

## CHAPTER 617

## ABORTION; OBSCENITY; HOUSES OF ILL-FAME

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## 617.20 DRUGS TO PRODUCE MISCARRIAGE.

Whoever shall manufacture, give, or sell an instrument, drug, or medicine, or any other substance, with intent that the same may be unlawfully used in producing the miscarriage of a woman, shall be guilty of a felony.

**History:** *RL s 4944 (10177)*

**617.21 EVIDENCE.**

In any prosecution for abortion or attempting abortion, no person shall be excused from testifying as a witness on the ground that his testimony would tend to criminate himself.

**History:** *RL s 4945 (10178)*

**617.22 CONCEALING BIRTH.**

Every person who shall endeavor to conceal the birth of a child by any disposition of its dead body, whether the child died before or after its birth, shall be guilty of a misdemeanor. Every person who, having been convicted of endeavoring to conceal the still-birth of any issue, or the death of any issue under the age of two years, shall, subsequent to that conviction, endeavor to conceal any subsequent birth or death, shall be punished by imprisonment for not more than five years.

**History:** *RL s 4946; 1917 c 231 s 1; 1979 c 102 s 13; 1983 c 7 s 16 (10179)*

**OBSCENITY****617.23 INDECENT EXPOSURE; PENALTIES.**

Every person who shall wilfully and lewdly expose his person, or the private parts thereof, in any public place, or in any place where others are present, or shall procure another to so expose himself, and every person who shall be guilty of any open or gross lewdness or lascivious behavior, or any public indecency other than hereinbefore specified, shall be guilty of a misdemeanor, and punished by a fine of not less than \$5, or by imprisonment in a county jail for not less than ten days.

Every person committing the offense herein set forth, after having once been convicted of such an offense in this state, shall be guilty of a gross misdemeanor.

**History:** *RL s 4953; 1931 c 321 (10186)*

**617.24 [Repealed, 1961 c 664 s 2]****617.241 OBSCENE MATERIALS; DISTRIBUTION PROHIBITED; PENALTY.**

**Subdivision 1. Definitions.** For purposes of this section, the following terms have the meanings given them:

(a) "Obscene" means that the work, taken as a whole, appeals to the prurient interest in sex of the average person, which portrays patently offensive sexual conduct and which, taken as a whole, does not have serious literary, artistic, political, or scientific value. In order to determine that a work is obscene, the trier of fact must find:

(i) that the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest in sex of the average person;

(ii) that the work depicts patently offensive sexual conduct specifically defined by clause (b); and

(iii) that the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(b) "Patently offensive sexual conduct" includes any of the following depicted sexual conduct:

(i) An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal.

(ii) Sadomasochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a revealing costume or the condition of being fettered, bound, or otherwise physically restricted on the part of one so clothed.

(iii) Masturbation or lewd exhibitions of the genitals including any explicit, close-up representation of a human genital organ.

(iv) Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(c) "Community" means the political subdivision from which persons properly qualified to serve as jurors in a civil proceeding are chosen.

**Subd. 2. Crime.** It is unlawful for any person knowingly to exhibit, sell, print, offer to sell, give away, circulate, publish, distribute, or attempt to distribute any obscene book, magazine, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph, motion picture film, play, image, instrument, statue, drawing, or other article which is obscene.

**Subd. 3. Penalty.** Any person violating any provision of this section shall be fined up to \$10,000 for the first offense and up to \$20,000 for the second or a subsequent offense.

**History:** 1961 c 664 s 1; 1982 c 604 s 1; 1983 c 204 s 9; 1984 c 628 art 3 s 11

#### 617.243 INDECENT LITERATURE, DISTRIBUTION.

**Subdivision 1. Prohibited activity.** No person, copartnership or corporation shall, as a condition to a sale or delivery for resale of any paper, magazine, book, comic, periodical or publication, require that the purchaser or consignee receive for resale any other article, book, comic or other publication reasonably believed by the purchaser or consignee to be obscene as defined in section 617.241.

