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TENNESSEE CODE ANNOTATED  
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\*\*\* CURRENT THROUGH THE 2011 REGULAR SESSION \*\*\*  
 \*\*\* ANNOTATIONS CURRENT THROUGH APRIL 29, 2011 \*\*\*

Title 29 Remedies And Special Proceedings  
 Chapter 3 Abatement of Nuisances

**GO TO THE TENNESSEE ANNOTATED STATUTES ARCHIVE DIRECTORY**

*Tenn. Code Ann. § 29-3-101 (2011)*

**29-3-101. Definitions -- Maintenance and abatement of nuisance -- Forfeiture of property -- Payment of moneys from forfeiture into general funds.**

(a) As used herein:

(1) "Lewdness" includes all matter of lewd sexual conduct or live exhibition, and includes, but is not limited to, possession, sale or exhibition of any:

- (A) Obscene films or plate positives;
- (B) Films designed to be projected upon a screen for exhibition; or
- (C) Films or slides, either in negative or positive form, designed for projection on a screen for exhibition;

(2) "Nuisance" means that which is declared to be a nuisance by other statutes, and, in addition, means:

(A) Any place in or upon which lewdness, prostitution, promotion of prostitution, patronizing prostitution, unlawful sale of intoxicating liquors, unlawful sale of any regulated legend drug, narcotic or other controlled substance, unlawful gambling, any sale, exhibition or possession of any material determined to be obscene or pornographic with intent to exhibit, sell, deliver or distribute matter or materials in violation of §§ 39-17-901--39-17-908, § 39-17-911, § 39-17-914, § 39-17-918, or §§ 39-17-1003--39-17-1005, quarreling, drunkenness, fighting, breaches of the peace are carried on or permitted, and personal property, contents, furniture, fixtures, equipment and stock used in or in connection with the conducting and maintaining any such place for any such purposes; or

(B) A criminal gang, as defined by § 40-35-121(a), that regularly engages in gang related conduct. "Gang related conduct" occurs when one (1) or more criminal gang member or members, as defined by § 40-35-121(a), regularly engages in the following:

- (i) Intimidating, harassing, threatening, stalking, provoking or assaulting any person;
- (ii) Possessing weapons prohibited under §§ 39-17-1302 and 39-17-1307, knowingly remaining in the presence of anyone who is in possession of such weapons, or knowingly remaining in the presence of such weapons;
- (iii) Unlawfully damaging, defacing or marking any public or private property of another or possessing tools for the purpose of unlawfully damaging, defacing or marking any public or private property of another;

(iv) Selling, possessing, manufacturing or using any controlled substance or drug paraphernalia as defined in § 39-17-402, knowingly remaining in the presence of anyone selling, possessing, manufacturing or using any controlled substance or drug paraphernalia, knowingly remaining in the presence of any controlled substance or drug paraphernalia, driving under the influence of any controlled substance in violation of § 55-10-401 or being under the influence of any controlled substance in public in violation of § 39-17-310;

(v) Using, consuming, possessing or purchasing alcoholic beverages unlawfully, including, but not limited to, public intoxication in violation of § 39-17-310 or driving under the influence of alcohol in violation of § 55-10-401;

(vi) Criminal trespassing in violation of § 39-14-405;

(vii) Taking any action to recruit gang members or making any threats or promises to shoot, stab, strike, hit, assault, injure, disturb the peace or destroy the personal property of anyone as an incentive to join a gang; or

(viii) Taking any action to stop a gang member from leaving a gang or making any threats or promises to shoot, stab, strike, hit, assault, injure, disturb the peace or destroy the personal property of anyone as an incentive not to leave a gang;

(ix) Engaging in a criminal gang offense as defined by § 40-35-121(a);

(x) Disorderly conduct in violation of § 39-17-305; or

(xi) Contributing to or encouraging the delinquency or unruly behavior of a minor in violation of § 37-1-156;

(3) "Person" means and includes any individual, corporation, association, partnership, trustee, lessee, agent or assignee; and

(4) "Place" means and includes any building, room enclosure or vehicle, or separate part or portion thereof or the ground itself and all the property on which the nuisance is located that is under the ownership, management or control of the violator.

(b) Any person who uses, occupies, establishes or conducts a nuisance, or aids or abets therein, and the owner, agent or lessee of any interest in any such nuisance, together with the persons employed in or in control of any such nuisance by any such owner, agent or lessee, is guilty of maintaining a nuisance and such nuisance shall be abated as provided hereinafter.

(c) All motor vehicles, furnishings, fixtures, equipment, moneys and stock, used in or in connection with the maintaining or conducting of a nuisance, are subject to seizure, immediately upon detection by any law enforcement officer and are subject to forfeiture to the state by order of a court having jurisdiction upon application by any of the officers or persons authorized by § 29-3-102, to bring action for the abatement of such nuisance; provided, that seizure for the possession of obscene matter shall be in accordance with §§ 39-17-901--39-17-908 and seizure for violations of §§ 39-17-1003--39-17-1005 shall be in accordance with §§ 39-17-1006 and 39-17-1007. Any property so forfeited shall be disposed of by public auction or as otherwise provided by law.

(d) All moneys from such forfeiture and all proceeds realized from the enforcement of this section shall be paid equally into the general funds of the state and the general funds of the political subdivision or other public agency, if any, whose officers made the seizure, except as otherwise provided by law.

(e) (1) Upon a person's second or subsequent conviction for promoting prostitution or patronizing prostitution, any vehicle in which such offense was committed is subject to seizure and forfeiture in accordance with the procedure established in title 39, chapter 11, part 7; provided, however, that nothing contained within the provisions of this subsection (e) shall be construed to authorize seizure of such vehicle at any time prior to such conviction.

(2) The provisions of subdivision (e)(1) apply only if the violations making the vehicle subject to seizure and forfeiture occur in Tennessee and at least one (1) of the previous violations occurs on or after July 1, 2002, and the second or subsequent offense after July 1, 2002, occurs within five (5) years of the most recent prior offense occurring after July 1, 2002.

**HISTORY:** Acts 1913 (2nd E.S.), ch. 2, § 1; Shan., § 5164a1; Code 1932, § 9324; Acts 1943, ch. 118, § 1; C. Supp. 1950, § 9324; Acts 1973, ch. 277, §§ 1-4; T.C.A. (orig. ed.), § 23-301; Acts 1990, ch. 1092, § 8; 2002, ch. 847, §§ 1-3; 2006, ch. 763, §§ 1, 2; 2009, ch. 571, § 1.

**NOTES: Compiler's Notes.**

This section was declared unconstitutional on grounds that it would permit seizures solely on officer's conclusion of obscenity and that "place" as defined could include a home. See *Airway Theater, Inc. v. Canale*, 366 F. Supp. 343 (W.D. Tenn. 1973), annotated below. See also § 1-3-110 relating to severability.

Acts 2006, ch. 556, §§ 1 and 2 purported to amend this section by amending subdivisions (a)(2) and (4) effective July 1, 2006. Although the act was signed by the governor, the act did not go into effect because the secretary of state

was informed that the act was defective.

#### **Amendments.**

The 2002 amendment inserted "promotion of prostitution, patronizing" in (a)(2); inserted "motor vehicles," near the beginning of the first sentence in (c); and added (e).

The 2006 amendment, in (a), substituted "prostitution" for "assignation" near the beginning of (a)(2) and substituted "or the ground itself and all the property on which the nuisance is located that is under the ownership, management or control of the violator" for "the ground itself" at the end of (a)(4).

The 2009 amendment rewrote (a)(2) which read: "(2) 'Nuisance' means that which is declared to be such by other statutes, and, in addition thereto, means any place in or upon which lewdness, prostitution, promotion of prostitution, patronizing prostitution, unlawful sale of intoxicating liquors, unlawful sale of any regulated legend drug, narcotic or other controlled substance, unlawful gambling, any sale, exhibition or possession of any material determined to be obscene or pornographic with intent to exhibit, sell, deliver or distribute matter or materials in violation of §§ 39-17-901 - 39-17-908, § 39-17-911, § 39-17-914, § 39-17-918, or §§ 39-17-1003 -- 39-17-1005, quarreling, drunkenness, fighting or breaches of the peace are carried on or permitted, and personal property, contents, furniture, fixtures, equipment and stock used in or in connection with the conducting and maintaining any such place for any such purpose;".

#### **Effective Dates.**

Acts 2002, ch. 847, § 4. August 12, 2002. The apparent legislative intent, expressed in § 4, was that the 2002 amendment by that act take effect July 1, 2002; however, since § 4 lacks wording constitutionally required for setting extraordinary effective dates, the code commission deems the amendment by that act to take effect in accordance with *Tenn. Const., art. II, § 20*. See Opinion of the Attorney General, June 25, 1982 ( OAG 82-201).

Acts 2006, ch. 763, § 3. July 1, 2006.

Acts 2009, ch. 571, § 3. July 1, 2009.

#### **Cross-References.**

Abatement of exercise of unlicensed privilege, §§ 67-4-202, 67-4-216.

Circuit court jurisdiction, § 16-10-110.

Gambling devices, § 39-17-505.

Sexual exploitation of children, title 39, ch. 17, part 10.

Unauthorized signal light on highway declared nuisance, § 54-5-602.

#### **Section to Section References.**

This chapter is referred to in § 29-3-102.

*Sections 29-3-101 -- 29-3-111* are referred to in §§ 29-3-108, 29-3-111.

This section is referred to in §§ 13-6-102, 29-3-102, 29-3-103, 29-3-110.

#### **Textbooks.**

Tennessee Jurisprudence, 6 *Tenn. Juris., Constitutional Law*, §§ 30, 58, 61; 16 *Tenn. Juris., Intoxicating Liquors*, §§ 19-27; 20 *Tenn. Juris., Nuisances*, §§ 1, 4, 10, 20.

#### **Law Reviews.**

Business Associations -- 1961 Tennessee Survey (II) (Kenneth L. Roberts), 15 *Vand. L. Rev.* 840.

Comment, The Rights of Nonsmokers in Tennessee, 54 *Tenn L. Rev.* 671 (1987).

The Tennessee Court System (Frederic S. Le Clercq), 8 *Mem. St. U.L. Rev.* 189.

The Tennessee Court System -- Chancery Court (Frederic S. Le Clercq), 8 *Mem. St. U.L. Rev.* 281.

The Tennessee Court System -- Circuit Court (Frederic S. Le Clercq), 8 *Mem. St. U.L. Rev.* 241.

The Tennessee Court System -- Criminal Court (Frederic S. Le Clercq), 8 *Mem. St. U.L. Rev.* 319.

The Tennessee Court System -- Prosecution, 8 *Mem. St. U.L. Rev.* 477.

Torts -- Crematorium as a Nuisance -- Anticipatory Injunction -- Psychic and Aesthetic Injury, 34 *Tenn. L. Rev.* 329.

### Attorney General Opinions.

Lotteries, reverse raffles and gaming laws, OAG 84-221 (7/18/84); OAG 84-272 (9/27/84).

