

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 W (2d) 762; Stats 1975 s. 823.01.

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

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. 66.20 to 66.26 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. 66.88 to 66.918 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 W (2d) 762; Stats 1975 s. 823.02; 1977 c. 187, 379; 1981 c. 282

The state can apply for an injunction against a retailer whose revolving charge plan is usurious, even though the statute violated does not provide for a criminal penalty. *State v. J. C. Penney Co.* 48 W (2d) 125, 179 NW (2d) 641.

This section was not repealed by implication by the creation of 144.30 through 144.46 which empowers the department of natural resources to investigate sources of pollution. *State v. Dairyland Power Coop.* 52 W (2d) 45, 187 NW (2d) 878.

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 which constitute violations of the ordinance. *State v. H. Samuels Co.* 60 W (2d) 631, 211 NW (2d) 417.

See note to 144.26, citing *State v. Deetz*, 66 W (2d) 1, 224 NW (2d) 407.

Nuisance is unreasonable activity or use of property that interferes substantially with comfortable enjoyment of life, health, safety of another or others. *State v. Quality Egg Farm, Inc.* 104 W (2d) 506, 311 NW (2d) 650 (1981)

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, he 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 W (2d) 762; Stats 1975 s. 823.03.

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 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.

History: Sup. Ct. Order, 67 W (2d) 762; Stats 1975 s. 823.04

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 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.

History: Sup. Ct. Order, 67 W (2d) 762; Stats 1975 s. 823.05

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 W (2d) 762; Stats 1975 s. 823.06; 1983 a. 476; 1987 a. 378

823.065 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.

History: Sup. Ct. Order, 67 W (2d) 762; Stats 1975 s. 823.065

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. 66.052 (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.

History: Sup. Ct. Order, 67 W (2d) 762; Stats 1975 s. 823.07.

823.08 Actions against agricultural uses. (1) LEGISLATIVE PURPOSE. The legislature finds that changes in agricultural technology, practices and scale of operation have, on occasion, tended to create conflicts between agricultural and other activities. 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 technology. The legislature therefore deems it in the best interest of the state to establish guidelines for the resolution of 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) NUISANCE ACTIONS. In this section, "agricultural use" has the meaning specified in s. 91.01 (1) and "agricultural practice" means any activity associated with an agricultural use. In any action finding an agricultural use or an agricultural practice a nuisance, if the use or practice was conducted on lands not subject to an ordinance:

(a) Notwithstanding s. 823.03, closure shall not be available as a remedy unless the agricultural use or practice is a threat to public health and safety;

(b) The court may assess only nominal damages if the agricultural use or practice found to be a nuisance was conducted at the same location, on substantially the same scale and in substantially the same manner prior to the time that any plaintiff acquired an interest in any property damaged by the agricultural use or practice; and

(c) The court may order the defendant to adopt agricultural practices which have potential for reducing the offensive aspects of the activity or use found to be a nuisance. The court may request public agencies having expertise in agricultural matters to furnish the court with suggestions for practices suitable for reducing the offensive aspects of the nuisance.

(3) ACTIONS WHERE AN ORDINANCE. (a) In any nuisance action against an agricultural use or agricultural practice conducted on lands subject to an ordinance, the relief granted, if any, shall not substantially restrict or regulate such uses or practices, unless such relief is necessary to protect public health or safety.

(b) In this section, "ordinance" means an exclusive agricultural use zoning ordinance which has been certified under s. 91.06.

(4) COSTS AND FEES. In any nuisance action brought in which an agricultural use or an agricultural practice is alleged to be a nuisance, if the defendant prevails the defendant shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred on his or her behalf in connection with the defense of such action, together with a reasonable amount for attorney fees.

History: 1981 c 123.

See note to 823.02, citing 1983 WLR 95.

823.085 Actions against owners or operators of solid waste facilities. (1) In this section, "solid waste facility" has the meaning given in s. 144.43 (5).

(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. 144.44 (4) (a) 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. 144.435 (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% per year.

(d) Punitive damages may not be awarded.

History: 1991 a 269.

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 W (2d) 762; Stats. 1975 s. 823.09

See note to 823.10, citing State v. Panno, 151 W (2d) 819, 447 NW (2d) 74 (Ct. App. 1989).

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 W (2d) 762, 782; Stats. 1975 s. 823.10; 1977 c 449.

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

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 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.

History: Sup. Ct. Order, 67 W (2d) 762, 782; Stats. 1975 s. 823.11

823.113 Drug house a public nuisance; action for abatement. (1) Any building or structure that is used to facilitate

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the delivery or manufacture, as defined in s. 161.01 (6) and (13) respectively, of a controlled substance, as defined in s. 161.01 (4), and any building or structure where those acts take place, 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.

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 which it is located or, if the requirements under s. 66.05 (1) (b) 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.

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.

(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 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 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.

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 W (2d) 762, 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 he shall be punished as for contempt, as provided in s. 823.12.

History: Sup. Ct. Order, 67 W (2d) 762, 782; Stats. 1975 s. 823.13.

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 W (2d) 762; 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 W (2d) 762, 782; 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 he would have against a tenant holding over his term.