**Subd. 2. Penalty.** A violation of subdivision 1 is a gross misdemeanor.

**History:** 1957 c 323 s 1; 1983 c 204 s 10

#### 617.246 USE OF MINORS IN SEXUAL PERFORMANCE PROHIBITED.

**Subdivision 1. Definitions.** (a) For the purpose of this section, the terms defined in this subdivision have the meanings given them.

(b) "Minor" means any person under the age of 18.

(c) "Promote" means to produce, direct, publish, manufacture, issue, or advertise.

(d) "Sexual performance" means any play, dance or other exhibition presented before an audience or for purposes of visual or mechanical reproduction which depicts sexual conduct as defined by clause (e).

(e) "Sexual conduct" means any of the following if the depiction involves a minor:

(i) An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal.

(ii) Sadomasochistic abuse, meaning flagellation, torture, or similar demeaning acts inflicted by or upon a person who is nude or clad in undergarments or in a revealing costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(iii) Masturbation or lewd exhibitions of the genitals.

(iv) Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(f) "Work" means an original or reproduction of a picture, film, photograph, negative, slide, videotape, videodisc, or drawing.

Subd. 2. **Use of minor.** It is unlawful for a person to promote, employ, use or permit a minor to engage in or assist others to engage in posing or modeling alone or with others in any sexual performance if the person knows or has reason to know that the conduct intended is a sexual performance.

Any person who violates this subdivision is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000 for the first offense and \$20,000 for a second or subsequent offense, or both.

Subd. 3. **Operation or ownership of business.** A person who owns or operates a business in which a work depicting a minor in a sexual performance, as defined in this section, is disseminated, and who knows the content and character of the work disseminated, is guilty of a felony and may be sentenced to imprisonment for not more than five years, or to payment of a fine of not more than \$10,000 for the first offense and \$20,000 for a second or subsequent offense, or both.

Subd. 4. **Dissemination.** A person who, knowing or with reason to know its content and character, disseminates for profit a work depicting a minor in sexual performance, as defined in this section, is guilty of a felony and may be sentenced to imprisonment for not more than five years, or to payment of a fine of not more than \$10,000 for the first offense and \$20,000 for a second or subsequent offense, or both.

Subd. 5. **Consent; mistake.** Neither consent to sexual performance by a minor or his parent, guardian, or custodian nor mistake as to the minor's age is a defense to a charge of violation of this section.

**History:** 1977 c 371 s 1; 1982 c 604 s 2; 1983 c 204 s 11; 1984 c 628 art 3 s 7-9

## 617.247 POSSESSION OF PICTORIAL REPRESENTATIONS OF MINORS.

Subdivision 1. **Policy; purpose.** It is the policy of the legislature in enacting this section to protect minors from the physical and psychological damage caused by their being used in photographic representations of sexual conduct which involves minors. It is therefore the intent of the legislature to penalize possession of photographic representations of sexual conduct which involve minors in order to protect the identity of minors who are victimized by involvement in the photographic representations, and to protect minors from future involvement in photographic representations of sexual conduct.

Subd. 2. **Definitions.** For purposes of this section, the following terms have the meanings given them:

(a) "Photographic representation" means an original or reproduction of a film, videotape, videodisc, photograph, negative, or slide.

(b) "Sexual conduct" has the meaning given to it in section 617.246.

Subd. 3. **Dissemination prohibited.** A person who disseminates a photographic representation of sexual conduct which involves a minor, knowing or with reason to know its content and character and that an actual minor is an actor or photographic subject in it, is guilty of a gross misdemeanor.

Subd. 4. **Possession prohibited.** A person who has in possession a photographic representation of sexual conduct which involves a minor, knowing or with

reason to know its content and character and that an actual minor is an actor or photographic subject in it, is guilty of a gross misdemeanor.