A proposed bill, which would provide for the forfeiture of motor vehicles used in the commission of a person's second or subsequent violation for promoting prostitution or patronizing prostitution, would not violate the excessive fines provisions of the United States or Tennessee Constitutions, OAG 02-055 (4/30/02).

A proposed bill, which would provide for the forfeiture of motor vehicles used in the commission of a person's second or subsequent violation for promoting prostitution or patronizing prostitution, would not be facially unconstitutional under the excessive fines clauses of the United States or Tennessee Constitutions, although it could be held unconstitutional as applied in certain circumstances, OAG 02-055 (4/30/02).

### Comparative Legislation.

Abatement of nuisances:

**Ala.** Code, tit. 6, § 6-5-120 -- 6-5-127.

**Ark.** Stat. Ann. §§ 14-268-105, 16-90-409.

**Ga.** Code Ann. § 3-10-8.

**Ky.** Rev. Stat. Ann. § 381.770.

**Miss.** Code Ann. §§ 95-3-1 -- 95-3-29.

**N.C.** Gen. Stat. §§ 19-1 -- 19-1.5, 19-2.1 -- 19-20.

**Va.** Code §§ 48-1 -- 48-6.

### LexisNexis 50 State Surveys, Legislation & Regulations

Nuisance

#### Cited:

*Henderson v. Grundy County Beer Committee*, 176 *Tenn.* 397, 141 *S.W.2d* 901, 1939 *Tenn.* LEXIS 130 (1940); *State ex rel. Blackburn v. Fox*, 200 *Tenn.* 227, 292 *S.W.2d* 21, 1956 *Tenn.* LEXIS 399 (1956); *Boles v. City of Chattanooga*, 892 *S.W.2d* 416, 1994 *Tenn. App.* LEXIS 367 (*Tenn. Ct. App.* 1994); *Cooper v. Parrish*, 20 *F. Supp. 2d* 1204, 1998 *U.S. Dist. LEXIS* 14223 (*W.D. Tenn.* 1998); *King of Clubs v. Gibbons*, 9 *S.W.3d* 796, 1999 *Tenn. App.* LEXIS 372 (*Tenn. Ct. App.* 1999); *Cooper v. Parrish*, 203 *F.3d* 937, 2000 *FED App.* 0047P, 2000 *FED App.* 47P, 2000 *U.S. App. LEXIS* 1718 (6th *Cir. Tenn.* 2000); *Town of Nolensville v. King*, 151 *S.W.3d* 427, 2004 *Tenn.* LEXIS 1109 (*Tenn.* 2004); *State ex rel. Gibbons v. Club Universe*, -- *S.W.3d* --, 2005 *Tenn. App.* LEXIS 439 (*Tenn. Ct. App.* July 26, 2005).

### NOTES TO DECISIONS

1. Constitutionality. 2. Construction. 3. Nuisances. 4. --Gambling Houses. 5. --Intoxicating Liquor. 6. -- --Sale. 7. -- -- Presence of Minors. 8. -- --Effect of Local Option. 9. --Houses of Ill Fame. 10. --Lotteries. 11. --Crematories. 12. Criminal Offenses. 13. Imminence of Injury. 14. Mental Disturbances. 15. Review.

#### 1. Constitutionality.

The statute does not violate *Tenn. Const., art. II, § 2*, relating to separate branches of the state government. *State ex rel. Estes v. Persica*, 130 *Tenn.* 48, 168 *S.W.* 1056, 1914 *Tenn.* LEXIS 3 (1914).

The public nuisance statutes are not violative of *Tenn. Const., art. I, § 8* or *art. XI, § 8*. *Barrowman v. State ex rel. Evans*, 214 *Tenn.* 408, 381 *S.W.2d* 251, 1964 *Tenn.* LEXIS 490 (*Tenn.* July 15, 1964).

Judgment ordering padlocking of residence as public nuisance for alleged unlawful sale of intoxicating liquors did not constitute an unconstitutional confiscation or forfeiture of property. *State ex rel. Evans v. Caldwell*, 53 *Tenn. App.* 195, 381 *S.W.2d* 553, 1964 *Tenn. App.* LEXIS 95 (*Tenn. Ct. App.* 1964).

This section was declared unconstitutional in that it would permit seizures solely on officer's conclusion of obscenity and place as defined could include a home. *Airways Theater, Inc. v. Canale*, 366 *F. Supp.* 343, 1973 *U.S. Dist. LEXIS* 11012 (*W.D. Tenn.* 1973).

The issuance of a permanent injunction against the owner of premises which had been used for the purposes of prostitution prohibiting such use of his property, in absence of any proof that he had knowledge of such use, was not violative of his constitutional rights, since it did not deprive him of property or punish him in any way. *State ex rel. Webster v. Daugherty*, 530 S.W.2d 81, 1975 Tenn. App. LEXIS 172 (Tenn. Ct. App. 1975).

The definition of the word "nuisance" as it relates to prostitution and assignation is not unconstitutionally overbroad, vague, and indefinite. *State ex rel. Webster v. Daugherty*, 530 S.W.2d 81, 1975 Tenn. App. LEXIS 172 (Tenn. Ct. App. 1975).

This section applies equally to all landowners in the same position and does not violate *Tenn. Const., art. XI, § 8* or *U.S. Const., amend. 14*. *State ex rel. Webster v. Daugherty*, 530 S.W.2d 81, 1975 Tenn. App. LEXIS 172 (Tenn. Ct. App. 1975).

The padlocking of property on the order of the court in a proceeding instituted under the nuisance statute did not deprive the owner of his federal right to due process of law or any other right he had under the federal constitution. *Wilson v. Winstead*, 470 F. Supp. 263, 1978 U.S. Dist. LEXIS 16659 (E.D. Tenn. 1978).

Section was found to be not unconstitutional under the state and federal constitutions as a prior restraint or as a violation of the free speech rights of adults. *Davis-Kidd Booksellers v. McWherter*, 866 S.W.2d 520, 1993 Tenn. LEXIS 407 (Tenn. 1993).

## **2. Construction.**

The fact that defendants may reside in the building in which they conduct illicit enterprise does not make the public nuisance statute inapplicable since the statute embraces any building, structure, or place. *Barrowman v. State ex rel. Evans*, 214 Tenn. 408, 381 S.W.2d 251, 1964 Tenn. LEXIS 490 (Tenn. July 15, 1964).

Section 39-2901 (repealed; see § 39-17-307) specifying certain things which constitute public nuisance is merely cumulative to title 29, ch. 3. *State ex rel. Evans v. Caldwell*, 53 Tenn. App. 195, 381 S.W.2d 553, 1964 Tenn. App. LEXIS 95 (Tenn. Ct. App. 1964).

## **3. Nuisances.**

The test in cases arising under the provisions of these sections is not the number of unlawful acts that occurred but whether the evidence as a whole indicates recurrent acts which amount to a nuisance, and time is not a material factor in the offense of maintaining such a nuisance. *State v. James*, 177 Tenn. 21, 145 S.W.2d 783, 1940 Tenn. LEXIS 5 (1940).

For an injunction suit to be maintained prior to the alleged nuisance coming into being it must be sufficiently shown in the original bill or petition that the proposed establishment is a nuisance per se. *State ex rel. Cunningham v. Feezell*, 218 Tenn. 17, 400 S.W.2d 716, 1966 Tenn. LEXIS 549 (1966).

The difference between a nuisance per se and a nuisance per accidens is that in the former, injury in some form is certain to be inflicted while in the latter the injury is uncertain or contingent until it actually occurs. *State ex rel. Cunningham v. Feezell*, 218 Tenn. 17, 400 S.W.2d 716, 1966 Tenn. LEXIS 549 (1966).

## **4. --Gambling Houses.**

A house where betting on horse races is conducted is within the section. *State ex rel. Armstrong v. Bernstein*, 145 Tenn. 74, 238 S.W. 91, 1921 Tenn. LEXIS 71 (1921).

## **5. --Intoxicating Liquor.**

A person who has paid all taxes and who sells intoxicating liquors only to persons outside of the state is not maintaining a nuisance within the meaning of this statute, for such sales are legal. *State ex rel. Vines v. Chadwell*, 130 Tenn. 253, 169 S.W. 1170, 1914 Tenn. LEXIS 24 (1914).

Right to abate public nuisance extends to padlocking of private residence where intoxicating liquors are unlawfully sold. *State ex rel. Evans v. Caldwell*, 53 Tenn. App. 195, 381 S.W.2d 553, 1964 Tenn. App. LEXIS 95 (Tenn. Ct. App. 1964).

## **6. -- --Sale.**

Possession of federal license which gave rise to presumption that holder was engaged in illegal sale of liquor was rebutted where defendant who operated soft drink stand testified that he did not sell intoxicating beverages and introduced evidence that drink sold was not intoxicating. *Baker v. State*, 5 Tenn. Civ. App. (Higgins) 292 (1915).

The engaging in the sale of intoxicating liquors declared by this statute to be a public nuisance belongs to that class of nuisances always treated by the Supreme Court as tending to disturb the peace and good order of the community. *State ex rel. Thompson v. Reichman*, 135 Tenn. 685, 188 S.W. 597, 1916 Tenn. LEXIS 47 (1916).

An incorporated social club which had been in existence for 25 years, with a limited membership, dispensing intoxicating beverages to its members at cost of materials and service, as a mere incident to the main purpose of the club, no person not a member of the club being permitted to obtain anything from the club at his own expense, was not guilty of conducting a nuisance under this statute. *State ex rel. Whittaker v. Mountain City Club*, 136 Tenn. 102, 188 S.W. 579, 1916 Tenn. LEXIS 104 (1916).

Where evidence was to the effect that one of the operators of a hotel was aware that a roomer in the hotel was engaged in the sale of intoxicating liquors within a week after such roomer took up residence in the hotel but did nothing about it until after proceedings were instituted under these sections more than a month later, the operators could be properly enjoined from maintaining a public nuisance at the hotel by engaging in the unlawful storage and sale of intoxicating liquors. *State v. James*, 177 Tenn. 21, 145 S.W.2d 783, 1940 Tenn. LEXIS 5 (1940).

#### **7. -- --Presence of Minors.**

Evidence sustained finding that defendant maintained public nuisance where intoxicating liquors were kept and minors allowed to congregate. *State ex rel. Henderson v. Cuniff*, 30 Tenn. App. 347, 206 S.W.2d 32, 1947 Tenn. App. LEXIS 93 (1947).

#### **8. -- --Effect of Local Option.**

Operation of liquor store could not be enjoined as a nuisance where local option election had never been completed. *O'Neil v. State ex rel. Baker*, 185 Tenn. 534, 206 S.W.2d 780, 1947 Tenn. LEXIS 354 (1947).

