

CHAPTER 617

ABORTION; OBSCENITY; HOUSES OF ILL-FAME

617.23 Indecent exposure; penalties.
 617.80 Definitions.
 617.81 Nuisance; acts constituting;
 injunction; notice.

617.82 Temporary order.
 617.85 Nuisance; motion to cancel lease.

617.23 INDECENT EXPOSURE; PENALTIES.

(a) A person is guilty of a misdemeanor who in any public place, or in any place where others are present:

- (1) willfully and lewdly exposes the person's body, or the private parts thereof;
- (2) procures another to expose private parts; or
- (3) engages in any open or gross lewdness or lascivious behavior, or any public indecency other than behavior specified in clause (1) or (2) or this clause.

(b) A person is guilty of a gross misdemeanor if:

- (1) the person violates this section in the presence of a minor under the age of 16; or
- (2) the person violates this section after having been previously convicted of violating this section, sections 609.342 to 609.3451, or a statute from another state in conformity with any of those sections.

History: 1995 c 226 art 2 s 31

617.80 DEFINITIONS.

[For text of subd 1, see M.S.1994]

Subd. 2. Building. "Building" means a structure suitable for human shelter, a commercial structure that is maintained for business activities that involve human occupation, any portion of the structure, or the land surrounding the structure. If the building is a multiunit dwelling, a hotel or motel, or a commercial or office building, the term "building," for purposes of sections 617.80 to 617.87, means only the portion of the building within or outside the structure in which a nuisance is maintained or permitted, such as a dwelling unit, room, suite of rooms, office, common area, storage area, garage, or parking area.

[For text of subd 3, see M.S.1994]

Subd. 4. Prostitution. "Prostitution" or "prostitution-related activity" means conduct that would violate sections 609.321 to 609.324.

Subd. 5. Gambling. "Gambling" or "gambling-related activity" means conduct that would violate sections 609.75 to 609.762.

[For text of subs 6 and 7, see M.S.1994]

Subd. 8. Interested party. "Interested party," for purposes of sections 617.80 to 617.87, means any known lessee or tenant of a building or affected portion of a building; any known agent of an owner, lessee, or tenant; or any other person who maintains or permits a nuisance and is known to the city attorney, county attorney, or attorney general.

Subd. 9. Prosecuting attorney. "Prosecuting attorney" means the attorney general, county attorney, city attorney, or attorney serving the jurisdiction where the nuisance is located.

History: 1995 c 244 s 26-30

617.81 NUISANCE; ACTS CONSTITUTING; INJUNCTION; NOTICE.

[For text of subd 1, see M.S.1994]

Subd. 2. Acts constituting a nuisance. (a) For purposes of sections 617.80 to 617.87, a public nuisance exists upon proof of two or more separate behavioral incidents of one or

more of the following, committed within the previous 12 months within the building, or if the building contains more than one rental unit: (1) within a single rental unit; or (2) within two or more rental units leased or controlled by the same person:

- (1) prostitution or prostitution-related activity committed within the building;
- (2) gambling or gambling-related activity committed within the building;
- (3) keeping or permitting a disorderly house within the building;
- (4) unlawful sale, possession, storage, delivery, giving, manufacture, cultivation, or use of controlled substances committed within the building;
- (5) unlicensed sales of alcoholic beverages committed within the building in violation of section 340A.401;
- (6) unlawful sales or gifts of alcoholic beverages by an unlicensed person committed within the building in violation of section 340A.503, subdivision 2, clause (1); or
- (7) unlawful use or possession of a firearm in violation of section 609.66, subdivision 1a, 609.67, or 624.713, committed within the building.

(b) Proof of a nuisance exists if each of the elements of the conduct constituting the nuisance is established by clear and convincing evidence.

Subd. 2a. [Repealed, 1995 c 244 s 42]

Subd. 3. [Repealed, 1995 c 244 s 42]

Subd. 4. **Notice.** (a) If a prosecuting attorney has reason to believe that a nuisance is maintained or permitted in the jurisdiction the prosecuting attorney serves, and intends to seek abatement of the nuisance, the prosecuting attorney shall provide the written notice described in paragraph (b), by personal service or certified mail, return receipt requested, to the owner and all interested parties known to the prosecuting attorney.

(b) The written notice must:

- (1) state that a nuisance as defined in subdivision 2 is maintained or permitted in the building and must specify the kind or kinds of nuisance being maintained or permitted;
- (2) summarize the evidence that a nuisance is maintained or permitted in the building, including the dates on which nuisance-related activities are alleged to have occurred;
- (3) inform the recipient that failure to abate the conduct constituting the nuisance or to otherwise resolve the matter with the prosecuting attorney within 30 days of service of the notice may result in the filing of a complaint for relief in district court that could, among other remedies, result in enjoining the use of the building for any purpose for one year or, in the case of a tenant, could result in cancellation of the lease; and
- (4) inform the owner of the options available under section 617.85.

History: 1995 c 244 s 31,32

617.82 TEMPORARY ORDER.

Whenever a prosecuting attorney has cause to believe that a nuisance described in section 617.81, subdivision 2, exists within the jurisdiction the attorney serves, the prosecuting attorney may by verified petition seek a temporary injunction in district court in the county in which the alleged public nuisance exists, provided that at least 30 days have expired since service of the notice required under section 617.81, subdivision 4. No temporary injunction may be issued without a prior show cause notice of hearing to the respondents named in the petition and an opportunity for the respondents to be heard. Upon proof of a nuisance described in section 617.81, subdivision 2, the court shall issue a temporary injunction. Any temporary injunction issued must describe the conduct to be enjoined.

History: 1995 c 244 s 33

617.85 NUISANCE; MOTION TO CANCEL LEASE.

Where notice is provided under section 617.81, subdivision 4, that an abatement of a nuisance is sought and the circumstances that are the basis for the requested abatement involved the acts of a commercial or residential tenant or lessee of part or all of a building, the owner of the building that is subject to the abatement proceeding may file before the court that has jurisdiction over the abatement proceeding a motion to cancel the lease or otherwise

secure restitution of the premises from the tenant or lessee who has maintained or conducted the nuisance. The owner may assign to the prosecuting attorney the right to file this motion. In addition to the grounds provided in chapter 566, the maintaining or conducting of a nuisance as defined in section 617.81, subdivision 2, by a tenant or lessee, is an additional ground authorized by law for seeking the cancellation of a lease or the restitution of the premises. It is no defense to a motion under this section by the owner or the prosecuting attorney that the lease or other agreement controlling the tenancy or leasehold does not provide for eviction or cancellation of the lease upon the ground provided in this section.

Upon a finding by the court that the tenant or lessee has maintained or conducted a nuisance in any portion of the building, the court shall order cancellation of the lease or tenancy and grant restitution of the premises to the owner. The court must not order abatement of the premises if the court:

(a) cancels a lease or tenancy and grants restitution of that portion of the premises to the owner; and

(b) further finds that the acts constituting the nuisance as defined in section 617.81, subdivision 2, were committed by the tenant or lessee whose lease or tenancy has been canceled pursuant to this section and the tenant or lessee was not committing the acts in conjunction with or under the control of the owner.

History: 1995 c 244 s 34