

CHAPTER 280.

NUISANCES.

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280.01 Jurisdiction over nuisances. Any person may maintain an action to recover damages for and to abate a private nuisance or any person, county, city, village or town may maintain an action to recover damages or to abate a public nuisance from which injuries peculiar to the complainant are suffered, so far as necessary to protect the complainant's rights and to obtain an injunction to prevent the same. [1935 c. 541 s. 375; 1939 c. 423; 1943 c. 398]

Note: Nuisances, public or private, may be abated, whether the acts constituting them be declared so by statute or not, even though they also constitute crimes. State ex rel. Cowie v. La Crosse Theaters Co., 232 W 153, 286 NW 707.

Under 280.01, Stats. 1937, a city having no property that could be affected by the erection of a gasoline service station was not entitled to maintain an action to enjoin the erection thereof. Algoma v. Peterson, 233 W 82, 288 NW 809.

280.02 Injunction against public nuisance, time extension. An action to enjoin a public nuisance may be commenced and prosecuted in the name of the state, either by the attorney-general upon his own information, or upon the relation of a private individual, or a county, having first obtained leave therefor from the court. An action to enjoin a public nuisance may also be commenced and prosecuted by a city, village or town in its own name, and it shall not be necessary to obtain leave from the court to commence or prosecute such action. The same rule as to liability for costs shall govern as in other actions brought by the state. No stay of any order or judgment enjoining or abating, in any action under this section, may be had unless the appeal be taken within 5 days after notice of entry of such judgment or order or service of the injunction. Upon appeal and stay, the return to the supreme court shall be made immediately. [1935 c. 541 s. 376; 1939 c. 423; 1943 c. 66, 398]

Note: Ch. 301, laws of 1931, giving council control of city property and navigable waters did not authorize city to maintain action in own name instead of in state's name to abate nuisance and purprestures in Lake Monona (280.02, Stats. 1931). Madison v. Schott, 211 W 23, 247 NW 527.

Under 280.02, Stats. 1937, a city has no power to bring an action to abate a public nuisance. Juneau v. Badger Co-operative Oil Co., 227 W 620, 634, 279 NW 666.

Section 280.02, Stats. 1937, applies to an action by the state brought on relation of a private person, having obtained leave therefor from the court. The relator need not show that he sustains special damage from the nuisance. State ex rel. Cowie v. La Crosse Theaters Co., 232 W 153, 286 NW 707.

Under 280.02, Stats. 1937, an action to enjoin as a nuisance the erection of a gasoline service station could not be maintained by a city; the city not being a "private individual," and not having brought the action in the name of the state nor having first obtained leave of the court. Algoma v. Peterson, 233 W 82, 288 NW 809.

The continuous playing and permitting to be played on the defendants' premises of the game of bingo, as a gambling game and a lottery, constituted a "public nuisance." State ex rel. Trampe v. Multerer, 234 W 50, 289 NW 600.

A prosecution under a city ordinance declaring any plant which emits foul or offen-

sive odors, or which is dangerous or prejudicial to the public health, to be a public nuisance, and imposing a penalty, ought not to result in a verdict of guilty if the result is to single out a particular use by an industry as objectionable without a showing that it is detrimental or prejudicial to public health or welfare by clear and convincing evidence. The rights that may come within the court's consideration may vary from comfortable enjoyment of property to protection against a condition dangerous to health, but the judgment must be framed in a procedure affected by the municipal legislation as well as the common law. Milwaukee v. Milbrew, Inc., 240 W 527, 3 NW (2d) 386.

In an action on the relation of a private person, on leave of court granted pursuant to 280.02, to enjoin as a public nuisance an alleged violation by a power company of the requirement of § 1.34 of so maintaining a dam as to pass at all times a prescribed minimum of the natural flow of the stream the trial court properly declined to entertain a contention that the condition complained of should be abated because the defendant had not constructed a fishway as required by the act authorizing the dam, since an issue as to fishways was not raised by the complaint and was not within the permission granted to bring the action. State ex rel. Priegel v. Northern States Power Co., 242 W 345, 8 NW (2d) 350.

Under this section, the attorney-general may institute an action to enjoin a person from selling intoxicating liquors at retail under a license alleged to be void. State ex rel. Martin v. Barrett, 248 W 621, 22 NW (2d) 663. See note to 146.14, citing 24 Atty. Gen. 653.

280.03 Judgment. In such actions, when the plaintiff prevails, he shall, in addition to judgment for damages and costs, also have judgment that the nuisance be abated unless the court shall otherwise order. [1935 c. 541 s. 377]

280.04 Execution and warrant. In case of judgment that the nuisance be abated and removed the plaintiff shall have execution in the common form for his damages and costs and a separate warrant to the proper officer requiring him to abate and remove the nuisance at the expense of the defendant.

280.05 Warrant may be stayed. The court may, on the application of the defendant, order a stay of such warrant for such time as may be necessary, not exceeding six months, to give him an opportunity to remove the nuisance, upon his giving satisfactory security to do so within the time specified in the order.

Note: Where the commission finds that "it is not clear beyond a reasonable doubt" that a petitioner for compensation as an innocent convict was innocent of the crime for which he suffered imprisonment, the denial of compensation cannot be set aside in the absence of proof in the record of the proceedings before the commission that compels the conclusion that the commission erred as a matter of law in making such finding. LeFevre v. Goodland, 247 W 512, 19 NW (2d) 884. The burden of convincing the commission by proof beyond a reasonable doubt that he was innocent is on the petitioner. LeFevre v. Goodland, 247 W 512, 19 NW (2d) 884. The remedy provided for by (5), on the commission's denial of compensation to a petitioner, is exclusive. LeFevre v. Goodland, 247 W 512, 19 NW (2d) 884.

