

# CODE OF VIRGINIA



## Title 48 Nuisances

# Title 48 - Nuisances

## Chapter 1 - ABATING PUBLIC NUISANCES GENERALLY

### § 48-1. Investigation of complaint by special grand jury.

When complaint is made to the circuit court of any county, or the corporation court of any city of this Commonwealth, by five or more citizens of any county, city or town, setting forth the existence of a public or common nuisance, the court, or the judge thereof in vacation, shall summon a special grand jury, in the mode provided by law, to the next term of such court, to specially investigate such complaint.

Code 1919, § 1520.

### § 48-2. Presentment against person causing nuisance.

If upon a full investigation of the complaint mentioned in § [48-1](#) the grand jury is satisfied that the nuisance complained of is of a public nature, it shall proceed to make presentment against such person or persons as they may find have created or caused such nuisance.

Code 1919, § 1520.

### § 48-3. Permitting continuation of nuisance; presentment against premises.

If any such nuisance be upon premises the owner of which did not create or cause such nuisance, but permitted its continuation, such owner shall, for the purposes of this chapter, be deemed responsible for such nuisance, and if such owner be not a resident or citizen of this Commonwealth, or one whose residence is not known, such presentment shall be against the premises upon which such nuisance is.

Code 1919, § 1520.

### § 48-4. Service of copy of presentment; defense by person interested.

Upon any such presentment the court shall order a copy thereof to be served upon the person or persons presented, or whose property is presented, in the manner prescribed by law as to the service of notices. To any such proceeding, if it be in rem, any person interested, or for and in behalf of the owner of such premises, may make defense.

Code 1919, § 1520.

### § 48-5. Fines and costs; judgment of abatement.

Upon the trial of any such presentment the person or persons who have created, caused or permitted the continuation of any nuisance, if found guilty, shall be ordered to either abate said nuisance or to reimburse the locality for all costs of removal and abatement of said nuisance, if the locality has abated the nuisance pursuant to § [15.2-900](#), and further may be fined not more than \$25,000, in addition to other remedies available under the law.

Code 1919, § 1520; 1996, cc. [291](#), [808](#); 2009, cc. [181](#), [551](#).

### § 48-6. Enforcement of judgment in rem.

Every judgment in rem under this chapter shall be enforced in the same manner as an attachment levied on real estate.

Code 1919, § 1520.

## **Chapter 2 - Houses of Prostitution, etc.**

### **§ 48-7. Houses and contents are nuisances subject to abatement.**

Any person who shall knowingly erect, establish, continue, maintain, use, own, occupy or lease any building, erection, place, or area used for the purpose of lewdness, assignation, prostitution, or activities of a criminal street gang, as criminal street gang is defined in § [18.2-46.1](#) in the Commonwealth is guilty of a nuisance, and the building, erection, place, or area, the ground itself, in or upon which such lewdness, assignation, prostitution, or criminal street gang activity is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, musical instruments and contents are also declared a nuisance, and shall be enjoined and abated as hereinafter provided.

Code 1919, § 1521; 2005, cc. [764](#), [813](#).

### **§ 48-8. How nuisance enjoined.**

Whenever a nuisance is kept, maintained, or exists as defined in § [48-7](#) the attorney for the Commonwealth or the Attorney General of the Commonwealth, or, with the exception of a suit brought against a criminal street gang as defined in § [18.2-46.1](#), any responsible citizen of the Commonwealth, may maintain a suit in equity in the name of the Commonwealth, upon the relation of such attorney for the Commonwealth, Attorney General, or citizen, to perpetually enjoin such nuisance, the person or persons conducting or maintaining the same, and the owner or agent of the building or ground upon which such nuisance exists. In such suit the court, or a judge in vacation, shall, upon the presentation of a bill therefor alleging that the nuisance complained of exists, and sworn to by two reputable citizens, allow a temporary writ of injunction, without bond, if it 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, that the nuisance complained of exists, unless the court or judge by previous order shall have directed the form and manner in which the evidence 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. A suit brought to enjoin criminal street gang activity may be brought against the criminal street gang as defined in § [18.2-46.1](#), as an unincorporated association and in the name by which it is commonly known.

Code 1919, § 1522; 2005, cc. [764](#), [813](#).

### **§ 48-9. When case to be tried; dismissal; substitution of complainant; costs.**

The suit when ready for hearing shall be tried at the first term of court, unless good cause for a continuance shall be shown, and in such suit oral evidence given in court of the general reputation of the place or criminal street gang as defined in § [18.2-46.1](#) shall be admissible for the purpose of proving or tending to prove the existence of such nuisance. If the complaint is filed by a citizen it shall not be

dismissed by him before final hearing, except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal approved by the attorney for the Commonwealth, or the Attorney General of the Commonwealth, in writing or in open court. In any case, if the court is of the opinion that the suit ought not to be dismissed, it may direct the attorney for the Commonwealth to prosecute it to judgment; and if the suit is continued more than one term of court, any citizen or the attorney for the Commonwealth may be substituted for the complaining party and prosecute such suit to judgment. If the suit is brought by a citizen, and the court finds there was no reasonable ground or cause for said suit, the costs may be taxed against such citizen.

Code 1919, § 1523; 2005, cc. [764](#), [813](#).

#### **§ 48-10. Contempt proceedings.**

In case of the violation of any injunction granted to restrain such nuisance, 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 an information, 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 proceeding demand the production and oral examination of the witnesses.

Code 1919, § 1524.

#### **§ 48-11. Punishment for contempt.**

A party found guilty of contempt under the provisions of § [48-10](#), shall be punished by a fine of not less than \$100 nor more than \$2,500, or by imprisonment in jail not less than three months nor more than six months, or in the discretion of the court by both fine and imprisonment.

