CHAPTER 823

NUISANCES

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823.01 Jurisdiction over nuisances. 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 762 (1975); Stats. 1975 s. 823.01.

A town's recovery under nuisance statutes does not require injury to the town's own property. Town of East Troy v. Soo Line Railroad Co. 653 F.2d 1123 (1980).

Navigating the "Impenetrable Jungle": Statutory Limits on Wisconsin Public Nuisance Actions. Massaro. 90 MLR 95 (2006).

823.015 Action against condominium association. If a city, village, town, or county has grounds under this chapter to abate a nuisance occurring upon the common elements of a condominium and the failure of a condominium association under ch. 703 to perform its duties to maintain and control the common elements is a reason the nuisance has not been abated, an action for a receivership under ch. 823 may be brought against the condominium association whether it is incorporated or unincorporated. This section does not authorize the seizure of condominium buildings or units.

History: 2003 a. 283.

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

823.02 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 on information obtained by the department of justice, or upon the relation of a private individual, sewerage commission created under ss. 200.01 to 200.15 or a county, having first obtained leave therefor from the court. An action to enjoin a public nuisance may be commenced and prosecuted by a city, village, town or a metropolitan sewerage district created under ss. 200.21 to 200.65 in the name of the municipality or metropolitan sewerage district, and it is not necessary to obtain leave from the court to commence or prosecute the 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 is taken within 5 days after notice of entry of the judgment or order or service of the injunction. Upon appeal and stay, the return to the court of appeals or supreme court shall be made immediately.

History: 1971 c. 276; Sup. Ct. Order, 67 Wis. 2d 585, 762 (1975); Stats. 1975 s. 823.02; 1977 c. 187, 379; 1981 c. 282; 1999 a. 150 s. 672.

This section was not repealed by implication by the creation of former ss. 144.30 to 144.46 [now see chs. 285 and 289] that empower DNR to investigate sources of pollution. State v. Dairyland Power Coop. 52 Wis. 2d 45, 187 N.W.2d 878 (1971).

A court of equity will not enjoin a crime or ordinance violation to enforce the law, but will if the violation constitutes a nuisance. Repeated violations of an ordinance constitute a public nuisance as a matter of law, and the injunction can only enjoin operations that constitute violations of the ordinance. State v. H. Samuels Co. 60 Wis. 2d 631, 211 N.W.2d 417 (1973).

The concept that an owner of real property can, in all cases, do with the property as he or she pleases is no longer in harmony with the realities of society. The "reasonable use" rule applies. State v. Deetz, 66 Wis. 2d 1, 224 N.W.2d 407 (1974).

A nuisance is an unreasonable activity or use of property that interferes substantially with the comfortable enjoyment of life, health, or safety of others. State v. Quality Egg Farm, Inc. 104 Wis. 2d 506, 311 N.W.2d 650 (1981).

Prohibiting injunctive relief against a person merely because the person was acting independently would render a public nuisance that consisted of multiple independent actors engaging in acts of prostitution immune to effective redress. Accordingly, a trial court had authority to issue an injunction to abate the individual's role in prostitution that undisputed evidence proved was a public nuisance. City of Milwaukee v. Burnette, 2001 WI App 258, 248 Wis. 2d 820, 637 N.W.2d 447, 00−2308.

The social and economic roots of judge−made air pollution policy in Wisconsin. Laitos, 58 MLR 465.

Primary jurisdiction; role of courts and administrative agencies. Krings, 1972 WLR 934.

Protecting the right to farm: Statutory limits on nuisance actions against the farmer. Grossman and Fischer. 1983 WLR 95.

823.03 Judgment. In such actions, when the plaintiff prevails, the plaintiff shall, in addition to judgment for damages and costs, also have judgment that the nuisance be abated unless the court shall otherwise order.

History: Sup. Ct. Order, 67 Wis. 2d 585, 762 (1975); Stats. 1975 s. 823.03; 1993 a. 486.

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

History: Sup. Ct. Order, 67 Wis. 2d 585, 762 (1975); Stats. 1975 s. 823.04; 1993 a. 486.

823.05 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 6 months, to give the defendant an opportunity to remove the nuisance, upon the defendant's giving satisfactory security to do so within the time specified in the order.

