

SENATE SUBSTITUTE

FOR

SENATE BILL NO. 3

AN ACT

To repeal sections 82.1025, 82.1027, 82.1028, 82.1029, 82.1030, and 82.1031, RSMo, and to enact in lieu thereof five 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Section A. Sections 82.1025, 82.1027, 82.1028, 82.1029, 82.1030, and 82.1031, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 82.462, 82.1025, 82.1027, 82.1030, and 82.1031, to read as follows:

82.462. 1. Except as provided in subsection 3 of this section, a person who is not the owner of real property or who is a creditor holding a lien interest on the property, and who suspects that the real property may be abandoned may enter upon the premises of the real property, without having a right to a mechanics lien pursuant to section 429.010, to do the following:

(1) Without entering any structure located on the real property, visually inspect the real property to determine whether the real property may be abandoned;

(2) Upon a good faith determination based upon the inspection that the property is abandoned, perform any of the following actions:

(a) Secure the real property;

(b) Remove trash or debris from the grounds of the real

1 property;

2 (c) Landscape, maintain, or mow the grounds of the real
3 property;

4 (d) Remove or paint over graffiti on the real property.

5 2. A person who enters upon the premises and conducts the
6 actions permitted in subsection 1 of this section and who makes a
7 good faith determination based upon the inspection that the
8 property is abandoned shall be:

9 (1) Immune from claims of civil and criminal trespass and
10 all other civil liability therefor, unless the act or omission
11 constitutes gross negligence or willful, wanton, or intentional
12 misconduct.

13 (2) Barred from bringing a civil action against the
14 property owner seeking damages as a result of physical injury,
15 unless the property owner's act or omission constitutes gross
16 negligence or willful, wanton, or intentional misconduct.

17 3. In the case of real property that is subject to a
18 mortgage or deed of trust, the creditor holding the debt secured
19 by the mortgage or deed of trust may not enter upon the premises
20 of the real property under subsection 1 of this section if entry
21 is barred by an automatic stay issued by a bankruptcy court.

22 4. As used in this section, "abandoned property" shall
23 mean:

24 (1) A vacant, unimproved lot zoned residential or
25 commercial for which the owner is in violation of a county or
26 municipal nuisance or property maintenance ordinance; or

27 (2) With respect to actions taken pursuant to this section
28 by a creditor holding a lien interest in the property, a property

1 which contains a structure or building which has been
2 continuously unoccupied by persons legally entitled to possession
3 for at least six months prior to entry under this section and the
4 creditor's debt secured by such lien interest has been
5 continuously delinquent for not less than three months; or

6 (3) With respect to actions taken pursuant to this section
7 by persons other than creditors, a property which contains a
8 structure or building which has been continuously unoccupied by
9 persons legally entitled to possession for at least six months
10 prior to entry under this section, and for which the owner is in
11 violation of a county or municipal nuisance or property
12 maintenance ordinance, and for which either:

13 (a) Ad valorem property taxes are delinquent; or

14 (b) The property owner has failed to comply with any county
15 or municipal ordinance requiring registration of vacant property,
16 or the county or municipality has determined the structure to be
17 uninhabitable due to deteriorated conditions;

18 5. This section shall apply only to real property located
19 in any home rule city with more than four hundred thousand
20 inhabitants and located in more than one county, in any county
21 with a charter form of government and with more than nine hundred
22 fifty thousand inhabitants, and in any city not within a county.

23 82.1025. 1. **[This section applies]** Sections 82.1025,
24 82.1027, and 82.1030 apply to a nuisance located within the
25 boundaries of any county of the first classification with a
26 charter form of government and a population greater than nine
27 hundred thousand, in any county of the first classification with
28 more than one hundred ninety-eight thousand but fewer than one

1 hundred ninety-nine thousand two hundred inhabitants, in any
2 county of the first classification with more than seventy-three
3 thousand seven hundred but fewer than seventy-three thousand
4 eight hundred inhabitants, in any county of the first
5 classification with more than ninety-three thousand eight hundred
6 but fewer than ninety-three thousand nine hundred inhabitants, in
7 any home rule city with more than one hundred fifty-one thousand
8 five hundred but fewer than one hundred fifty-one thousand six
9 hundred inhabitants, in any city not within a county and in any
10 city with at least three hundred fifty thousand inhabitants which
11 is located in more than one county.