#### **9. -- --Houses of Ill Fame.**

Where the evidence established that a hotel was used for assignation purposes on one particular night by seven couples, it could be reasonably inferred that like offenses had been committed on previous nights so as to sustain an injunction against maintaining a public nuisance. *State v. James*, 177 Tenn. 21, 145 S.W.2d 783, 1940 Tenn. LEXIS 5 (1940).

Because activities taking place at nude dancing establishment satisfied the standard of sexual activity as a business, there was no error in ruling that "lap dancing," as conducted at defendant's place of business, constituted "prostitution" as that term is used in *T.C.A. § 29-3-101*. *State ex rel. Gibbons v. Jackson*, 16 S.W.3d 797, 1999 Tenn. App. LEXIS 674 (Tenn. Ct. App. 1999), *aff'd*, *Haney v. First Am. Nat'l Bank*, -- S.W.3d --, 1999 Tenn. LEXIS 675 (Tenn. Dec. 20, 1999).

#### **10. -- --Lotteries.**

A scheme designated as "bank night" or "opportunity night" under which cash prizes are awarded to a patron of the theater in case the number under which his name is registered is drawn and such patron is in the theater at the time of such drawing, cannot be abated as a nuisance on the theory that it comes under the provisions of the gaming and lottery statutes. *State ex rel. Dist. Att'y Gen. v. Crescent Amusement Co.*, 170 Tenn. 351, 95 S.W.2d 310, 1935 Tenn. LEXIS 142 (1935).

#### **11. -- --Crematories.**

Allegations in petition seeking to abate proposed operation of crematory in rural or rural residential area were not sufficient to support abatement of operation prior to its establishment where grounds of abatement were that operation would cause mental anguish, depressed feelings, physical discomfort and lower property value since such allegations did not indicate certain injury. *State ex rel. Cunningham v. Feezell*, 218 Tenn. 17, 400 S.W.2d 716, 1966 Tenn. LEXIS 549 (1966).

#### **12. Criminal Offenses.**

Maintaining a public nuisance is a misdemeanor at common law and is punishable as provided in § 39-106 (now § 39-11-111) even though § 29-3-101 defining public nuisances does not make maintenance of the same a crime. *Laws v. State*, 218 Tenn. 536, 404 S.W.2d 510, 1966 Tenn. LEXIS 586 (1966).

#### **13. Imminence of Injury.**

Anticipatory nuisance may be enjoined under proper circumstances where injury anticipated is imminent and certain to occur. *State ex rel. Cunningham v. Feezell*, 218 Tenn. 17, 400 S.W.2d 716, 1966 Tenn. LEXIS 549 (1966).

A nuisance cannot exist without surrounding circumstances that determine whether an injury is occasioned since some injury must be occasioned or at least be imminent because of the alleged nuisance. *State ex rel. Cunningham v. Feezell*, 218 Tenn. 17, 400 S.W.2d 716, 1966 Tenn. LEXIS 549 (1966).

Where injury from an alleged nuisance is not real and immediate and certain to occur, the nuisance will not be enjoined anticipatory to its going into operation. *State ex rel. Cunningham v. Feezell*, 218 Tenn. 17, 400 S.W.2d 716, 1966 Tenn. LEXIS 549 (1966).

#### **14. Mental Disturbances.**

Mental disturbances or "psychic" injuries caused by a nuisance, public or private, may be actionable at law or in equity if the allegations of the petition are sufficient to persuade the court that if they are proved injury is imminent and certain. *State ex rel. Cunningham v. Feezell*, 218 Tenn. 17, 400 S.W.2d 716, 1966 Tenn. LEXIS 549 (1966).

#### **15. Review.**

The appellate courts, in reviewing cases under this chapter, will be governed by the rules applicable to appeals from the chancery court. Upon appeal from the circuit court, where the case was tried before the circuit judge without the intervention of a jury, to the court of appeals, that court was not precluded from finding the facts of the cases from the preponderance of the evidence, without reference to the findings of the circuit judge, and that court was in error in applying the rule in law cases that, where there is any material evidence to support the findings of the circuit judge upon material questions of fact, his findings of fact will not be disturbed. *Black v. State ex rel. Dist. Attorney-General*, 130 Tenn. 529, 172 S.W. 281, 1914 Tenn. LEXIS 55 (1914); *Wortham v. State*, 6 Tenn. Civ. App. (6 Higgins) 362 (1915).

The supreme court, on certiorari, will not go behind a concurrent finding of fact by the trial judge and the court of appeals, if there is any evidence to support it. *Black v. State ex rel. Dist. Attorney-General*, 130 Tenn. 529, 172 S.W. 281, 1914 Tenn. LEXIS 55 (1914).

On appeal from a conviction for violating an injunction enjoining one from engaging in the sale of intoxicating liquors at a named place the appellate court has to consider whether or not the evidence preponderates against the verdict of the jury; and the adverse finding below raises a presumption of guilt, which accused must overcome, in order to obtain a reversal on the facts, by showing that the preponderance of proof is against the finding. *O'Brien v. State ex rel. Bibb*, 26 Tenn. App. 270, 170 S.W.2d 931 (1942).

#### **Collateral References.**

24 *Am. Jur. 2d Disorderly Houses* §§ 3, 10; 38 *Am. Jur. 2d Gambling* §§ 172-185; 45 *Am. Jur. 2d Intoxicating Liquors* §§ 499-555; 58 *Am. Jur. 2d Nuisances* §§ 14-18, 142-184.

66 C.J.S. Nuisances § 2.

Automobile racetrack or drag strip as nuisance. 41 *A.L.R.3d* 1273.

Betting on races as nuisance. 166 *A.L.R.* 1264.

Carwash as nuisance. 4 *A.L.R.4th* 1308.

Drive-in theater or other outdoor dramatic or musical entertainment as nuisance. 93 *A.L.R.3d* 1156.

Exhibition of obscene motion pictures as nuisance. 50 *A.L.R.3d* 969.

Existence of, and relief from, nuisance created by operation of air conditioning or ventilating equipment. 79 *A.L.R.3d* 320.

Fence as nuisance. 80 *A.L.R.3d* 962.

Funeral home as private nuisance. 8 *A.L.R.4th* 324.

Gasoline or other fuel storage tanks as nuisance. 50 *A.L.R.3d* 209.

Gun club, or shooting gallery or range, as nuisance. 26 *A.L.R.3d* 661.

Keeping bees as nuisance. 88 *A.L.R.3d* 992.

Keeping of dogs as enjoined nuisance. 11 *A.L.R.3d* 1399.

Laundry or drycleaning establishment as nuisance. *41 A.L.R.3d 1236.*

Massage parlor as nuisance. *80 A.L.R.3d 1020.*

Operation of cement plant as nuisance. *82 A.L.R.3d 1004.*

Operation of incinerator as nuisance. *41 A.L.R.3d 1009.*

Operation of nude-model photographic studio as offense. *48 A.L.R.3d 1313.*

Permitting guests to bring and consume their own liquor, charge of maintaining a liquor nuisance predicated on. *49 A.L.R. 1451.*

Pornoshops or similar places disseminating obscene materials as nuisance. *58 A.L.R.3d 1134.*

Public dump as nuisance. *52 A.L.R.2d 1134.*

Remedies for sewage treatment plant alleged or deemed to be nuisance. *101 A.L.R.5th 287.*

Saloons or taverns as nuisance. *5 A.L.R.3d 989.*

Telephone or telegraph service facilitating betting on horse racing or other sport, as nuisance. *30 A.L.R.3d 1143.*

Topless or bottomless dancing or similar conduct as offense. *49 A.L.R.3d 1084.*

Vibrations not accompanied by blasting or explosion as constituting nuisance. *103 A.L.R.5th 157.*

Zoos as nuisance. *58 A.L.R.3d 1085.*

Nuisance 65.

**HIERARCHY NOTES:**

Tit. 29 Note



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 \*\*\* ANNOTATIONS CURRENT THROUGH APRIL 29, 2011 \*\*\*

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 Chapter 3 Abatement of Nuisances

**GO TO THE TENNESSEE ANNOTATED STATUTES ARCHIVE DIRECTORY**

*Tenn. Code Ann. § 29-3-102 (2011)*

**29-3-102. Jurisdiction to abate.**

The jurisdiction is hereby conferred upon the chancery, circuit, and criminal courts and any court designated as an environmental court pursuant to Chapter 426 of the Public Acts of 1991 to abate the public nuisances defined in § 29-3-101, upon petition in the name of the state, upon relation of the attorney general and reporter, or any district attorney general, or any city or county attorney, or without the concurrence of any such officers, upon the relation of ten (10) or more citizens and freeholders of the county wherein such nuisances may exist, in the manner herein provided.

**HISTORY:** Acts 1913 (2nd E.S.), ch. 2, § 2; Shan., § 5164a2; Code 1932, § 9325; T.C.A. (orig. ed.), § 23-302; modified; 2000, ch. 720, § 1.

**NOTES: Section to Section References.**

Sections 29-3-101 -- 29-3-111 are referred to in §§ 29-3-108, 29-3-111.

This section is referred to in §§ 29-3-101, 29-3-103, 29-3-106.

**Textbooks.**

Gibson's Suits in Chancery (7th ed., Inman), § 8.

Tennessee Jurisprudence, 11 *Tenn. Juris., Equity*, § 34; 16 *Tenn. Juris., Intoxicating Liquors*, § 27; 20 *Tenn. Juris., Nuisances*, §§ 21, 28.

**Law Reviews.**

Criminal Law and Procedure -- 1960 Tennessee Survey (Robert E. Kendrick), 13 *Vand. L. Rev.* 1059.

Equity -- 1957 Tennessee Survey (Thomas F. Green, Jr.), 10 *Vand. L. Rev.* 1095.

The Tennessee Court System -- Chancery Court (Frederic S. Le Clercq), 8 *Mem. St. U.L. Rev.* 281.

The Tennessee Court System -- Circuit Court (Frederic S. Le Clercq), 8 *Mem. St. U.L. Rev.* 241.

The Tennessee Court System -- Criminal Court (Frederic S. Le Clercq), 8 *Mem. St. U.L. Rev.* 319.

The Tennessee Court System -- Prosecution, 8 *Mem. St. U.L. Rev.* 477.

**Attorney General Opinions.**

A county attorney may bring an action under *T.C.A. § 29-3-102* to abate a nuisance, OAG 01-166 (11/15/01).

Even though no state statute expressly declares parking an unregistered car on private property to be a nuisance

subject to abatement or any other penalty, depending on the facts and circumstances, such practice could constitute a nuisance, and, in addition, it could violate local land use, environmental, or zoning ordinances, OAG 04-172 (12/17/04).

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Nuisance

### Cited:

*State v. Champion Int'l Corp.*, 709 S.W.2d 569, 1986 Tenn. LEXIS 830 (Tenn. 1986); *T & W Enterprises, Inc. v. Casey*, 715 S.W.2d 356, 1986 Tenn. App. LEXIS 3092 (Tenn. Ct. App. 1986); *Cooper v. Parrish*, 20 F. Supp. 2d 1204, 1998 U.S. Dist. LEXIS 14223 (W.D. Tenn. 1998); *State ex rel. Gibbons v. Club Universe*, -- S.W.3d --, 2005 Tenn. App. LEXIS 439 (Tenn. Ct. App. July 26, 2005).

