

IC 32-30-8

Chapter 8. Actions for Drug Nuisances

IC 32-30-8-1

"Nuisance"

Sec. 1. As used in this chapter, "nuisance" means:

- (1) the use of a property to commit an act constituting an offense under IC 35-48-4; or
- (2) an attempt to commit or a conspiracy to commit an act described in subdivision (1).

As added by P.L.2-2002, SEC.15.

IC 32-30-8-2

"Property"

Sec. 2. (a) Except as provided in subsection (d), as used in this chapter, "property" means a house, a building, a mobile home, or an apartment that is leased for residential or commercial purposes.

(b) The term includes:

- (1) an entire building or complex of buildings; or
- (2) a mobile home community;

and all real property of any nature appurtenant to and used in connection with the house, building, mobile home, or apartment, including all individual rental units and common areas.

(c) The term does not include a hotel, motel, or other guest house, part of which is rented to a transient guest.

(d) For actions brought by the attorney general in relation to the sale or solicited sale of a synthetic drug (as defined in IC 35-31.5-2-321) or a synthetic drug lookalike substance (as defined in IC 35-31.5-2-321.5), "property" means a house, a building, a mobile home, or an apartment that is owned or leased for commercial or residential purposes. The term includes all real property of any nature appurtenant to and used in connection with the house, building, mobile home, or apartment.

As added by P.L.2-2002, SEC.15. Amended by P.L.87-2005, SEC.38; P.L.196-2013, SEC.12.

IC 32-30-8-3

"Tenant"

Sec. 3. (a) As used in this chapter, "tenant" means a person who leases or resides in a property.

(b) The term does not include a person who:

- (1) owns a mobile home;
- (2) leases or rents a site in a mobile home community for residential use; and
- (3) resides in a mobile home community.

As added by P.L.2-2002, SEC.15. Amended by P.L.87-2005, SEC.39.

IC 32-30-8-4

Actions to abate nuisance; persons authorized to initiate

Sec. 4. An action to abate a nuisance under this chapter may be initiated by any of the following:

- (1) The prosecuting attorney of the circuit where the nuisance is located.
- (2) The corporation counsel or city attorney of a city in which a nuisance is located.
- (3) An attorney representing a county in which a nuisance is located.
- (4) The property owner.
- (5) The attorney general.

As added by P.L.2-2002, SEC.15. Amended by P.L.196-2013, SEC.13.

IC 32-30-8-5

Action to abate nuisance; notice; requirements

Sec. 5. (a) A person initiating an action under this chapter to abate a nuisance existing on a property shall, at least forty-five (45) days before filing the action, provide notice to:

- (1) each tenant of the property; and
- (2) the owner of record;

that a nuisance exists on the property.

(b) The notice required under this section must specify the following:

- (1) The date and time the nuisance was first discovered.
- (2) The location on the property where the nuisance is allegedly occurring.

(c) The notice must be:

- (1) hand delivered; or
- (2) sent by certified mail;

to each tenant and the owner of record.

(d) A person initiating an action to abate a nuisance under this chapter shall:

- (1) when notice is provided under this section, produce all evidence in the person's possession or control of the existence of the nuisance; and
- (2) if requested by the owner, assist the owner in the production of witness and physical evidence.

As added by P.L.2-2002, SEC.15.

IC 32-30-8-6

Action to abate nuisance initiated or joined by owner of record; exempt from notice requirement

Sec. 6. If the owner of record of a property that is the subject of an action under this chapter initiates or joins in the action under this chapter, the requirement under section 5 of this chapter to provide notice at least forty-five (45) days before filing does not apply to the action.

As added by P.L.2-2002, SEC.15.

IC 32-30-8-7

Application of trial rules to notice; posting requirement

Sec. 7. (a) Notice of a complaint initiating an action under this chapter must be made as provided in the Indiana Rules of Trial Procedure.

(b) Except in an action under this chapter in which the owner of record of the property that is the subject of the action initiates or joins the action as a party, the person who initiates an action under this chapter, not later than forty-eight (48) hours after filing a complaint under this chapter, shall post a copy of the complaint in a conspicuous place on the property alleged by the complaint to be a nuisance.

As added by P.L.2-2002, SEC.15.

IC 32-30-8-8

Service upon defendant

Sec. 8. (a) If the defendant has not been personally served with process despite the exercise of due diligence, the person initiating an action under this chapter, not more than twenty (20) days after the filing of a complaint and the filing of an affidavit that personal service on the defendant cannot be had after due diligence, may cause a copy of the complaint to be mailed to the defendant by certified mail, restricted delivery, return receipt to the clerk of court requested. Service is considered completed when the following are filed with the court:

- (1) Proof of the mailing.
- (2) An affidavit that a copy of the complaint has been posted on the property alleged to be a nuisance.