History: Sup. Ct. Order, 67 Wis. 2d 585, 762 (1982); Stats. 1975 s. 823.05; 1993 a. 486.

823.06 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 or may be collected by finding the defendant personally liable for these expenses, as provided in s. 74.53. The 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.

History: Sup. Ct. Order, 67 Wis. 2d 585, 762 (1975); Stats. 1975 s. 823.06; 1983 a. 476; 1987 a. 378.

823.065 Repeated violations of a municipal 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.

History: Sup. Ct. Order, 67 Wis. 2d 585, 762 (1975); Stats. 1975 s. 823.065; 1993 a. 246.

823.07 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 s. 66.0415 (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.

History: Sup. Ct. Order, 67 Wis. 2d 585, 762 (1975); Stats. 1975 s. 823.07; 1999 a. 150 s. 672.

823.075 Actions against forestry operations. (1) In this section:

(a) "Department" means the department of natural resources.

(b) "Forest" means a parcel of land in which at least 80 percent of the parcel is producing or is capable of producing at least 20 cubic feet of merchantable timber, as defined in s. 77.81 (3), per acre per year.

(c) "Forestry operation" means any activity related to the harvesting, reforestation, and other forest management activities, including thinning, pest control, fertilization, and wildlife management.

(d) "Generally accepted forestry management practices" means forestry management practices that promote sound management of a forest, as determined by the department by rule. The rule promulgated by the department may incorporate by reference the most recent version of the department's publication known as Wisconsin Forest Management Guidelines and identified as publication number PUB−FR−226.

(2) A forestry operation is not a nuisance if the forestry operation alleged to be a nuisance conforms to generally accepted forestry management practices.

(3) A forestry operation that conforms to generally accepted forestry management practices is not a nuisance as a result of any of the following:

(a) A change in ownership or size of a forest.

(b) Cessation or interruption of forestry operations.

(c) Enrollment of all or part of the forest in governmental forestry or conservation programs.

(d) Adoption of new forestry technology.

(4) In any action in which a forestry operation is alleged to be a nuisance, if the party who was alleged to commit the nuisance prevails, the court may award that party the actual and necessary costs incurred in the action and, notwithstanding s. 814.04 (1), reasonable attorney fees.

History: 2005 a. 79.

823.08 Actions against agricultural uses. (1) LEGISLATIVE PURPOSE. The legislature finds that development in rural areas and changes in agricultural technology, practices and scale of operation have increasingly tended to create conflicts between agricultural and other uses of land. The legislature believes that, to the extent possible consistent with good public policy, the law should not hamper agricultural production or the use of modern agricultural technology. The legislature therefore deems it in the best interest of the state to establish limits on the remedies available in those conflicts which reach the judicial system. The legislature further asserts its belief that local units of government, through the exercise of their zoning power, can best prevent such conflicts from arising in the future, and the legislature urges local units of government to use their zoning power accordingly.

(2) DEFINITIONS. In this section:

(a) "Agricultural practice" means any activity associated with an agricultural use.

(b) "Agricultural use" has the meaning given in s. 91.01 (2).

(3) NUISANCE ACTIONS. (a) An agricultural use or an agricultural practice may not be found to be a nuisance if all of the following apply:

1. The agricultural use or agricultural practice alleged to be a nuisance is conducted on, or on a public right−of−way adjacent to, land that was in agricultural use without substantial interruption before the plaintiff began the use of property that the plaintiff alleges was interfered with by the agricultural use or agricultural practice.

2. The agricultural use or agricultural practice does not present a substantial threat to public health or safety.

(am) Paragraph (a) applies without regard to whether a change in agricultural use or agricultural practice is alleged to have contributed to the nuisance.

(b) In an action in which an agricultural use or an agricultural practice is found to be a nuisance, the following conditions apply:

1. The relief granted may not substantially restrict or regulate the agricultural use or agricultural practice, unless the agricultural use or agricultural practice is a substantial threat to public health or safety.

