

CHAPTER 1

[Initiative Measure No. 335]

MORAL NUISANCES

AN ACT Relating to moral nuisances; amending section 1, chapter 127, Laws of 1913 and RCW 7.48.050; amending section 2, chapter 127, Laws of 1913 and RCW 7.48.060; amending section 3, chapter 127, Laws of 1913 and RCW 7.48.070; amending section 4, chapter 127, Laws of 1913 and RCW 7.48.080; amending section 5, chapter 127, Laws of 1913 as amended by section 1, chapter 94, Laws of 1927 and RCW 7.48.090; amending section 6, chapter 127, Laws of 1913 as amended by section 2, chapter 94, Laws of 1927 and RCW 7.48.100; and adding new sections to chapter 127, Laws of 1913 and to chapter 7.48 RCW.

Be it enacted by the People of the State of Washington:

Section 1. Section 1, chapter 127, Laws of 1913 and RCW 7.48.050 are each amended to read as follows:

~~((Whoever shall erect, establish, maintain, continue, use, own or lease any building or place used for the purpose of lewdness, assignation or prostitution is guilty of a nuisance, and the building or place, or the ground itself, in or upon which lewdness, assignation or prostitution is conducted, permitted or carried on, continued or exists, and the furniture, fixtures, musical instruments, and contents are also declared a nuisance, and shall be enjoined and abated as hereinafter provided.))~~ The definitions set forth in this section shall apply throughout this chapter as they relate to moral nuisances.

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

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

(a) Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and

(b) Which depicts or describes patently offensive representations or descriptions of:

(i) Ultimate sexual acts, normal or perverted, actual or simulated; or

(ii) Masturbation, excretory functions, or lewd exhibition of the genitals or genital area.

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

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

(4) "Matter" shall mean a motion picture film or a publication or both.

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

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

(a) Film or plate negative;

(b) Film or plate positive;

(c) Film designed to be projected on a screen for exhibition;

(d) Films, glass slides, or transparencies, either in negative or positive form, designed for exhibition by projection on a screen;

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

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

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

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

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

NEW SECTION. Sec. 2. There is added to chapter 127, Laws of 1913 and to chapter 7.48 RCW a new section to read as follows:

The following are declared to be moral nuisances:

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

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

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

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

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

(6) Every place which, as a regular course of business, is used for the purpose of lewdness, assignation, or prostitution, and every such place in or upon which acts of lewdness, assignation, or prostitution are conducted, permitted, carried on, continued, or exist;

(7) All public houses or places of resort where illegal gambling is carried on or permitted; all houses or places within any city, town, or village, or upon any public road, or highway where drunkenness, illegal gambling,

fighting, or breaches of the peace are carried on or permitted; all opium dens, or houses, or places of resort where opium smoking is permitted.

NEW SECTION. Sec. 3. There is added to chapter 127, Laws of 1913 and to chapter 7.48 RCW a new section to read as follows:

The following are also declared to be moral nuisances, as personal property used in conducting and maintaining a moral nuisance:

(1) All moneys paid as admission price to the exhibition of any lewd film found to be a moral nuisance;

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

(3) The furniture, fixtures, and contents of a place which is a moral nuisance.

From and after service of a copy of the notice of hearing of the application for a preliminary injunction, provided for in section 8 of this 1977 amendatory act, upon the place or its manager, acting manager, or person then in charge, all such persons are deemed to have knowledge of the acts, conditions, or things which make such place a moral nuisance. Where the circumstantial proof warrants a determination that a person had knowledge of the moral nuisance prior to such service of process, the court shall make such finding.

NEW SECTION. Sec. 4. There is added to chapter 127, Laws of 1913 and to chapter 7.48 RCW a new section to read as follows:

In addition to any other remedy provided by law, any act, occupation, structure, or thing which is a moral nuisance may be abated, and the person doing such act or engaged in such occupation, and the owner and agent of the owner of any such structure or thing, may be enjoined as provided in this chapter.