## NOTES TO DECISIONS

1. Constitutionality. 2. Construction. 3. Jurisdiction. 4. Venue. 5. Review. 6. Jury Trial.

### 1. Constitutionality.

This section is not class legislation, and is not in violation of *Tenn. Const., art. I, § 8* or art. XI, § 8, nor *U.S. Const., amend. 14*. The ten citizens authorized to bring the suit are made the agents of the state. *State ex rel. Estes v. Persica*, 130 Tenn. 48, 168 S.W. 1056, 1914 Tenn. LEXIS 3 (1914).

Judgment ordering padlocking of residence as public nuisance for alleged unlawful sale of intoxicating liquors did not constitute an unconstitutional confiscation or forfeiture of property. *State ex rel. Evans v. Caldwell*, 53 Tenn. App. 195, 381 S.W.2d 553, 1964 Tenn. App. LEXIS 95 (Tenn. Ct. App. 1964).

### 2. Construction.

This statute furnishes a cumulative remedy, and does not abrogate any other remedy, and does not affect the sheriff's duties. *State ex rel. Thompson v. Reichman*, 135 Tenn. 685, 188 S.W. 597, 1916 Tenn. LEXIS 47 (1916).

*T.C.A. § 29-3-102* does not require that a district attorney general swear to the truth of allegations contained in a complaint. *Cooper v. Parrish*, 203 F.3d 937, 2000 FED App. 0047P, 2000 FED App. 47P, 2000 U.S. App. LEXIS 1718 (6th Cir. Tenn. 2000), cert. denied, 531 U.S. 877, 121 S. Ct. 185, 148 L. Ed. 2d 128, 2000 U.S. LEXIS 5925 (2000).

### 3. Jurisdiction.

The city attorney cannot institute such proceeding in any other city. He is confined to the local jurisdiction of his own city. Error in refusing to abate such action brought in one city by the city attorney of another city is not cured by the fact that the city in which the suit was brought was subsequently, by legislative act, included in the city whose city attorney instituted the suit. *State ex rel. Powers v. Shelton*, 138 Tenn. 345, 197 S.W. 1096, 1917 Tenn. LEXIS 39 (1917).

In suit to abate public nuisance and to revoke corporate charter, fact that criminal court had narrow statutory concurrent jurisdiction with chancery court with reference to abatement of public nuisances did not permit criminal court to retain jurisdiction of suit for purpose of revocation of corporate charter under maxim that equity having taken jurisdiction for one purpose will retain jurisdiction for all purposes. *Pan-O-Ram Club, Inc. v. State*, 217 Tenn. 137, 395 S.W.2d 803, 1965 Tenn. LEXIS 526 (1965).

A proceeding to abate a public nuisance is an action of an equitable nature and must be tried in accordance with the rules of chancery, although it may properly be filed in criminal or circuit, as well as chancery, courts. *State ex rel. Webster v. Daugherty*, 530 S.W.2d 81, 1975 Tenn. App. LEXIS 172 (Tenn. Ct. App. 1975).

The statute giving jurisdiction over equitable matters to "circuit courts" refers to courts of law as distinguished from courts of equity and includes criminal courts; therefore, action for a permanent injunction restraining use of property for prostitution was properly brought in criminal court. *State ex rel. Webster v. Daugherty*, 530 S.W.2d 81, 1975 Tenn. App. LEXIS 172 (Tenn. Ct. App. 1975).

Principles of concurrent jurisdiction precluded the circuit court from entering an order which purported to enjoin the district attorney from proceeding against the plaintiff in an abatement action filed in the criminal court. *King of Clubs v. Gibbons*, 9 S.W.3d 796, 1999 Tenn. App. LEXIS 372 (Tenn. Ct. App. 1999), rehearing denied, -- S.W.3d --, 1999 Tenn. App. LEXIS 477 (Tenn. Ct. App. July 13, 1999).

**4. Venue.**

It appears that location is an essential ingredient of the action and is associated with the offense accordingly. The proper venue is in the county where the nuisance is situated. *State ex rel. Boyd v. Scott*, 176 Tenn. 662, 145 S.W.2d 765, 1940 Tenn. LEXIS 115 (Tenn. Dec. 1940).

**5. Review.**

Case brought under title 29, ch. 3 comes to court of appeals as if it were an equity case under § 27-3-103 (repealed) with a presumption of the correctness of the decree of the judgment of the lower court unless the preponderance of the evidence is to the contrary. *State ex rel. Evans v. Caldwell*, 53 Tenn. App. 195, 381 S.W.2d 553, 1964 Tenn. App. LEXIS 95 (Tenn. Ct. App. 1964).

**6. Jury Trial.**

In a suit in Chancery there is a statutory right under § 21-1-103 to a jury, except in accounting cases or cases barred by law or other provisions of the code. *Smith County Education Assn. v. Anderson*, 676 S.W.2d 328, 1984 Tenn. LEXIS 936 (Tenn. 1984).

**Collateral References.**

58 Am. Jur. 2d Nuisances §§ 164-166.

66 C.J.S. Nuisances § 121.

Proceedings for injunction or restraining order as basis of malicious prosecution action. 70 A.L.R.3d 536.

Right to maintain action to enjoin public nuisance as affected by existence of pollution control agency. 60 A.L.R.3d 665.

Street or highway, right, as between state and county or municipality, to maintain action to abate public nuisance in. 65 A.L.R. 699.

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**HIERARCHY NOTES:**

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*Tenn. Code Ann. § 29-3-103 (2011)*

**29-3-103. Filing of bill -- Parties.**

When a public nuisance, as defined in § 29-3-101, is kept, maintained, carried on, or exists in any county, a bill or petition may be filed in any chancery, circuit, or criminal court of such county, in the name of the state, by and upon the relation of the respective officers or persons named in § 29-3-102, against the person keeping, maintaining, or carrying on such nuisance, and all aiders and abettors therein, and the owners, proprietors, or agents or persons or corporations in charge or control of the building or place wherein such nuisance exists, for the purpose of having such nuisance abated and permanently discontinued.

**HISTORY:** Acts 1913 (2nd E.S.), ch. 2, § 3; Shan., § 5164a3; mod. Code 1932, § 9326; T.C.A. (orig. ed.), § 23-303.

**NOTES: Section to Section References.**

Sections 29-3-101 -- 29-3-111 are referred to in §§ 29-3-108, 29-3-111.

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**Cited:**

*Etheridge v. First Nat'l Bank*, 54 Tenn. App. 46, 387 S.W.2d 835, 1964 Tenn. App. LEXIS 143 (Tenn. Ct. App. Oct. 8, 1964); *State ex rel. Webster v. Daugherty*, 530 S.W.2d 81, 1975 Tenn. App. LEXIS 172 (Tenn. Ct. App. 1975); *Cooper v. Parrish*, 20 F. Supp. 2d 1204, 1998 U.S. Dist. LEXIS 14223 (W.D. Tenn. 1998).

**NOTES TO DECISIONS**

1. Institution of Proceeding. 2. Notice. 3. Evidence. 4. Jurisdiction.

**1. Institution of Proceeding.**

An injunction against the attorney general will not lie to enjoin the institution and prosecution of suits to enjoin and abate nuisances. Such injunction is beyond the jurisdiction of the court, and a mere nullity and may be disregarded without incurring the penalty of contempt of court. *Howell v. Thompson*, 130 Tenn. 311, 170 S.W. 253, 1914 Tenn. LEXIS 30 (1914).

The statute does not impose any duty on the sheriff, does not mention him, and he is not authorized, in his official capacity, to institute any proceeding under it; but this does not excuse him for the nonenforcement of the law against the unlawful sales of intoxicating liquors. *State ex rel. Thompson v. Reichman*, 135 Tenn. 653, 188 S.W. 225, 1916 Tenn. LEXIS 46 (1916), rehearing denied, 135 Tenn. 685, 188 S.W. 597, 1916 Tenn. LEXIS 47 (1916).

## 2. Notice.

An injunction issued under this section without notice is merely an error in procedure and is not void, as the court had jurisdiction of the subject matter and the defendant. *State v. Ragghianti*, 129 Tenn. 560, 167 S.W. 689, 1914 Tenn. LEXIS 146 (1914); *Black v. State ex rel. Dist. Attorney-General*, 130 Tenn. 529, 172 S.W. 281, 1914 Tenn. LEXIS 55 (1914).

This section does not contemplate a hearing of the application, nor require the giving of any notice when the bill or petition is filed by ten or more citizens and freeholders, but it does require such notice on the relation of the attorney-general or any other officer named in the section. *State ex rel. Estes v. Persica*, 130 Tenn. 48, 168 S.W. 1056, 1914 Tenn. LEXIS 3 (1914).

## 3. Evidence.

Identification of place in bill and in certified internal revenue license cannot be raised in the appellate court, where no question was made on the trial below, and such places were treated as identical. *Wortham v. State*, 6 Tenn. Civ. App. (6 Higgins) 362 (1915).

Certified list of holders of internal revenue licenses for the sales of intoxicating liquors is not inadmissible because it failed to state the number of pages contained in the list, nor is there any objection to the submission of such documentary evidence by an attorney without being sworn to testify in the case. *Wortham v. State*, 6 Tenn. Civ. App. (6 Higgins) 362 (1915).

## 4. Jurisdiction.

Environmental court had the authority to enjoin a nightclub from operating because the environmental court had jurisdiction over the matter, and it had jurisdiction to abate nuisances. *State ex rel. Gibbons v. Club Universe*, -- S.W.3d --, 2005 Tenn. App. LEXIS 439 (Tenn. Ct. App. July 26, 2005).

## Collateral References.

58 *Am. Jur. 2d Nuisances* §§ 169-172.

66 C.J.S. *Nuisances* §§ 124, 126.

Joinder, in injunction action to restrain or abate nuisance, of persons contributing thereto through separate and independent acts. 45 *A.L.R.2d* 1284.

Necessity of knowledge by owner of real estate of a nuisance maintained thereon by another to subject him to the operation of a statute providing for the abatement of nuisances or prescribing pecuniary penalty therefor. 12 *A.L.R.* 431, 121 *A.L.R.* 642.

Proceedings for injunction or restraining order as basis of malicious prosecution action, 70 *A.L.R.3d* 536.

Right to maintain action to enjoin public nuisance as affected by existence of pollution control agency. 60 *A.L.R.3d* 665.

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*Tenn. Code Ann. § 29-3-104 (2011)*

**29-3-104. Bond of relators.**

Where such bill or petition is filed by citizens and freeholders, they shall make bond, in such sum as the judge or chancellor shall prescribe, conditioned to pay all costs and damages in the event the court trying the case shall adjudge that the proceeding was instituted without probable cause; but no bond for costs or damages shall be required where the proceeding is instituted by and upon the relation of the attorney general and reporter or a district attorney general or a county or a city attorney.

