

FIRST REGULAR SESSION

SENATE BILL NO. 229

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CURLS.

Read 1st time January 12, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1168S.011

AN ACT

To repeal sections 82.1025, 82.1027, 82.1029, and 82.1031, RSMo, and to enact in lieu thereof four new sections relating to property regulations in certain cities and counties.

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

Section A. Sections 82.1025, 82.1027, 82.1029, and 82.1031, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 82.1025, 82.1027, 82.1029, and 82.1031, 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 of the property allows clutter on the
21 property such as abandoned automobiles, appliances or similar objects. Any
22 property owner who owns property within one thousand two hundred feet of a
23 parcel of property which is alleged to be a nuisance may bring a nuisance action
24 against the offending property owner for the amount of damage created by such
25 nuisance to the value of the petitioner's property, including diminution in value
26 of the petitioner's property, and court costs, provided that the owner of the
27 property which is alleged to be a nuisance has received notification of the alleged
28 nuisance and has had a reasonable opportunity, not to exceed forty-five days, to
29 correct the alleged nuisance. This section is not intended to abrogate, and shall
30 not be construed as abrogating, any remedy available under the common law of
31 private nuisance.

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

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

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

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

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

49 (2) The property owner of record at the last known address of the property
50 owner on file with the county or city, or, if the property owner is a corporation [or
51 other type of], limited liability company, **or other legal entity**, to the property
52 owner's registered agent at the agent's address of record; that a nuisance exists
53 and that legal action may be taken against the owner of the property. If the

54 notice sent by certified mail is returned unclaimed or refused, designated by the
55 post office to be undeliverable, or signed for by a person other than the addressee,
56 then adequate and sufficient notice may be given to the tenant, if any, and the
57 property owner of record by sending a copy of the notice by regular mail to the
58 address of the property owner or registered agent and posting a copy of the notice
59 on the property where the nuisance allegedly is occurring. A sworn affidavit by
60 the person who mailed or posted the notice describing the date and manner that
61 notice was given shall be prima facie evidence of the giving of such notice. The
62 notice shall specify:

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

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

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

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

75 6. [A neighborhood organization may not bring an action under this
76 section if, at the time of filing suit, the neighborhood organization or any of its
77 directors own real estate, or have an interest in a trust or a corporation or other
78 limited liability company that owns real estate, in the city or county in which the
79 nuisance is located with respect to which real property taxes are delinquent or
80 a notice of violation of a city code or ordinance has been issued and served and
81 is outstanding.

82 7.] This section is not intended to abrogate, and shall not be construed as
83 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] **nonprofit** corporation whose articles of
11 incorporation or bylaws specify that one of the purposes for which the corporation
12 is organized is the preservation and protection of residential and community
13 property values in a neighborhood or neighborhoods with geographic boundaries
14 that conform to the boundaries of not more than two adjoining neighborhoods
15 recognized by the planning division of the city or county in which the
16 neighborhood or neighborhoods are located provided that the corporation's articles
17 of incorporation 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; **or**

28 **(b) In a home rule city with more than four hundred thousand**
29 **inhabitants and located in more than one county, an organization**
30 **defined in paragraph (a) of subdivision (13) of section 32.105, or an**
31 **organization recognized by the governing municipality as a**
32 **neighborhood association.**

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

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

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

42 (c) Impairs the reasonable use or peaceful enjoyment of other property in

43 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
59 section if, at the time of filing suit, the neighborhood organization or any of its
60 directors own real estate, or have an interest in a trust or a corporation or other
61 limited liability company that owns real estate, in the city or county in which the
62 nuisance is located with respect to which real property taxes are delinquent or
63 a notice of violation of a city code or ordinance has been issued and served and
64 is outstanding.

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

68 [9.] 8. A proceeding under this section shall:

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

70 (2) Be expedited in every way.

82.1031. No action shall be brought under section 82.1025 or sections

2 82.1027 to 82.1030 if the owner of the property that is the subject of the action
3 is in good faith compliance with any order issued by the department of natural
4 resources, the United States Environmental Protection Agency, or the office of
5 attorney general, **and the court reviewing a claim under section 82.1025**
6 **or sections 82.1027 to 82.1030 determines upon a claim by the defendant**
7 **that such order would prevent municipal enforcement of the applicable**
8 **code or ordinance.**

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