

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR

SENATE BILL NO. 3

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CURLS.

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ADRIANE D. CROUSE, Secretary.

0430S.06P

AN ACT

To repeal sections 82.1025, 82.1026, 82.1027, 82.1028, 82.1029, 82.1030, and 82.1031, RSMo, and to enact in lieu thereof six 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, 82.1026, 82.1027, 82.1028, 82.1029, 82.1030, and
2 82.1031, RSMo, are repealed and six new sections enacted in lieu thereof, to be known
3 as sections 82.462, 82.1025, 82.1026, 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
2 who is not the owner of real property or who is a creditor holding a lien
3 interest on the property, and who suspects that the real property may be
4 abandoned may enter upon the premises of the real property, without having
5 a right to a mechanics lien pursuant to section 429.010, to do the following:**

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

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

11 (a) Secure the real property;

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

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

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

15 **2. A person who enters upon the premises and conducts the actions**
16 **permitted in subsection 1 of this section and who makes a good faith**
17 **determination based upon the inspection that the property is abandoned**
18 **shall be:**

19 **(1) Immune from claims of civil and criminal trespass and all other**
20 **civil liability therefor, unless the act or omission constitutes gross negligence**
21 **or willful, wanton, or intentional misconduct.**

22 **(2) Barred from bringing a civil action against the property owner**
23 **seeking damages as a result of physical injury, unless the property owner's**
24 **act or omission constitutes gross negligence or willful, wanton, or intentional**
25 **misconduct.**

26 **3. In the case of real property that is subject to a mortgage or deed of**
27 **trust, the creditor holding the debt secured by the mortgage or deed of trust**
28 **may not enter upon the premises of the real property under subsection 1 of**
29 **this section if entry is barred by an automatic stay issued by a bankruptcy**
30 **court.**

31 **4. As used in this section, "abandoned property" shall mean:**

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

35 **(2) With respect to actions taken pursuant to this section by a creditor**
36 **holding a lien interest in the property, a property which contains a structure**
37 **or building which has been continuously unoccupied by persons legally**
38 **entitled to possession for at least six months prior to entry under this section**
39 **and the creditor's debt secured by such lien interest has been continuously**
40 **delinquent for not less than three months; or**

41 **(3) With respect to actions taken pursuant to this section by persons**
42 **other than creditors, a property which contains a structure or building**
43 **which has been continuously unoccupied by persons legally entitled to**
44 **possession for at least six months prior to entry under this section, and for**
45 **which the owner is in violation of a county or municipal nuisance or**
46 **property maintenance ordinance, and for which either:**

47 **(a) Ad valorem property taxes are delinquent; or**

48 **(b) The property owner has failed to comply with any county or**
49 **municipal ordinance requiring registration of vacant property, or the county**
50 **or municipality has determined the structure to be uninhabitable due to**

51 **deteriorated conditions;**

52 **5. This section shall apply only to real property located in any home**
53 **rule city with more than four hundred thousand inhabitants and located in**
54 **more than one county, in any county with a charter form of government and**
55 **with more than nine hundred fifty thousand inhabitants, in any home rule**
56 **city with more than one hundred sixteen thousand but fewer than one**
57 **hundred fifty-five thousand inhabitants, and in any city not within a county.**

82.1025. 1. [This section applies] **Sections 82.1025, 82.1027, and 82.1030**
2 **apply** to a nuisance located within the boundaries of any county of the first
3 classification with a charter form of government and a population greater than nine
4 hundred thousand, in any county of the first classification with more than one hundred
5 ninety-eight thousand but fewer than one hundred ninety-nine thousand two hundred
6 inhabitants, in any county of the first classification with more than seventy-three
7 thousand seven hundred but fewer than seventy-three thousand eight hundred
8 inhabitants, in any county of the first classification with more than ninety-three
9 thousand eight hundred but fewer than ninety-three thousand nine hundred
10 inhabitants, in any home rule city with more than one hundred fifty-one thousand five
11 hundred but fewer than one hundred fifty-one thousand six hundred inhabitants, in
12 any city 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 the
16 neighborhood because the owner of such property allows the property to be in a
17 deteriorated condition, due to neglect or failure to reasonably maintain, violation of a
18 county or municipal building code, standard, or ordinance, abandonment, failure to
19 repair after a fire, flood or some other damage to the property or because the owner or
20 resident of the property allows clutter on the property such as abandoned automobiles,
21 appliances or similar objects.] Any property owner who owns property within one
22 thousand two hundred feet of a parcel of property which is alleged to be a nuisance
23 may bring a nuisance action **under this section** against the offending property owner
24 for the amount of damage created by such nuisance to the value of the petitioner's
25 property, including diminution in value of the petitioner's property, and court costs[,
26 provided that the owner of the property which is alleged to be a nuisance has received
27 notification of the alleged nuisance and has had a reasonable opportunity, not to
28 exceed forty-five days, to correct the alleged nuisance. This section is not intended to
29 abrogate, and shall not be construed as abrogating, any remedy available under the

