

TITLE 52
NUISANCES

CHAPTER 1
NUISANCES IN GENERAL

52-101. NUISANCE DEFINED. Anything which is injurious to health or morals, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.

[52-101, added 1976, ch. 82, sec. 2, p. 271.]

52-102. PUBLIC NUISANCE. A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

[52-102, added 1976, ch. 82, sec. 2, p. 271.]

52-103. MORAL NUISANCES -- DEFINITIONS. As used in [title 52](#), Idaho Code, relating to moral nuisances.

(A) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual conduct which appears in the lewd matter, or knowledge of the acts of lewdness, assignation, or prostitution which occur on the premises.

(B) "Lewd matter" is synonymous with "obscene matter" and means any matter:

- (1) which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and
- (2) which depicts or describes patently offensive representations or descriptions of:
 - (a) ultimate sexual acts, normal or perverted, actual or simulated; or
 - (b) masturbation, excretory functions, or lewd exhibition of the genitals or genital area.

Nothing herein contained is intended to include or proscribe any matter which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political or scientific value.

(C) "Lewdness" shall have and include all those meanings which are assigned to it under the common law.

(D) "Matter" means a motion picture film or a publication or both.

(E) "Moral Nuisance" means a nuisance which is injurious to public morals.

(F) "Motion picture film" shall include any:

- (1) film or plate negative;
- (2) film or plate positive;
- (3) film designed to be projected on a screen for exhibition;
- (4) films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen. [;]

(5) video tape or any other medium used to electronically reproduce images on a screen.

(G) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(H) "Place" includes, but is not limited to, any building, structure or places, or any separate part or portion thereof, whether permanent or not, or the ground itself.

(I) "Publication" shall include any book, magazine, article, pamphlet, writing, printing, illustration, picture, sound recording, or a motion picture film which is offered for sale or exhibited in a coin-operated machine.

(J) "Sale" means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer or possession of, lewd matter.

[52-103, added 1976, ch. 82, sec. 2, p. 272.]

52-104. MORAL NUISANCES -- TYPES. The following are declared to be moral nuisances:

(A) Any and every place in the state where lewd films are publicly exhibited as a regular course of business, or possessed for the purpose of such exhibition;

(B) Any and every place in the state where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such exhibition;

(C) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a moral nuisance under this section;

(D) Any and every place of business in the state in which lewd publications constitute a principal part of the stock in trade;

(E) Any and every lewd publication possessed at a place which is a moral nuisance under this section; and

(F) Every place which, as a regular course of business, is used for the purposes of lewdness, assignation, or prostitution, and every such place in or upon which acts of lewdness, assignation, or prostitution, are held or occur.

[52-104, added 1976, ch. 82, sec. 2, p. 273.]

52-105. MORAL NUISANCES -- PERSONAL PROPERTY -- KNOWLEDGE OF NUISANCE. The following are also declared to be moral nuisances, as personal property used in conducting and maintaining a moral nuisance:

(A) All monies paid as admission price to the exhibition of any lewd film found to be a moral nuisance.

(B) All valuable consideration received for the sale of any lewd publication which is found to be a moral nuisance.

(C) The furniture and movable contents of a place which is a moral nuisance.

From and after service of a copy of the notice of hearing of the application for a preliminary injunction, provided for in section [52-405](#), Idaho Code, upon the place, or its manager, or acting manager, or person then in charge, all such parties are deemed to have knowledge of the acts, conditions or things which make such place a moral nuisance. Where the circumstantial proof warrants a determination that a person had knowledge of the moral nuisance prior to such service of process, the court shall make such finding.

[52-105, added 1976, ch. 82, sec. 2, p. 273.]

52-106. MORAL NUISANCES -- BUILDING WHERE GAMBLING IS CARRIED ON. Any building, place, or the ground itself, wherein or whereon gambling or any game of chance for money, checks, credit or other representatives of value is carried on or takes place, or gambling paraphernalia is kept, or any notice, sign or device advertising or indicating the existence or presence of such gambling or any game of chance is displayed or exposed to view, is declared a moral nuisance and shall be enjoined and abated as provided by law.

[52-106, added 1976, ch. 82, sec. 2, p. 274.]

52-107. PRIVATE NUISANCE. Every nuisance not defined by law as a public nuisance or a moral nuisance, is private.

[52-107, added 1976, ch. 82, sec. 2, p. 274.]

52-108. WHEN NOT A NUISANCE. Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.

[52-108, added 1976, ch. 82, sec. 2, p. 274.]

52-109. LIABILITY OF SUCCESSIVE OWNERS FOR CONTINUING NUISANCE. Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of such property, created by a former owner, is liable therefor in the same manner as the one who first created it.

[52-109, added 1976, ch.82, sec. 2, p. 274.]

52-110. ABATEMENT DOES NOT PRECLUDE ACTION. The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

[52-110, added 1976, ch. 82, sec. 2, p. 274.]

52-111. ACTIONS FOR NUISANCE. Anything which is injurious to health or morals, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance and the subject of an action. In the case of a moral nuisance, the action may be brought by any resident citizen of the county; in all other cases the action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance; and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

[52-111, added 1976, ch. 82, sec. 2, p. 274.]