12 2. [A parcel of property is a nuisance, if such property
13 adversely affects the property values of a neighborhood or the
14 property value of any property within the neighborhood because
15 the owner of such property allows the property to be in a
16 deteriorated condition, due to neglect or failure to reasonably
17 maintain, violation of a county or municipal building code,
18 standard, or ordinance, abandonment, failure to repair after a
19 fire, flood or some other damage to the property or because the
20 owner or resident of the property allows clutter on the property
21 such as abandoned automobiles, appliances or similar objects.]

22 Any property owner who owns property within one thousand two
23 hundred feet of a parcel of property which is alleged to be a
24 nuisance may bring a nuisance action under this section against
25 the offending property owner for the amount of damage created by
26 such nuisance to the value of the petitioner's property,
27 including diminution in value of the petitioner's property, and
28 court costs[, provided that the owner of the property which is

1 alleged to be a nuisance has received notification of the alleged
2 nuisance and has had a reasonable opportunity, not to exceed
3 forty-five days, to correct the alleged nuisance. This section
4 is not intended to abrogate, and shall not be construed as
5 abrogating, any remedy available under the common law of private
6 nuisance].

7 3. An action for injunctive relief to abate a nuisance
8 [under this section] may be brought under this section by:

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

11 (2) A neighborhood organization, as defined in subdivision
12 (2) of section 82.1027, on behalf of any person or persons who
13 own property within the boundaries of the neighborhood or
14 neighborhoods described in the articles of incorporation or
15 bylaws of the neighborhood organization and who could maintain a
16 nuisance action under this section or under the common law of
17 private nuisance, or on its own behalf with respect to a nuisance
18 on property anywhere within the boundaries of the neighborhood or
19 neighborhoods.

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

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

27 (2) The property owner of record at the last known address
28 of the property owner on file with the county or city, or, if the

1 property owner is a corporation or other type of limited
2 liability company, to the property owner's registered agent at
3 the agent's address of record;

4
5 that a nuisance exists and that legal action may be taken against
6 the owner of the property if the nuisance is not eliminated
7 within sixty days after the date on the written notice. If the
8 notice sent by certified mail is returned unclaimed or refused,
9 designated by the post office to be undeliverable, or signed for
10 by a person other than the addressee, then adequate and
11 sufficient notice [may be given to the tenant, if any, and the
12 property owner of record by sending a copy of the notice by
13 regular mail to the address of the property owner or registered
14 agent and] shall be provided by posting a copy of the notice on
15 the property where the nuisance allegedly is occurring. A sworn
16 affidavit by the person who mailed or posted the notice
17 describing the date and manner that notice was given shall be
18 [prima facie] sufficient evidence [of the giving of such notice]
19 to establish that the notice was given. The notice shall
20 specify:

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

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

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

26 (d) The relief sought in the action.

27 5. [When a neighborhood organization files a suit under
28 this section, an officer of the neighborhood organization or its

1 counsel shall certify to the court:

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

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

8 6. A neighborhood organization may not bring an action
9 under this section if, at the time of filing suit, the
10 neighborhood organization or any of its directors own real
11 estate, or have an interest in a trust or a corporation or other
12 limited liability company that owns real estate, in the city or
13 county in which the nuisance is located with respect to which
14 real property taxes are delinquent or a notice of violation of a
15 city code or ordinance has been issued and served and is
16 outstanding.

17 7. This section is not intended to abrogate, and shall not
18 be construed as abrogating, any remedy available under the common
19 law of private nuisance.] A copy of a notice of citation issued
20 by the city or county that shows the date the citation was issued
21 shall be prima facie evidence of whether and for how long a
22 citation has been pending against the property or the property
23 owner.

24 6. A proceeding under this section shall:

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

26 (2) Be expedited in every way.

27 7. When a property owner or neighborhood organization
28 brings an action under this section for injunctive relief to

1 abate a nuisance, a prima facie case for injunctive relief shall
2 be made upon proof that a nuisance exists on the property. Such
3 an action shall not require proof that the party bringing the
4 action has sustained damage or loss as a result of the nuisance.