Subd. 5. **Exception.** This section does not apply to the performance of official duties by peace officers, court personnel, or attorneys, nor to licensed physicians, psychologists, or social workers or persons acting at the direction of a licensed physician, psychologist, or social worker in the course of a bona fide treatment or professional education program.

Subd. 6. **Consent.** Consent to sexual performance by a minor or his parent, guardian, or custodian is not a defense to a charge of violation of this section.

Subd. 7. **Second offense.** If a person is convicted of a second or subsequent violation of this section within 15 years of the prior conviction, the court shall order a mental examination of the person. The examiner shall report to the court whether treatment of the person is necessary.

**History:** 1982 c 604 s 3; 1983 c 204 s 12

### 617.25 INDECENT ARTICLES AND INFORMATION.

Every person who shall sell, lend, or give away, or in any manner exhibit, or offer to sell, lend, or give away, or have in his possession with intent to sell, lend, give away, or advertise or offer for sale, loan, or distribution, any instrument or article, or any drug or medicine for causing unlawful abortion; or shall write or print, or cause to be written or printed, a card, circular, pamphlet, advertisement, or notice of any kind, or shall give oral information, stating when, where, how, or whom, or by what means such article or medicine can be obtained or who manufactures it, shall be guilty of a gross misdemeanor and punished by imprisonment in the county jail for not more than one year or by a fine of not more than \$3,000 or by both.

**History:** RL s 4955; 1965 c 395 s 1; 1984 c 628 art 3 s 11 (10188)

### 617.251 SALE OF ARTICLES RELATING TO PREVENTION OF CONCEPTION OR DISEASE.

Instruments, articles, drugs or medicines for the prevention of conception or disease may be sold, offered for sale, distributed or dispensed only by persons or organizations recognized as dealing primarily with health or welfare. Anyone convicted of violation of this section shall be guilty of a gross misdemeanor and punished by imprisonment not to exceed one year or by a fine of not more than \$3,000 or both.

**History:** 1965 c 395 s 2; 1984 c 628 art 3 s 11

### 617.26 MAILING AND CARRYING OBSCENE MATTER.

Every person who shall deposit or cause to be deposited in any post office in the state, or place in charge of any express company or other common carrier or person for transportation, any of the articles or things specified in section 617.241 or 617.25, or any circular, book, pamphlet, advertisement or notice relating thereto, with the intent of having the same conveyed by mail, express, or in any other manner; or who shall knowingly or wilfully receive the same with intent to carry or convey it, or shall knowingly carry or convey the same by express, or in any other manner except by United States mail, shall be guilty of a misdemeanor. The provisions of this section and section 617.25 shall not be construed to apply to an article or instrument

used by physicians lawfully practicing, or by their direction or prescription, for the cure or prevention of disease.

**History:** *RL s 4956; 1965 c 51 s 85 (10189)*

### 617.27 SEARCH WARRANT; DESTRUCTION OF PROPERTY.

A county or municipal court, upon complaint under oath that any person has in his possession or under his control any of the obscene books, papers, or other matter specified in sections 617.241 to 617.26, shall issue a warrant directed to the sheriff or any constable of the county, directing him to search for, seize, and take possession of the obscene matter. Upon conviction of the person in whose possession the obscene matter was found, the judge shall cause it to be destroyed, and the fact to be entered upon the records of the court.

**History:** *RL s 4957; 1965 c 51 s 86; 1983 c 359 s 92 (10190)*

### 617.28 CERTAIN MEDICAL ADVERTISEMENTS.

**Subdivision 1. Placing advertisement; penalty.** Any person who shall advertise, in his own name or in the name of another person, firm or pretended firm, association, corporation or pretended corporation, in any newspaper, pamphlet, circular, or other written or printed paper, or the owner, publisher, or manager of any newspaper or periodical who shall permit to be inserted or published in any newspaper or periodical owned or controlled by him, the treatment or curing of venereal diseases, the restoration of "lost manhood" or "lost vitality," or shall advertise in any manner that he is a specialist in diseases of the sexual organs, or diseases caused by sexual weakness, self-abuse, or excessive sexual indulgence, or in any disease of like causes, or who shall advertise in any manner any medicine, drug compound, appliance or any means whatever whereby it is claimed that sexual diseases of men and women may be cured or relieved, or miscarriage or abortion produced, shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$50 nor more than \$3,000 or by imprisonment in the county jail for not more than six months.

