

Select Year: 2020

The 2020 Florida Statutes

Title XLVI
CRIMES

Chapter 893
DRUG ABUSE PREVENTION AND CONTROL

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893.138 Local administrative action to abate certain activities declared public nuisances.—

(1) It is the intent of this section to promote, protect, and improve the health, safety, and welfare of the citizens of the counties and municipalities of this state by authorizing the creation of administrative boards with authority to impose administrative fines and other noncriminal penalties in order to provide an equitable, expeditious, effective, and inexpensive method of enforcing ordinances in counties and municipalities under circumstances when a pending or repeated violation continues to exist.

(2) Any place or premises that has been used:

- (a) On more than two occasions within a 6-month period, as the site of a violation of s. 796.07;
- (b) On more than two occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- (c) On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- (d) By a criminal gang for the purpose of conducting criminal gang activity as defined by s. 874.03;
- (e) On more than two occasions within a 6-month period, as the site of a violation of s. 812.019 relating to dealing in stolen property;
- (f) On two or more occasions within a 6-month period, as the site of a violation of chapter 499; or
- (g) On more than two occasions within a 6-month period, as the site of a violation of any combination of the following:
 1. Section 782.04, relating to murder;
 2. Section 782.051, relating to attempted felony murder;
 3. Section 784.045(1)(a)2., relating to aggravated battery with a deadly weapon; or
 4. Section 784.021(1)(a), relating to aggravated assault with a deadly weapon without intent to kill,

may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in this section.

(3) Any pain-management clinic, as described in s. 458.3265 or s. 459.0137, which has been used on more than two occasions within a 6-month period as the site of a violation of:

- (a) Section 784.011, s. 784.021, s. 784.03, or s. 784.045, relating to assault and battery;
- (b) Section 810.02, relating to burglary;
- (c) Section 812.014, relating to theft;
- (d) Section 812.131, relating to robbery by sudden snatching; or
- (e) Section 893.13, relating to the unlawful distribution of controlled substances,

may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in this section.

(4) Any county or municipality may, by ordinance, create an administrative board to hear complaints regarding the nuisances described in subsection (2). Any employee, officer, or resident of the county or municipality may bring a complaint before the board after giving not less than 3 days' written notice of such complaint to the owner of the place or premises at his or her last known address. After a hearing in which the board may consider any evidence, including evidence of the general reputation of the place or premises, and at which the owner of the premises shall have an

opportunity to present evidence in his or her defense, the board may declare the place or premises to be a public nuisance as described in subsection (2).

(5) If the board declares a place or premises to be a public nuisance, it may enter an order requiring the owner of such place or premises to adopt such procedure as may be appropriate under the circumstances to abate any such nuisance or it may enter an order immediately prohibiting:

(a) The maintaining of the nuisance;

(b) The operating or maintaining of the place or premises, including the closure of the place or premises or any part thereof; or

(c) The conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.

(6) An order entered under subsection (5) shall expire after 1 year or at such earlier time as is stated in the order.

(7) An order entered under subsection (5) may be enforced pursuant to the procedures contained in s. [120.69](#). This subsection does not subject a municipality that creates a board under this section, or the board so created, to any other provision of chapter 120.

(8) The board may bring a complaint under s. [60.05](#) seeking temporary and permanent injunctive relief against any nuisance described in subsection (2).

(9) This section does not restrict the right of any person to proceed under s. [60.05](#) against any public nuisance.

(10) As used in this section, the term "controlled substance" includes any substance sold in lieu of a controlled substance in violation of s. [817.563](#) or any imitation controlled substance defined in s. [817.564](#).

(11) The provisions of this section may be supplemented by a county or municipal ordinance. The ordinance may include, but is not limited to, provisions that establish additional penalties for public nuisances, including fines not to exceed \$250 per day; provide for the payment of reasonable costs, including reasonable attorney fees associated with investigations of and hearings on public nuisances; provide for continuing jurisdiction for a period of 1 year over any place or premises that has been or is declared to be a public nuisance; establish penalties, including fines not to exceed \$500 per day for recurring public nuisances; provide for the recording of orders on public nuisances so that notice must be given to subsequent purchasers, successors in interest, or assigns of the real property that is the subject of the order; provide that recorded orders on public nuisances may become liens against the real property that is the subject of the order; and provide for the foreclosure of property subject to a lien and the recovery of all costs, including reasonable attorney fees, associated with the recording of orders and foreclosure. No lien created pursuant to the provisions of this section may be foreclosed on real property which is a homestead under s. 4, Art. X of the State Constitution. Where a local government seeks to bring an administrative action, based on a stolen property nuisance, against a property owner operating an establishment where multiple tenants, on one site, conduct their own retail business, the property owner shall not be subject to a lien against his or her property or the prohibition of operation provision if the property owner evicts the business declared to be a nuisance within 90 days after notification by registered mail to the property owner of a second stolen property conviction of the tenant. The total fines imposed pursuant to the authority of this section shall not exceed \$15,000. Nothing contained within this section prohibits a county or municipality from proceeding against a public nuisance by any other means.

(12) Notwithstanding any other law, a rental property that is declared a nuisance under this section may not be abated or subject to forfeiture under the Florida Contraband Forfeiture Act if the nuisance was committed by someone other than the property owner and the property owner commences rehabilitation of the property within 30 days after the property is declared a nuisance and completes the rehabilitation within a reasonable time thereafter.

History.—s. 7, ch. 87-243; s. 2, ch. 90-207; s. 1, ch. 91-143; s. 6, ch. 93-227; s. 1, ch. 94-242; s. 42, ch. 96-388; s. 1829, ch. 97-102; s. 1, ch. 97-200; s. 2, ch. 98-395; s. 1, ch. 2000-111; s. 5, ch. 2001-66; s. 24, ch. 2008-238; s. 27, ch. 2011-141; s. 87, ch. 2012-5; s. 88, ch. 2016-10; ss. 7, 44, ch. 2016-105; s. 107, ch. 2019-167; s. 3, ch. 2020-130.