

CHAPTER 42-02
ABATEMENT OF COMMON NUISANCE

42-02-01. Who may bring abatement.

The attorney general, the state health officer, the state's attorney, or any citizen of the county where a nuisance exists or is maintained, may bring an action in the name of the state to abate and perpetually enjoin the nuisance.

42-02-02. Injunction - Proceedings.

If the action is brought by a citizen, that citizen shall give a bond in an amount sufficient to cover the costs of such action as the court may direct. An injunction shall be granted at the commencement of an action for the abatement of a nuisance in the usual manner of granting injunctions, except that the affidavit or complaint, or both, may be made by the state's attorney, the attorney general, or an assistant, upon information and belief. When an injunction, either temporary or permanent, has been granted under the provisions of this section, it shall be binding on the defendant or defendants throughout the entire state.

42-02-03. Temporary injunction - When officers take possession of property.

If, at the time of granting the temporary injunction, an affidavit shall be presented to the court or judge stating or showing that acts are being committed contrary to law upon the premises where said nuisance is located, the court or judge must issue the court's or judge's warrant commanding the officer serving said writ of injunction, at the time of service, to take possession and custody of any articles or property used or employed contrary to law. The officer shall take and hold the possession of such property until final judgment is entered, or until the possession of such property shall be disposed of by an order of the court or judge upon a hearing had before it for such purpose. The expense for such holding shall be taxed as a part of the costs in the action.

42-02-04. Nuisance - Abatement.

If a place is found, upon the judgment of a jury, court, or judge having jurisdiction, to be a nuisance, a law enforcement officer of the county or city where the nuisance is located shall close and abate such place by taking possession thereof, together with all personal property used in keeping and maintaining the nuisance, and close the same against use by anyone and keep it closed for a period of one year from the date of the judgment decreeing it to be a nuisance. After judgment, such officer publicly shall destroy the personal property used in keeping and maintaining the nuisance. Any person breaking open said building, erection, or place or using the premises so ordered to be closed shall be punished for contempt as provided by this chapter.

42-02-05. When premises released.

If the proceeding is an action either at law or in equity and a bond is given and the costs therein are paid, the premises shall be released at the end of one year from the date of the service of the temporary injunctive order, if in an equity case, or from the closing of the premises, if in a criminal case. In the meantime, and in either form of action, the premises where such nuisance was kept and maintained shall be regarded as being under a restraining order of the court, a violation of which will subject the violator to punishment for contempt. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty, or liability to which it may be subject under any statute or law.

42-02-06. Termination of lease by owner under injunction releases property - Notice to tenant.

When leasehold premises are closed under an injunctive order or have been adjudged to be a nuisance, the owner thereof shall have the right to terminate the lease by giving three days' notice thereof in writing to the tenant, and after giving such notice, if the owner shall prove to the court that the owner was without fault, and had not knowingly nor negligently permitted the

keeping or maintaining of the nuisance complained of, the premises shall be turned over to the owner upon the order of the court. The release of the property shall be upon the condition that the nuisance shall not be continued and that the return of the property shall not release any lien upon said property occasioned by any prosecution of the tenant. If the owner appears and pays all costs of the proceedings and files a bond with sureties to be approved by the court, conditioned that the owner immediately will abate said nuisance and will prevent it from being established or kept therein within the period of one year thereafter, the court or the judge, if satisfied of the owner's good faith, may order that the premises taken and closed be released and the said order of abatement canceled so far as it may relate to said property.

42-02-07. Evidence admissible.

In a prosecution under this chapter in a civil proceeding, evidence of the general reputation of the house, building, room, or place designated in the complaint shall be admissible for the purpose of proving the existence of a nuisance. Proof of the fact that any person has pleaded guilty to violation of the provisions of any city ordinance or any other law of the land enacted to prevent a nuisance also is admissible, if it can be shown further that such person, when pleading guilty, was or had been, at the time and place mentioned in the complaint in the action then pending before the court, a frequenter or inmate of such house, building, room, or place, and such proof shall be deemed prima facie evidence of the guilt of the defendant.

42-02-08. Claim of privilege denied.

No person shall be excused from giving any testimony or evidence upon any investigation or proceeding for a violation of this chapter upon the ground that such testimony would tend to convict the person of a crime, but such testimony or evidence shall not be received against the person upon any criminal investigation or proceeding.

42-02-09. Reasonable attorney's fees.

In case judgment is rendered in favor of the plaintiff in any action brought under the provisions of section 42-02-02, the court or judge rendering it also shall render judgment for reasonable attorney's fees in favor of the plaintiff and against the defendants therein. Such attorney's fees shall be taxed and collected as other costs in the action, and when collected shall be paid to the attorney for the plaintiff therein. If such attorney is the attorney general or state's attorney, such attorney's fees shall be paid into the county treasury and credited to the general fund of the county.

42-02-10. Injunction - Penalty for violation.

Any person violating the terms of an injunction for the abatement of a nuisance in any place in this state is guilty of contempt of court.

42-02-11. Contempt proceeding.

A contempt proceeding arising out of the violation of any injunction granted under the provisions of this chapter must be conducted in the manner prescribed for the conduct of such proceeding in chapter 27-10.