

IC 7.1-2-6

Chapter 6. Remedies: Public Nuisances

IC 7.1-2-6-1

Public nuisance; places

Sec. 1. (a) The following are declared to be a public nuisance:

(1) A room, a house, a building, a boat, a structure, an automobile, other vehicle, or place of any kind where at least one (1) of the following occurs:

(A) An alcoholic beverage of any type is sold, possessed, manufactured, bartered, or given away in violation of law or a rule of the commission.

(B) A person is permitted to resort for the purpose of drinking an alcoholic beverage of any type in violation of law.

(2) A place where alcoholic beverages are kept for sale, barter, or gift in violation of law or in violation of a rule of the commission, and all alcoholic beverages and all other property kept in and used in maintaining a place.

(3) The business property of a person who knowingly or intentionally sells, possesses, manufactures, barter, or gives away alcoholic beverages in violation of law or a rule of the commission.

(b) The plaintiff in an action to abate a public nuisance under subsection (a)(3) must prove that the owner of the business had actual knowledge of the actions alleged to constitute a nuisance.

(c) In determining whether the owner of a business should be held liable for failing to abate a public nuisance under subsection (a)(3), the court shall consider the efforts the owner of the business took to abate the public nuisance, including whether the police department that serves the business owner's property had been notified by the business owner or the owner's employee of the actions alleged to constitute the public nuisance.

(Formerly: Acts 1973, P.L.55, SEC.1.) As amended by P.L.52-1994, SEC.1.

IC 7.1-2-6-2

Public nuisance; acts

Sec. 2. Public Nuisance: Acts. An act or practice, or manner of conducting a business by a permittee contrary to a provision of this title or to a rule or regulation of the commission, or by a person not a permittee contrary to a provision of this title, shall also constitute a public nuisance if done, carried on, or permitted to take place in a building or upon a premises in or on which an alcoholic beverage is possessed, kept, stored, or consumed, or upon a vehicle, or conveyance in or on which an alcoholic beverage is being kept, stored, consumed, conveyed, transported, or imported into this state contrary to this title, or contrary to a rule or regulation of the commission.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-2-6-3

Public nuisance; untaxed liquor

Sec. 3. Public Nuisance: Untaxed Liquor. A malt article, liquid, alcoholic beverage, or container of a substance or beverage in respect to which an excise tax or license fee is imposed under this title and upon which the tax or fee has not been paid, the receptacle in which it is contained and the premises where it is kept or hidden shall constitute a public nuisance.

(Formerly: Acts 1973, P.L.55, SEC.1; Acts 1973, P.L.56, SEC.5.)

IC 7.1-2-6-4

Abatement of public nuisance

Sec. 4. Abatement of Public Nuisance. The commission, the chairman, the attorney general, a prosecuting attorney, a permittee authorized to sell alcoholic beverages within the county in which a common nuisance exists, kept, or maintained, or a number of permittees authorized to sell alcoholic beverages within the county or elsewhere within the state, or a taxpayer of the county, may maintain an action in the name of the state to abate and perpetually enjoin a public nuisance, or to abate, or enjoin, or both, a practice, or conduct of a person, whether a permittee or not, in violation of this title or a rule or regulation of the commission.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-2-6-5

Available remedies

Sec. 5. Available Remedies. The plaintiff in an action to abate a public nuisance shall not be required to give bond in the action. A temporary restraining order, a preliminary injunction, a permanent injunction, and other appropriate relief may be granted in this action as is allowed by the Indiana Rules of Civil Procedure.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-2-6-6

Evidence of federal tax payment

Sec. 6. Evidence of Federal Tax Payment. The payment of a federal government special tax by a person, or the possession by him of a stamp or receipt issued to him by the federal government, either as a retail dealer, or as a wholesale dealer in alcoholic beverages, or the possession by him, or the posting by him upon the premises of a stamp, certificate, permit or license issued under the authority of the United States authorizing him to deal in alcoholic beverages shall be prima facie evidence that the named person is engaged in possessing, selling, transporting, giving away or furnishing alcoholic beverages on the covered premises. This section shall apply in a criminal prosecution under this title or in an action to abate or enjoin a public nuisance or unlawful practice or a practice prohibited by a rule or regulation of the commission.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-2-6-7