**Subd. 2. Publication; penalty.** Any person publishing, distributing, or causing to be distributed or circulated, any of the advertising matter hereinabove prohibited, shall be guilty of a misdemeanor and punished as prescribed in subdivision 1.

**History:** *1909 c 162 s 1,2; 1984 c 628 art 3 s 11 (10191, 10192)*

### 617.29 EVIDENCE.

The production of any advertisement or advertising matter published or distributed contrary to the provisions of sections 617.28 and 617.29 shall be of itself prima facie evidence of the guilt of the person advertising to cure any such disease hereinabove mentioned, or of the publishers who publish any matter such as is herein prohibited.

**History:** *1909 c 162 s 3 (10193)*

### 617.291 SEXUALLY PROVOCATIVE MATERIAL, PURPOSE AND POLICY OF THE LEGISLATURE.

**Subdivision 1.** In enacting sections 617.291 to 617.297 the legislature declares its purposes and intent to be as follows:

There exists an urgent need to prevent commercial exposure of minors to sexually provocative written, photographic, printed, sound or published materials as

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these are hereafter defined in sections 617.291 to 617.297 and which are hereby declared to be harmful to minors.

Subd. 2. It is in the best interest of the health, welfare and safety of the citizens of this state, and especially of minors within the state, that commercial dissemination of such sexually provocative written, photographic, printed, sound or published materials deemed harmful to minors be restricted to persons over the age of 17 years; or, if available to minors under the age of 18 years, that the availability of such materials be restricted to sources within established and recognized schools, churches, museums, medical clinics and physicians, hospitals, public libraries, or government sponsored organizations.

**History:** 1969 c 1071 s 1

## 617.292 DEFINITIONS.

Subdivision 1. As used in sections 617.291 to 617.297 the terms defined in this section have the meanings given them.

Subd. 2. "Minor" means any person under the age of 18 years.

Subd. 3. "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

Subd. 4. "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's unclothed genitals, pubic area, buttocks or, if such a person be a female, her breast.

Subd. 5. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

Subd. 6. "Sadomasochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

Subd. 7. "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:

(1) predominantly appeals to the prurient, shameful or morbid interest of minors, and

(2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and

(3) is utterly without redeeming social importance for minors.

Subd. 8. "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry or both;

(1) the character and content of any material which is reasonably susceptible of examination by the defendant, and

(2) the age of the minor, provided however that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

**History:** 1969 c 1071 s 2

## 617.293 HARMFUL MATERIALS; DISSEMINATION TO MINORS PROHIBITED.

It is unlawful for any person knowingly to sell or loan for monetary consideration to a minor:

(a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors, or

(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in clause (a), or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse which, taken as a whole, is harmful to minors.

**History:** 1969 c 1071 s 3; 1971 c 25 s 95

#### **617.294 COMMERCIAL EXHIBITION PROHIBITED.**

It is unlawful for any person knowingly to exhibit for a monetary consideration to a minor or knowingly to sell to a minor an admission ticket or pass or knowingly to admit a minor for a monetary consideration to premises whereon there is exhibited, a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct, or, sadomasochistic abuse and which is harmful to minors.

**History:** 1969 c 1071 s 4

#### **617.295 EXEMPTIONS.**

The following are exempt from criminal or other action hereunder:

(a) Recognized and established schools, churches, museums, medical clinics and physicians, hospitals, public libraries, governmental agencies or quasi governmental sponsored organizations, and persons acting in their capacity as employees or agents of such organization. For the purpose of this section "recognized and established" shall mean an organization or agency having a full time faculty and diversified curriculum in the case of a school; a church affiliated with a national or regional denomination; a licensed physician or psychiatrist or clinic of licensed physicians or psychiatrists; and in all other exempt organizations shall refer only to income tax exempted organizations which are supported in whole or in part by tax funds or which receive at least one-third of their support from publicly donated funds.

