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.

Even though a business may be lawful, nevertheless it may be conducted in such a way as to amount to a nuisance either because of its location or because of the effect of the operation. Smoke is not a nuisance per se, but smoke and soot and offensive odors may constitute a nuisance in fact when they interfere with the use and enjoyment of their property by persons of ordinary sensibilities. Sohns v. Jensen, 11 W (2d) 449, 105 NW (2d) 818.

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.

For discussion of repeated violation of a statute as sustaining an action to restrain a nuisance, see State v. Texaco, 14 W (2d) 625, 111 NW (2d) 918.

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.

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.

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.

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.

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.

280.08 Fence may be a private nuisance; abatement. (1) Any fence, hedge or other structure in the nature of a fence unnecessarily exceeding 6 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. However, nothing herein contained shall limit the right of a municipality to forbid the erection of a fence less than 6 feet in height.

(2) Any such owner or occupant injured either in his comfort or in the enjoyment of his estate by such fence, hedge 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.

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 s. 280.09, exists the district attorney or any citizen of the county may maintain an action in the circuit or county 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 s. 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 60 days after the conviction.

History: 1961 c. 495.

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.

280.16 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.

280.20 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.

280.21 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 said statute, is a public nuisance and may be proceeded against under this chapter.