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CHAPTER 43

Abatement of Nuisances

**SECTION 15‑43‑10.** Use of buildings or places for lewdness and the like declared a nuisance.

 (A) A person who erects, establishes, continues, maintains, uses, owns, occupies, leases, or releases any building or other place used for the purposes of lewdness, assignation, prostitution, repeated acts of unlawful possession or sale of controlled substances, or continuous breach of the peace in this State is guilty of a nuisance; and the building, place, or the ground itself in or upon which the lewdness, assignation, prostitution, repeated acts of unlawful possession or sale of controlled substances, or continuous breach of the peace is conducted, permitted, carried on, continued, or exists and the furniture, fixtures, musical instruments, and movable property used in conducting or maintaining the nuisance also are declared a nuisance and shall be enjoined and abated as provided in this chapter.

 (B) As used in this section “continuous breach of the peace” means a pattern of repeated acts or conduct which either (1) directly disturbs the public peace or (2) disturbs the public peace by inciting or tending to incite violence.

 (C) Nothing in this section supplants, alters, or limits a statutory or common law right of a person to bring an action in court or the right of the State to prosecute a person for a violation of a statute or common law.

HISTORY: 1962 Code Section 10‑1801; 1952 Code Section 10‑1801; 1942 Code Section 575; 1932 Code Section 575; Civ. P. ‘22 Section 491; 1918 (30) 814; 1998 Act No. 261, Section 1.

**SECTION 15‑43‑20.** Attorney General, solicitor, or citizen may bring suit for injunction.

 Whenever a nuisance is kept, maintained or exists, as defined in this chapter, the Attorney General, the solicitor of the judicial district in which such nuisance is kept or any citizen of the State may maintain an action in equity in the name of the State, upon the relation of such Attorney General, solicitor or citizen, to enjoin perpetually such nuisance, the person conducting or maintaining the nuisance and the owner or agent of the building or ground upon which the nuisance exists.

HISTORY: 1962 Code Section 10‑1802; 1952 Code Section 10‑1802; 1942 Code Section 576; 1932 Code Section 576; Civ. P. ‘22 Section 492; 1918 (30) 814.

**SECTION 15‑43‑30.** Temporary injunction.

 In such action the court or the judge in vacation shall, upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary writ of injunction, without bond, if the existence of such nuisance shall be made to appear to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony or otherwise, as the complainant may elect, unless the court or judge by previous order shall have directed the form and manner in which it shall be presented. Three days’ notice in writing shall be given the defendant of the hearing of the application and if then continued at his instance the writ as prayed shall be granted as a matter of course. When an injunction has been granted it shall be binding on the defendant throughout the State, and any violation of the provisions of the injunction herein provided for shall be a contempt as provided in Section 15‑43‑70.

HISTORY: 1962 Code Section 10‑1803; 1952 Code Section 10‑1803; 1942 Code Section 576; 1932 Code Section 576; Civ. P. ‘22 Section 492; 1918 (30) 814.

**SECTION 15‑43‑40.** Trial; evidence of general reputation.

 The action, when brought, shall be triable at the first term of court after due and timely service of the notice has been given, and in such action evidence of the general reputation of the place shall be competent for the purpose of proving the existence of the nuisance.

HISTORY: 1962 Code Section 10‑1804; 1952 Code Section 10‑1804; 1942 Code Section 577; 1932 Code Section 577; Civ. P. ‘22 Section 493; 1918 (30) 815.

**SECTION 15‑43‑50.** Immunity of witnesses.

 The solicitor, Attorney General or other attorney representing the prosecution for violation of this chapter may, with the approval of the court, grant immunity to any witness called to testify in behalf of the prosecution.

HISTORY: 1962 Code Section 10‑1805; 1952 Code Section 10‑1805; 1942 Code Section 583; 1932 Code Section 583; Civ. P. ‘22 Section 499; 1918 (30) 817.

**SECTION 15‑43‑60.** Dismissal.

 If the complaint is filed by a citizen or corporation it shall not be dismissed except upon a sworn statement made by the complainant and his or its attorney setting forth the reason why the action should be dismissed and upon the approval of such dismissal by the Attorney General or by the solicitor, 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 Attorney General or solicitor to prosecute the action to judgment, and if the action is continued more than one term of court any citizen of the State may be substituted for the complaining party and prosecute the action to judgment. If the action is brought by a citizen or a corporation and the court finds there was no reasonable ground or cause for the action, the costs may be taxed to such citizen or corporation.