(b) This subsection does not apply to transient guests of a hotel, motel, or other guest house. All tenants or residents of a property that is used in whole or in part as a business, home, residence, or dwelling who may be affected by an order issued under this chapter must be:

- (1) provided reasonable notice as ordered by the court having jurisdiction over the nuisance action; and
- (2) afforded an opportunity to be heard at all proceedings in the action.

(c) Notice of lis pendens shall be filed concurrently with the initiation of an action under this chapter.

As added by P.L.2-2002, SEC.15.

IC 32-30-8-9

Hearing; service upon owner of property

Sec. 9. (a) Except as otherwise provided under rules adopted by the Indiana supreme court, upon the filing of a complaint initiating an action under this chapter, the court shall schedule a hearing not later than twenty (20) days after the filing date.

(b) Service of process must be made upon the owner of the property that is alleged in the notice filed under section 5 of this chapter to be a nuisance at least five (5) days before the hearing. If

service cannot be completed in time to give the owner the minimum notice required by this subsection, the court may set a new hearing date.

As added by P.L.2-2002, SEC.15.

IC 32-30-8-10

Equitable relief

Sec. 10. The court may issue an injunction or order other equitable relief under this chapter regardless of whether an adequate remedy exists at law.

As added by P.L.2-2002, SEC.15.

IC 32-30-8-10.5

Additional remedies in an action involving synthetic drugs

Sec. 10.5. In addition to the remedies and penalties specified in sections 10, 11, 12, and 13 of this chapter, the court may do any of the following in an action brought under this chapter concerning the sale or solicited sale of a synthetic drug (as defined in IC 35-31.5-2-321) or a synthetic drug lookalike substance (as defined in IC 35-31.5-2-321.5):

- (1) Issue a restraining order against the person subject to IC 32-30-7-9 and IC 32-30-7-13.
- (2) Issue a preliminary injunction, temporary forfeiture, or closure order pending final decision on a permanent injunction subject to IC 32-30-7-12.
- (3) Issue an order of abatement subject to IC 32-30-7-22.

As added by P.L.196-2013, SEC.14.

IC 32-30-8-11

Order to vacate

Sec. 11. Notwithstanding any other provision of law, and in addition to or as a component of a remedy ordered under section 10 of this chapter, the court, after a hearing, may order a tenant that created a nuisance on the property leased by the tenant to vacate the property within seventy-two (72) hours after the issuance of the order.

As added by P.L.2-2002, SEC.15.

IC 32-30-8-12

Restitution; possession; removal of tenant's personal property

Sec. 12. (a) The court, after a hearing under this chapter, may grant a judgment of restitution or the possession of the property to the owner if:

- (1) the owner and tenant are parties to the action; and
- (2) the tenant has failed to obey an order issued under section 10 or 11 of this chapter.

(b) If the court orders the owner to have possession of the property, the court shall require the sheriff to execute the order of possession not later than five (5) days after the order is issued.

(c) If the owner is awarded possession of the property, the owner may seek an order from the court allowing removal of a tenant's personal property under IC 32-31-4.

As added by P.L.2-2002, SEC.15.

IC 32-30-8-13

Plan for correction

Sec. 13. In an action under this chapter, the court may order the owner of the property to submit for court approval a plan for correction to ensure, to the extent reasonably possible, that the property will not again be used for a nuisance if the owner:

- (1) is a party to the action; and
- (2) knew of the existence of the nuisance.

As added by P.L.2-2002, SEC.15.

IC 32-30-8-14

Proof that defendant knew of nuisance not required

Sec. 14. Except as provided in section 13 of this chapter, the court may order appropriate relief under this chapter without proof that a defendant knew of the existence of the nuisance.

As added by P.L.2-2002, SEC.15.

IC 32-30-8-15

Evidence

Sec. 15. In any action brought under this chapter:

- (1) evidence of the general reputation of the property is admissible to corroborate testimony based on personal knowledge or observation, or evidence seized during the execution of a search and seizure warrant, but is not sufficient to establish the existence of a nuisance under this chapter; and
- (2) evidence that the nuisance had been discontinued at the time of the filing of the complaint or at the time of the hearing does not bar the imposition of appropriate relief by the court under sections 10 through 14 of this chapter.

As added by P.L.2-2002, SEC.15.