(b) Individuals in a parental relationship with the minor.

(c) Motion picture machine operators, stagehands, or other theatre employees such as cashiers, doormen, ushers, and concession employees, if such person or persons have no financial interest in the entertainment presented other than the salary or wage, or in any theatre or place where such employee has no financial interest when his services are obtained solely for salary or wage; provided, that such employee is under the direct supervision of a theatre manager who is a resident of this state and who is not exempt from action under sections 617.291 to 617.297.

**History:** 1969 c 1071 s 5

#### **617.296 PENALTIES; INJUNCTIVE REMEDIES.**

Subdivision 1. A violation of any provision of sections 617.291 to 617.297 shall constitute a gross misdemeanor.

Subd. 2. Whenever any county attorney, or the attorney general of this state, has reasonable cause to believe that any person within this state is violating sections 617.291 to 617.297, he may by verified petition seek a temporary restraining order or temporary injunction in the district court in the county in which the alleged violation occurred. No temporary restraining order or preliminary injunction shall be issued without a prior show cause notice of hearing to the respondents named in



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the petition, and an opportunity for the respondents to be heard. Personal service of the show cause order and of the petition made as in civil actions on the named respondents, or upon any of their employees or agents found within the state, shall constitute sufficient notice. Such show cause order for hearing may be returnable on the third day from the date of service as to a respondent who is present in this state, and on the fifth day as to a person not a resident or not found within this state.

**History:** 1969 c 1071 s 6

## **617.297 EVIDENCE OF ADHERENCE TO MOTION PICTURE RATING SYSTEM.**

In any proceeding or prosecution involving the exhibitor or owner of any motion picture theatre, evidence of compliance or noncompliance with and adherence to a rating system recognized in the motion picture industry is admissible.

**History:** 1969 c 1071 s 7

## **617.298 OBSCENE MOTION PICTURES AT DRIVE-IN THEATRES; DEFINITIONS.**

Subdivision 1. **Definitions.** For the purposes of this section and section 617.299, the terms defined in this section have the meanings given them.

Subd. 2. **Obscene.** "Obscene" has the meaning given to it in section 617.241.

Subd. 3. **Nudity.** "Nudity" means the showing of the human male or female genitals, pubic areas, or buttocks with less than a fully opaque covering, or the showing of an uncovered, or less than opaquely covered, female breast below a point immediately above the top of the nipple, or the breast with the nipple and immediately adjacent area only covered.

Subd. 4. [Repealed, 1983 c 204 s 14]

**History:** 1979 c 290 s 1; 1983 c 204 s 13

## **617.299 OBSCENE MOTION PICTURES; PROHIBITING EXHIBITION AT DRIVE-IN THEATRES.**

Subdivision 1. Subject to the exemptions of section 617.295, a person who exhibits an obscene motion picture at a drive-in theatre is guilty of a misdemeanor.

Subd. 2. Whoever violates the provisions of subdivision 1 within two years of a previous conviction shall be sentenced to imprisonment for not less than 20 days nor more than one year and to payment of a fine of not more than \$3,000.

**History:** 1979 c 290 s 2; 1984 c 628 art 3 s 11

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**617.30** [Repealed, 1967 c 507 s 12]

**617.31** [Repealed, 1963 c 753 art 2 s 17]

**617.32** [Repealed, 1967 c 507 s 12]

**617.325** [Repealed, 1967 c 507 s 12]

## **617.33 HOUSES OF PROSTITUTION; NUISANCES; ABATEMENT.**

Whoever shall erect, establish, continue, maintain, use, own, or lease any building, erection, or place used for the purpose of lewdness, assignation, or prostitution is guilty of a nuisance, and the building, erection, or place, or the ground itself, in or upon which such lewdness, assignation, or prostitution is

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conducted, permitted, or carried on, continued or exists, and the furniture, fixtures, musical instruments, and movable property used in conducting or maintaining such public nuisance, are also declared a nuisance and shall be enjoined and abated as hereinafter provided.

