

1 A bill to be entitled
2 An act relating to local administrative action to
3 abate public nuisances and criminal gang activity;
4 amending s. 893.138, F.S.; authorizing a local
5 administrative board to declare a place to be a public
6 nuisance if the place is used on more than two
7 occasions within a 6-month period as the site of the
8 storage of a controlled substance with intent to
9 unlawfully sell or deliver the controlled substance
10 off the premises; authorizing an administrative board
11 to hear complaints regarding any pain-management
12 clinic declared to be a public nuisance; providing
13 that an order entered against a person for a public
14 nuisance expires after 1 year or at an earlier time if
15 so stated in the order unless the person has violated
16 the order during the term of the order; requiring that
17 the board conduct a hearing to determine whether the
18 person violated the administrative order; authorizing
19 an administrative board to seek temporary and
20 permanent injunctive relief against any pain-
21 management clinic declared to be a public nuisance;
22 authorizing the board to extend the term of the order
23 by up to 1 additional year and to impose a penalty if
24 the board finds that the person violated the order;
25 authorizing a county or municipal ordinance to include
26 fines for days of public nuisance activities outside
27 the 6-month period in which the minimum number of
28 activities are shown to have occurred; authorizing a

29 | local ordinance to provide for continuing jurisdiction
 30 | over a place or premises that are subject to an
 31 | extension of the administrative order; providing an
 32 | effective date.

34 | Be It Enacted by the Legislature of the State of Florida:

36 | Section 1. Section 893.138, Florida Statutes, is amended
 37 | to read:

38 | 893.138 Local administrative action to abate drug-related,
 39 | prostitution-related, or stolen-property-related public
 40 | nuisances and criminal gang activity.—

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

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

51 | (a) On more than two occasions within a 6-month period, as
 52 | the site of a violation of s. 796.07;

53 | (b) On more than two occasions within a 6-month period, as
 54 | the site of the unlawful sale, delivery, manufacture, or
 55 | cultivation of a ~~any~~ controlled substance, or as the site of the
 56 | storage of a controlled substance with intent to unlawfully sell

57 | or deliver the controlled substance off the premises;

58 | (c) On one occasion as the site of the unlawful possession
 59 | of a controlled substance, where such possession constitutes a
 60 | felony and that has been previously used on more than one
 61 | occasion as the site of the unlawful sale, delivery,
 62 | manufacture, or cultivation of a ~~any~~ controlled substance;

63 | (d) By a criminal gang for the purpose of conducting
 64 | criminal gang-related ~~gang~~ activity as defined in ~~by~~ s. 874.03;
 65 | or

66 | (e) On more than two occasions within a 6-month period, as
 67 | the site of a violation of s. 812.019 relating to dealing in
 68 | stolen property,

69 |
 70 | may be declared to be a public nuisance, and such nuisance may
 71 | be abated pursuant to ~~the procedures provided in~~ this section.

72 | (3) Any pain-management clinic, as described in s.
 73 | 458.3265 or s. 459.0137, which has been used on more than two
 74 | occasions within a 6-month period as the site of a violation of:

75 | (a) Section 784.011, s. 784.021, s. 784.03, or s. 784.045,
 76 | relating to assault and battery;

77 | (b) Section 810.02, relating to burglary;

78 | (c) Section 812.014, relating to dealing in theft;

79 | (d) Section 812.131, relating to robbery by sudden
 80 | snatching; or

81 | (e) Section 893.13, relating to the unlawful distribution
 82 | of controlled substances,

83 |
 84 | may be declared to be a public nuisance, and such nuisance may

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85 be abated pursuant to the procedures provided in this section.

86 (4) Any county or municipality may, by ordinance, create
 87 an administrative board to hear complaints regarding the
 88 nuisances described in subsections ~~subsection~~ (2) and (3). Any
 89 employee, officer, or resident of the county or municipality may
 90 bring a complaint before the board after giving not less than 3
 91 days' written notice of such complaint to the owner of the place
 92 or premises at his or her last known address. After a hearing in
 93 which the board may consider any evidence, including evidence of
 94 the general reputation of the place or premises, and at which
 95 the owner of the premises shall have an opportunity to present
 96 evidence in his or her defense, the board may declare the place
 97 or premises to be a public nuisance as described in subsection
 98 (2) or subsection (3).