280.06 Expense of abating, how collected. The expense of abating such nuisance pursuant to such warrant shall be collected by the officer in the same manner as damages and costs are collected upon execution; and such officer may sell any material of any fences, buildings or other things abated or removed as a nuisance as personal property is sold upon execution and apply the proceeds to pay the expenses of such abatement, paying the residue, if any, to the defendant. [1935 c. 541 s. 378]

280.065 Repeated violations of a city ordinance a public nuisance. Repeated or continuous violation of a municipal ordinance relating to naphtha, benzol, gasoline, kerosene or any other inflammable liquid or combustible material is declared a public nuisance, and an action may be maintained by the municipality to abate such nuisance and enjoin such violation. [1935 c. 269]

280.07 [Repealed by 1935 c. 541 s. 379]

280.07 Violations of ordinances or resolutions relating to noxious business. Repeated or continuous violations of a city, village or town resolution or ordinance enacted pursuant to the provisions of section 66.052 (1) is declared a public nuisance and an action may be maintained by any such municipality to abate or remove such nuisance and enjoin such violation. [1939 c. 423; 1947 c. 362]

280.08 Fence may be a private nuisance; abatement. (1) Any fence or other structure in the nature of a fence unnecessarily exceeding six feet in height, maliciously erected or maintained for the purpose of annoying the owners or occupants of adjoining property, shall be deemed a private nuisance.

(2) Any such owner or occupant injured either in his comfort or in the enjoyment of his estate by such fence or other structure, may have an action of tort for the damages sustained thereby; and the provisions of the statutes, concerning actions for private nuisances, shall be applicable thereto.

Note: See note to 62.11, citing Williams v. Hudson, 219 W 119, 262 NW 607.

280.09 Bawdyhouses declared nuisances. Whoever shall erect, establish, continue, maintain, use, occupy or lease any building or part of building, erection or place to be used for the purpose of lewdness, assignation or prostitution, or permit the same to be used, in the state of Wisconsin, shall be guilty of a nuisance and the building, erection, or place, in or upon which such lewdness, assignation or prostitution is conducted, permitted, carried on, continued or exists, and the furniture, fixtures, musical instruments and contents used therewith for the same purpose are declared a nuisance, and shall be enjoined and abated.

280.10 Disorderly house, action for abatement. Whenever a nuisance, as defined in section 280.09, exists the district attorney or any citizen of the county may maintain an action in the circuit court in the name of the state to abate the nuisance and to perpetually enjoin every person guilty thereof from continuing, maintaining or permitting such nuisance. All temporary injunctions issued in such actions begun by district attorneys shall be issued without requiring the undertaking specified in section 268.06, and in actions instituted by citizens it shall be discretionary with the court or presiding judge to issue them

without such undertaking. The conviction of any person, of the offense of lewdness, assignation, or prostitution committed in the building or part of a building, erection or place shall be sufficient proof of the existence of a nuisance in such building or part of a building, erection or place, in an action for abatement commenced within sixty days after the conviction. [1933 c. 228; 1935 c. 541 s. 380]

280.11 Evidence; dismissal of action; costs. In actions begun under section 280.10 the existence of any nuisance defined by section 280.09 shall constitute prima facie evidence that the owner of the premises affected has permitted the same to be used as a nuisance; and evidence of the general reputation of the place shall be admissible to prove the existence of such nuisance. If the complaint is filed by a citizen, it shall not be dismissed, except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal shall be approved by the district attorney of the county in writing or in open court. If the court is of the opinion that the action ought not to be dismissed it may direct the district attorney of the county to prosecute said action to judgment. If the action is brought by a citizen, and the court finds that there was no reasonable ground or cause for said action the costs shall be taxed to such citizen.

280.12 Punishment for violation of injunction. A party found guilty of contempt for the violation of any injunction granted under the provisions of sections 280.09 to 280.15 shall be punished by a fine of not less than two hundred nor more than one thousand dollars or by imprisonment in the county jail not less than three nor more than six months or by both such fine and imprisonment.

280.13 Judgment and execution; sale of fixtures. If the existence of the nuisance be established in an action under section 280.09, or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments, or movable property used in conducting the nuisance, and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released. If any person shall break and enter or use a building, erection, or place so directed to be closed he shall be punished as for contempt, as provided in section 280.12.

280.14 Application of proceeds of sale; lis pendens. The proceeds of the sale of such personal property, shall be applied in the payment of the costs of the action and abatement and the balance, if any, shall be paid to the defendant. The plaintiff may file a notice of the pendency of the action as in actions affecting the title to real estate; and if the owner of the premises affected be adjudged guilty of the nuisance, the judgment for costs shall constitute a lien thereon prior to any other lien created after the filing of such lis pendens.

280.15 Undertaking to release building. The owner of any building or part of building affected by an action under section 280.10 may appear at any time after the commencement thereof and file an undertaking in such sum and with such sureties as shall be required by the court to the effect that he will immediately abate the alleged nuisance, if it exists, and prevent the same from being re-established in the building or part of building aforesaid, and will pay all costs that may be awarded against him in the action. Thereupon the court may dismiss the action as to such building or part of building and revoke any order previously made closing the same; but such dismissal and revocation shall not release the property from any judgment, lien, penalty, or liability to which it may be subject by law. Acceptance of any such undertaking, the sum, supervision, satisfaction, and all other conditions thereof shall all be within the discretion of the court, but the period for which such undertaking shall run shall be not less than one year. [1933 c. 228]