**HISTORY:** Acts 1913 (2nd E.S), ch. 2, § 3, Shan., § 516414; Code 1932 § 9327; T.C.A. (orig. ed.), 23-304; modified.

**NOTES: Section to Section References.**

Sections 29-3-101 -- 29-3-111 are referred to in §§ 29-3-108, 29-3-111.

**Law Reviews.**

Attorneys' Fees -- Tennessee Recognizes the "Third Party Exception" to the American Rule, *16 Mem. St. U.L. Rev.* 399 (1986).

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**Cited:**

*State ex rel. Webster v. Daugherty*, 530 S.W.2d 81, 1975 Tenn. App. LEXIS 172 (Tenn. Ct. App. 1975).

**Collateral References.**

66 C.J.S. Nuisances § 125.

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*Tenn. Code Ann. § 29-3-105 (2011)*

**29-3-105. Temporary injunction.**

(a) In such proceeding, the court, or a judge or chancellor in vacation, shall, upon the presentation of a bill or petition therefor, alleging that the nuisance complained of exists, award a temporary writ of injunction, enjoining and restraining the further continuance of such nuisance, and the closing of the building or place wherein the same is conducted until the further order of the court, judge, or chancellor.

(b) The award of a temporary writ of injunction shall be accompanied by such bond as is required by law in such cases, in case the bill is filed by citizens and freeholders; but no bond shall be required when such is filed by the officers provided for, if it shall be made to appear to the satisfaction of the court, judge or chancellor, by evidence in the form of a due and proper verification of the bill or petition under oath, or of affidavits, depositions, oral testimony, or otherwise, as the complaints or petitioners may elect, that the allegations of such bill or petition are true.

**HISTORY:** Acts 1913 (2nd E.S.), ch. 2, § 4; Shan., § 5164a5; mod. Code 1932, § 9328; T.C.A. (orig. ed.), § 23-305; modified.

**NOTES: Cross-References.**

Temporary injunction, *Tenn. R. Civ. P. 65.04*.

**Section to Section References.**

Sections 29-3-101 -- 29-3-111 are referred to in §§ 29-3-108, 29-3-111.

**Textbooks.**

Tennessee Jurisprudence, 20 *Tenn. Juris., Nuisances*, § 20.

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Nuisance

**Cited:**

*State ex rel. Webster v. Daugherty*, 530 S.W.2d 81, 1975 Tenn. App. LEXIS 172 (Tenn. Ct. App. 1975); *Logan v. Ledford*, 699 F. Supp. 141, 1988 U.S. Dist. LEXIS 12469 (M.D. Tenn. 1988); *Cooper v. Parrish*, 20 F. Supp. 2d 1204, 1998 U.S. Dist. LEXIS 14223 (W.D. Tenn. 1998); *King of Clubs v. Gibbons*, 9 S.W.3d 796, 1999 Tenn. App. LEXIS 372 (Tenn. Ct. App. 1999); *Cooper v. Parrish*, 203 F.3d 937, 2000 FED App. 0047P, 2000 FED App. 47P, 2000 U.S. App. LEXIS 1718 (6th Cir. Tenn. 2000); *State ex rel. Dean v. Vanhorn*, -- S.W.3d --, 2005 Tenn. App. LEXIS 476 (Tenn. Ct. App. Aug. 10, 2005).

**NOTES TO DECISIONS**

1. Constitutionality. 2. Special Injury.

**1. Constitutionality.**

Provision for injunction at instance of citizens and freeholders, without injunction bond, is not unconstitutional. Such parties act as agents of the state, and this does not violate *Tenn. Const., art. I, § 8*, and art. XI, § 8, nor the *fourteenth amendment of the federal Constitution*. *State ex rel. Estes v. Persica*, 130 Tenn. 48, 168 S.W. 1056, 1914 Tenn. LEXIS 3 (1914).

Provision for closing the place before a hearing is not unconstitutional, as a deprivation of property without due process, though the owner be not a party, in violation of *Tenn. Const., art. I, § 8* and the *fourteenth amendment of the federal Constitution*. *State ex rel. Estes v. Persica*, 130 Tenn. 48, 168 S.W. 1056, 1914 Tenn. LEXIS 3 (1914).

Provision requiring award of temporary writ of injunction is not unconstitutional as depriving the judges of the exercise of judicial power, in violation of *Tenn. Const., art. II, §§ 1, 2*, for the statute contemplates the exercise of judicial functions by the judge or chancellor to whom a petition for abatement and injunction is brought, and merely prescribes a rule of practice upon the filing of a proper petition for abatement, the sufficiency of which is to be determined by the court. *State ex rel. Estes v. Persica*, 130 Tenn. 48, 168 S.W. 1056, 1914 Tenn. LEXIS 3 (1914).

In light of the fact that defendant's nude dancing establishment was entitled to some measure of first amendment protection, it was error to grant a temporary writ of injunction in regards to "lewd and obscene exhibition of the genitals," because the injunction attempted to prohibit a future undescribed activity. *State ex rel. Gibbons v. Jackson*, 16 S.W.3d 797, 1999 Tenn. App. LEXIS 674 (Tenn. Ct. App. 1999), aff'd, *Haney v. First Am. Nat'l Bank*, -- S.W.3d --, 1999 Tenn. LEXIS 675 (Tenn. Dec. 20, 1999).

**2. Special Injury.**

The nuisance may be enjoined, without showing any special injury. *State v. Ragghianti*, 129 Tenn. 560, 167 S.W. 689, 1914 Tenn. LEXIS 146 (1914).

**Collateral References.**

66 C.J.S. Nuisances § 125.

Right to maintain action to enjoin public nuisance as affected by existence of pollution control agency. 60 A.L.R.3d 665.

What corporate communications are entitled to attorney-client privilege--modern cases. 27 A.L.R.5th 76.

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*Tenn. Code Ann. § 29-3-106 (2011)*

**29-3-106. Notice of hearing -- Effect of injunction -- Ex parte writ.**

(a) Five (5) days' notice in writing shall be given the defendant of the hearing of the application; and if then continued at defendant's instance, the writ as prayed for shall be granted as a matter of course.

(b) When the injunction shall have been granted, it shall be binding upon the defendant throughout the county until modified or set aside by the court, judge, or chancellor having cognizance of the case; and any violation of the injunction by the defendant, or upon defendant's procurement, shall be a contempt of court and punished as hereinafter provided.

(c) When a bill or petition is made by any of the respective officers named in § 29-3-102 and supported by affidavit that there is probable cause to believe that a public nuisance exists, neither notice of the application nor of the hearing shall be required before the court may grant the writ, ex parte. A hearing shall be conducted within five (5) days following the execution of the writ closing and padlocking the premises, or the writ shall expire. Notice of the hearing shall be given to the defendant. If the defendant seeks to continue the hearing on the temporary injunction beyond the five-day period, the temporary injunction shall remain in effect.

**HISTORY:** Acts 1913 (2nd E.S.), ch. 2, § 4; Shan., § 5164a6; Code 1932, § 9329; T.C.A. (orig. ed.), § 23-306; Acts 2007, ch. 331, § 1.

**NOTES: Amendments.**

The 2007 amendment added (c).

**Effective Dates.**

Acts 2007, ch. 331, § 2. July 1, 2007.

**Section to Section References.**

Sections 29-3-101 -- 29-3-111 are referred to in §§ 29-3-108, 29-3-111.

**Textbooks.**

Tennessee Jurisprudence, 15 *Tenn. Juris., Injunctions*, § 60; 16 *Tenn. Juris., Intoxicating Liquors*, § 27; 20 *Tenn. Juris., Nuisances*, § 20.

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**Cited:**

*State ex rel. Webster v. Daugherty*, 530 S.W.2d 81, 1975 Tenn. App. LEXIS 172 (Tenn. Ct. App. 1975).

**NOTES TO DECISIONS**

1. Subject Matter. 2. Notice. 3. Contempt.

**1. Subject Matter.**

An injunction made in respect to a subject matter beyond the jurisdiction of the court, as where the court has no jurisdiction of the subject matter or of the person of the defendant, is a nullity. It may be disregarded without incurring the penalty of contempt. *State v. Ragghianti*, 129 Tenn. 560, 167 S.W. 689, 1914 Tenn. LEXIS 146 (1914); *Howell v. Thompson*, 130 Tenn. 311, 170 S.W. 253, 1914 Tenn. LEXIS 30 (1914).

**2. Notice.**

The requirement of the five days' written notice of the hearing of the application for a temporary injunction does not contemplate a hearing of the application, nor require the giving of the five days' notice of the issuance of a temporary injunction where the bill is filed by citizens and freeholders. *State ex rel. Estes v. Persica*, 130 Tenn. 48, 168 S.W. 1056, 1914 Tenn. LEXIS 3 (1914); *State ex rel. Mynatt v. King*, 137 Tenn. 17, 191 S.W. 352, 1916 Tenn. LEXIS 49 (1916).

**3. Contempt.**

Where a temporary injunction was issued enjoining the defendant from further engaging in the sale of liquors, a petition for an attachment for contempt, charging that he had continued the sale of intoxicating liquors, in willful disobedience of the injunction, showed a violation of the injunction. *State v. Ragghianti*, 129 Tenn. 560, 167 S.W. 689, 1914 Tenn. LEXIS 146 (1914).

Where the defendant answered a petition for an attachment for contempt, by alleging various matters of excuse and avoidance, he could not attack the petition on appeal on account of its general averments and lack of specific allegations. *State v. Ragghianti*, 129 Tenn. 560, 167 S.W. 689, 1914 Tenn. LEXIS 146 (1914).

Contempt proceedings brought by petition and because of violation of injunction issued are criminal in nature, and guilt, in lower court, must be established beyond reasonable doubt. But on appeal from judgment of conviction, appellant must show that the evidence preponderates against the verdict. *Wortham v. State*, 6 Tenn. Civ. App. (6 Higgins) 362 (1915).

The punishment for violating the injunction issued is that prescribed by § 29-3-111 for contempt of court. *State ex rel. Trelkeld v. Casotti*, 137 Tenn. 633, 195 S.W. 182, 1917 Tenn. LEXIS 173 (1917).

Where defendant violated an injunction enjoining him from engaging in the sale of intoxicating liquors he was guilty of criminal contempt. *O'Brien v. State ex rel. Bibb*, 26 Tenn. App. 270, 170 S.W.2d 931 (1942).

**Collateral References.**

66 C.J.S. Nuisances §§ 86, 125, 128.

Injunction 143.

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*Tenn. Code Ann. § 29-3-107 (2011)*

**29-3-107. Voluntary dismissal -- Substitution of relators.**

(a) No such proceeding shall be voluntarily dismissed except upon a written, sworn statement of the relator or relators of the reasons for dismissal.