2. If the court orders the defendant to take any action to mitigate the effects of the agricultural use or agricultural practice found to be a nuisance, the court shall do all of the following:

a. Request public agencies having expertise in agricultural matters to furnish the court with suggestions for practices suitable to mitigate the effects of the agricultural use or agricultural practice found to be a nuisance.

b. Provide the defendant with a reasonable time to take the action directed in the court's order. The time allowed for the defendant to take the action may not be less than one year after the date of the order unless the agricultural use or agricultural practice is a substantial threat to public health or safety.

3. If the court orders the defendant to take any action to mitigate the effects of the agricultural use or agricultural practice found to be a nuisance, the court may not order the defendant to take any action that substantially and adversely affects the economic viability of the agricultural use, unless the agricultural use or agricultural practice is a substantial threat to public health or safety.

(c) 1. Subject to subd. 2., if a court requests the department of agriculture, trade and consumer protection or the department of natural resources for suggestions under par. (b) 2. a., the department of agriculture, trade and consumer protection or the department of natural resources shall advise the court concerning the relevant provisions of the performance standards, prohibitions, conservation practices and technical standards under s. 281.16 (3).

2. If the agricultural use or agricultural practice alleged to be a nuisance was begun before October 14, 1997, a department may advise the court under subd. 1. only if the department determines that cost−sharing is available to the defendant under s. 92.14 or 281.65 or from any other source.

(4) COSTS. (a) In this subsection, "litigation expenses" means the sum of the costs, disbursements and expenses, including reasonable attorney, expert witness and engineering fees necessary to prepare for or participate in an action in which an agricultural use or agricultural practice is alleged to be a nuisance.

(b) Notwithstanding s. 814.04 (1) and (2), the court shall award litigation expenses to the defendant in any action in which an agricultural use or agricultural practice is alleged to be a nuisance if

the agricultural use or agricultural practice is not found to be a nuisance.

History: 1981 c. 123; 1995 a. 149; 1997 a. 27; 1999 a. 9; 2009 a. 28.

Sub. (4) unequivocally mandates the recovery of reasonable attorney fees. Zink v. Khwaja, 2000 WI App 58, 233 Wis. 2d 691, 608 N.W.2d 394, 99−0149.

Protecting the right to farm: Statutory limits on nuisance actions against the farmer. Grossman and Fischer. 1983 WLR 95.

Brewing Land Use Conflicts: Wisconsin's Right to Farm Law. Hanson. Wis.Law. Dec. 2002.

823.085 Actions against owners or operators of solid waste facilities. (1) In this section, "solid waste facility" has the meaning given in s. 289.01 (35).

(2) In any action finding a solid waste facility or the operation of a solid waste facility to be a public or private nuisance, if the solid waste facility was licensed under s. 289.31 (1) and was operated in substantial compliance with the license, the plan of operation for the solid waste facility approved by the department of natural resources and the rules promulgated under s. 289.05 (1) that apply to the facility, then all of the following apply:

(a) Notwithstanding s. 823.03, the court may not order closure of the solid waste facility or substantial restriction in the operation of the solid waste facility unless the court determines that the continued operation of the solid waste facility is a threat to public health and safety.

(b) The department of natural resources shall comply with a request by the court to provide suggestions for practices to reduce the offensive aspects of the nuisance.

(c) The amount recovered by any person for damage to real property may not exceed the value of the real property as of the date that the solid waste facility began operation increased by 8 percent per year.

(d) Punitive damages may not be awarded.

History: 1991 a. 269; 1995 a. 227.

823.09 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.

History: Sup. Ct. Order, 67 Wis. 2d 585, 762 (1975); Stats. 1975 s. 823.09.

Fourth degree sexual assault under s. 940.225 (3m) constitutes lewdness and supports a finding of a nuisance. State v. Panno, 151 Wis. 2d 819, 447 N.W.2d 74 (Ct. App. 1989).

Read in conjunction with s. 823.11, ss. 823.09 and 823.10 do not violate due process because they provide the opportunity to challenge prima facie evidence that a defendant knowingly permitted prostitution to occur on his property, and also allow the collateral challenge of the underlying prostitution convictions. The statutes also do not violate constitutional rights to freedom of association, the protection against government establishment of religion, and equal protection. State v. Schultz, 218 Wis. 2d 798, 582 N.W.2d 113 (Ct. App. 1998), 97−3414.