5 8. With respect to an action under this section against the
6 owner of commercial or industrial property, when a property owner
7 or neighborhood organization bringing the action prevails in such
8 action, such property owner or organization may be entitled to an
9 award for its reasonable attorneys' fees and expenses, as ordered
10 by the court, incurred in bringing and prosecuting the action,
11 which award for attorneys' fees and expenses shall be entered as
12 a judgment against the owner of the property on which the act or
13 condition constituting the nuisance occurred or was located.

14 82.1027. As used in sections 82.1025, 82.1027 [to] , and
15 82.1030, the following terms mean:

16 (1) "Code or ordinance violation", a violation under the
17 provisions of a municipal code or ordinance of any home rule city
18 with more than four hundred thousand inhabitants and located in
19 more than one county, or any city not within a county, which
20 regulates fire prevention, animal control, noise control,
21 property maintenance, building construction, health, safety,
22 neighborhood detriment, sanitation, or nuisances;

23 (2) "Neighborhood organization", either:

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

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

27 b. Whose articles of incorporation or bylaws specify that
28 one of the purposes for which the corporation is organized is the

1 preservation and protection of residential and community property
2 values in all or part of a neighborhood or neighborhoods with
3 geographic boundaries that conform to the boundaries of not more
4 than two adjoining neighborhoods recognized by the planning
5 division of the city or county in which the neighborhood or
6 neighborhoods are located [provided that the corporation's
7 articles of incorporation or bylaws provide that:

8 (a) The corporation has members;

9 (b) Membership shall be open to all persons who own
10 residential real estate or who reside in the neighborhood or
11 neighborhoods described in the corporation's articles of
12 incorporation or bylaws subject to reasonable restrictions on
13 membership to protect the integrity of the organization; however,
14 membership may not be conditioned upon payment of monetary
15 consideration in excess of twenty-five dollars per year; and

16 (c) Only members who own residential real estate or who
17 reside in the neighborhood or neighborhoods described in the
18 corporation's articles of incorporation or bylaws may elect
19 directors or serve as a director] in any home rule city with more
20 than three hundred fifty thousand inhabitants and located in more
21 than one county, or in any city not within a county; and

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

26 (b) An organization recognized by the federal Internal
27 Revenue Service as tax exempt under the provisions of Internal
28 Revenue Code section 501(c)(3), or the corresponding section of

1 any future tax code, which has had a contract with any home rule
2 city with more than three hundred fifty thousand inhabitants and
3 located in more than one county, or with any city not within a
4 county to furnish housing related services in that municipality
5 or county at any point during the five-year period preceding the
6 filing of the action, and is in compliance with or completed such
7 contract;

8 (3) "Nuisance", [within the boundaries of the neighborhood
9 or neighborhoods described in the articles of incorporation or
10 bylaws of the neighborhood organization, an act or condition
11 knowingly created, performed, maintained, or permitted to exist
12 on private property that constitutes a code or ordinance
13 violation and that significantly affects the other residents of
14 the neighborhood; and] an activity or condition created,
15 performed, maintained, or permitted to exist on private property
16 that constitutes a code or ordinance violation, whether or not
17 the property has been cited by the city or county in which the
18 property is located; or, if the property is in a deteriorated
19 condition, due to neglect or failure to reasonably maintain,
20 abandonment, failure to repair after a fire, flood, or some other
21 deterioration of the property, or there is clutter on the
22 property such as abandoned automobiles, appliances, or similar
23 objects; or, with respect to commercial, industrial, and vacant
24 property, if the activity or condition on the property
25 encourages, promotes, or substantially contributes to unlawful
26 activity within three hundred feet of the property; and the
27 activity or condition either:

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

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

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

5 82.1030. 1. Subject to subsection 2 of this section,
6 sections 82.1025 and 82.1027 [to 82.1029] shall not be construed
7 [as] to abrogate any equitable or legal right or remedy otherwise
8 available under the law to abate a nuisance.

9 2. Sections 82.1025 and 82.1027 [to 82.1029] shall not be
10 construed [as] to grant standing for an action challenging any
11 zoning application or approval.

12 82.1031. No action shall be brought under section 82.1025
13 [or] and sections 82.1027 to 82.1030 if the owner of the property
14 that is the subject of the action is in good faith compliance
15 with [any order] all orders issued by the department of natural
16 resources, the United States Environmental Protection Agency, or
17 the office of attorney general.

