

TITLE 23
ALCOHOLIC BEVERAGES

CHAPTER 7
LIQUOR NUISANCES

23-701. LIQUOR NUISANCE DEFINED -- MAINTAINING. The conducting or maintaining of a place or of a vehicle of any sort for the manufacture, storage, transportation, sale, or dispensing of alcoholic liquor, except as in this act authorized, permitted, or licensed, is hereby declared to be a public nuisance and in this article is referred to as a liquor nuisance.

[23-701, added 1939, ch. 222, sec. 1001, p. 465.]

23-702. BUILDING AND EQUIPMENT. A building, vehicle, car, or boat where alcoholic liquors are manufactured, stored, transported, sold, or otherwise dispensed, or where persons are permitted to resort for the purpose of purchasing or drinking alcoholic liquor, except as in this act authorized, permitted, or licensed, and all alcoholic liquor, vessels, glasses, kegs, pumps, bars, and other property and equipment found or used in connection therewith are hereby declared to be a public nuisance and in this article such a public nuisance is referred to as a liquor nuisance.

[23-702, added 1939, ch. 222, sec. 1002, p. 465.]

23-703. MAINTENANCE A MISDEMEANOR. Any person who conducts or maintains a liquor nuisance is guilty of a misdemeanor.

[23-703, added 1939, ch. 222, sec. 1003, p. 465.]

23-704. ABATEMENT AND PROSECUTION. Except as in this article otherwise provided, a liquor nuisance may be abated and a person maintaining a liquor nuisance may be prosecuted and punished, as provided by law in other cases of public nuisance.

[23-704, added 1939, ch. 222, sec. 1004, p. 465.]

23-705. ACTION FOR MAINTENANCE. The prosecuting attorney may maintain an action of an equitable nature, as relator, in the name of the state of Idaho, to abate a liquor nuisance, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a liquor nuisance.

[23-705, added 1939, ch. 222, sec. 1005, p. 465.]

23-706. TEMPORARY INJUNCTION. Upon the filing of a verified complaint therefor, in any court of competent jurisdiction, the court or a judge at chambers, if satisfied that the liquor nuisance complained of exists, may allow a temporary writ of injunction, without bond, enjoining the defendant from maintaining any such nuisance within the jurisdiction of the court issuing such writ; but no such injunction shall issue unless it be made to appear to the satisfaction of the court that the owner or agent of the owner of such building or place knew, or had been personally served with notice, that such building or place was being so used and had failed to abate such nui-

sance, or that upon diligent inquiry such owner or agent of the owner could not be found within the state for the service of such preliminary notice.

[23-706, added 1939, ch. 222, sec. 1006, p. 465.]

23-707. 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.

[23-707, added 1939, ch. 222, sec. 1007, p. 465.]

23-708. PERPETUAL INJUNCTION AND ORDER OF ABATEMENT -- EXECUTION OF ORDER. If the existence of the nuisance is established, the court shall enter a decree perpetually restraining all persons from maintaining or permitting such nuisance, and from using the building or place in which the same is maintained for any purpose, for a period of one (1) year thereafter, unless such decree is sooner vacated, as hereinafter provided. While said decree remains in effect, such building or place shall be in the custody of the court.

An order of abatement shall also issue as a part of such decree, which order shall direct the sheriff of the county to remove from such building or place all fixtures and movable property used in conducting or aiding or abetting such nuisance, to sell the same in the manner provided by law for the sale of chattels under execution, to close such building or place against its use for any purpose, and to keep it closed for a period of one (1) year, unless sooner released as hereinafter provided. The sheriff's fees for removing and selling the movable property shall be taxed as a part of the costs, and shall be the same as those for levying upon and selling like property under execution. For closing the building and keeping it closed the court shall allow a reasonable fee to be taxed as a part of the costs.

[23-708, added 1939, ch. 222, sec. 1008, p. 465.]

23-709. DISPOSITION OF PROCEEDS OF SALE. The proceeds of the sale of the movable property shall be applied in payment of the costs of the proceeding and of the abatement, and the balance, if any, shall be paid to the defendant or person owning said property upon the return of such sale.

[23-709, added 1939, ch. 222, sec. 1009, p. 465.]

23-710. VIOLATION OF INJUNCTION AND ORDER OF ABATEMENT A CONTEMPT. In case of the violation of any injunction or order of abatement issued under the provisions of this article, the court, or a judge at chambers, may summarily try and punish the offender for his contempt of court.

[23-710, added 1939, ch. 222, sec. 1010, p. 465.]

23-711. RELEASE OF BUILDING FROM INJUNCTION. If the owner of such building or place has not been guilty of any contempt of court in the proceeding, and pays all costs of the proceeding and of the abatement and files a bond, with sureties to be approved by the court, in the penal sum of the full value of the property, to be ascertained by the court, or by a judge at chambers, conditioned that such owner will immediately abate such nuisance

and prevent the same from being established or maintained therein within a period of one (1) year thereafter, the court shall vacate such decree and order of abatement, so far as the same may relate to such building or place, and shall also vacate the order directing the sale of the movable property. The release herein provided for shall not release such property from any judgment, lien, penalty, or liability to which it may otherwise be subject by law.

[23-711, added 1939, ch. 222, sec. 1011, p. 465.]

23-712. COSTS A LIEN. Whenever the costs shall be assessed under the provisions of this chapter against the owner of any property declared to be a liquor nuisance, such costs shall constitute a lien upon such property to the extent of the interest of such owner, and writ of execution shall issue thereon.

[23-712, added 1939, ch. 222, sec. 1012, p. 465.]