WEST VIRGINIA CODE CHAPTER 61 ARTICLE 9

WV Legislature

§61-9-1. Definition of terms.

For the purposes of this article the terms “place,” “person,” “nuisance” are defined as follows:” Place” shall include any building, structure, erection or place, or any separate part or portion thereof, or the ground itself; “person” shall include any individual, corporation, association, partnership, trustee, lessee, agent or assignee; ”nuisance” shall mean any place as above defined in or upon which lewdness, assignation, or prostitution is conducted, permitted, continued or exists, and the personal property and contents used in conducting or maintaining any such place for any such purpose.

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§61-9-2. Maintenance of nuisance; injunction.

Any person who shall use, occupy, establish or conduct a nuisance as defined in section one, or aid or abet therein, and the owner, agent, or lessee of any interest in any such nuisance, together with the person employed in or in control of any such nuisance, by any such owner, agent, or lessee, shall be guilty of maintaining a nuisance and shall be enjoined as hereinafter provided.

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§61-9-3. Suit to enjoin; by whom instituted.

Whenever a nuisance exists, the Attorney General of the state, the prosecuting attorney of the county wherein the same exists, or any person who is a citizen, resident or taxpayer of the county, may bring suit in equity in the name of the State of West Virginia, upon the relation of such Attorney General, prosecuting attorney, or any person, to abate such nuisance and to perpetually enjoin the person or persons maintaining the same from further maintenance thereof.

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§61-9-4. Venue; procedure; temporary injunction; order closing place; vacation of orders; bond.

Such suit shall be brought in the circuit court of the county in which the property is located, or in any other court of the county having equity jurisdiction. The bill of complaint and other pleadings, and all proceedings in the case, shall conform to the law of the state with respect to equity procedure and to the rules and principles governing courts of equity, except so far as otherwise herein provided.

At the time of the commencement of the suit, or at any time during the pendency thereof, the plaintiff or his attorney may file in the office of the clerk of the county court of the county in which such property is located a memorandum or notice setting forth the title of the case, the court in which it is pending, the general object of the suit, a brief description of the property to be affected thereby, and the name of the person or persons whose estate is intended to be affected by such suit. Such notice shall immediately be recorded by the clerk of the county court in the deed book, and he shall index the same in the name of all the parties whose interest in such property is to be affected; and such notice shall, from and after its recordation, be notice to all purchasers of such property of the pendency of such suit.

Upon the application for an injunction in such suit, the court or judge may, in his discretion, enjoin the defendants 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, until the final decision of the case. A copy of such injunction order may be posted in a conspicuous place upon the premises proceeded against, and any person thereafter removing or interfering with such property shall be guilty of a violation of such injunction, and any person removing or mutilating such copy of the order so posted, while the same remains in force, shall be guilty of contempt of court, provided such posted notice or order contains thereon or therein a notice to that effect. The officer serving such injunction order shall forthwith make and return into court an inventory of the personal property and contents situated in the building or place proceeded against and used in conducting or maintaining such nuisance.

If, at the time of granting a temporary injunction, the same shall appear proper, the court or judge granting the same may order the place proceeded against to be closed and not used for any purpose until the final decision of the case: Provided, however, That the owner of any property so closed or restrained may appear at any time before final hearing and decision, and upon payment of all the costs incurred, and upon the filing of a bond, with sureties to be approved by the clerk, in the amount of the full value of the property, to be ascertained by the court or judge, conditioned that such owner will immediately abate the nuisance and prevent the same from being established or kept until final decision of the case, then and in that case the court or judge, if satisfied of the good faith of the owner of the real or personal property and of his innocence of any knowledge of the use of such property as a nuisance, and that with reasonable care and diligence such owner could not have known thereof, may deliver such property to the owner thereof and vacate any order theretofore made for the

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closing of such real property, or restraining the removal or interference with such personal property. The release of any real or personal property under the provisions of this section, however, shall not release it from any judgment, lien, penalty or liability to which it may be subject by law.

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§61-9-5. Prima facie evidence of nuisance; prosecution of complaint; dismissal; costs; permanent injunction.

In such suit evidence of the general reputation of the place, or an admission or finding of guilt of any person under the criminal laws against prostitution, lewdness or assignation at any such place, shall be admissible for the purpose of proving the existence of such nuisance, and shall be prima facie evidence of such nuisance and of knowledge thereof and acquiescence and participation therein on the part of the person or persons charged with maintaining such nuisance as herein defined. If the complaint is filed by a person who is a citizen, resident or taxpayer of the county, it shall not be dismissed except upon a sworn statement by the complainant and his or its attorney, setting forth the reasons why the action should be dismissed and the dismissal approved by the prosecuting attorney in writing or in open court. If the court or judge is of opinion that the action ought not to be dismissed, he may direct the prosecuting attorney to prosecute such action to judgment at the expense of the county, and if any such action is continued more than one term of court, any person who is a citizen, resident or taxpayer of the county, or the Attorney General, or the prosecuting attorney, may be substituted for the complainant and prosecute such suit to final decree. If the suit is brought by any person who is a citizen, resident or taxpayer of the county and the court finds and enters of record in the case that there were no reasonable grounds or cause for such suit, the costs may be taxed to such person. If the existence of the nuisance be established upon the trial, a decree shall be entered which shall perpetually enjoin the defendants and any other person or persons from further maintaining the nuisance at the place complained of and the defendants from maintaining such nuisance elsewhere within the county.

