

TITLE 52
NUISANCES

CHAPTER 4
MORAL NUISANCES -- ACTION FOR INJUNCTION AND ABATEMENT

52-401. CUMULATIVE REMEDY. In addition to any other remedy provided by law, any act, occupation, structure or thing which is a moral nuisance, may be abated, and the person doing such act or engaged in such occupation, and the owner and agent of the owner of any such structure or thing may be enjoined, as in this chapter provided.

[(52-401) 1976, ch. 82, sec. 4, p. 275.]

52-402. WHO MAY MAINTAIN ACTION. The attorney general, prosecuting attorney, or any private resident citizen of the county may maintain an action of an equitable nature, as relator, in the name of the state of Idaho, to abate a moral nuisance, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a moral nuisance.

If such action is instituted by a private person, the complainant shall execute a bond prior to the issuance of a restraining order or a temporary injunction, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than five hundred dollars (\$500), to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or is not maintained, or if it is finally decided that the restraining order or temporary injunction ought not to have been granted. The party enjoined shall have recourse against said bond for all damages suffered, including damages to his property, person, or character and including reasonable attorney's fees incurred by him in making defense to said action. No bond shall be required of the prosecuting attorney or the attorney general, and no action shall be maintained against the public official for his official action when brought in good faith.

[52-402, added 1976, ch. 82, sec. 4, p. 275.]

52-403. PLEADINGS -- JURISDICTION -- VENUE -- APPLICATION FOR TEMPORARY INJUNCTION. The action, provided for in this chapter, shall be brought in any court of competent jurisdiction in the county in which the property is located. Such action shall be commenced by the filing of a verified complaint alleging the facts constituting the nuisance. After the filing of said complaint, application for a temporary injunction may be made to the court in which the action is filed, or to a judge thereof, who shall grant a hearing within ten (10) days after the filing.

[52-403, added 1976, ch. 82, sec. 4, p. 275.]

52-404. ORDER RESTRAINING REMOVAL OF PERSONAL PROPERTY FROM PREMISES -- SERVICE -- PUNISHMENT. Where such application for a temporary injunction is made, the court may, on application of the complainant showing good cause, issue an ex parte restraining order, restraining the defendant and all other persons from removing or in any manner interfering with the personal property and contents of the place where such nuisance is alleged to exist, un-

til the decision of the court or judge granting or refusing such temporary injunction and until the further order of the court thereon, except that, pending such decision, the stock in trade may not be so restrained, but an inventory and full accounting of all business transactions thereafter may be required.

The restraining order may be served by handing to and leaving a copy of such order with any person in charge of such place or residing therein, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place, or by both such delivery and posting. The officer serving such restraining order shall forthwith make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance.

Any violation of such restraining order is a contempt of court, and where such order is posted, mutilation or removal thereof, while the same remains in force, is a contempt of court, provided such posted order contains therein a notice to that effect.

[52-404, added 1976, ch. 82, sec. 4, p. 276.]

52-405. NOTICE OF HEARING ON TEMPORARY INJUNCTION -- CONSOLIDATION. A copy of the complaint, together with a notice of the time and place of the hearing of the application for a temporary injunction, shall be served upon the defendant at least five (5) days before such hearing. The place may also be served by posting such papers in the same manner as is provided for in section [52-404](#), Idaho Code, in the case of a restraining order. If the hearing is then continued at the instance of any defendant, the temporary writ as prayed shall be granted as a matter of course.

Before or after the commencement of the hearing of an application for a temporary injunction, the court, on application of either of the parties or on its own motion, may order the trial of the action on the merits to be advanced and consolidated with the hearing on the application for the temporary injunction. Any evidence received upon an application for a temporary injunction which would be admissible upon the trial on the merits becomes a part of the record of the trial and need not be repeated as to such parties at the trial on the merits.

[52-405, added 1976, ch. 82, sec. 4, p. 276.]

52-406. RIGHT TO POSSESSION OF REAL PROPERTY AND PERSONAL PROPERTY AFTER HEARING ON THE TEMPORARY INJUNCTION -- CONDITIONS FOR AVOIDANCE OF TEMPORARY FORFEITURE. If upon hearing, the allegations of the complaint are sustained by clear and convincing evidence that a moral nuisance exists and is likely to continue in the absence of injunctive relief, the court shall issue a temporary injunction, without additional bond, restraining the defendant and any other person from continuing the nuisance.