823.10 Disorderly house, action for abatement. If a nuisance, as defined in s. 823.09, 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 the nuisance. All temporary injunctions issued in the actions begun by district attorneys shall be issued without requiring the undertaking specified in s. 813.06, and in actions instituted by citizens it shall be discretionary with the court or presiding judge to issue them without the 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 the building or part of a building, erection or place, in an action for abatement commenced within 60 days after the conviction.

History: Sup. Ct. Order, 67 Wis. 2d 585, 762, 782 (1975); Stats. 1975 s. 823.10; 1977 c. 449.

Fourth degree sexual assault under s. 940.225 (3m) constitutes lewdness and supports a finding of nuisance. State v. Panno, 151 Wis. 2d 819, 447 N.W.2d 74 (Ct. App. 1989).

Read in conjunction with s. 823.11, ss. 823.09 and 823.10 do not violate due process because they provide the opportunity to challenge prima facie evidence that a defendant knowingly permitted prostitution to occur on his property, and also allow a collateral challenge of the underlying prostitution convictions. The statutes also do not violate the freedom of association, the protection against government establishment of religion, and the right to equal protection. State v. Schultz, 218 Wis. 2d 798, 582 N.W.2d 113 (Ct. App. 1998), 97−3414.

823.11 Evidence; dismissal of action; costs. In actions begun under s. 823.10 the existence of any nuisance defined by s. 823.09 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 the complainant's 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.

History: Sup. Ct. Order, 67 Wis. 2d 585, 762, 782 (1975); Stats. 1975 s. 823.11; 1993 a. 486.

Read in conjunction with s. 823.11, ss. 823.09 and 823.10 do not violate due process because they provide the opportunity to challenge prima facie evidence that a defendant knowingly permitted prostitution to occur on his property, and also allow the collateral challenge of the underlying prostitution convictions. The statutes also do not violate constitutional rights to freedom of association, the protection against government establishment of religion, and equal protection. State v. Schultz, 218 Wis. 2d 798, 582 N.W.2d 113 (Ct. App. 1998), 97−3414.

823.113 Drug or criminal gang house a public nuisance. (1) Any building or structure that is used to facilitate the delivery, distribution or manufacture, as defined in s. 961.01 (6), (9) and (13) respectively, of a controlled substance, as defined in s. 961.01 (4), or a controlled substance analog, as defined in s. 961.01 (4m), and any building or structure where those acts take place, is a public nuisance and may be proceeded against under this section.

(1m) (a) In this subsection, "criminal gang" has the meaning given in s. 939.22 (9).

(b) Any building or structure that is used as a meeting place of a criminal gang or that is used to facilitate the activities of a criminal gang, is a public nuisance and may be proceeded against under this section.

(2) If a nuisance exists, the city, town or village where the property is located may maintain an action in the circuit court to abate the nuisance and to perpetually enjoin every person guilty of creating or maintaining the nuisance, the owner, lessee or tenant of the building or structure where the nuisance exists and the owner of the land upon which the building or structure is located, from continuing, maintaining or permitting the nuisance.

(3) If the existence of the nuisance is shown in the action to the satisfaction of the court, either by verified complaint or affidavit, the court shall issue a temporary injunction to abate and prevent the continuance or recurrence of the nuisance, including the issuance of an order requiring the closure of the property. Any temporary injunction issued in an action begun under this subsection shall be issued without requiring the undertaking specified in s. 813.06.

(4) In ruling upon a request for closure, whether for a defined or undefined duration, the court shall consider all of the following factors:

(a) The extent and duration of the nuisance at the time of the request.

(b) Prior efforts by the defendant to comply with previous court orders to abate the nuisance.

(c) The nature and extent of any effect that the nuisance has upon other persons, such as residents or businesses.

(d) The effect of granting the request upon any resident or occupant of the premises who is not named in the action, including the availability of alternative housing or relocation assistance, the pendency of any action to evict a resident or occupant and any evidence of participation by a resident or occupant in the nuisance activity.

History: 1989 a. 122; 1993 a. 98; 1995 a. 448.

An order under this section for closure and sale of an apartment house did not violate the constitutional protection against excessive fines. City of Milwaukee v. Arrieh, 211 Wis. 2d 764, 565 N.W.2d 291 (Ct. App. 1997), 96−0482.