NEW SECTION. Sec. 5. There is added to chapter 127, Laws of 1913 and to chapter 7.48 RCW a new section to read as follows:

The attorney general, prosecuting attorney, city attorney, city prosecutor, or any citizen of the county may maintain an action of an equitable nature in the name of the state of Washington upon the relation of such attorney general, prosecuting attorney, city attorney, city prosecutor, or citizen, to abate a moral nuisance, to perpetually enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a moral nuisance.

If such action is instituted by a private person, the complainant shall execute a bond to the person against whom complaint is made, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than five hundred dollars, to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, and the court finds there was no reasonable grounds or cause for said action and the case is dismissed for that reason before trial or for want of prosecution. No bond

shall be required of the attorney general, prosecuting attorney, city attorney, or city prosecutor, and no action shall be maintained against such public official for his official action when brought in good faith.

Sec. 6. Section 2, chapter 127, Laws of 1913 and RCW 7.48.060 are each amended to read as follows:

~~((Whenever a nuisance exists, as defined in RCW 7.48.050, the prosecuting attorney or any citizen of the county may maintain an action in equity in the name of the state of Washington upon the relation of such prosecuting attorney or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same, and the owner or the agent of the building or ground upon which said nuisance exists. In such action, the court or judge may upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary injunction if it shall be made to appear to the satisfaction of the court or judge that such nuisance exists. At least three days' notice in writing shall be given the defendant of the hearing of the application. Any violation of the provisions of injunction herein provided shall be a contempt as hereinafter provided:))~~ The action provided for in section 5 of this 1977 amendatory act shall be brought in any court of competent jurisdiction in the county in which the property is located. Such action shall be commenced by the filing of a verified complaint alleging the facts constituting the nuisance. After the filing of said complaint, application for a temporary injunction may be made to the court in which the action is filed, or to a judge thereof, who shall grant a hearing within ten days after the filing.

NEW SECTION. Sec. 7. There is added to chapter 127, Laws of 1913 and to chapter 7.48 RCW a new section to read as follows:

Where such application for a temporary injunction is made, the court or judge thereof may, on application of the complainant showing good cause, issue an ex parte restraining order, restraining the defendant and all other persons from removing or in any manner interfering with the personal property and contents of the place where such nuisance is alleged to exist, until the decision of the court or judge granting or refusing such temporary injunction and until the further order of the court thereon, except that pending such decision, the stock in trade may not be so restrained, but an inventory and full accounting of all business transactions may be required.

The restraining order may be served by handing to and leaving a copy of such order with any person in charge of such place or residing therein, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place, or by both such delivery and posting. The officer serving such restraining order shall forthwith make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance.

Any violation of such restraining order is a contempt of court, and where such order is posted, mutilation or removal thereof while the same

remains in force is a contempt of court if such posted order contains therein a notice to that effect.

NEW SECTION. Sec. 8. There is added to chapter 127, Laws of 1913 and to chapter 7.48 RCW a new section to read as follows:

A copy of the complaint, together with a notice of the time and place of the hearing of the application for a temporary injunction, shall be served upon the defendant at least three days before such hearing. The place may also be served by posting such papers in the same manner as is provided for in section 7 of this 1977 amendatory act in the case of a restraining order. If the hearing is then continued at the instance of any defendant, the temporary writ as prayed shall be granted as a matter of course.

Before or after the commencement of the hearing of an application for a temporary injunction, the court, on application of either of the parties or on its own motion, may order the trial of the action on the merits to be advanced and consolidated with the hearing on the application for the temporary injunction. Any evidence received upon an application for a temporary injunction which would be admissible in the trial on the merits becomes a part of the record of the trial and need not be repeated as to such parties at the trial on the merits.

NEW SECTION. Sec. 9. There is added to chapter 127, Laws of 1913 and to chapter 7.48 RCW a new section to read as follows:

If upon hearing, the allegations of the complaint are sustained to the satisfaction of the court or judge, the court or judge shall issue a temporary injunction without additional bond, restraining the defendant and any other person from continuing the nuisance.

