's**
10 findings and recommendations, and shall determine whether any such property shall be
11 subject to the registration fee. Within five business days, the clerk of the municipality or
12 county with a charter form of government and with more than one million inhabitants shall
13 notify by mail the owners of property on which the registration fee has been levied at their
14 last known address according to the records of the city and the county. The property owner
15 shall have the right to appeal the decision of the office to the municipal court within thirty
16 days of such notification. Absent the existence of any valid appeal or request for

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 reconsideration pursuant to subsection 3 of this section, the registration fee shall begin to
18 accrue on the beginning of the second calendar quarter after the decision of the municipal
19 officer.

20 3. Within thirty days of the municipality or county with a charter form of government
21 and with more than one million inhabitants making such notification, the property owner may
22 complete any improvements to the property that may be necessary to revoke the levy of the
23 registration fee, and then may request a reinspection of the property and a reconsideration of
24 the levy of the registration fee by the municipality or county with a charter form of
25 government and with more than one million inhabitants. If the municipal or county officer
26 revokes the registration fee, no such assessment shall be made and the matter shall be
27 considered closed. If the officer affirms the assessment of the registration fee, the property
28 owner shall have the right to appeal the reconsideration decision of the officer to the
29 municipal court within thirty days of such decision. Absent the existence of any valid appeal
30 to the municipal court or other court of competent jurisdiction, the registration fee shall begin
31 to accrue on the beginning of the second calendar quarter after the reconsideration decision of
32 the municipal governing body.

33 4. The municipal governing body shall establish by ordinance procedures for payment
34 of the registration fee and penalties for delinquent payments of such fees. Any registration
35 fees which are delinquent for a period of one year shall become a lien on the property and
36 shall be subject to foreclosure proceedings in the same manner as delinquent real property
37 taxes. The owner of the property against which the assessment was originally made shall be
38 able to redeem the property only by presenting evidence that the violations of the applicable
39 housing code cited by the municipal officers have been cured and presenting payment of all
40 registration fees and penalties. Upon bona fide sale of the property to an unrelated party said
41 lien shall be considered released and the delinquent registration fee forgiven.

42 **5. (1) The governing body of the following may enact ordinances as provided in**
43 **this subsection:**

44 **(a) Any county with more than one million inhabitants; and**

45 **(b) Any city or village in any county with more than one million inhabitants.**

46 **(2) The governing body of any county, city, or village listed in subdivision (1) of**
47 **this subsection may enact ordinances to provide for the building official of the county,**
48 **city, or village, or any authorized representative of the building official, to petition the**
49 **circuit court in which a vacant nuisance building or structure is located for the**
50 **appointment of a receiver to rehabilitate the building or structure, to demolish it, or to**
51 **sell it to a qualified buyer.**

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

2 **(1) "Code or ordinance violation", a violation under the provisions of a**
3 **municipal or county code or ordinance that regulates fire prevention, animal control,**
4 **noise control, property maintenance, building construction, health, safety, neighborhood**
5 **detriment, sanitation, or nuisances;**

6 **(2) "Neighborhood organization", a Missouri not-for-profit corporation that:**

7 **(a) Is a bona fide community organization formed for the purpose of**
8 **neighborhood preservation or improvement in an area of a county, city, or village**
9 **with defined limits and boundaries described in the organization's articles of**
10 **incorporation or bylaws;**

11 **(b) Has a board of directors composed of individuals, at least half of whom**
12 **maintain their principal residence in the area of a county, city, or village described in the**
13 **organization's articles of incorporation or bylaws; and**

14 **(c) Is recognized by the federal Internal Revenue Service as tax exempt under**
15 **the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or**
16 **the corresponding section of any future tax code;**

17 **(3) "Nuisance", an activity or condition created, performed, maintained, or**
18 **permitted to exist on private property that constitutes a code or ordinance violation,**
19 **whether or not the property has been cited by the county, city, or village in which the**
20 **property is located; or, if the property is in a deteriorated condition, due to neglect or**
21 **failure to reasonably maintain, abandonment, failure to repair after a fire, flood, or**
22 **some other deterioration of the property, or there is clutter on the property such as**
23 **abandoned automobiles, appliances, or similar objects; or, with respect to commercial,**
24 **industrial, or vacant property, if the activity or condition on the property encourages,**
25 **promotes, or substantially contributes to unlawful activity within three hundred feet of**
26 **the property; or if any activity or condition:**