If at the time the temporary injunction is granted, it further appears that the person owning, in control, or in charge of the nuisance so enjoined had received five (5) days' notice of the hearing, then the court shall declare a temporary forfeiture of the use of the real property upon which such public nuisance is located and the personal property located therein and shall forthwith issue an order closing such place against its use for any purpose until final decision is rendered on the application for a permanent injunction, unless:

(1) the nuisance complained of has been abated by such person, or

(2) the owner of such property, as a "good faith" lessor, has taken action to void said lease as is authorized by section [52-414](#), Idaho Code.

Such order shall also continue in effect for such further period the order, authorized in section [52-404](#), Idaho Code, restraining the removal of personal property or, if not so issued, shall include such an order restraining for such period the removal or interference with the personal property and contents located therein. Such restraining order shall be served and the inventory of such property shall be made and filed as provided for in section [52-404](#), Idaho Code.

Such order shall also require such persons to show cause within thirty (30) days why such closing order should not be made permanent, as provided for in section [52-412](#), Idaho Code.

[52-406, added 1976, ch. 82, sec. 4, p. 277; am. 1982, ch. 271, sec. 1, p. 702.]

52-407. RIGHT TO POSSESSION OF REAL PROPERTY AND PERSONAL PROPERTY AFTER FINDING OF PUBLIC NUISANCE -- CONDITIONS FOR REENTRY AND REPOSSESSION. The owner of any real or personal property to be closed or restrained, or which has been closed or restrained, may appear between the filing of the complaint and the hearing on the application for a permanent injunction, and upon payment of all cost incurred and upon the filing of a bond by the owner of the real property with sureties to be approved by the clerk in the full value of the property to be ascertained by the court, conditioned that such owner will immediately abate the nuisance and prevent the same from being established or kept, until the decision of the court is rendered on the application for a permanent injunction, then the court, if satisfied of the good faith of the owner of the real property and of the innocence on the part of any owner of the personal property of any knowledge of the use of such personal property as a nuisance and that, with reasonable care and diligence, such owner could not have known thereof shall, at the time of the hearing on the application for the temporary injunction, refrain from issuing any order closing such real property or restraining the removal or interference with such personal property, and, if such temporary injunction has already been issued, shall discharge said order and shall deliver such real or personal property, or both, to the respective owners thereof. The release of any real or personal property, under this section, shall not release it from any judgment, lien, penalty, or liability to which it may be subjected.

[52-407, added 1976, ch. 82, sec. 4, p. 277.]

52-408. PRIORITY OF ACTION. The action provided for in this chapter shall be set down for trial within ninety (90) days and shall have precedence over all other cases except crimes, election contests, or injunctions.

[52-408, added 1976, ch. 82, sec. 4, p. 278; am. 1982, ch. 271, sec. 2, p. 703.]

52-409. EVIDENCE. In such action, an admission or finding of guilty of any person under the criminal laws against lewdness, prostitution, or assignation at any such place, is admissible for the purpose of proving the existence of said nuisance, and is prima facie evidence of such nuisance and of

knowledge of, and of acquiescence and participation therein, on the part of the person charged with maintaining said nuisance.

[52-409, added 1976, ch. 82, sec. 4, p. 278.]

52-410. EVIDENCE OF REPUTATION ADMISSIBLE. At all hearings upon the merits, evidence of the general reputation of the building or place constituting the alleged nuisance, of the inmates thereof, and of those resorting thereto, is admissible for the purpose of proving the existence of such nuisance.

[52-410, added 1976, ch. 82, sec. 4, p. 278.]

52-411. COSTS. If the action is brought by a private person and the court finds that there were no reasonable grounds or probable cause for bringing said action, and the case is dismissed for that reason before trial, or if the action is dismissed for want of prosecution, the costs may be taxed to such person.

If the existence of the nuisance is established upon the trial, a judgment shall be entered which shall perpetually enjoin the defendant and any other person from further maintaining the nuisance at the place complained of, and the defendant from maintaining such nuisance elsewhere, and the entire expenses of such abatement, including attorney's fees, shall be recoverable by plaintiff as a part of his costs of the lawsuit.

If the complaint is filed by a private person, it shall not be voluntarily dismissed except upon a sworn statement by the complainant and his attorney, setting forth the reason why the action should be dismissed and the dismissal approved by the prosecuting attorney in writing or in open court. If the judge is of the opinion that the action ought not to be dismissed, he may direct the prosecuting attorney to prosecute said action to judgment at the expense of the county, and if the action is continued more than one (1) term of court, any person who is a citizen of the county, or has an office therein, or the attorney general or the prosecuting attorney, may be substituted for the complainant and prosecute said action to judgment.