**History:** 1913 c 562 s 1 (10199)

## 617.34 ACTION TO ENJOIN; RESTRAINING ORDER; ANSWER.

When a nuisance is kept, maintained, or exists, as defined in sections 617.33 to 617.41, the county attorney or any resident of the county may maintain an action in equity in the name of the state of Minnesota, upon the relation of the county attorney or resident, to perpetually enjoin the nuisance, the person or persons conducting or maintaining the nuisance from further conducting or maintaining it, and the owner or agent of the building or ground upon which the nuisance exists, from further permitting the building or ground, or both, to be so used. The defendants shall be served in the manner provided by law for service of a summons in a civil action in district court. The court shall, upon the presentation of a verified complaint alleging that the nuisance complained of exists, allow a temporary writ of injunction without bond, if the existence of the nuisance is made to appear to the satisfaction of the court by evidence in the form of affidavits, depositions, oral testimony, or otherwise as the complainant may elect, unless the court, by previous order, has directed the form and manner in which the evidence must be presented, in which case it shall be so presented. Where a temporary injunction is prayed for, the court, on the application of plaintiff, may issue an ex parte restraining order, restraining the defendants and all other persons from removing or in any manner interfering with the furniture, fixtures, musical instruments, and movable property used in conducting the alleged nuisance, until the decision of the court granting or refusing the temporary injunction, and until the further order of the court on the temporary injunction. The restraining order may be served by handing to and leaving a copy of the order with any person in charge of the property or residing in the premises or apartment where the nuisance is situated, or by posting a copy of the order in a conspicuous place at or upon one or more of the principal doors or entrances to the premises or apartment where the nuisance is alleged to be maintained, or by both delivery and posting. The officer serving the restraining order shall immediately make a return into court and inventory of the personal property situated in and used in conducting or maintaining the nuisance. Any violation of the restraining order is a contempt of court. Mutilation or removal of a posted order, while it remains in force, is a contempt of court if the posted order contains a notice to that effect. Three days' notice, in writing, shall be given the defendants of the hearing of the application for temporary injunction and, if then continued at the instance of defendant, the temporary writ as prayed shall be granted as a matter of course. Each defendant notified shall serve upon the complainant or his attorney a verified answer on or before the date fixed in the notice for the hearing. The answer shall be filed with the clerk of the district court of the county where the cause is triable, but the court may allow additional time for answering if the extension of time does not prevent the issuing of the temporary writ as prayed for. The allegations of the answer are deemed to be traversed without further pleading. When an injunction is granted, it shall be binding on the defendants throughout the judicial district in which it was issued, and any violation of the provisions of the injunction is a contempt, as hereinafter provided.

**History:** 1913 c 562 s 2; 1984 c 609 s 27 (10200)

**617.35 TRIAL; LIMITATION OR DISMISSAL.**

The action when brought shall be noticed for and triable at the first term of the court the same as other actions triable in the district court of the county. Evidence of the general reputation of the place is admissible for the purpose of proving the existence of the nuisance and is prima facie evidence of the nuisance and of knowledge of it and of acquiescence and participation in it on the part of the owners, lessors, lessees, users, and all those in possession of or having charge of, as agent or otherwise, or having any interest in any form of property used in conducting or maintaining the nuisance. If the complaint is filed by a resident, it shall not be dismissed except upon a sworn statement made by the complainant and his attorney setting forth the reasons why the action should be dismissed, and upon approval by the county attorney in writing or in open court. If the court is of the opinion that the action should not be dismissed, he may direct the county attorney to prosecute the action to judgment at the expense of the county. If the action is continued more than one term of court, any resident of the county or the county attorney may be substituted for the complaining party and prosecute the action to judgment. If the action is brought by a resident and the court finds there was no reasonable grounds or cause for the action, the cost may be taxed to the resident.