27 **(a) Diminishes the value of the neighboring property;**

28 **(b) Is injurious to the public health, safety, security, or welfare of neighboring**
29 **residents or businesses; or**

30 **(c) Impairs the reasonable use or peaceful enjoyment of other property in the**
31 **neighborhood.**

32 **2. This section applies to a nuisance located within the boundaries of any:**

33 **(1) County with more than one million inhabitants; or**

34 **(2) City or village located within the boundaries of any county with more than**
35 **one million inhabitants.**

36 **3. Any property owner who owns property within one thousand two hundred**
37 **feet of a parcel of property that is alleged to be a nuisance may bring a nuisance action**
38 **under this section against the offending property owner for the amount of damage**

39 created by such nuisance to the value of the petitioner's property including, but not
40 limited to, diminution in value of the petitioner's property and court costs.

41 4. An action for injunctive relief to abate a nuisance may be brought against the
42 offending property owner under this section by:

43 (1) Anyone who owns property within one thousand two hundred feet of a
44 property that is alleged to be a nuisance; or

45 (2) A neighborhood organization:

46 (a) On behalf of any person or persons who own property within the boundaries
47 of the geographic area described in the articles of incorporation or bylaws of the
48 neighborhood organization and who could maintain a nuisance action under this section
49 or under the common law of private nuisance; or

50 (b) On the neighborhood organization's own behalf with respect to a nuisance on
51 property anywhere within the geographic boundaries described in the articles of
52 incorporation or bylaws of the neighborhood organization.

53 5. (1) An action shall not be brought under this section until sixty days after the
54 party who brings the action has mailed notice of intent to bring an action under this
55 section, postage prepaid, to:

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

58 (b) The property owner of record at the last known address of the property
59 owner on file with the county, city, or village or, if the property owner is a corporation or
60 other type of limited liability company, to the property owner's registered agent at the
61 agent's address of record.

62 (2) Such notice shall state that a nuisance exists and that legal action may be
63 taken against the owner of the property if the nuisance is not eliminated within sixty
64 days after the date on the mailed notice.

65 (3) If the notice is returned unclaimed or refused, designated by the United
66 States Postal Service to be undeliverable, or signed for by a person other than the
67 addressee, adequate and sufficient notice shall be provided by posting a copy of the
68 notice on the property where the nuisance allegedly is occurring. A sworn affidavit by
69 the person who mailed or posted the notice describing the date and manner that notice
70 was given shall be sufficient evidence to establish that the notice was given.

71 (4) The notice shall specify:

72 (a) The act or condition that constitutes the nuisance;

73 (b) The date the nuisance was first discovered;

74 (c) The address of the property and location on the property where the act or
75 condition that constitutes the nuisance is allegedly occurring or exists; and

76 (d) The relief sought in the action.

77 6. A proceeding under this section shall:

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

79 (2) Be expedited in every way.

80 7. When a property owner or neighborhood organization brings an action under
81 this section for injunctive relief to abate a nuisance, a prima facie case for injunctive
82 relief is made upon proof that a citation has been issued by the county, city, or village
83 with jurisdiction over the property that is subject to an action under this section. An
84 action for injunctive relief to abate a nuisance shall be heard by the court without a jury
85 and shall not require proof that the party bringing the action has sustained damage or
86 loss as a result of the nuisance.

87 8. A copy of a notice of citation issued by the county, city, or village with
88 jurisdiction over the property that is subject to an action under this section that shows
89 the date the citation was issued shall be prima facie evidence of whether and for how
90 long the property has been in violation of the code or ordinance provisions provided in
91 the citation.

92 9. When a property owner or neighborhood organization bringing the action
93 prevails in such action, such property owner or organization may be entitled to an
94 award for attorneys' fees and expenses, based on the amount of time reasonably
95 expended, as ordered by the court, which award for attorneys' fees and expenses shall
96 be entered as a judgment against the owner of the property on which the act or
97 condition constituting the nuisance occurred or was located.

98 10. (1) This section shall not be construed as to abrogate any equitable or legal
99 right or remedy otherwise available under the law to abate a nuisance.

100 (2) This section shall not be construed to grant standing for an action
101 challenging any zoning application or approval.