[52-411, added 1976, ch. 82, sec. 4, p. 279.]

52-412. CONTENT OF FINAL JUDGMENT AND ORDER. If the existence of a nuisance is admitted or established in an action as provided for in this chapter, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the place of all personal property and contents used in conducting the nuisance, and not already released under authority of the court, as provided for in sections [52-406](#) and [52-407](#), Idaho Code, and shall direct the sale of such thereof as belong to the defendants notified or appearing, in the manner provided for the sale of chattels under execution. Lewd matter shall be destroyed and not be sold.

Such order shall also require the renewal for one (1) year of any bond furnished by the owner of the real property, as provided in section [52-407](#), Idaho Code, or, if not so furnished, shall continue for one (1) year any closing order issued at the time of granting the temporary injunction, or, if no such closing order was then issued, shall include an order directing the effectual closing of the place against its use for any purpose, and keeping it closed for a period of one (1) year unless sooner released.

The owner of any place closed and not released under bond may then appear and obtain such release in the manner and upon fulfilling the requirements provided in section [52-407](#), Idaho Code.

Owners of unsold personal property and contents so seized must appear and claim the same within ten (10) days after such order of abatement is made, and prove innocence, to the satisfaction of the court, of any knowledge of said use thereof, and that with reasonable care and diligence they could not have known thereof. If such innocence is established, such unsold personal property and contents shall be delivered to the owner, otherwise it shall be sold as provided in this section. For removing and selling the personal property and contents, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution; and for closing the place and keeping it closed, a reasonable sum shall be allowed by the court.

[52-412, added 1976, ch. 82, sec. 4, p. 279.]

52-413. COURT SHALL PUNISH OFFENDER FOR VIOLATION OF INJUNCTION OR ORDER. In case of the violation of any injunction or closing order, granted under this chapter, or of a restraining order or the commission of any contempt of court in proceedings under this chapter, the court may summarily try and punish the offender. The trial may be had upon affidavits or either party may demand the production and oral examination of the witnesses.

[52-413, added 1976, ch. 82, sec. 4, p. 280.]

52-414. LEASE VOID IF BUILDING USED FOR LEWD PURPOSES. If a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, or prostitution, such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner, who may without process of law make immediate entry upon the premises.

[52-414, added 1976, ch. 82, sec. 4, p. 280.]

52-415. CIVIL PENALTY -- FORFEITURE -- ACCOUNTING -- LIEN AS TO EXPENSES OF ABATEMENT. Lewd matter is contraband, and there are no property rights therein. All personal property declared to be a moral nuisance in section [52-104](#), Idaho Code, and all monies and other considerations declared to be a moral nuisance under section [52-105](#), Idaho Code, are the subject of forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such monies may be traced to and shall be recoverable from persons who, under section [52-405](#), Idaho Code, have knowledge of the nuisance at the time such monies are received by them.

Upon judgment against the defendants in legal proceedings brought pursuant to this chapter, an accounting shall be made by such defendant or defendants of all monies received by them which have been declared to be a public nuisance under this section. An amount equal to the sum of all monies estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such matter is sold or exhibited, to be shared equally, as a

forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare, public health and public morals.

Where the action is brought pursuant to this chapter, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to the following:

- (1) investigative costs.
- (2) court costs.
- (3) reasonable attorney's fees arising out of the preparation for, and trial of the cause, and appeals therefrom, and other costs allowed on appeal.
- (4) printing costs of trial and appellate briefs, and all other papers filed in such proceedings.

[52-415, added 1976, ch. 82, sec. 4, p. 280.]

52-416. IMMUNITY. The provisions of any criminal statutes with respect to the exhibition of, or the possession with the intent to exhibit, any obscene film shall not apply to a motion picture projectionist, usher, or ticket taker acting within the scope of his employment, provided that such projectionist, usher, or ticket taker: (1) has no financial interest in the place wherein he is so employed, and (2) freely and willingly gives testimony regarding such employment in any judicial proceedings brought under this chapter, including pre-trial discovery proceedings incident thereto, when and if such is requested, and upon being granted immunity by the trial judge sitting in such matters.

[52-416, added 1976, ch. 82, sec. 4, p. 281.]

52-417. SEVERABILITY. If any section, subsection, sentence, or clause of this act is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of the remaining portion of this act. It is hereby declared that this act would have been passed, and each section, sentence, or clause thereof, irrespective of the fact that any one or more sections, subsections, sentences or clauses might be adjudged to be unconstitutional, or for any other reason invalid.

[52-417, added 1976, ch. 82, sec. 4, p. 281.]