823.114 Judgment and order of sale of property. (1) If the existence of the nuisance is established in an action under s. 823.113, an order of abatement shall be entered as part of the judgment in the case. In that order, the court shall do all of the following:

(a) Direct the removal from the building or structure of all furniture, equipment and other personal property used in the nuisance.

(b) Order the sale of the personal property.

(c) Order the closure of the building or structure for any purpose.

(d) Order the closure of the building or structure until all building code violations are corrected and a new certificate of occupancy is issued if required by the city, town or village within which the property is located and the building or structure is released under s. 823.15 or sold under s. 823.115.

(e) Order the sale of the building or structure and the land upon that it is located or, if the requirements under s. 66.0413 (1) (c) are met, order that the building or structure be razed, the land sold, and the expense of the razing collected under s. 823.06.

(2) Any person breaking and entering or using a building or structure ordered closed under sub. (1) shall be punished for contempt under s. 823.12.

History: 1989 a. 122; 1993 a. 213; 2001 a. 30.

823.115 Sale of property and use of proceeds. (1) If personal and real property are ordered sold under s. 823.114, and the real property is not released to the owner under s. 823.15, the plaintiff in the action under s. 823.113 shall sell the property at the highest available price. The city, town or village may sell the property at either a public or private sale. The proceeds of the sale shall be applied to the payment of the costs of the action and abatement and any liens on the property, and the balance, if any, paid as provided in sub. (2). 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 building or structure, or the owner of the land upon which the building or structure is located, is found guilty of the nuisance, the judgment for costs of the action not paid out of the proceeds of the sale of the property shall constitute a lien on the real estate prior to any other lien created after the filing of the lis pendens, except a lien under s. 292.31 (8) (i) or 292.81.

(2) Any balance remaining from the proceeds of the sale of property under sub. (1) shall be paid in equal shares to the following agencies or officials for the purposes listed:

(a) The law enforcement agency of the city, town or village that brought the action, to be used for gang−related and drug−related law enforcement activities.

(b) The treasurer of the city, town or village that brought the action, to be placed in a fund that is used to provide grants to organizations for gang abatement and drug and alcohol treatment programs for residents of the city, town or village that brought the action.

(c) The treasurer of the city, town or village that brought the action, to be placed in a fund that is used to provide grants to organizations for housing rehabilitation, neighborhood revitalization and neighborhood crime prevention activities in the city, town or village that brought the action.

History: 1989 a. 122; 1993 a. 98, 453; 1995 a. 227; 1997 a. 27.

823.12 Punishment for violation of injunction. A party found guilty of contempt for the violation of any injunction granted under ss. 823.09 to 823.15 shall be punished by a fine of not less than $200 nor more than $1,000 or by imprisonment in the county jail not less than 3 nor more than 6 months or both.

History: Sup. Ct. Order, 67 Wis. 2d 585, 762 (1975), 782; Stats. 1975 s. 823.12.

823.13 Judgment and execution; sale of fixtures. If the existence of the nuisance be established in an action under s. 823.09, 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 the person shall be punished as for contempt, as provided in s. 823.12.

History: Sup. Ct. Order, 67 Wis. 2d 585, 762, 782 (1975); Stats. 1975 s. 823.13; 1993 a. 486.

823.14 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.

History: Sup. Ct. Order, 67 Wis. 2d 585, 762 (1975); Stats. 1975 s. 823.14.

823.15 Undertaking to release building or structure. The owner of any building or structure, or the owner of the land upon which the building or structure is located, affected by an action under s. 823.10 or 823.113 may appear at any time after the commencement of the action and file an undertaking in a sum and with the sureties required by the court to the effect that he or she will immediately abate the alleged nuisance, if it exists, and prevent the same from being reestablished in the building or structure, and will pay all costs that may be awarded against him or her in the action. Upon receipt of the undertaking, the court may dismiss the action as to the building or structure and revoke any order previously made closing the building or structure; but that dismissal and revocation shall not release the property from any judgment, lien, penalty, or liability that the property is subject to by law. The court has discretion in accepting any undertaking, the sum, supervision, satisfaction, and all other conditions of the undertaking, but the period that the undertaking shall run may not be less than one year.