102 11. If a property owner sued under this section pleads and proves that a
103 condition alleged by the plaintiff to be a nuisance is the subject matter of an order of the
104 state department of natural resources, the United States Environmental Protection
105 Agency, or the office of the Missouri attorney general and further pleads and proves
106 that the property is in compliance with such order with respect to such condition, such
107 proof shall be an affirmative defense to plaintiff's claim that such condition is subject to
108 one or more of the remedies provided for under this section.

82.1025. 1. Sections 82.1025, 82.1027 and 82.1030 apply to a nuisance located
2 within the boundaries of:

3 (1) Any city not within a county [~~or in~~];

4 (2) Any home rule city with at least three hundred fifty thousand inhabitants which is
5 located in more than one county;

6 (3) **Any home rule city with more than one hundred sixty thousand but fewer**
7 **than two hundred thousand inhabitants; or**

8 (4) **Any home rule city with more than seventy-one thousand but fewer than**
9 **seventy-nine thousand inhabitants.**

10 2. Any property owner who owns property within one thousand two hundred feet of a
11 parcel of property ~~[which]~~ **that** is alleged to be a nuisance may bring a nuisance action under
12 this section against the offending property owner for the amount of damage created by such
13 nuisance to the value of the petitioner's property, including diminution in value of the
14 petitioner's property, and court costs.

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

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

19 (2) A neighborhood organization, as defined in section 82.1027, on behalf of any
20 person or persons who own property within the boundaries of the neighborhood or
21 neighborhoods described in the articles of incorporation or bylaws of the neighborhood
22 organization and who could maintain a nuisance action under this section or under the
23 common law of private nuisance, or on its own behalf with respect to a nuisance on property
24 anywhere within the boundaries of the neighborhood or neighborhoods.

25 4. An action shall not be brought under this section until sixty days after the party
26 who brings the action has ~~[sent written]~~ **mailed** notice of intent to bring an action under this
27 section ~~[by certified mail, return receipt requested]~~, postage prepaid, to:

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

30 (2) The property owner of record at the last known address of the property owner on
31 file with the county or city, or, if the property owner is a corporation or other type of limited
32 liability company, to the property owner's registered agent at the agent's address of record;

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34 that a nuisance exists and that legal action may be taken against the owner of the property if
35 the nuisance is not eliminated within sixty days after the date on the ~~[written]~~ **mailed** notice.
36 If the notice ~~[sent by certified mail]~~ is returned unclaimed or refused, designated by the post
37 office to be undeliverable, or signed for by a person other than the addressee, then adequate
38 and sufficient notice shall be provided by posting a copy of the notice on the property where
39 the nuisance allegedly is occurring. A sworn affidavit by the person who mailed or posted the

40 notice describing the date and manner that notice was given shall be sufficient evidence to
41 establish that the notice was given. The notice shall specify:

42 (a) The act or condition that constitutes the nuisance;

43 (b) The date the nuisance was first discovered;

44 (c) The address of the property and location on the property where the act or
45 condition that constitutes the nuisance is allegedly occurring or exists; and

46 (d) The relief sought in the action.

47 5. A copy of a notice of citation issued by the city or county that shows the date the
48 citation was issued shall be prima facie evidence of whether and for how long ~~[a citation has
49 been pending against the property or the property owner]~~ **the property has been in violation
50 of the code or ordinance provisions described in the citation.**

51 6. A proceeding under this section shall:

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

53 (2) Be expedited in every way.

54 7. When a property owner or neighborhood organization brings an action under this
55 section for injunctive relief to abate a nuisance, a prima facie case for injunctive relief shall be
56 made upon proof that a nuisance exists on the property. ~~[Such]~~ **An action for injunctive
57 relief to abate a nuisance shall be heard by the court without a jury and** shall not require
58 proof that the party bringing the action has sustained damage or loss as a result of the
59 nuisance.

60 8. ~~[With respect to an action under this section against the owner of commercial or
61 industrial property,]~~ When a property owner or neighborhood organization bringing the action
62 prevails in such action, such property owner or organization may be entitled to an award for
63 ~~[its reasonable]~~ attorneys' fees and expenses, **based on the amount of time reasonably
64 expended,** as ordered by the court, ~~[incurred in bringing and prosecuting the action,]~~ which
65 award for attorneys' fees and expenses shall be entered as a judgment against the owner of the
66 property on which the act or condition constituting the nuisance occurred or was located.