If at the time the temporary injunction is granted, it further appears that the person owning, in control of, or in charge of the nuisance so enjoined had received three days notice of the hearing, then the court shall declare a temporary forfeiture of the use of the real property upon which such public nuisance is located and the personal property located therein, and shall forthwith issue an order closing such place against its use for any purpose until a final decision is rendered on the application for a permanent injunction, unless:

(1) The person owning, in control of, or in charge of such nuisance shows to the satisfaction of the court or judge, by competent and admissible evidence which is subject to cross-examination, that the nuisance complained of has been abated by such person; or

(2) The owner of such property, as a "good faith" lessor, has taken action to void said lease as is authorized by section 17 of this 1977 amendatory act.

Such order shall also continue in effect for such further period as the order authorized in section 7 of this 1977 amendatory act provides. If no order has been issued pursuant to section 7 of this 1977 amendatory act, then an order restraining the removal or interference with the personal

property and contents located therein shall be issued. Such restraining order shall be served and the inventory of such property shall be made and filed as provided for in section 7 of this 1977 amendatory act.

Such order shall also require such persons to show cause within thirty days why such closing order should not be made permanent, as provided for in section 15 of this 1977 amendatory act.

NEW SECTION. Sec. 10. There is added to chapter 127, Laws of 1913 and to chapter 7.48 RCW a new section to read as follows:

The owner of any real or personal property to be closed or restrained, or which has been closed or restrained, may appear after the filing of the complaint and before the hearing on the application for a permanent injunction.

The court, if satisfied of the good faith of the owner of the real property and of the innocence on the part of any owner of the personal property of any knowledge of its use as a nuisance, and that with reasonable care and diligence such owner could not have known thereof shall, at the time of the hearing on the application for the temporary injunction and upon payment of all costs incurred and upon the filing of a bond by the owner of the real property with sureties to be approved by the clerk in the full value of the property to be ascertained by the court, conditioned that such owner will immediately abate the nuisance and prevent the same from being established or kept, refrain from issuing any order closing such real property or restraining the removal or interference with such personal property, and, if such temporary injunction has already been issued, shall cancel said order and shall deliver such real or personal property, or both, to the respective owners thereof. The release of any real or personal property under this section shall not release it from any judgment, lien, penalty, or liability to which it may be subjected by law.

Sec. 11. Section 3, chapter 127, Laws of 1913 and RCW 7.48.070 are each amended to read as follows:

~~((In such action evidence of the general reputation of the place shall be admissible for the purpose of proving the existence of said nuisance. If the complaint is filed by a citizen, 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 the dismissal approved by the prosecuting attorney in writing or in open court. If the court is of the opinion that the action ought not to be dismissed, he may direct the prosecuting attorney to prosecute such action to judgment, and if the action is continued more than once, upon the application of either party, any citizen of the county or the prosecuting attorney may be substituted for the complaining party and prosecute said action to judgment. If the action is brought by a citizen and the court finds there was no reasonable ground or cause for said action, the costs may be taxed to such citizen who originally brought such action.))~~ The action provided for in section 5 of this 1977 amendatory act

shall be set down for trial at the first term of the court and shall have precedence over all other cases except crimes, election contests, or injunctions.

NEW SECTION. Sec. 12. There is added to chapter 127, Laws of 1913 and to chapter 7.48 RCW a new section to read as follows:

In such action, an admission or finding of guilty of any person under the criminal laws against lewdness, prostitution, or assignation at any such place is admissible for the purpose of proving the existence of such nuisance, and is prima facie evidence of such nuisance and of knowledge of, and of acquiescence and participation therein, on the part of the person charged with maintaining such nuisance.

NEW SECTION. Sec. 13. There is added to chapter 127, Laws of 1913 and to chapter 7.48 RCW a new section to read as follows:

At all hearings upon the merits, evidence of the general reputation of the building or place constituting the alleged nuisance, of the inmates thereof, and of those resorting thereto, is admissible for the purpose of proving the existence of such nuisance.