History: Sup. Ct. Order, 67 Wis. 2d 585, 762, 782 (1975); Stats. 1975 s. 823.15; 1989 a. 122.

823.16 Remedy of lessor of place of prostitution. If the lessee of a place has been convicted of keeping that place as a place of prostitution or if such place has been adjudged a nuisance under this chapter, the lease by which such place is held is void and the lessor shall have the same remedies for regaining possession of the premises as the lessor would have against a tenant holding over the tenant's term.

History: Sup. Ct. Order, 67 Wis. 2d 585, 762 (1975); Stats. 1975 s. 823.16; 1993 a. 486.

823.20 Gambling place a public nuisance. (1) Any gambling place, as defined in s. 945.01 (4) (a), is a public nuisance and may be proceeded against under this chapter.

(2) Any citizen of the county in which such nuisance exists may bring an action, without showing special damages or injury, to enjoin or abate the nuisance. The court after 3 days' notice to the defendants may allow a temporary injunction without bond. The action shall be dismissed only if the court is satisfied that it should be dismissed on its merits. If application for dismissal is made, the court may continue the action and by order require the attorney general to prosecute it.

(3) If the lessee of the place has been convicted of the crime of commercial gambling because of having operated that place as a gambling place or if such place has been adjudged a nuisance under this chapter, the lease by which such place is held is void and the lessor shall have the same remedies for regaining possession of the premises as the lessor would have against a tenant holding over the tenant's term.

History: Sup. Ct. Order, 67 Wis. 2d 585, 762 (1975); Stats. 1975 s. 823.20; 1993 a. 486; 1995 a. 11.

823.21 Dilapidated buildings declared nuisances. Any building which, under s. 66.0413 (1) (b) 1., has been declared so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or has been determined to be unreasonable to repair under s. 66.0413 (1) (b) 1. is a public nuisance and may be proceeded against under this chapter.

History: Sup. Ct. Order, 67 Wis. 2d 585, 762 (1975); Stats. 1975 s. 823.21; 1993 a. 213; 1999 a. 150.

823.215 Dilapidated wharves and piers in navigable waters declared nuisances. Any wharf or pier in navigable waters which is declared so old, dilapidated or in need of repair that it is dangerous, unsafe or unfit for use under s. 30.13 (5m) (a) 2. or repair is determined unreasonable under that section is a public nuisance and may be proceeded against under this chapter.

History: 1981 c. 252; 1999 a. 150 ss. 666, 672; 2001 a. 30 s. 108.

823.23 Receivership for public nuisances. (1) DEFINITIONS. In this section:

(a) "Abatement" means the removal, suspension, improvement, or correction of any condition at a residential property that has been adjudicated to constitute a nuisance. "Abatement" may include the demolition of some or all of the improvements on the residential property if the residential property is unoccupied.

(b) "Interested party" means any person that possesses any legal or equitable interest of record in the residential property, including the holder of any lien or encumbrance of record on the residential property.

(c) "Nuisance" includes a nuisance under s. 254.595.

(d) "Purchase money security interest" means any of the following:

1. The interest of a vendor under a land contract relating to the residential property if the contract was recorded prior to the issuance of the notice under sub. (2) (b).

2. The interest of a mortgagee under a purchase money mortgage relating to the residential property if the mortgage was recorded prior to the issuance of the notice under sub. (2) (b).

3. The interest of a beneficiary under a purchase money trust deed relating to the residential property if the trust deed was recorded prior to the issuance of the notice under sub. (2) (b).

(e) "Residential property" means land, together with all the improvements erected on the land, that is located in a city, village, or town and used or intended to be used for residential purposes, including single−family, duplex, and multifamily structures, and mixed−use structures that have one or more residential units.

(2) RECEIVERSHIP FOR BUILDINGS THAT CONSTITUTE A NUISANCE; PROCEDURE. (a) If a residential property is alleged to be a nuisance under this chapter or s. 254.595, the city, village, or town in which the property is located may apply to the circuit court for the appointment of a receiver to abate the nuisance.