Code 1919, § 1524; 1996, cc. [291](#), [808](#).

#### **§ 48-12. Order of abatement of nuisance; sale of furniture, etc.; closing of building.**

If the existence of the nuisance be established in such suit in equity, or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments, or movable property used in conducting the nuisance, and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and shall decree 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. 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 § [48-11](#).

Code 1919, § 1525.

#### **§ 48-13. Disposition of proceeds of sale.**

The proceeds of the sale of the personal property, as provided in § [48-12](#), shall be applied to the payment of the costs of the suit and abatement, including such reasonable attorney fee to be decreed to

the attorney for the complainant, as the court shall think just, and the balance, if any, shall be paid to the defendant.

Code 1919, § 1526.

**§ 48-14. When property to be delivered to owner on giving bond.**

If the owner appears and pays all costs of the proceedings and files a bond, with sureties to be approved by the clerk, in the full value of the property, to be ascertained by the court, or by the judge, in vacation, conditioned that he will immediately abate such nuisance and prevent the same from being established or kept 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 such owner and such order of abatement cancelled so far as the same may relate to such property; and if the proceeding be a suit in equity and such bond be given, and costs therein paid before judgment and order of abatement, the suit shall be thereby abated as to such building only. But 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.

Code 1919, § 1527.

**§ 48-15. Immunity to witnesses.**

On motion of the attorney for the Commonwealth or other attorney representing the prosecution for violation of this chapter, the court may grant immunity to any witness called to testify in behalf of the prosecution.

Code 1919, § 1528.

**§ 48-16. Closure of nuisance involving illegal drug transactions.**

A. Upon a conviction under § [18.2-258](#) and after due notice and opportunity to be heard on the part of any owner, lessor, or a lienholder not involved in the original offense, by a proceeding similar to that in Chapter 22.1 (§ [19.2-386.1](#) et seq.) of Title 19.2 and upon proof of guilty knowledge, a court may order that such house, motor vehicle, aircraft, boat, vessel, or other premises, or any room or part thereof, be closed, but the court may, upon the owner or lessor giving bond in the penalty of not less than \$500 and with security to be approved by the court, conditioned that the premises shall not be used for unlawful purposes, turn the same over to its owner or lessor; or proceeding may be had in equity as provided in § [48-17](#).

B. The penalties provided in this section shall be in addition to any other penalty provided by law, including immediate termination of a rental agreement as provided in § [55.1-1245](#).

C. In a civil or in rem proceeding under the provisions of this section judgment shall not be entered against the owner, lessor, or lienholder of property unless it is proved (i) that he knew of the unlawful use of the property and (ii) that he had the right, because of such unlawful use, to enter and repossess the property.

2004, c. [462](#).

#### **§ 48-17. Enjoining nuisances involving illegal drug transactions.**

The attorney for the Commonwealth, or any citizen of the county, city, or town, where such a nuisance as is described in § [18.2-258](#) exists, may, in addition to any other remedies and punishment, maintain a suit in equity in the name of the Commonwealth to enjoin the same. The attorney for the Commonwealth shall not be required to prosecute any suit brought by a citizen under this section. In every case where the bill charges, on the knowledge or belief of the complainant, and is sworn to by two witnesses, that a nuisance exists as described in § [18.2-258](#), a temporary injunction may be granted as soon as the bill is presented to the court provided reasonable notice has been given. The injunction shall enjoin and restrain any owners, tenants, their agents, employees, and any other person from contributing to or maintaining the nuisance and may impose such other requirements as the court deems appropriate. If, after a hearing, the court finds that the material allegations of the bill are true, although the premises complained of may not then be unlawfully used, it shall continue the injunction against such persons or premises for such period of time as it deems appropriate, with the right to dissolve the injunction upon a proper showing by the owner of the premises.

2004, c. [462](#).

#### **§ 48-17.1. Temporary injunctions against alcoholic beverage sales.**

A. Any locality by or through its mayor, chief executive, or attorney may petition a circuit court to temporarily enjoin the sale of alcohol at any establishment licensed by the Virginia Alcoholic Beverage Control Authority. The basis for such petition shall be the operator of the establishment has allowed it to become a meeting place for persons committing serious criminal violations of the law on or immediately adjacent to the premises so frequent and serious as to be deemed a continuing threat to public safety, as represented in an affidavit by the chief law-enforcement officer of the locality, supported by records of such criminal acts. The court shall, upon the presentation of evidence at a hearing on the matter, grant a temporary injunction, without bond, enjoining the sale of alcohol at the establishment, if it appears to the satisfaction of the court that the threat to public safety complained of exists and is likely to continue if such injunction is not granted. The court hearing on the petition shall be held within 10 days of service upon the respondent. The respondent shall be served with notice of the time and place of the hearing and copies of all documentary evidence to be relied upon by the complainant at such hearing. Any injunction issued by the court shall be dissolved in the event the court later finds that the threat to public safety that is the basis of the injunction has been abated by reason of a change of ownership, management, or business operations at the establishment, or other change in circumstance.

B. The Virginia Alcoholic Beverage Control Authority shall be given notice of any hearing under this section. In the event an injunction is granted, the Virginia Alcoholic Beverage Control Authority shall initiate an investigation into the activities at the establishment complained of and conduct an administrative hearing. After the Virginia Alcoholic Beverage Control Authority hearing and when a final determination has been issued by the Virginia Alcoholic Beverage Control Authority, regardless of dis-



position, any injunction issued hereunder shall be null, without further action by the complainant, respondent, or the court.

2007, c. [456](#); 2015, cc. [38](#), [730](#).