18 [82.1028. Sections 82.1027 to 82.1030 apply to a
19 nuisance located within the boundaries of any city not
20 within a county and any home rule city with more than
21 four hundred thousand inhabitants and located in more
22 than one county.]

23
24 [82.1029. 1. A neighborhood organization, on
25 behalf of a person or persons who own real estate or
26 reside within one thousand two hundred feet of a
27 property on which there is a condition or activity
28 constituting a code or ordinance violation in the
29 neighborhood or neighborhoods described in the articles
30 of incorporation or the bylaws of the neighborhood
31 organization, or on its own behalf with respect to a
32 code or ordinance violation on property anywhere within
33 the boundaries of the neighborhood or neighborhoods,
34 may seek injunctive and other equitable relief in the
35 circuit court for abatement of a nuisance upon showing:

36 (1) The notice requirements of this section have

1 been satisfied; and

2 (2) The nuisance exists and has not been abated.

3 2. An action under this section shall not be
4 brought until:

5 (1) Sixty days after the neighborhood
6 organization sends written notice by certified mail,
7 return receipt requested, postage prepaid, to the
8 appropriate municipal code enforcement agency of the
9 neighborhood organization's intent to bring an action
10 under this section, together with a copy of the notice
11 the neighborhood organization sent or attempted to send
12 to the property owner in compliance with subdivision

13 (2) of subsection 2 of this section; and

14 (2) Sixty days after the neighborhood
15 organization sends notice by first class prepaid
16 postage certified mail, return receipt requested, to:

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

20 (b) The property owner of record at the last
21 known address of the property owner on file with the
22 county or city, or, if the property owner is a
23 corporation or other type of limited liability company,
24 to the property owner's registered agent at the
25 registered agent's address of record;

26
27 that a nuisance exists and that legal action may be
28 taken if the nuisance is not abated. If the notice
29 sent by certified mail is returned unclaimed or
30 refused, designated by the post office to be
31 undeliverable, or signed for by a person other than the
32 addressee, then adequate and sufficient notice may be
33 given to the tenant, if any, and the property owner of
34 record by sending a copy of the notice by regular mail
35 to the address of the property owner or registered
36 agent and posting a copy of notice on the property
37 where the nuisance allegedly is occurring.

38 3. A sworn affidavit by the person who mailed or
39 posted the notice describing the date and manner that
40 notice was given shall be prima facie evidence of the
41 giving of such notice.

42 4. The notice required by this section shall
43 specify:

44 (1) The act or condition that constitutes the
45 nuisance;

46 (2) The date the nuisance was first discovered;

47 (3) The address of the property and location on
48 the property where the act or condition that
49 constitutes the nuisance is allegedly occurring or
50 exists; and

51 (4) The relief sought in the action.

1 5. In filing a suit under this section, an
2 officer of the neighborhood organization or its counsel
3 shall certify to the court:

4 (1) From personal knowledge, that the
5 neighborhood organization has taken the required steps
6 to satisfy the notice requirements under this section;
7 and

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

11 6. An action may not be brought under this
12 section based on an alleged violation of a particular
13 code provision or ordinance if there is then pending
14 against the property or the owner of the property a
15 notice of violation with respect to such code provision
16 or ordinance issued by an appropriate municipal code
17 enforcement agency unless such notice of violation has
18 been pending for more than forty-five days and the
19 condition or activity that gave rise to the violation
20 has not been abated. This subsection shall not
21 preclude an action under this section where the
22 appropriate municipal code enforcement agency has
23 declined to issue a notice of violation against the
24 property or the property owner.

25 7. A neighborhood organization may not bring an
26 action under this section if, at the time of filing
27 suit, the neighborhood organization or any of its
28 directors own real estate, or have an interest in a
29 trust or a corporation or other limited liability
30 company that owns real estate, in the city or county in
31 which the nuisance is located with respect to which
32 real property taxes are delinquent or a notice of
33 violation of a city code or ordinance has been issued
34 and served and is outstanding.

35 8. A copy of the notice of citation issued by the
36 city that shows the date the citation was issued shall
37 be prima facie evidence of whether and for how long a
38 citation has been pending against the property or the
39 property owner.

40 9. A proceeding under this section shall:

41 (1) Be heard at the earliest practicable date;

42 and

43 (2) Be expedited in every way.]