(b) At least 60 days before filing an application for the appointment of a receiver under par. (a), the city, village, or town shall give written notice by 1st class mail to all owners, owner's agents, and interested parties at their last−known address of the intent to file the application and by publication as a class 1 notice under ch. 985. The notice shall include all of the following information:

1. The address and other information that identifies the residential property.

2. The conditions of the residential property that constitute a nuisance and that resulted in the decision to apply for a receiver.

3. The name, address, and telephone number of the person or department where additional information can be obtained concerning the nuisance and the action necessary to abate the nuisance.

4. That the appointment of a receiver may be requested unless action is taken to abate the nuisance within 60 days after receipt of the notice.

(c) If a notice sent under par. (b) is recorded with the register of deeds in the county in which the residential property is located, the notice is considered to have been served, as of the date the notice is recorded, on any person claiming an interest in the residential property as a result of a conveyance from the owner of record unless the conveyance was recorded before the recording of the notice.

(d) A city, village, or town may not apply for the appointment of a receiver under this subsection if an interested party has commenced and is prosecuting in a timely fashion an action or other judicial or administrative proceeding to foreclose a security interest on the residential property, or to obtain specific performance of, or forfeit, the purchaser's interest in a land contract.

(e) Notice of the application for the appointment of a receiver under this section shall be served on all owners, owners' agents, and interested parties. At the time that the application is filed with the court, the applicant shall file a lis pendens.

(f) If, following the application for appointment of a receiver, one or more of the interested parties elects to abate the nuisance, the party or parties shall be required to post security in such an amount and character as the court considers appropriate to ensure timely performance of all work necessary to abate the nuisance, as well as satisfy such other conditions as the court considers appropriate for timely completion of the abatement.

(g) In the event that all interested parties elect not to act under par. (f) or to timely perform work undertaken under par. (f), the court shall make a determination as to whether the residential property is a nuisance. The court shall determine the extent of the abatement necessary and the scope of work necessary to eliminate the conditions and shall appoint a receiver to complete the abatement.

(h) The court shall appoint a receiver who is one of the following:

1. A housing authority, redevelopment company, redevelopment corporation, redevelopment authority, or community development authority under ss. 66.1201, 66.1301, 66.1331, 66.1333, or 66.1335.

2. A nonprofit corporation, the primary purpose of which is the improvement of housing conditions within the city, village, or town in which the property is located.

(i) If the court is unable to appoint a receiver from one of the entities listed in par. (h), the court may appoint as a receiver any other person that the court determines to be competent.

(j) A receiver appointed by the court pursuant to this section shall not be required to give security or bond as a condition of the appointment.

(3) AUTHORITY OF RECEIVER; FINANCING AGREEMENTS; FEE. (a) A receiver appointed under sub. (2) (h) or (i) shall have the authority to do all of the following unless specifically limited by the court:

1. Take possession and control of the residential property including the right to enter into and terminate tenancies, manage and maintain the property under chs. 704 and 799 and rules related to residential rental practices promulgated under s. 100.20 (2), and charge and collect rents derived from the residential property, applying the sum of those rents to the costs incurred due to the abatement and receivership.

2. Negotiate contracts and pay all expenses associated with operation and conservation of the residential property including all utility, fuel, custodial, repair, or insurance expenses.

3. Pay all accrued property taxes, penalties, assessments, and other charges imposed on the residential property by a unit of government including any charges accruing during the pendency of the receivership.

4. Dispose of any or all abandoned personal property found at the residential property.

5. Enter into contracts and pay for the performance of any work necessary to complete the abatement.

(b) In addition to the powers under par. (a), the receiver may, under such terms and conditions as a court shall allow, enter into financing agreements with public or private lenders and encumber the property so as to have moneys available to abate the nuisance. The receiver may give a holder of a purchase money security interest who received notice under sub. (2) the first opportunity to lend the money under this paragraph.

(c) A receiver may charge an administration fee at an hourly rate approved by the court or at a rate of 20 percent of the total cost of the abatement, whichever the court considers more appropriate.

(4) LIMITS ON LANDLORD AUTHORITY. (a) In this subsection, "anticipated action" means a statement or statements by a person authorized by ordinance to bring an action under this section that leads a landlord to conclude that an action under this section may be commenced.