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§61-9-6. Order of abatement; sale of personal property; renewal of bond or continuance of closing order; release of property; breaking in or entering closed property; sheriff's fees.

If the existence of such nuisance be admitted or established in a suit as provided in this article, an order of abatement shall be entered as part of the decree 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 by and under the authority of the court as provided in section four of this article, and shall direct the sale of such thereof as belongs to the defendants notified or appearing in the manner provided for the sale of personal property under execution. Such order shall also require the renewal for one year of any bond furnished by the owner of the real property as provided in section four, or, if not so furnished, shall continue for one 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 so keeping it closed for a period of one year unless sooner released: Provided, however, That the owner of any place so closed and not released under bond as hereinbefore provided may then or thereafter appear and obtain such release in the manner and upon fulfilling the requirements as hereinbefore provided. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty, or liability, to which it may be subject by law. Owners of unsold personal property and contents so seized shall appear and claim the same within ten days after such order of abatement is made, and if it has not been proved to the satisfaction of the court that such owner had knowledge of such use thereof, or, that with reasonable care and diligence, he could not have known thereof, such unsold personal property and contents shall be delivered to the owner, otherwise it shall be sold as hereinbefore provided. If any person shall break and enter or use any place so directed to be closed, he shall be punished as for contempt as provided hereinafter, in addition to any other penalties imposed by law. For removing and selling personal property and contents, the sheriff 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.

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§61-9-7. Nuisance disclosed in criminal proceedings; proceeds from sale of personal property.

In case the existence of such nuisance is established in a criminal proceeding in a court not having equitable jurisdiction, it shall be the duty of the prosecuting attorney to proceed promptly under this article to enforce the provisions and penalties thereof, and the finding of the defendant guilty in such criminal proceedings of any offense herein declared to be a nuisance, unless reversed or set aside, shall be conclusive as against such defendant as to the existence of the nuisance. The proceeds of the sale of the personal property, as provided in the preceding section of this article, shall be applied in payment of the costs of the suit and abatement, including the complainant's costs, or so much of the proceeds as may be necessary, except as hereinafter provided.

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§61-9-8. Violation of injunction or closing order; trial; penalty.

In case of the violation of any injunction or closing order granted under the provisions of this article, or the commission of any contempt of court in proceedings under this article, the court, or a judge thereof in vacation, may summarily try and punish the offender. The proceedings shall conform to the practice in other suits in equity for violations of injunctions, and proceedings for contempt of court. The trial may be had upon affidavits, or either party may demand the production and oral examination of the witnesses. A party found guilty of contempt under the provisions of this article shall be punished by a fine of not less than $100 nor more than $1,000, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment.

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§61-9-9. Permanent injunction; tax imposed on property.

Whenever a permanent injunction is granted against any person or persons for maintaining a nuisance as in this article defined, there shall be imposed upon such nuisance and against the person or persons maintaining the same a tax of $300: Provided, however, That such tax may not be imposed upon the personal property or against the owner or owners thereof who have proven innocence as hereinbefore provided, or upon the real property or against the owner or owners thereof who shall show to the satisfaction of the court or judge thereof, at the time of the granting of the permanent injunction, that he or they have in good faith permanently abated the nuisance complained of. The imposition of such tax shall be made by the court as a part of the proceedings, and the clerk of such court shall make and certify a return of the imposition of such tax thereon to the county assessor, who shall enter the same as a tax upon the property and against the persons upon which or whom the lien was imposed, as a proper tax and charge upon such real or personal property, when making up his assessments for the next ensuing year, unless the same shall have been paid before such books are made up; and the same shall be and remain a perpetual lien upon all property, both real and personal, used for the purposes of maintaining such nuisance, except as herein excepted, until fully paid. The payment of such tax shall not relieve the persons or property from any other taxes provided by law. The provisions of the laws relating to the collection of taxes in this state, the delinquency thereof, and sale of property for taxes, shall govern in the collection of the tax herein prescribed insofar as the same are applicable; and the said tax collected shall be applied in payment of any deficiency in the costs of the action and abatement on behalf of the state to the extent of such deficiency after the application thereto of the proceeds of the sale of the personal property as hereinbefore provided, and the remainder of such tax, together with the unexpended portion of the proceeds of personal property, shall be paid into the county treasury.

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§61-9-10. Notice to collect tax.

When such nuisance has been found to exist under any equity proceedings as in this article provided, and the owner or agent of such place whereon the same has been found to exist was not a party to such proceedings and has not appeared therein, the said tax of $300 shall, nevertheless, be imposed against the person served or appearing and against the property as in this article set forth. But no such tax shall be certified to the assessor or enforced against such property, unless the owner thereof shall have appeared therein or shall be served with summons or notice therein, and the provisions of existing laws regarding the service of process shall be applied to service in proceedings under this article. The person in whose name the real estate affected by the action stands on the land books of the county for purposes of taxation shall be presumed to be the owner thereof, and in case of unknown persons having or claiming any ownership, right, title, or interest in property affected by the action, such may be made parties to the action by designating them in the summons and complaint as "all other persons unknown claiming any ownership, right, title, or interest in the property affected by the action," and service thereon be had by publishing such summons in the same manner prescribed by law.

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§61-9-11. Effect of holding any part of article unconstitutional.

Should any provision or section of this article be held unconstitutional, such fact shall not be held to invalidate the other provisions and sections hereof.

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