Order of court

Sec. 7. Order of Court. The court shall order upon final judgment against the defendant that the room, house, building, structure, boat or place of any kind shall be closed for a period of one (1) year. However, the court may order in the alternative that the premises be closed for only a part of the one (1) year period or until the owner, lessee, tenant, or occupant of the premises gives bond with sufficient surety to be approved by the court making the order, in a penal sum of not less than one thousand dollars (\$1,000), payable to the State of Indiana.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-2-6-8

Conditions of bond

Sec. 8. Conditions of Bond. The bond required by IC 1971, 7.1-2-6-7, shall be conditioned that an alcoholic beverage will not thereafter be manufactured, possessed, sold, bartered, given away, furnished, or otherwise disposed of in or on the public nuisance, or kept in or on it with the intent to sell, barter, give away, or otherwise dispose of it contrary to law or to a rule or regulation of the commission. The bond shall be conditioned also that the unlawful conduct or practice, or conduct of another person, whether a permittee or not, the violation of this title or of a rule or regulation of the commission, will not be permitted on or in the premises. The bond shall be conditioned further that the defendant will pay all fines, costs, and damages against him for the violation of this title.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-2-6-9

Recovery on bond

Sec. 9. Recovery on Bond. The whole amount of the bond filed under this chapter may be recovered as a penalty if a condition of the bond is violated. The penalty recovered shall be for the use of the city or town, or if outside the limits of a city or town, then to the county, in which the premises are situated.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-2-6-10

Abatement upon conviction

Sec. 10. Abatement Upon Conviction. A person may file a complaint with the circuit or criminal court of the county in which the offense was committed in a case in which a person has been convicted of a violation of this title, to abate as a public nuisance the real estate or other property involved in the commission of the offense or to enjoin the unlawful conduct or practice on or in the premises. In an abatement action under this section, a certified copy of the record of conviction shall be admissible in evidence and prima facie evidence that the room, house, building, boat, structure, automobile, or other vehicle, or place of any kind set forth and

described in the complaint is a public nuisance.
(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-2-6-11

Injunction pending trial

Sec. 11. Injunction Pending Trial. An action seeking relief through an injunction or abatement may be begun, carried on and concluded prior to or during the pending of the criminal prosecution of a defendant arising from or in connection with, or on, or at the room, house, building, boat, structure, automobile, or other vehicle, or place of any kind set out and described in the complaint for the action seeking relief through an injunction or abatement.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-2-6-12

Action by commission

Sec. 12. Action by Commission. The commission may enforce a provision of this title or a rule or regulation of the commission against a permittee either by way of seeking a writ of mandate mandating the defendant to comply with a rule or regulation of the commission or by an action for an injunction enjoining a permittee from violating a rule or regulation of the commission whether the conduct of the defendant does or does not constitute a public nuisance within the meaning of this title. A temporary restraining order, preliminary injunction, and a permanent injunction may be granted in such an action without a bond being filed by the plaintiff.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-2-6-13

Action by commission; representation

Sec. 13. Action by Commission: Representation. An action authorized by IC 1971, 7.1-2-6-12, shall be brought in the name of the State of Indiana on the relation of the commission. The commission may be represented by an attorney selected by it, or by the attorney general, or by a deputy or assistant attorney general assigned by the attorney general for the purpose of instituting or conducting the action, or by both.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-2-6-14

Remedies cumulative

Sec. 14. Remedies Cumulative. The remedies authorized by IC 1971, 7.1-2-5, and by this chapter are cumulative and in no sense shall one (1) of the remedies exclude another. The remedies provided in this article shall not limit or remove the power of the commission to revoke a permit.

(Formerly: Acts 1973, P.L.55, SEC.1.)