30 common law of private nuisance].

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

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

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

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

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

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

51 that a nuisance exists and that legal action may be taken against the owner of the
52 property **if the nuisance is not eliminated within sixty days after the date on**
53 **the written notice.** If the notice sent by certified mail is returned unclaimed or
54 refused, designated by the post office to be undeliverable, or signed for by a person
55 other than the addressee, then adequate and sufficient notice [may be given to the
56 tenant, if any, and the property owner of record by sending a copy of the notice by
57 regular mail to the address of the property owner or registered agent and] **shall be**
58 **provided by** posting a copy of the notice on the property where the nuisance allegedly
59 is occurring. A sworn affidavit by the person who mailed or posted the notice
60 describing the date and manner that notice was given shall be [prima facie] **sufficient**
61 evidence [of the giving of such notice] **to establish that the notice was given.** 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 or

66 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 officer
69 of the neighborhood organization or its counsel shall certify to the court:

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

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

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

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

85 **6. A proceeding under this section shall:**

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

87 **(2) Be expedited in every way.**

88 **7. When a property owner or neighborhood organization brings an**
89 **action under this section for injunctive relief to abate a nuisance, a prima**
90 **facie case for injunctive relief shall be made upon proof that a nuisance**
91 **exists on the property. Such an action shall not require proof that the party**
92 **bringing the action has sustained damage or loss as a result of the nuisance.**
93 **8. With respect to an action under this section against the owner of**
94 **commercial or industrial property, when a property owner or neighborhood**
95 **organization bringing the action prevails in such action, such property**
96 **owner or organization may be entitled to an award for its reasonable**
97 **attorneys' fees and expenses, as ordered by the court, incurred in bringing**
98 **and prosecuting the action, which award for attorneys' fees and expenses**
99 **shall be entered as a judgment against the owner of the property on which**
100 **the act or condition constituting the nuisance occurred or was located.**

82.1026. The governing body of any home rule city with more than four

2 hundred thousand inhabitants and located in more than one county may enact
3 ordinances to provide for the [building official of the] city [or any authorized
4 representative of the building official] to petition the circuit court in the county in
5 which a vacant nuisance [building or structure] **property** is located for the
6 appointment of a receiver to rehabilitate the building or structure, to demolish [it] **the**
7 **building or structure**, or to sell [it] **the property** to a [qualified] buyer **who can**
8 **demonstrate an ability to abate the nuisance and vacancy. The court shall**
9 **maintain jurisdiction over the matter and the property until the city**
10 **dismisses the case or the nuisance and vacancy is abated.**

82.1027. As used in sections **82.1025**, 82.1027 [to] , **and** 82.1030, the following
2 terms 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 a
6 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", **either:**

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

11 **a. Is a bonafide community organization formed for the purpose of**
12 **neighborhood preservation or improvement;**

13 **b.** Whose articles of incorporation or bylaws specify that one of the purposes
14 for which the corporation is organized is the preservation and protection of residential
15 and community property values in **all or part of** a neighborhood or neighborhoods
16 with geographic boundaries that conform to the boundaries of not more than two
17 adjoining neighborhoods recognized by the planning division of the city or county in
18 which the neighborhood or neighborhoods are located [provided that the corporation's
19 articles of incorporation or bylaws provide that:

20 (a) The corporation has members;

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

27 (c) Only members who own residential real estate or who reside in the

28 neighborhood or neighborhoods described in the corporation's articles of incorporation
29 or bylaws may elect directors or serve as a director] **in any home rule city with**
30 **more than three hundred fifty thousand inhabitants and located in more**
31 **than one county, or in any city not within a county; and**

