

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 668

INTRODUCER: Senator Perry

SUBJECT: Public Nuisances

DATE: March 29, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 668 amends s. 823.05, F.S., relating to public nuisances, to:

- Delete the requirement that a criminal gang or member or associate of such gang must use a location “on two or more occasions” for the purpose of engaging in a criminal gang-related activity in order for such use to qualify as a public nuisance that can be abated or enjoined;
- Provide that any place or premises that has been used on more than two occasions within a six-month period as the site of dealing in stolen property, assault, aggravated assault, battery, aggravated battery, burglary, theft, or robbery by sudden snatching, may be declared a public nuisance and may be abated or enjoined; and
- Provide that a rental property that is declared a public nuisance based upon the previously-described circumstances may not be abated or subject to forfeiture under the Florida Contraband Forfeiture Act if the nuisance was committed by someone other than the owner of the property and the property owner commences rehabilitation of the property within 30 days after the property is declared a public nuisance and completes the rehabilitation within a reasonable time thereafter.

The abatement or enjoining of a public nuisance described in the bill may result in a cost-savings or cost-avoidance to homeowners or businesses, if they have sustained an economic loss, and a cost-savings or cost-avoidance to local governments if they have sustained an economic loss. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

II. Present Situation:

Public Nuisances (s. 823.05, F.S.)

Section 823.05(1), F.S., provides that a person is guilty of maintaining a public nuisance¹ if he or she erects, establishes, continues, or maintains, owns or leases any building, booth, tent or place which tends to annoy the community or injure the health of the community, or become manifestly injurious to the morals or manners of the people as described in s. 823.01, F.S., or any house or place of prostitution, assignation, lewdness or place or building where games of chance are engaged in violation of law or any place where any law of the state is violated. The building, erection, place, tent or booth and the furniture, fixtures, and contents are declared a public nuisance.

Section 823.05(2), F.S., provides that a criminal gang, criminal gang member, or criminal gang associate who engages in the commission of criminal gang-related activity² is a public nuisance,³ and the use of a location on two or more occasions by a criminal gang or member or associate of such gang for the purpose of engaging in criminal gang-related activity is also a public nuisance.⁴

Section 823.05(2), F.S., does not prevent a local governing body from adopting and enforcing laws consistent with ch. 825, F.S., relating to criminal gangs and gang violence.⁵ Further, the state, through the Department of Legal Affairs or any state attorney, or any of the state's agencies, instrumentalities, subdivisions, or municipalities having jurisdiction over conduct in violation of a provision of ch. 825, F.S., may institute civil proceedings under s. 823.05(2), F.S., and, pending final determination, the circuit court may enter injunctions, prohibitions, or restraining orders, or take such other actions it deems proper.⁶

Section 823.05(3), F.S., provides that a massage establishment as defined in s. 480.033(7), F.S., that operates in violation of s. 480.0475, F.S., or s. 480.0535(2), F.S., is a public nuisance.

¹ Although s. 823.05(1), F.S., refers to a person being "guilty of maintaining a public nuisance," s. 823.05, F.S., does not make maintaining a public nuisance a crime. However, s. 823.01, F.S., provides that all nuisances that tend to annoy the community, injure the health of the citizens in general, or corrupt the public morals are second degree misdemeanors, except that a violation of s. 823.10, F.S., is a third degree felony. Section 823.10(1), F.S., provides that certain places visited by persons for the purpose of unlawfully using a controlled substance or a drug described in ch. 499, F.S. (Florida Drug and Cosmetic Act), or for the illegal keeping, selling, or delivering of such substance or drug, are a public nuisance. Any person who willfully keeps or maintains, or aids or abets another in keeping or maintaining, such public nuisance commits a third degree felony, if such public nuisance is a warehouse, structure, or building. *Id.*

² Section 823.05(2)(a), F.S., defines the terms "criminal gang," "criminal gang member," "criminal gang associate," and "criminal gang-related activity" by reference to the definitions of those terms in s. 874.03, F.S.