History: Sup. Ct. Order, 67 W (2d) 762; Stats 1975 s. 823 16

823.20 Gambling place a public nuisance. (1) Any gambling place 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 he would have against a tenant holding over his term.

History: Sup. Ct. Order, 67 W (2d) 762; Stats 1975 s. 823 20.

823.21 Dilapidated buildings declared nuisances. Any building which, under s. 66.05 (1) has been declared so old, dilapidated or out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or has been determined to be unreasonable to repair under s. 66.05 (1), is a public nuisance and may be proceeded against under this chapter.

History: Sup. Ct. Order, 67 W (2d) 762; Stats 1975 s. 823 21.

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. 66.0495 (1) (b) or repair is determined unreasonable under that section is a public nuisance and may be proceeded against under this chapter.

History: 1981 c. 252

823.22 Property violating codes or health orders. (1) If real property in counties having a population of 100,000 or more is in violation of those provisions of a municipal

building code which concern health or safety or of an order of the county health department, county health commission or municipal health board or officer, the city, village or town in which such property is located may commence an action to declare such property a public nuisance. A tenant or class of tenants of property which is in violation of the municipal building code or of an order of the county health department, county health commission or municipal health board or officer, or any other person or class of persons whose health, safety or property interests are or would be adversely affected by property which is in violation of the municipal building code or of an order of the county health department, county health commission or municipal health board or officer, may file a petition with the clerk of the city, village, or town requesting the governing body to commence an action to declare such property a public nuisance. Upon refusal or failure of such governing body to commence such an action within 20 days after the filing of the petition, the tenant, class of tenants, other person or other class of persons may commence such action directly upon the filing of security for court costs. In any such case, the court before which such action is commenced shall exercise jurisdiction in rem or quasi in rem over such property and the owner of record of the property, if known, and all other persons of record holding or claiming any interest therein shall be made parties defendant and service of process may be had upon them as provided by law. Any change of ownership subsequent to the commencement of the action shall not affect the jurisdiction of the court over such property. At the time of commencing the action, the municipality or other parties plaintiff shall file a lis pendens. If the court finds that such a violation exists, it shall adjudge the property a public nuisance and such an entry of judgment shall be a lien upon the premises.

(2) A property owner or any person of record holding or claiming any interest in such property shall have 60 days after entry of judgment to eliminate the violation. If within 60 days after entry of judgment under sub. (1), an owner of the property presents evidence satisfactory to the court, upon hearing, that the violation has been eliminated, the court shall set aside the judgment. It shall not be a defense to this action that the owner of record of the property is a different person, partnership or corporate entity than the owner of record of the property on the date the action was commenced or thereafter provided a lis pendens has been filed prior to the change of ownership. No hearing under this subsection shall be held until notice has been given to the municipality and all the plaintiffs advising them of their right to appear. If the judgment is not so set aside within 60 days after entry of judgment, the court shall appoint a disinterested person to act as receiver of the property for the purpose of abating the nuisance.

(3) (a) Any receiver so appointed shall collect all rents and profits accruing from the property, pay all costs of management, including all general and special real estate taxes or assessments and interest payments on first mortgages thereon, and make any repairs necessary to meet the standards required by the building code or any such health order. Such receiver may, with the approval of the circuit court, borrow money against and encumber said property as security therefor, in such amounts as are necessary to meet such standards.

(b) At the request of and with the approval of the owner, he may sell the property at a price equal to at least the appraisal value plus the cost of any repairs made under this section for which the selling owner is or will become liable therefor. The receiver shall apply moneys received from the sale of the property to pay all debts due on the property in the order set

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by law, and shall pay over any balance with the approval of the court, to the selling owner.

(4) The receiver appointed pursuant to this chapter shall have a lien, for the expenses necessarily incurred in the execution of the order, upon the premises upon or in respect of which the work required by said order has been done or expenses incurred. The municipality that sought the order declaring the property to be a public nuisance may also recover its expenses and the expenses of the receiver under subs. (3) (a) and (5), to the extent that the expenses are not reimbursed under s. 632.103 (2) from funds withheld from an insurance settlement, by maintaining an action against the property owner under s. 74.53.

(5) The court shall set the fees and bond of the receiver, and may discharge him at such time as the court deems appropriate.

(6) Nothing in this section relieves the owner of any property for which a receiver has been appointed from any civil or criminal responsibility or liability otherwise imposed by law, except that the receiver shall be civilly and criminally responsible and liable for all matters and acts directly under his authority or performed by him or at his discretion.

(7) This section shall not apply to owner-occupied one or 2-family dwellings.

(8) The commencement of an action by a tenant pursuant to this section shall not be just cause for eviction.

History: 1973 c. 306; Sup. Ct. Order, 67 W (2d) 762; Stats. 1975 s. 823.22; 1983 a. 476; 1987 a. 378; 1989 a. 347.

For a public nuisance it was sufficient to allege that defendants knowingly caused the lowering of the ground water table from which the area residents drew water from private wells which caused numerous citizens great hardship. *State v. Michels Pipeline Construction, Inc.* 63 W (2d) 278, 217 NW (2d) 339, 219 NW (2d) 308.