(b) A landlord or receiver, or any agent of a landlord or receiver, of a residential rental unit that is the subject of any action, or anticipated action, to abate an alleged nuisance under this section may not with respect to the tenant of the rental unit, increase rent, decrease services, bring a court proceeding for possession of the unit, refuse to renew the rental agreement, or threaten or attempt to do any of the foregoing if the tenant, in a court proceeding commenced by the tenant, landlord, or receiver, establishes by a preponderance of the credible evidence that the foregoing conduct would not have occurred but for the bringing of an action for the abatement of a nuisance under this section with respect to the rental unit or the anticipation of such an action being brought. To prevail, the tenant must also establish by a preponderance of the evidence that one of the following applies:

1. No nuisance was found with respect to the rental unit.

2. The tenant was found not to cause a nuisance with respect to the rental unit.

3. If a nuisance exists under this section, the conduct specified in this paragraph is not necessary to abate the nuisance.

(d) Any action or inaction by a landlord, receiver, or agent described in par. (b) is subject to chs. 704 and 799, and any court proceeding regarding such an action or inaction shall be heard by the following court:

1. If the court proceeding is brought by a receiver, by the court that appointed the receiver.

2. If the court proceeding is brought by the tenant or landlord, in small claims court as an eviction action.

(e) In any action taken under par. (b), the notice given to the tenant must state the basis for the action and the right of the tenant to contest the action.

(5) REVIEW OF EXPENDITURES BY COURT; LIEN FOR UNPAID EXPENSES. (a) All moneys the receiver expends and all of the costs and obligations that he or she incurs in performing the abatement, including the receiver's administrative fee, shall be reviewed by the court for reasonableness and necessity. To the extent that the court finds the moneys, costs, or obligations to be reasonable and necessary, it shall issue an order reciting this fact as well as the amount found to be reasonable and necessary.

(b) If all of the costs and obligations that the court found to be reasonable and necessary under par. (a) have not been paid, the court shall issue a judgment for the unpaid amount and file that judgment with the office of the clerk of court within 60 days after the receiver files a statement of those unpaid costs and obligations with the court and that judgment shall constitute a lien on the residential property from the date of the filing of the judgment.

(6) EFFECT ON PURCHASE MONEY SECURITY INTEREST OF LIEN FOR UNPAID ABATEMENT EXPENSES. (a) The issuance of the notice under sub. (2) (b) shall constitute a default for waste under any purchase money security interest relating to the residential property subject to the notice, and if any violations of the building code listed in the notice are not corrected within 30 days after the mailing of the notice, the vendor, mortgagee, or beneficiary under any purchase money security interest may commence proceedings to exercise the remedies set forth in the purchase money security interest.

(b) A lien created under sub. (5) (b) shall be prior and superior to any purchase money security interest in the residential property if all of the following apply to that purchase money security interest:

1. The city, village, or town gave the holder of the purchase money security interest and any vendee, mortgagor, or grantor under such purchase money security interest the notice under sub. (2) (b).

2. The holder of the purchase money security interest has not, prior to the appointment of a receiver under sub. (2) (g), initiated proceedings to foreclose the purchase money security interest, to abate the conditions resulting in issuance of the notice under sub. (2) (b) or to gain possession of the property.

(c) Except for property tax liens, assessment liens, and purchase money security interests not included in par. (b), a lien created under sub. (5) (b) shall be prior and superior to all other liens, mortgages, and encumbrances against the residential property upon which it is imposed without regard to the date the other liens, mortgages, or encumbrances were attached to the residential property.

(7) TERMINATION OF RECEIVERSHIP. (a) The receivership into which the court placed the residential property under sub. (2) (h) or (i) shall terminate only by an order of the court.

(b) The court shall terminate the receivership if the residential property's owner or owner's agent or an interested party or the receiver show the court all of the following:

1. That the abatement has been completed.

2. That the costs and obligations incurred due to the abatement, including the receiver's administrative fee, have been paid by an owner, owner's agent, or interested party or that a lien has been filed pursuant to sub. (5).

3. That the owner, owner's agent, or interested party will manage the residential property in conformance with applicable housing codes.

(c) The court shall terminate the receivership if the receiver shows the court one of the following:

1. That the abatement is not feasible.

2. That the improvements on the property have been demolished by the city, village or town.

History: 2001 a. 86; 2009 a. 125.