³ Section 823.05(2)(b), F.S. Section 893.138(2)(d), F.S., also provides that any place or premises that has been used by a criminal gang for the purpose of conducting criminal gang activity may be declared a public nuisance if the place or premises has been used on more than two occasions within a six-month period as the site of dealing in stolen property or a violation of ch. 499, F.S. (Florida Drug and Cosmetic Act). Unlike s. 823.05, F.S., a public nuisance described in s. 893.138, F.S., is abated pursuant to procedures provided in that section. Section 893.138(2)-(7), F.S. However, the public nuisance may be enjoined pursuant to s. 60.05, F.S. Section 893.138(9) and (10), F.S.

⁴ Section 823.05(2)(c), F.S.

⁵ Section 823.05(2)(d), F.S.

⁶ Section 823.05(2)(e), F.S.

Abating or Enjoining Public Nuisances (ss. 60.05 and 60.06, F.S.)

Public nuisances described in s. 823.05, F.S., must be enjoined pursuant to s. 60.05, F.S., or abated pursuant to s. 60.06, F.S.⁷ Section 60.05(1), F.S., authorizes the Attorney General, state attorney, city attorney, county attorney, and any citizen to sue in the name of the state to enjoin the nuisance, the person(s) maintaining it, and the owner or agent of the building or ground on which the nuisance exists. The court, based on evidence⁸ or affidavit, may issue a temporary injunction enjoining:

- The maintaining of a nuisance;
- The operating and maintaining of the place or premises where the nuisance is maintained;
- The owner or agent of the building or ground upon which the nuisance exists; and
- The conduct, operation, or maintenance of any business or activity operated or maintained in the building or on the premises in connection with the maintenance of the nuisance.⁹

The injunction must specify the activities enjoined and must not preclude the operation of any lawful business not conducive to the maintenance of the alleged nuisance.¹⁰ If the existence of a nuisance is shown at the final hearing, the court must issue a permanent injunction and order the costs to be paid by the persons establishing or maintaining the nuisance.¹¹ The court must adjudge that the costs are a lien on all personal property found in the place of the nuisance; however, if the property fails to bring enough to pay costs, the lien is on the real estate occupied by the nuisance.¹²

Section 60.06, F.S., requires the court, upon “proper” proof, to order the abatement of all nuisances mentioned in s. 823.05, F.S., and authorizes the court to enforce injunctions by contempt. However, this jurisdiction does not repeal or alter s. 823.01, F.S., which provides criminal penalties for nuisances described in that section.¹³

Real Property and the Florida Contraband Forfeiture Act

The “Florida Contraband Forfeiture Act” (Act)¹⁴ authorizes seizure and civil forfeiture of real property used in violation of the provisions of the Act.¹⁵ The seizure may only occur if the owner

⁷ Section 823.05(1), (2)(b) and (c), and (3), F.S.

⁸ Evidence of the general reputation of the alleged nuisance and place is admissible to prove the existence of a nuisance.

Section 60.05(3), F.S.

⁹ Section 60.05(2), F.S.

¹⁰ Section 60.05(2), F.S. At least 3 days’ notice in writing shall be given to the defendant of the time and place of application for the temporary injunction. *Id.*

¹¹ Section 60.05(4), F.S.

¹² *Id.* However, no lien attaches to the real estate of any person other than the person establishing or maintaining the nuisance unless five days’ written notice has been given to the owner or owner’s agent who fails to abate the nuisance within this five-day period. *Id.*

¹³ Section 60.06, F.S.

¹⁴ Sections 932.701-932.7062, F.S. *See* s. 932.701(1), F.S.

