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CHAPTER 8.

 NUISANCES

**SECTION 61‑8‑10.** Common nuisances.

The unlawful sale, barter, exchange, storage or keeping in possession in this State of spirituous, malt, vinous, fermented, brewed (whether lager or rice beer) or other liquors or beverages or a compound or mixture thereof which contains alcohol and is used as a beverage is hereby declared a common nuisance.

**SECTION 61‑8‑20.** Arrest warrants and search warrants.

Any person may appear before a magistrate in the county and swear out an arrest warrant on personal knowledge or on information and belief charging a nuisance, giving the names of witnesses against the keeper or manager of the place and his aides and assistants, if any. The magistrate must direct the arrest warrant either to the sheriff of the county or to a special constable commanding the defendant to be arrested and brought before him to be dealt with according to law and may issue a search warrant in which the premises in question must be particularly described, commanding the sheriff or constable to search thoroughly the premises in question and to seize all alcoholic liquors found thereon, to seize all vessels, bar fixtures, screens, bottles, glasses, and appurtenances apparently used or suitable for use in retailing liquors, and to make a complete inventory thereof and deposit it with the sheriff. Liquors so seized must, if no action to recover them is begun within thirty days after the seizure or if an action is begun and the judgment of the court is adverse to the plaintiff, be destroyed publicly by the sheriff of the county.

**SECTION 61‑8‑30.** Disposition; binding over for trial.

Under the arrest warrant, the defendant must be arrested and brought before a magistrate and the case must be disposed of as other crimes, except that when the magistrate commits or binds over the parties for trial to the next term of court of general sessions for the county, he must make out each paper in the case in duplicate and file one with the clerk of the court for the county and immediately transmit the other to the solicitor of the circuit.

**SECTION 61‑8‑40.** Restraining orders or injunctions.

Upon receipt of any such paper, the solicitor immediately must apply to a circuit judge at chambers in that circuit, or to the nearest circuit judge if there is none in that circuit, for an order or injunction restraining the defendants, their servants, or agents from keeping, receiving, bartering, selling, or giving away alcoholic liquors until the further order of the court or perpetually after hearing after notice to the defendant. The circuit judge must grant the restraining order or injunction without requiring a bond or undertaking upon the hearing or receipt by him of the magistrate court papers from the solicitor. A violation of the restraining order or injunction is considered a contempt of court and punishable as contempt by the court or another circuit judge, as for the violation of an order or injunction.

**SECTION 61‑8‑50.** Contempt proceedings.

A person who violates the terms of a restraining order granted in such proceedings must be punished for contempt by a fine of not less than two hundred dollars nor more than one thousand dollars and by imprisonment not less than ninety days nor more than one year. In contempt proceedings arising out of the violation of an injunction granted under the provisions of this chapter, the court or, in vacation, any judge thereof has power to try summarily and punish the party guilty as required by law. The affidavits upon which the attachment for contempt issues are prima facie evidence for the State. At the hearing upon the charge for contempt, evidence may be oral or in the form of affidavits, or both. The defendant shall not necessarily be discharged upon his denial of the fact stated in the moving papers. The clerk of court must, upon the application of either party, issue subpoenas for witnesses and, except as provided in this section, the practice in these contempt proceedings must conform as nearly as possible to the practice in the court of common pleas.

**SECTION 61‑8‑60.** Writs of replevin.

Liquors seized as provided in this chapter and the vessels containing the liquors must not be taken from the custody of the officers in possession thereof by a writ of replevin or other process, except as provided in Section 61‑8‑20. No suit shall lie for damages alleged to arise by seizure and detention of liquors under this chapter.

**SECTION 61‑8‑70.** Solicitor’s failure to prosecute.

When a solicitor neglects or refuses to perform a duty or to take any steps required of him by a provision of this chapter, the Attorney General, on his own motion or by request of the Governor, must, in person or by an assistant, proceed to the locality and perform the neglected duty and take steps as are necessary in the place of the solicitor. The Attorney General may, in his discretion, cause a prosecution to be instituted not only in the matter neglected but also against the solicitor for malfeasance or misfeasance in office, for official misconduct, or for other charges justified by facts, and may pursue the prosecution to the extent of a conviction and dismissal from office of the solicitor. In this event, the Attorney General may appoint one or more additional assistants who must each receive while actually employed the same compensation, to be paid from the litigation fund of the Attorney General. Any duty imposed in this chapter upon a solicitor may be performed by the Attorney General or other person authorized by him to perform the duty.