(b) If such reasons are not satisfactory to the court, or the court shall be of opinion that the proceeding ought not to be dismissed, it may order the same to proceed, and may substitute another relator or relators willing to act as such, either with or without bond, in the court's discretion.

**HISTORY:** Acts 1913 (2nd E.S.), ch. 2, § 5; Shan., § 5164a10; Code 1932, § 9333; T.C.A. (orig. ed.), § 23-307.

**NOTES: Section to Section References.**

Sections 29-3-101 -- 29-3-111 are referred to in §§ 29-3-108, 29-3-111.

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**Cited:**

*State ex rel. Webster v. Daugherty*, 530 S.W.2d 81, 1975 Tenn. App. LEXIS 172 (Tenn. Ct. App. 1975).

**Collateral References.**

66 C.J.S. Nuisances §§ 126, 133.

Pretrial procedure 501-520.

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*Tenn. Code Ann. § 29-3-108 (2011)*

**29-3-108. Time of trial.**

Proceedings under §§ 29-3-101 -- 29-3-111 shall be triable at the first term after due notice or service of process, and shall, in the chancery and circuit courts, be given precedence over all other causes.

**HISTORY:** Acts 1913 (2nd E.S.), ch. 2, § 5; Shan., § 5164a8; Code 1932, § 9331; T.C.A. (orig. ed.), § 23-309.

**NOTES: Section to Section References.**

Sections 29-3-101 -- 29-3-111 are referred to in § 29-3-111.

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**Cited:**

*State ex rel. Webster v. Daugherty*, 530 S.W.2d 81, 1975 Tenn. App. LEXIS 172 (Tenn. Ct. App. 1975).

**NOTES TO DECISIONS**

1. Right to Jury Trial.

**1. Right to Jury Trial.**

The defendant, in a proceeding under this chapter for the abatement of a place where intoxicating liquor is sold as a public nuisance, is entitled to a jury trial of the facts in issue, if properly demanded, notwithstanding the fact the statute contemplates that cases shall be tried with expedition and that a suit cannot be dismissed without the consent of the court. *State ex rel. Mynatt v. King*, 137 Tenn. 17, 191 S.W. 352, 1916 Tenn. LEXIS 49 (1916).

Where it is asserted that a jury is dispensed with as the distinguishing feature of a new form of action provided by the legislature for an infraction of law, that purpose should clearly appear from the face of the statute, and not by an inference from a mere general construction. *State ex rel. Mynatt v. King*, 137 Tenn. 17, 191 S.W. 352, 1916 Tenn. LEXIS 49 (1916).

**Collateral References.**

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*Tenn. Code Ann. § 29-3-109 (2011)*

**29-3-109. [Repealed.]**

**NOTES: Compiler's Notes.**

Former § 29-3-109 (Acts 1913 (2nd E.S.), ch. 2, § 5; Shan., § 5164a9; mod. Code 1932, § 9332; T.C.A. (orig. ed.), § 23-310), concerning admissibility of reputation evidence, was repealed by Acts 1991, ch. 273, § 36. For present provisions on a similar subject, see *Tenn. R. Evid. 405*.

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\*\*\* CURRENT THROUGH THE 2011 REGULAR SESSION \*\*\*  
\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 29, 2011 \*\*\*

Title 29 Remedies And Special Proceedings  
Chapter 3 Abatement of Nuisances

**GO TO THE TENNESSEE ANNOTATED STATUTES ARCHIVE DIRECTORY**

*Tenn. Code Ann. § 29-3-110 (2011)*

**29-3-110. Order of abatement.**

(a) If, upon the trial, the existence of the nuisance is established under § 29-3-101(a)(2)(A), an order of abatement shall be entered as part of the judgment or decree of the court, which order shall direct the removal from the building or place where the nuisance exists or is maintained of all means, appliances, fixtures, appurtenances, materials, supplies and instrumentalities used for the purpose of conducting, maintaining or carrying on the unlawful business, occupation, game, practice or device constituting the nuisance; and shall direct the sale thereof, or such portion thereof as may be lawfully sold, upon such terms as the court may order, and the payment of the proceeds into court to be applied to costs or paid over to the owner, and the destruction of such portion thereof, if any, as cannot be lawfully sold within this state; and the judgment or decree shall perpetually enjoin the defendant from engaging in, conducting, continuing, or maintaining the nuisance, directly or indirectly, by the defendant or defendant's agents or representatives, and perpetually forbidding the owner of the building from permitting or suffering the nuisance to be done in the building.

(b) If, upon the trial, the existence of the nuisance is established under § 29-3-101(a)(2)(B), an order of abatement shall be entered as part of the judgment or decree of the court, which order shall perpetually enjoin the defendant or defendants from engaging in, conducting or continuing the nuisance, directly or indirectly.

**HISTORY:** Acts 1913 (2nd E.S.), ch. 2, § 6; Shan., § 5164a11; Code 1932, § 9334; T.C.A. (orig. ed.), § 23-311; Acts 2009, ch. 571, § 2.

**NOTES: Amendments.**

The 2009 amendment inserted "under § 29-3-101(a)(2)(A)" near the beginning of (a); and added (b).

**Effective Dates.**

Acts 2009, ch. 571, § 3. July 1, 2009.

**Section to Section References.**

Sections 29-3-101 -- 29-3-111 are referred to in §§ 29-3-108, 29-3-111.

**Law Reviews.**

Criminal Law and Procedure -- 1960 Tennessee Survey (Robert E. Kendrick), *13 Vand. L. Rev.* 1059.

**LexisNexis 50 State Surveys, Legislation & Regulations**

Nuisance

**Cited:**

*State ex rel. Webster v. Daugherty*, 530 S.W.2d 81, 1975 Tenn. App. LEXIS 172 (Tenn. Ct. App. 1975); *King of Clubs v. Gibbons*, 9 S.W.3d 796, 1999 Tenn. App. LEXIS 372 (Tenn. Ct. App. 1999).

**NOTES TO DECISIONS**

1. Removal of Fixtures. 2. Nuisances. 3. Unlawful Bond Requirement.

**1. Removal of Fixtures.**

There is no necessity for an order of abatement by directing the removal, from the building in question, of fixtures, supplies, and instrumentalities used for the purpose of conducting the unlawful business, when it is seen that they had been previously removed before the filing of the petition for abatement. *Black v. State ex rel. Dist. Attorney-General*, 130 Tenn. 529, 172 S.W. 281, 1914 Tenn. LEXIS 55 (1914).

**2. Nuisances.**

Environmental court had the authority to enjoin a nightclub from operating because the environmental court had jurisdiction over the matter, and it had jurisdiction to abate nuisances. *State ex rel. Gibbons v. Club Universe*, -- S.W.3d --, 2005 Tenn. App. LEXIS 439 (Tenn. Ct. App. July 26, 2005).

**3. Unlawful Bond Requirement.**

Trial court properly entered an abatement order under *T.C.A. § 29-3-110* to enjoin the operation of a brothel on the property owner's land, but erred by conditioning the property owner's lawful use of its property on the filing of an open-ended \$20,000 surety bond to assure continued compliance with the abatement order, which amounted to a taking of property without due process of law. *State ex rel. Dean v. Vanhorn*, -- S.W.3d --, 2005 Tenn. App. LEXIS 476 (Tenn. Ct. App. Aug. 10, 2005).

**Collateral References.**

58 *Am. Jur. 2d Nuisances* §§ 176-180.

66 C.J.S. *Nuisances* § 129.

Remedies for sewage treatment plant alleged or deemed to be nuisance. 101 *A.L.R.5th* 287.

*Nuisance* 57, 96.

**HIERARCHY NOTES:**

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*Tenn. Code Ann. § 29-3-111 (2011)*

**29-3-111. Penalty for violation.**

If any person breaks into or enters, or uses any building or place while closed under a preliminary injunction granted under the provisions of §§ 29-3-101 -- 29-3-111, or violates any permanent injunction granted under the provisions of such sections, such person commits a Class C misdemeanor.

**HISTORY:** Acts 1913 (2nd E.S.), ch. 2, § 7; Shan., § 5164a12; Code 1932, § 9335; T.C.A. (orig. ed.), § 23-312; Acts 1989, ch. 591, § 113.

**NOTES: Code Commission Notes.**

Portions of this section have been rewritten by the executive secretary to the Tennessee code commission to implement Acts 1989, ch. 591, § 113, effective November 1, 1989, which requested that the executive secretary amend this section by deleting the penalty provision and inserting language to indicate violation of the section is a Class C misdemeanor.

**Cross-References.**

Penalty for Class C misdemeanor, § 40-35-111.

**Section to Section References.**

Sections 29-3-101 -- 29-3-111 are referred to in § 29-3-108.

**Textbooks.**

Tennessee Criminal Practice and Procedure (Raybin), § 24.15.

Tennessee Jurisprudence, 15 *Tenn. Juris., Injunctions*, § 60; 16 *Tenn. Juris., Intoxicating Liquors*, §§ 18, 27.

**LexisNexis 50 State Surveys, Legislation & Regulations**

Nuisance

**Cited:**

*State ex rel. Webster v. Daugherty*, 530 S.W.2d 81, 1975 Tenn. App. LEXIS 172 (Tenn. Ct. App. 1975); *State ex rel. Dean v. Vanhorn*, -- S.W.3d --, 2005 Tenn. App. LEXIS 476 (Tenn. Ct. App. Aug. 10, 2005).

**NOTES TO DECISIONS**

1. Venue and Jurisdiction. 2. Trial. 3. Punishment for Violation. 4. Review.

### **1. Venue and Jurisdiction.**

Venue to enjoin a nuisance as provided in these sections is local, and a defendant against whom an injunction has been issued in one county cannot be adjudged guilty of contempt for engaging in similar conduct in another county beyond the jurisdiction of the court. *State ex rel. Boyd v. Scott*, 176 Tenn. 662, 145 S.W.2d 765, 1940 Tenn. LEXIS 115 (Tenn. Dec. 1940).

### **2. Trial.**

The contempt proceeding is not summary where the offenses with which the contemnor was charged were set out in a petition duly sworn to and filed in the case, and where he was given an opportunity to make defense by answer. It is unnecessary to recite in the judgment of contempt all the facts and steps in the proceeding constituting the contempt. *Wortham v. State*, 6 Tenn. Civ. App. (6 Higgins) 362 (1915).

The violation of an injunction issued in a nuisance case is a criminal contempt which is punitive in character to vindicate the authority of the law, and the court as an organ of society; and the proceeding is one quasi criminal in character. *State ex rel. Anderson v. Daugherty*, 137 Tenn. 125, 191 S.W. 974, 1916 Tenn. LEXIS 58 (1916).

Defendant was not entitled to trial by jury in contempt proceeding in circuit court for violating injunction against illegal sale of intoxicating liquor as statute provided that abatement of public nuisance should be conducted in accordance with procedure of court of chancery, and chancellor had authority to punish for contempt summarily. *Pass v. State*, 181 Tenn. 613, 184 S.W.2d 1, 1944 Tenn. LEXIS 283 (1944).