67 ~~[9. Property owners bringing a lawsuit based on the prima facie case standard under
68 subsections 5 and 7 of this section, or seeking attorney fees and expenses under subsection 8
69 of this section, shall be limited to lawsuits involving property ownership in any home rule city
70 with more than three hundred fifty thousand inhabitants and located in more than one county
71 or any city not within a county and shall otherwise be limited to the general standards for
72 nuisance applying to other political subdivisions under subsection 1 of this section.]~~

82.1026. The governing body of any **city not within a county**, home rule city with
2 more than four hundred thousand inhabitants and located in more than one county, **home rule
3 city with more than one hundred sixty thousand but fewer than two hundred thousand
4 inhabitants, or home rule city with more than seventy-one thousand but fewer than**

5 **seventy-nine thousand inhabitants** may enact ordinances to provide for the building official
6 of the city or any authorized representative of the building official to petition the circuit court
7 in the county in which a vacant nuisance building or structure is located for the appointment
8 of a receiver to rehabilitate the building or structure, to demolish it, or to sell it to a qualified
9 buyer.

82.1027. As used in section 82.1025 and sections 82.1027 to 82.1030, the following
2 terms mean:

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

11 (2) "Neighborhood organization", either:

12 (a) A Missouri not-for-profit corporation that:

13 a. Is a bonafide community organization formed for the purpose of neighborhood
14 preservation or improvement;

15 b. Whose articles of incorporation or bylaws specify that one of the purposes for
16 which the corporation is organized is the preservation and protection of residential and
17 community property values in all or part of a neighborhood or neighborhoods with
18 geographic boundaries that conform to the boundaries of not more than two adjoining
19 neighborhoods recognized by the planning division of the city ~~or county~~ in which the
20 neighborhood or neighborhoods are located ~~in any home rule city with more than three~~
21 ~~hundred fifty thousand inhabitants and located in more than one county, or in any city not~~
22 ~~within a county~~; and

23 c. Whose board of directors is comprised of individuals, at least half of whom
24 maintain their principal residence in a neighborhood the organization serves as described in
25 the organization's articles of incorporation or bylaws; or

26 (b) An organization recognized by the federal Internal Revenue Service as tax exempt
27 under the provisions of Internal Revenue Code Section 501(c)(3) **(26 U.S.C. Section 501(c)**
28 **(3)), as amended**, or the corresponding section of any future tax code, which has had a
29 contract with any ~~home rule~~ city ~~with more than three hundred fifty thousand inhabitants~~
30 ~~and located in more than one county, or in any city not within a county~~ to furnish housing
31 related services in that ~~municipality or county~~ **city** at any point during the five-year period
32 preceding the filing of the action, and is in compliance with or completed such contract;

33 (3) "Nuisance", an activity or condition created, performed, maintained, or permitted
34 to exist on private property that constitutes a code or ordinance violation, whether or not the
35 property has been cited by the city or county in which the property is located; or, if the
36 property is in a deteriorated condition, due to neglect or failure to reasonably maintain,
37 abandonment, failure to repair after a fire, flood, or some other deterioration of the property,
38 or there is clutter on the property such as abandoned automobiles, appliances, or similar
39 objects; or, with respect to commercial, industrial, and vacant property, if the activity or
40 condition on the property encourages, promotes, or substantially contributes to unlawful
41 activity within three hundred feet of the property; ~~and the~~ **or if any** activity or condition
42 ~~[either]:~~

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

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

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

82.1031. ~~[No action shall be brought]~~ **If a property owner sued** under section
2 82.1025 and sections 82.1027 to 82.1030 ~~[if the owner of the property that]~~ **pleads and**
3 **proves that a condition alleged by the plaintiff to be a nuisance** is the subject **matter** of
4 ~~[the action is in good faith compliance with all orders]~~ **an order** issued by the **state**
5 department of natural resources, the United States Environmental Protection Agency, or the
6 office of the **Missouri** attorney general, **and further pleads and proves that the property is**
7 **in compliance with such order with respect to such condition, such proof shall be an**
8 **affirmative defense to plaintiff's claim that such condition is subject to one or more of**
9 **the remedies provided for under section 82.1025 and sections 82.1027 to 82.1030.**

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