¹⁵ Section 932.703(1)(a), F.S. Real property may not be seized or restrained, other than by *lis pendens*, subsequent to a violation of the Florida Contraband Forfeiture Act until the persons entitled to notice are afforded the opportunity to attend the pre-seizure adversarial preliminary hearing. Section 932.703(3)(b), F.S. “A notice of *lis pendens* is an instrument which may be filed with the clerk of the circuit court in connection with actions involving the ownership of, or interest in, property. It is intended to operate as constructive notice to persons dealing with the property that is the subject matter of litigation.” *Op. Att’y Gen. Fla.* 58-135 (1958). Other requirements relating to seizure are specified in s. 923.703, F.S. Forfeiture

of the property is arrested for a criminal offense that forms the basis for determining that the property is a “contraband article” under s. 932.07, F.S.,¹⁶ or when one or more statutorily-specified exceptions to this arrest requirement apply.¹⁷ For example, one specified exception is when the property is not owned by the person arrested for a criminal offense that forms the basis for determining that the property is a “contraband article,” but the owner of the property had actual knowledge of the criminal activity.¹⁸

As previously noted, s. 823.05, F.S., in part, addresses criminal gang-related activity. Section 874.08, F.S., provides that the following are subject to seizure and forfeiture under the Florida Contraband Forfeiture Act:

- All profits, proceeds, and instrumentalities of criminal gang activity;
- All property used or intended or attempted to be used to facilitate the criminal activity of any criminal gang or of any criminal gang member;
- All profits, proceeds, and instrumentalities of criminal gang recruitment; and
- All property used or intended or attempted to be used to facilitate criminal gang recruitment.

III. Effect of Proposed Changes:

The bill amends s. 823.05, F.S., relating to public nuisances, to:

- Delete the requirement that a criminal gang or member or associate of such gang must use a location “on two or more occasions” for the purpose of engaging in a criminal gang-related activity in order for such use to qualify as a public nuisance that can be abated or enjoined;
- Provide that any place or premises that has been used on more than two occasions within a six-month period as the site of dealing in stolen property (s. 812.019, F.S.), assault (s. 784.011, F.S.), aggravated assault (s. 784.021, F.S.), battery (s. 784.03, F.S.), aggravated battery (s. 784.045, F.S.), burglary (s. 810.02, F.S.),¹⁹ theft (s. 812.014, F.S.), or robbery by sudden snatching (s. 812.131, F.S.), may be declared a public nuisance and may be abated or enjoined as provided in s. 60.05, F.S., or s. 60.06, F.S.; and
- Provide that a rental property that is declared a public nuisance based upon the previously-described circumstances may not be abated or subject to forfeiture under the Florida Contraband Forfeiture Act if the nuisance was committed by someone other than the owner of the property and the property owner commences rehabilitation of the property within 30 days after the property is declared a public nuisance and completes the rehabilitation within a reasonable time thereafter.

proceedings are addressed in s. 932.704, F.S., and disposition of liens and forfeited property are addressed in s. 932.7055, F.S.

¹⁶ The definition of “contraband article” in s. 932.701(2), F.S., includes an extensive list of tangible items. One of these items is real property used or attempted to be used as an instrumentality in the commission of, or in aiding or abetting the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Act. Section 932.701(2)(a)6., F.S. See s. 932.702, F.S. (unlawful acts involving a contraband article).

¹⁷ Section 932.703(1)(a), F.S.

¹⁸ Section 932.703(1)(a)3., F.S. Evidence that the owner received notification from a law enforcement agency and acknowledged receipt of the notification in writing, that the seized asset had been used in violation of the act on a prior occasion by the arrested person, may be used to establish actual knowledge. *Id.*

¹⁹ Armed burglary is also included in this section. See s. 810.02(2)(b), F.S.

The bill also restructures s. 823.05(1), F.S., which defines what constitutes a public nuisance and what may be abated or enjoined as a public nuisance. This is not a substantive change because nothing of a substantive nature is eliminated from or added to that subsection.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The abatement or enjoining of a public nuisance described in the bill may result in a cost-savings or cost-avoidance to homeowners or businesses, if they have sustained an economic loss (e.g., decreased home and business property values and loss of customers) as a result of the presence of the nuisance.

C. Government Sector Impact:

The abatement or enjoining of a public nuisance described in the bill may result in a cost-savings or cost-avoidance to local governments if they have sustained an economic loss (e.g., decreased local tax revenues, increased local law enforcement costs, and increased local ordinance or code enforcement costs) as a result of the presence of the nuisance.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 823.05 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.