**History:** 1913 c 562 s 3; 1984 c 609 s 28 (10201)

**617.36 CONTEMPTS.**

In case of the violation of any injunction granted under the provisions of sections 617.33 to 617.41, or of a restraining order or the commission of any contempt of court in proceedings under those sections, the court or, in vacation, a judge thereof, may summarily try and punish the offender. The proceedings shall be commenced by filing with the clerk of the court a complaint under oath, setting out and alleging 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 demand the production and oral examination of the witnesses. A party found guilty of contempt under the provisions of those sections shall be punished by a fine of not less than \$100 nor more than \$3,000 or by imprisonment in the county jail for not less than three nor more than six months or by both fine and imprisonment.

**History:** 1913 c 562 s 4; 1984 c 628 art 3 s 11 (10202)

**617.37 ORDER OF ABATEMENT; PERSONAL PROPERTY; CONTEMPT; FEES.**

If the existence of the nuisance be admitted or established in an action, as provided in sections 617.33 to 617.41, or in a criminal proceeding in the district court, 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 of such thereof as belong to the defendants notified or appearing, in the manner provided for the sale of chattels under execution, and shall direct 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. Owners of unsold personal property so seized must appear and claim the same within ten days after such order of abatement is made, and prove innocence, to the satisfaction of the court, of any knowledge of the use thereof, and that with reasonable care and diligence they could not have known thereof. Every defendant in the action shall be presumed to have had knowledge of the general reputation of the place. If such innocence be so established, such unsold personal property shall be delivered to the

owner, otherwise it shall be sold as hereinbefore provided. 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 section 617.36. For removing and selling the movable property, 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 premises and keeping them closed, a reasonable sum shall be allowed by the court.

**History:** 1913 c 562 s 5 (10203)

#### **617.38 DUTY OF COUNTY ATTORNEY.**

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 county attorney to proceed promptly, under sections 617.33 to 617.41, to enforce the provisions and penalties thereof, and the finding of the defendant guilty in such criminal proceeding, unless reversed or set aside, shall be conclusive as against such defendant as to the existence of the nuisance. All moneys collected under those sections shall be paid to the county treasurer. The proceeds of the sale of the personal property, as provided in section 617.37, shall be applied in payment of the costs of the action and abatement or so much of such proceeds as may be necessary, except as hereinafter provided.

**History:** 1913 c 562 s 6 (10204)

#### **617.39 INTERVENTION BY OWNER.**

If the owner of the premises in which the nuisance has been maintained appears and pays all costs of the proceeding, and files a bond with sureties to be approved by the court in the full value of the property, to be ascertained by the court or, in vacation, by the judge thereof, conditioned that he will immediately abate the nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court or, in vacation, the judge, if satisfied of his good faith, may order the premises closed or sought to be closed under the order of abatement, to be delivered to the owner, and the order of abatement canceled so far as the same may relate to the real property. 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.

**History:** 1913 c 562 s 7 (10205)

#### **617.40 PERMANENT INJUNCTION; PENALTY AND LIEN.**

When a permanent injunction issues against any person for maintaining a nuisance as herein defined, or against any owner or agent of the building kept or used for the purpose prohibited by sections 617.33 to 617.41, there shall be imposed upon the building and the ground upon which the same is located and against the person or persons maintaining the nuisance, and the owner or agent of the premises, a penalty of \$300. The imposing of the penalty shall be made by the court as a part of the proceeding, and the clerk of the court shall make and certify a return of the imposition of the penalty forthwith to the county auditor, who shall enter the same as a tax upon the property and against the persons upon which or whom the lien was imposed as and when other taxes are entered, and the same shall be and remain a lien on the land upon which lien was imposed until fully paid; provided, that any such lien imposed while the tax books are in the hands of the auditor shall be immediately entered therein. The payment of such penalty shall not relieve the persons or property from any other penalties provided by law. The provisions of the

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law 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 penalty herein prescribed in so far as the same are applicable, and the penalty 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 personal property, as hereinbefore provided, and the remainder of the penalty, together with the unexpended portion of the proceeds of the sale of personal property, shall be distributed in the same manner as fines collected for the keeping of houses of ill-fame, excepting that ten percent of the amount of the whole penalty collected and of the whole proceeds of the sale of the personal property, as provided in those sections, shall be paid by the treasurer to the attorney representing the state in the injunction action, at the time of final judgment.