HISTORY: 1962 Code Section 10‑1806; 1952 Code Section 10‑1806; 1942 Code Section 577; 1932 Code Section 577; Civ. P. ‘22 Section 493; 1918 (30) 815.

**SECTION 15‑43‑70.** Violation of injunction; punishment for contempt.

 In case of the violation of any injunction granted under the provisions of this chapter the court or, in vacation, a judge thereof may summarily try and punish the offender. The proceeding shall be commenced by filing with the clerk of the court a complaint, under oath, setting out the alleged facts constituting such violation, upon which the court or judge shall cause a warrant to issue under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may at any stage of the proceedings demand the production and oral examination of the witnesses. A party found guilty of contempt under the provisions of this section shall be punished by a fine of not less than two hundred dollars nor more than one thousand dollars or by imprisonment in the county jail or State Penitentiary not less than three months nor more than six months, or by both fine and imprisonment.

HISTORY: 1962 Code Section 10‑1807; 1952 Code Section 10‑1807; 1942 Code Section 578; 1932 Code Section 578; Civ. P. ‘22 Section 494; 1918 (30) 815.

**SECTION 15‑43‑80.** Abatement; sale of fixtures; closing place for year.

 If the existence of the nuisance be established in an action, as provided in this chapter or in a criminal proceeding, an order of abatement shall be entered as part of the judgment in the case. The order shall direct the removal from the building or place of all fixtures, furniture, musical instruments or movable property used in conducting the nuisance, shall direct the sale thereof in the manner provided for the sale of chattels under execution and shall direct 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.

HISTORY: 1962 Code Section 10‑1808; 1952 Code Section 10‑1808; 1942 Code Section 579; 1932 Code Section 579; Civ. P. ‘22 Section 495; 1918 (30) 816.

**SECTION 15‑43‑90.** Use of proceeds of sale of personal property.

 The proceeds of the sale of the personal property, as provided in Section 15‑43‑80, 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.

HISTORY: 1962 Code Section 10‑1809; 1952 Code Section 10‑1809; 1942 Code Section 580; 1932 Code Section 580; Civ. P. ‘22 Section 496; 1918 (30) 816.

**SECTION 15‑43‑100.** Entry or use of closed building as contempt.

 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 Section 15‑43‑70.

HISTORY: 1962 Code Section 10‑1810; 1952 Code Section 10‑1810; 1942 Code Section 579; 1932 Code Section 579; Civ. P. ‘22 Section 495; 1918 (30) 816.

**SECTION 15‑43‑110.** Owner may secure release of building.

 If the owner appears and pays all costs of the proceeding and files a bond, with sureties to be approved by the court, in the full value of the property, to be ascertained by the court or, in vacation, by the county auditor’s records, conditional that he will immediately abate the nuisance and prevent it from being established or kept therein within a period of one year thereafter, the court or, in vacation, the judge may, if satisfied of his good faith, order the premises closed under the order of abatement to be delivered to the owner and the order of abatement cancelled so far as it may relate to such party. And if the proceeding be an action in equity and such bond be given and costs therein paid before judgment and order of abatement the action shall be thereby abated as to such building only. The release of the property under the provisions of this section shall not release it from judgment lien, penalty or liability to which it may be subject by law.

HISTORY: 1962 Code Section 10‑1811; 1952 Code Section 10‑1811; 1942 Code Section 581; 1932 Code Section 581; Civ. P. ‘22 Section 497; 1918 (30) 816.

**SECTION 15‑43‑120.** Notice shall be given to owner before action against him.

 No proceeding against the owner of the real estate shall be commenced hereunder unless ten days’ written notice be given by the prosecuting attorney to such owner or his agent and upon his failure thereafter to abate the nuisance.

HISTORY: 1962 Code Section 10‑1812; 1952 Code Section 10‑1812; 1942 Code Section 582; 1932 Code Section 582; Civ. P. ‘22 Section 498; 1918 (30) 817.

**SECTION 15‑43‑130.** Establishment of existence of nuisance in criminal proceeding.

 In case the existence of such nuisance is established in a criminal proceeding in a court not having equitable jurisdiction the county attorney or solicitor of the district shall proceed promptly under this chapter to enforce the provisions and penalties hereof, and the finding of the defendant guilty in such criminal proceedings, unless reversed or set aside, shall be conclusive as against such defendant as to the existence of the nuisance.

HISTORY: 1962 Code Section 10‑1813; 1952 Code Section 10‑1813; 1942 Code Section 580; 1932 Code Section 580; Civ. P. ‘22 Section 496; 1918 (30) 816.