CHAPTER 823

NUISANCES

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This section was not repealed by implication by the creation of 140.30 through 144.46 which empowers the department of natural resources to investigate sources of pollution.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 occa-

sion, 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.

823.09 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.

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.

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.

823.12 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. The owner of any building or part of building affected by an action under s. 823.10 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 reestablished 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.

History: Sup. Ct. Order, 67 W (2d) 762, 782; Stats. 1975 s. 823.15.

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 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) 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.

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.