*History: 1913 c 562 s 8 (10206)*

## **617.41 OWNERS AND AGENTS; PARTIES TO ACTION.**

When such nuisance has been found to exist under any proceeding in the district court, or as provided in sections 617.33 to 617.40, and the owner or agent of such building or ground whereon the same has been found to exist was not a party to such proceeding, nor appeared therein, the penalty of \$300 shall be imposed against the persons served or appearing and against the property, as set forth in those sections. Before the penalty shall be enforced against the property, the owner or agent thereof shall have appeared therein or shall be served with summons therein, and Rule 4.04 of the rules of civil procedure shall apply to service in proceedings under sections 617.33 to 617.40. The person in whose name the real estate affected by the action stands on the books of the county auditor 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 may be had by publishing such summons in the manner prescribed in Rule 4.04 of the rules of civil procedure. Any person having or claiming such ownership, right, title or interest, and any owner or agent in behalf of himself and such owner may make, serve, and file his answer therein within 20 days after such service and have trial of his rights in the premises by the court; and, if the cause has already proceeded to trial or to findings and judgment, the court shall by order fix the time and place of such further trial and shall modify, add to, or confirm such findings and judgment as the case may require. Other parties to the action shall not be affected thereby.

*History: 1913 c 562 s 9; 1976 c 239 s 49 (10207)*

- 617.42 [Renumbered 624.42]
- 617.43 [Renumbered 624.43]
- 617.44 [Renumbered 624.44]
- 617.45 [Renumbered 624.45]
- 617.46 [Renumbered 624.46]
- 617.47 [Renumbered 624.47]
- 617.48 [Renumbered 624.48]
- 617.49 [Renumbered 624.49]
- 617.50 [Renumbered 624.50]
- 617.51 [Renumbered 624.51]

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- 617.52 [Renumbered 624.52]
- 617.53 [Renumbered 624.53]
- 617.54 [Renumbered 624.54]
- 617.55 [Repealed, 1963 c 753 art 2 s 17]
- 617.56 [Repealed, 1963 c 753 art 2 s 17]
- 617.57 [Repealed, 1963 c 753 art 2 s 17]
- 617.58 [Repealed, 1963 c 753 art 2 s 17]
- 617.59 [Repealed, 1963 c 753 art 2 s 17]
- 617.60 [Repealed, 1963 c 753 art 2 s 17]
- 617.61 [Repealed, 1963 c 753 art 2 s 17]
- 617.62 [Repealed, 1963 c 753 art 2 s 17]
- 617.63 [Repealed, 1963 c 753 art 2 s 17]
- 617.64 [Repealed, 1963 c 753 art 2 s 17]
- 617.65 [Repealed, 1963 c 753 art 2 s 17]
- 617.66 [Repealed, 1963 c 753 art 2 s 17]
- 617.67 [Repealed, 1963 c 753 art 2 s 17]
- 617.68 [Repealed, 1963 c 753 art 2 s 17]
- 617.69 [Renumbered 624.701]
- 617.70 [Renumbered 624.702]
- 617.71 [Renumbered 624.703]
- 617.715 [Renumbered 126.19]
- 617.72 [Repealed, 1963 c 753 art 2 s 17]
- 617.73 [Repealed, 1963 c 753 art 2 s 17]
- 617.74 [Repealed, 1963 c 753 art 2 s 17]
- 617.75 [Repealed, 1963 c 753 art 2 s 17]