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

36 **(b) An organization recognized by the federal Internal Revenue**
37 **Service as tax exempt under the provisions of Internal Revenue Code section**
38 **501(c)(3), or the corresponding section of any future tax code, which has had**
39 **a contract with any home rule city with more than three hundred fifty**
40 **thousand inhabitants and located in more than one county, or with any city**
41 **not within a county to furnish housing related services in that municipality**
42 **or county at any point during the five-year period preceding the filing of the**
43 **action, and is in compliance with or completed such contract;**

44 **(3) "Nuisance", [within the boundaries of the neighborhood or neighborhoods**
45 **described in the articles of incorporation or bylaws of the neighborhood organization,**
46 **an act or condition knowingly created, performed, maintained, or permitted to exist on**
47 **private property that constitutes a code or ordinance violation and that significantly**
48 **affects the other residents of the neighborhood; and] **an activity or condition****
49 **created, performed, maintained, or permitted to exist on private property**
50 **that constitutes a code or ordinance violation, whether or not the property**
51 **has been cited by the city or county in which the property is located; or, if**
52 **the property is in a deteriorated condition, due to neglect or failure to**
53 **reasonably maintain, abandonment, failure to repair after a fire, flood, or**
54 **some other deterioration of the property, or there is clutter on the property**
55 **such as abandoned automobiles, appliances, or similar objects; or, with**
56 **respect to commercial, industrial, and vacant property, if the activity or**
57 **condition on the property encourages, promotes, or substantially contributes**
58 **to unlawful activity within three hundred feet of the property; and the**
59 **activity or condition either:**

60 **(a) Diminishes the value of the neighboring property; or**

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

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

64 neighborhood.

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

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

82.1031. No action shall be brought under section 82.1025 [or] **and** sections
2 82.1027 to 82.1030 if the owner of the property that is the subject of the action is in
3 good faith compliance with [any order] **all orders** issued by the department of natural
4 resources, the United States Environmental Protection Agency, or the office of attorney
5 general.

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

[82.1029. 1. A neighborhood organization, on behalf of a
2 person or persons who own real estate or reside within one thousand
3 two hundred feet of a property on which there is a condition or activity
4 constituting a code or ordinance violation in the neighborhood or
5 neighborhoods described in the articles of incorporation or the bylaws
6 of the neighborhood organization, or on its own behalf with respect to
7 a code or ordinance violation on property anywhere within the
8 boundaries of the neighborhood or neighborhoods, may seek injunctive
9 and other equitable relief in the circuit court for abatement of a
10 nuisance upon showing:

11 (1) The notice requirements of this section have been satisfied;
12 and

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

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

15 (1) Sixty days after the neighborhood organization sends
16 written notice by certified mail, return receipt requested, postage
17 prepaid, to the appropriate municipal code enforcement agency of the
18 neighborhood organization's intent to bring an action under this
19 section, together with a copy of the notice the neighborhood
20 organization sent or attempted to send to the property owner in
21 compliance with subdivision (2) of subsection 2 of this section; and

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

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

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

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

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

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

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

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

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

49 (4) The relief sought in the action.

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

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

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

57 6. An action may not be brought under this section based on an

58 alleged violation of a particular code provision or ordinance if there is
59 then pending against the property or the owner of the property a notice
60 of violation with respect to such code provision or ordinance issued by
61 an appropriate municipal code enforcement agency unless such notice
62 of violation has been pending for more than forty-five days and the
63 condition or activity that gave rise to the violation has not been
64 abated. This subsection shall not preclude an action under this section
65 where the appropriate municipal code enforcement agency has declined
66 to issue a notice of violation against the property or the property owner.

67 7. A neighborhood organization may not bring an action under
68 this section if, at the time of filing suit, the neighborhood organization
69 or any of its directors own real estate, or have an interest in a trust or
70 a corporation or other limited liability company that owns real estate,
71 in the city or county in which the nuisance is located with respect to
72 which real property taxes are delinquent or a notice of violation of a city
73 code or ordinance has been issued and served and is outstanding.

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

78 9. A proceeding under this section shall:

- 79 (1) Be heard at the earliest practicable date; and
80 (2) Be expedited in every way.]

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