Constitutional guarantee of trial by jury does not apply to contempt proceedings. *Barrowman v. State ex rel. Evans*, 214 Tenn. 408, 381 S.W.2d 251, 1964 Tenn. LEXIS 490 (Tenn. July 15, 1964).

### **3. Punishment for Violation.**

Where the party is found guilty of contempt, he may be committed to the county workhouse to work out the fine and costs in addition to the workhouse sentence as a part of the punishment. *Wortham v. State*, 6 Tenn. Civ. App. (6 Higgins) 362 (1915).

The punishment here prescribed is to be imposed for violation of the contempt declared by the Nuisance Act, Acts 1913 (2d Ex. Sess.), ch. 2. *State ex rel. Trelkeld v. Casotti*, 137 Tenn. 633, 195 S.W. 182, 1917 Tenn. LEXIS 173 (1917).

The fact that defendant may be punished criminally for violation of the law does not impair the right of the court to punish for contempt for violation of injunction issued under public nuisance statutes. *Barrowman v. State ex rel. Evans*, 214 Tenn. 408, 381 S.W.2d 251, 1964 Tenn. LEXIS 490 (Tenn. July 15, 1964).

### **4. Review.**

Judgment of contempt in lower court removes the presumption of innocence, and raises a presumption of guilt which the contemnor must overcome, in order to obtain a reversal on the facts, especially where the hearing was on oral evidence. *Wortham v. State*, 6 Tenn. Civ. App. (6 Higgins) 362 (1915).

Supreme court upon appeal has jurisdiction to revise and reduce sentences imposed for contempt if the punishment is excessive. *Barrowman v. State ex rel. Evans*, 214 Tenn. 408, 381 S.W.2d 251, 1964 Tenn. LEXIS 490 (Tenn. July 15, 1964).

### **Collateral References.**

58 Am. Jur. 2d Nuisances § 184.

66 C.J.S. Nuisances § 135.

Nuisance 38, 86.

### **HIERARCHY NOTES:**

Tit. 29 Note



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*Tenn. Code Ann. § 29-3-112 (2011)*

**29-3-112. Unlawfully engaging in business or profession.**

The carrying on, conducting, or practice of any profession, business, or occupation which is prohibited by law, unless the person so engaging in such profession, business, or occupation is in the possession of or holds a license issued by some board or other authority organized under the laws of the state, by any person not possessed of or holding the required license, is hereby declared to be a public nuisance, and the same may be abated under any procedure now provided by law for the abatement of any public nuisance, and such abatement may be accomplished by injunction.

**HISTORY:** Acts 1919, ch. 158, § 1; Shan. Supp., § 5158a1; Code 1932, § 9316; T.C.A. (orig. ed.), § 23-313.

**NOTES: Section to Section References.**

This section (formerly § 23-313) is referred to in §§ 29-3-113, 57-5-204.

**Textbooks.**

Tennessee Jurisprudence, 15 *Tenn. Juris., Injunctions*, § 16.

**Law Reviews.**

Tennessee Bar Proceedings -- Report of Unauthorized Practice of Law Committee, 24 *Tenn. L. Rev.* 91.

Tennessee Civil Disabilities: A Systemic Approach (Neil P. Cohen), 41 *Tenn. L. Rev.* 253.

**LexisNexis 50 State Surveys, Legislation & Regulations**

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**Cited:**

*State ex rel. Webster v. Daugherty*, 530 S.W.2d 81, 1975 *Tenn. App. LEXIS 172 (Tenn. Ct. App. 1975)*.

**NOTES TO DECISIONS**

1. Definitions. 2. Application. 3. --Practice of Law. 4. --Practice of Medicine. 5. --Failure to Pay Tax. 6. Contempt. 7. Accrual of Action.

**1. Definitions.**

"License" under this section, refers to a license issued by a board or other authority, in its discretion, after examination, to engage in a business, profession, or occupation. *State ex rel. Thompson v. Dixie Finance Co.*, 152 *Tenn.* 306,

278 S.W. 59, 1925 Tenn. LEXIS 74 (1925).

"Other authority" refers to a body vested with authority, in discretion, to issue license after examination. *State ex rel. Thompson v. Dixie Finance Co.*, 152 Tenn. 306, 278 S.W. 59, 1925 Tenn. LEXIS 74 (1925).

## **2. Application.**

### **3. --Practice of Law.**

This law is applicable to a corporation acting as a collection agency which is practicing law without a license. *State v. Retail Credit Men's Ass'n*, 163 Tenn. 450, 43 S.W.2d 918, 1931 Tenn. LEXIS 136 (1931).

On facts found, a collecting agency was held to be unlawfully practicing law, though it claimed to have taken a assignment of claims to be collected. *State v. James Sanford Agency*, 167 Tenn. 339, 69 S.W.2d 895, 1933 Tenn. LEXIS 46 (1934).

Collection agency could employ an attorney by the authority of its principal and when directed by such principal could demand execution on judgments and aid in finding property from which payment could be enforced without being engaged in the practice of law. *State ex rel. District Attorney v. Lytton*, 172 Tenn. 91, 110 S.W.2d 313, 1937 Tenn. LEXIS 55 (1937).

### **4. --Practice of Medicine.**

This section is not applicable to enjoin one holding unrevoked license to practice medicine from practicing. *State ex rel. State Bd. of Medical Exmrs. v. Hartley*, 165 Tenn. 278, 54 S.W.2d 960, 1932 Tenn. LEXIS 46 (1932).

Where it was shown that a corporation in the business of making lenses and fitting and selling eyeglasses employed doctors, who occupied small offices in each store of the corporation, to examine the eyes of customers directed to them by employees of the corporation, with the guarantee of a fixed minimum weekly income, it was held that the contract employment of the doctors was illegal and against public policy or public welfare, and the corporation was guilty of illegally practicing optometry. *State ex rel. Loser v. National Optical Stores Co.*, 189 Tenn. 433, 225 S.W.2d 263, 1949 Tenn. LEXIS 439 (1949).

### **5. --Failure to Pay Tax.**

This section does not apply to one who has simply failed to pay a required privilege tax. *State ex rel. Thompson v. Dixie Finance Co.*, 152 Tenn. 306, 278 S.W. 59, 1925 Tenn. LEXIS 74 (1925).

## **6. Contempt.**

Contempt proceedings against defendant who violated injunction against unlawful practice of dentistry were proper even though judgment finding defendant guilty of unlawful practice was reversed since such judgment was voidable only rather than void. *Hooper v. State ex rel. Nichol*, 205 Tenn. 134, 325 S.W.2d 565, 1959 Tenn. LEXIS 348 (1959).

Criminal court had jurisdiction in proceeding for contempt of injunction prohibiting unlawful practice of dentistry. *Hooper v. State ex rel. Nichol*, 205 Tenn. 134, 325 S.W.2d 565, 1959 Tenn. LEXIS 348 (1959).

Injunction restraining person from unlawfully engaging in profession, business or occupation was in furtherance of the enforcement of criminal laws and the contempt of such an injunction is criminal rather than civil. *Hooper v. State ex rel. Nichol*, 205 Tenn. 134, 325 S.W.2d 565, 1959 Tenn. LEXIS 348 (1959).

## **7. Accrual of Action.**

Provision of this section permitting enjoining of operation of an unlawful business could not serve as basis of enjoining operation of crematory prior to time such operation commenced. *State ex rel. Cunningham v. Feezell*, 218 Tenn. 17, 400 S.W.2d 716, 1966 Tenn. LEXIS 549 (1966). See also § 29-3-101 and notes thereto.

## **Collateral References.**

53 C.J.S. Licenses § 66; 66 C. J. S. Nuisances § 9.

Right to maintain action to enjoin public nuisance as affected by existence of pollution control agency. 60 A.L.R.3d 665.

Nuisance 21-24, 79, 80.

**HIERARCHY NOTES:**

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*Tenn. Code Ann. § 29-3-113 (2011)*

**29-3-113. Relators in abatement of business or occupation.**

The writ of injunction provided for in § 29-3-112 may be sued out by the board, or commissioner, charged with the supervision of the particular business or profession; or by any person affected by such nuisance.

**HISTORY:** Acts 1919, ch. 158, § 2; Shan. Supp., § 5158a2; mod. Code 1932, § 9317; T.C.A. (orig. ed.), § 23-314.

**NOTES: Section to Section References.**

This section (formerly § 23-314) is referred to in § 57-5-204.

**Law Reviews.**

Tennessee Civil Disabilities: A Systemic Approach (Neil P. Cohen), *41 Tenn. L. Rev.* 253.

**LexisNexis 50 State Surveys, Legislation & Regulations**

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**Cited:**

*State ex rel. Webster v. Daugherty*, 530 S.W.2d 81, 1975 Tenn. App. LEXIS 172 (Tenn. Ct. App. 1975).

**NOTES TO DECISIONS**

1. Delay by Board. 2. License of Defendant. 3. Criminal Prosecution.

**1. Delay by Board.**

Delay on the part of the state board of architects in suing to enjoin one from practicing architecture is immaterial respecting the right to maintain such suit, since no estoppel can justify one in continuing to practice unlawfully, where such is denounced by a valid police statute. *State Board of Examiners for A. & E. v. Rodgers*, 167 Tenn. 374, 69 S.W.2d 1093, 1933 Tenn. LEXIS 50 (1934).

**2. License of Defendant.**

The statute does not authorize a suit to enjoin one holding an unrevoked license to practice medicine from practicing. *State ex rel. State Bd. of Medical Exmrs. v. Hartley*, 165 Tenn. 278, 54 S.W.2d 960, 1932 Tenn. LEXIS 46 (1932).

**3. Criminal Prosecution.**

Injunction suit is maintainable notwithstanding the pendency of a criminal prosecution of a defendant for unla

wfully practicing architecture. *State Board of Examiners for A. & E. v. Rodgers*, 167 Tenn. 374, 69 S.W.2d 1093, 1933 Tenn. LEXIS 50 (1934).

The fact that Acts 1935, ch. 30 provides that the practice of law without a license is a misdemeanor does not deprive a court of chancery of the right to enjoin such unlawful practice since § 29-3-113 expressly provides for injunctive relief where a person engages in a profession, business or occupation requiring a license without holding such a license. *Lamb v. Whitaker*, 171 Tenn. 485, 105 S.W.2d 105, 1937 Tenn. LEXIS 128 (1937).

**Collateral References.**

66 C.J.S. Nuisances §§ 77, 124.

Right to maintain action to enjoin public nuisance as affected by existence of pollution control agency. 60 A.L.R.3d 665.

Injunction 114(2).

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*Tenn. Code Ann. § 29-3-114 (2011)*

**29-3-114. Abatement incident to action for damages.**

In all suits brought for the recovery of damages resulting from any nuisance, and the finding that the matter complained of is a nuisance, the court exercising a sound discretion may immediately, upon petition of plaintiff, order or decline to order the nuisance to be abated.