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

- 104 (a) The maintaining of the nuisance;
- 105 (b) The operating or maintaining of the place or premises,
 106 including the closure of the place or premises or any part
 107 thereof; or
- 108 (c) The conduct, operation, or maintenance of any business
 109 or activity on the premises which is conducive to such nuisance.

110 (6) An order entered under subsection (5) expires ~~(4)~~
 111 ~~shall expire~~ after 1 year or at such earlier time as is stated
 112 in the order unless the owner of a place or premises that has

113 been declared to be a public nuisance has violated the order
 114 during the term of the order. Upon receiving a complaint of
 115 recurring public nuisance activity or noncompliance and after
 116 providing at least 3 days' written notice to the owner of such
 117 place or premises, the board shall conduct a hearing to
 118 determine whether the owner violated the administrative order
 119 entered under subsection (5). If the board finds that the owner
 120 of such place or premises violated the order, the board may
 121 extend the term of the order by up to 1 additional year and may
 122 impose an additional penalty to the extent authorized by this
 123 section and by a supplemental county or municipal ordinance.

124 (7) An order entered under subsection (5) ~~(4)~~ may be
 125 enforced pursuant to the procedures contained in s. 120.69. This
 126 subsection does not subject a municipality that creates a board
 127 under this section, or the board so created, to any other
 128 provision of chapter 120.

129 (8) The board may bring a complaint under s. 60.05 seeking
 130 temporary and permanent injunctive relief against any nuisance
 131 described in subsection (2) or subsection (3).

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

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

138 (11) ~~The provisions of~~ This section may be supplemented by
 139 a county or municipal ordinance. The ordinance may include, but
 140 need is not be limited to, provisions that establish additional

141 penalties for public nuisances, including fines not to exceed
 142 \$250 per day for each day that the public nuisance activities
 143 described in subsections (2) and (3) have occurred, including
 144 days outside the 6-month period in which the minimum number of
 145 public nuisance activities are shown to have occurred. The
 146 ordinance may also, provide for the payment of reasonable costs,
 147 including reasonable attorney fees associated with
 148 investigations of and hearings on public nuisances; provide for
 149 continuing jurisdiction for a period of 1 year over any place or
 150 premises that have ~~has~~ been or are ~~is~~ declared to be a public
 151 nuisance, subject to an extension for up to 1 additional year as
 152 provided in subsection (6); establish penalties, including fines
 153 not to exceed \$500 per day for recurring public nuisances;
 154 provide for the recording of orders on public nuisances so that
 155 notice must be given to subsequent purchasers, successors in
 156 interest, or assigns of the real property that is the subject of
 157 the order; provide that recorded orders on public nuisances may
 158 become liens against the real property that is the subject of
 159 the order; and provide for the foreclosure of the property that
 160 is subject to a lien and the recovery of all costs, including
 161 reasonable attorney fees, associated with the recording of
 162 orders and foreclosure. A ~~No~~ lien created pursuant to ~~the~~
 163 ~~provisions of~~ this section may not be foreclosed on real
 164 property that ~~which~~ is a homestead under s. 4, Art. X of the
 165 State Constitution. When ~~where~~ a local government seeks to bring
 166 an administrative action, based on a stolen property nuisance,
 167 against a property owner operating an establishment where
 168 multiple tenants, on one site, conduct their own retail

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169 business, the property owner is ~~shall~~ not ~~be~~ subject to a lien
170 against his or her property or the prohibition of operation
171 provision if the property owner evicts the business declared to
172 be a nuisance within 90 days after notification by registered
173 mail to the property owner of a second stolen property
174 conviction of the tenant. The total fines imposed pursuant to
175 ~~the authority of this section~~ may ~~shall~~ not exceed \$15,000.
176 ~~Nothing contained within~~ This section does not prohibit
177 ~~prohibits~~ a county or municipality from proceeding against a
178 public nuisance by any other means.

179 Section 2. This act shall take effect July 1, 2012.