**HISTORY:** Code 1858, § 3403 (deriv. Acts 1851-1852, ch. 146, § 2); Acts 1901, ch. 139, § 1; Shan., § 5158; Code 1932, § 9314; T.C.A. (orig. ed.), § 23-315.

**NOTES:**

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**NOTES TO DECISIONS**

1. Maintenance of Suit. 2. Right to Damages. 3. Abatement. 4. --Self Help. 5. --Court Action. 6. --Houses of Ill Fame. 7. --Livery Stables. 8. --Sale of Intoxicating Liquors. 9. --Smoke.

**1. Maintenance of Suit.**

Injunctive relief against the maintenance of a nuisance must be promptly applied for, or it will be refused upon the ground of laches. *Weidner v. Friedman*, 126 Tenn. 677, 151 S.W. 56, 1912 Tenn. LEXIS 84, 42 L.R.A. (n.s.) 1041 (1912).

The owner of a leasehold may maintain a suit to enjoin the maintenance of a private nuisance detrimental to the enjoyment or usable value of the premises during his holding. *Fox v. Corbitt*, 137 Tenn. 466, 194 S.W. 88, 1916 Tenn. LEXIS 91 (1916).

The fact that the tenant renews his lease of the property after the creation of the private nuisance does not prevent his being granted such relief. *Fox v. Corbitt*, 137 Tenn. 466, 194 S.W. 88, 1916 Tenn. LEXIS 91 (1916).

Where the nuisance and damages alleged were caused by the growth of branches and foliage of a hedge over the land of complainant for a time so long that the branches and foliage reached the house of complainant and there remained so long unmolested as to rot parts of the house and fence and leave the ground soggy even in extremely dry periods, and no complaint or notice through this necessarily long period of time was given the defendants, the case was one of the application of the rule that equity requires a party to assert his rights in a reasonable time after he discovers that he was being wronged, and the complainant was not entitled to relief under this section and § 29-3-115. *Granberry*

*v. Jones*, 188 Tenn. 51, 216 S.W.2d 721, 1949 Tenn. LEXIS 314 (1949), not Followed *State v. Layne*, 623 S.W.2d 629, 1981 Tenn. Crim. App. LEXIS 381 (Tenn. Crim. App. 1981).

## **2. Right to Damages.**

A public nuisance, causing peculiar and special damages to an individual, will be restrained and abated at his suit, as where the unauthorized construction and operation by a private corporation, for its own use, of a private railroad along a public street, which not only obstructed the public travel along the street, but destroyed the ingress and egress of the owner of the abutting lot. *Richi v. Chattanooga Brewing Co.*, 105 Tenn. 651, 58 S.W. 646, 1900 Tenn. LEXIS 118 (1900).

Under an injunction suit, by an individual who has suffered peculiar and special damages therefrom, the chancery court may ascertain and award the damages sustained as an incident to the injunctive relief granted. *Richi v. Chattanooga Brewing Co.*, 105 Tenn. 651, 58 S.W. 646, 1900 Tenn. LEXIS 118 (1900); *Madison v. Ducktown Sulphur, Copper & Iron Co.*, 113 Tenn. 331, 83 S.W. 658, 1904 Tenn. LEXIS 30 (1904), questioned, *American Smelting & Ref. Co. v. Godfrey*, 158 F. 225, 1907 U.S. App. LEXIS 3988; *Union Planters' Bank & Trust Co. v. Memphis Hotel Co.*, 124 Tenn. 649, 139 S.W. 715, 1911 Tenn. LEXIS 69 (1911).

In a suit by several complainants against two distinct defendants for injunction to abate a nuisance to their respective property, caused by defendants, and to recover damages therefor, upon the court's refusal to allow the injunction, damages may be awarded, and for this purpose an order may be entered separating the demand of each complainant, and making it a distinct case against each defendant complained of in the bill, to the end that the damages may be assessed against the two defendants separately. *Madison v. Ducktown Sulphur, Copper & Iron Co.*, 113 Tenn. 331, 83 S.W. 658, 1904 Tenn. LEXIS 30 (1904), questioned, *American Smelting & Ref. Co. v. Godfrey*, 158 F. 225, 1907 U.S. App. LEXIS 3988.

Although a private nuisance is temporary and abatable in character, the chancery court will, to avoid a multiplicity of suits, award damages accruing after the commencement of the suit up to the time of trial. *Fox v. Corbitt*, 137 Tenn. 466, 194 S.W. 88, 1916 Tenn. LEXIS 91 (1916).

## **3. Abatement.**

### **4. --Self Help.**

One having a right of action for private nuisance on his land, created by another, may help himself personally by abating it, if he can do so without a breach of the peace. *Walker v. Davis*, 139 Tenn. 475, 202 S.W. 78, 1917 Tenn. LEXIS 124 (1918).

### **5. --Court Action.**

The jurisdiction of the chancery court is not taken away by this section. *Lassater v. Garrett & Brown*, 63 Tenn. 368, 1874 Tenn. LEXIS 265 (1874).

In the exercise of its discretion to refuse an injunction the chancery court has power to impose upon the defendants as a condition annexed, that they shall pay the accrued damages, and may be required to execute a bond to secure the same, in default of which the injunction will be issued to continue during such default. *Madison v. Ducktown Sulphur, Copper & Iron Co.*, 113 Tenn. 331, 83 S.W. 658, 1904 Tenn. LEXIS 30 (1904), questioned, *American Smelting & Ref. Co. v. Godfrey*, 158 F. 225, 1907 U.S. App. LEXIS 3988.

This statute giving the circuit court a sound discretion for the abatement of the nuisance applies to the chancery court. *Madison v. Ducktown Sulphur, Copper & Iron Co.*, 113 Tenn. 331, 83 S.W. 658, 1904 Tenn. LEXIS 30 (1904), questioned, *American Smelting & Ref. Co. v. Godfrey*, 158 F. 225, 1907 U.S. App. LEXIS 3988.

Where, after the institution of a suit to restrain a private nuisance, and chancery jurisdiction has attached, the defendant voluntarily ceased to commit the nuisance, the court may establish and declare the right to an injunction, and to maintain the suit in chancery that subsidiary rights may be enforced. *Fox v. Corbitt*, 137 Tenn. 466, 194 S.W. 88, 1916 Tenn. LEXIS 91 (1916).

### **6. --Houses of Ill Fame.**

The chancery court has jurisdiction to enjoin the owner of property from keeping or permitting a house of ill fame to be kept therein, at the suit of owners of adjacent or contiguous property, adapted and used for business and residence purposes, where, by reason of boisterous and vulgar conversation, and the public, immoral, and indecent conduct and exposure of person of the inmates of the house and their visitors, it has seriously affected and impaired the value and

rental productiveness of the complainant's property. *Weakley v. Page*, 102 Tenn. 178, 53 S.W. 551, 1898 Tenn. LEXIS 17, 46 L.R.A. 552 (1898); *Weidner v. Friedman*, 126 Tenn. 677, 151 S.W. 56, 1912 Tenn. LEXIS 84, 42 L.R.A. (n.s.) 1041 (1912).

A bill to enjoin the maintenance of a congeries of disorderly houses which have existed and have been in operation there for more than 25 years, will be dismissed for laches. *Weidner v. Friedman*, 126 Tenn. 677, 151 S.W. 56, 1912 Tenn. LEXIS 84, 42 L.R.A. (n.s.) 1041 (1912).

Disorderly houses cannot be prevented by injunction, at the suit of a private person, except when he shows special and peculiar injury to himself, different in kind from that suffered by the general public. *Weidner v. Friedman*, 126 Tenn. 677, 151 S.W. 56, 1912 Tenn. LEXIS 84, 42 L.R.A. (n.s.) 1041 (1912); *State v. Raghianti*, 129 Tenn. 560, 167 S.W. 689, 1914 Tenn. LEXIS 146 (1914).

The chancery court has no jurisdiction of bills by private property owners to prevent the operation of a congeries of disorderly houses in a "red light district," by an injunction against the several owners, proprietors, and inmates, where it is practically impossible to apportion the blame, or to ascertain from the evidence the jurisdictional facts as to how much of each house is responsible for the special injury alleged. *Weidner v. Friedman*, 126 Tenn. 677, 151 S.W. 56, 1912 Tenn. LEXIS 84, 42 L.R.A. (n.s.) 1041 (1912); *State v. Raghianti*, 129 Tenn. 560, 167 S.W. 689, 1914 Tenn. LEXIS 146 (1914).

#### **7. --Livery Stables.**

A livery stable, though erected and maintained adjacent to city residence property, is not per se a nuisance; but it becomes a nuisance if kept and used in such manner as to impair the value of such adjacent property, and destroy the comfort of those residing therein, by reason of the undue accumulation of filth, the emanation therefrom of foul and offensive odors, and the disturbance of boisterous conduct and unnecessary noise at unusual hours. *Harvey v. Consumers Ice Co.*, 104 Tenn. 583, 58 S.W. 316, 1900 Tenn. LEXIS 32 (1900).

#### **8. --Sale of Intoxicating Liquors.**

The sale of intoxicating liquors may be enjoined, without showing special injury, because the statute so provides. *State v. Raghianti*, 129 Tenn. 560, 167 S.W. 689, 1914 Tenn. LEXIS 146 (1914).

Although a saloon is operated in violation of a criminal statute and is a public nuisance suppressible by the state, it will, for the protection of property, be restrained as a private nuisance, if complainant can show that he suffers in consequence some substantial and special damage different in kind from that suffered by the public at large. *Fox v. Corbitt*, 137 Tenn. 466, 194 S.W. 88, 1916 Tenn. LEXIS 91 (1916).

#### **9. --Smoke.**

Injunction against smoke nuisances will not be granted where it would be against public policy, and the precedent would be intolerable. *Union Planters' Bank & Trust Co. v. Memphis Hotel Co.*, 124 Tenn. 649, 139 S.W. 715, 1911 Tenn. LEXIS 69 (1911).

#### **Collateral References.**

58 Am. Jur. 2d Nuisances §§ 176-181.

66 C.J.S. Nuisances § 139.

Nuisance 57.

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**GO TO THE TENNESSEE ANNOTATED STATUTES ARCHIVE DIRECTORY**

*Tenn. Code Ann. § 29-3-115 (2011)*

**29-3-115. Proof in action for damages.**

On the trial of such action for the recovery of damages, either party may show by proof the extent, if any, of the injury or injuries complained of, and how the alleged nuisance is caused or originated.

**HISTORY:** Acts 1901, ch. 139, § 2; Shan., § 5158a1; Code 1932, § 9315; T.C.A. (orig. ed.), § 23-316.

**NOTES: Collateral References.**

*58 Am. Jur. 2d Nuisances §§ 136-139.*

66 C.J.S. Nuisances §§ 149, 151.

Nuisance 49.

**LexisNexis 50 State Surveys, Legislation & Regulations**

Nuisance

**HIERARCHY NOTES:**

Tit. 29 Note