NEW SECTION. Sec. 14. There is added to chapter 127, Laws of 1913 and to chapter 7.48 RCW a new section to read as follows:

If the action is brought by a person who is a citizen of the county, and the court finds that there were no reasonable grounds or probable cause for bringing said action, and the case is dismissed before trial for that reason or for want of prosecution, the costs, including attorney's fees, may be taxed to such person.

If the existence of the nuisance is established upon the trial, a judgment shall be entered which shall perpetually enjoin the defendant and any other person from further maintaining the nuisance at the place complained of, and the defendant from maintaining such nuisance elsewhere. The entire expenses of such abatement, including attorney's fees, shall be recoverable by the plaintiff as a part of his costs of the lawsuit.

If the complaint is filed by a person who is a citizen of the county, it shall not be dismissed except upon a sworn statement by the complainant and his attorney, setting forth the reason why the action should be dismissed and the dismissal approved by the prosecuting attorney in writing or in open court. If the judge is of the opinion that the action should not be dismissed, he may direct the prosecuting attorney to prosecute said action to judgment at the expense of the county, and if the action is continued for more than one term of court, any person who is a citizen of the county or has an office therein, or the attorney general, the prosecuting attorney, city attorney, or city prosecutor, may be substituted for the complainant and prosecute said action to judgment.

NEW SECTION. Sec. 15. There is added to chapter 127, Laws of 1913 and to chapter 7.48 RCW a new section to read as follows:

If the existence of a nuisance is admitted or established in an action as provided for in section 5 of this 1977 amendatory act or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the place of all personal property and contents used in conducting the nuisance and not already released under authority of the court as provided for in sections 9 and 10 of this 1977 amendatory act, 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. Lewd matter shall be destroyed and shall not be sold.

Such judgment shall impose a penalty of three hundred dollars for the maintenance of such nuisance, which penalty shall be imposed against the person or persons found to have maintained the nuisance, and, in case any owner or agent of the building found to have had actual or constructive notice of the maintenance of such nuisance, against such owner or agent, and against the building kept or used for the purposes of maintaining a moral nuisance, which penalty shall be collected by execution as in civil actions, and when collected, shall be paid into the current expense fund of the county in which the judgment is had.

Such order shall also require the renewal for one year of any bond furnished by the owner of the real property, as provided in section 10 of this 1977 amendatory act or, if not so furnished, shall continue for one year any closing order issued at the time of granting the temporary injunction, or, if no such closing order was then issued, shall include an order directing the effectual closing of the place against its use for any purpose and keeping it closed for a period of one year unless sooner released.

The owner of any place closed and not released under bond may then appear and obtain such release in the manner and upon fulfilling the requirements provided in section 10 of this 1977 amendatory act.

Owners of unsold personal property and contents 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 such use thereof, and that with reasonable care and diligence they could not have known thereof. If such innocence is established, such unsold personal property and contents shall be delivered to the owner, otherwise it shall be sold as provided in this section. For removing and selling the personal property and contents, 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 place and keeping it closed, a reasonable sum shall be allowed by the court.

Sec. 16. Section 4, chapter 127, Laws of 1913 and RCW 7.48.080 are each amended to read as follows:

In case of the violation of any injunction granted under the provisions of RCW 7.48.050 through (~~7.48.110~~) 7.48.100 as now or hereafter amended,

the court or judge may summarily try and punish the offender. The proceedings shall be commenced by filing with the clerk of the court an information under oath, setting out the alleged facts constituting such violation, upon which the court or judge shall cause an attachment to issue, under which the defendant shall be arrested. The trial may be had upon ((~~affidavit~~)) affidavits, or either party may demand the production and oral examination of the witnesses. A party found guilty of contempt under the provisions of this section shall be punished by a fine of not less than two hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than three nor more than six months, or by both fine and imprisonment.

NEW SECTION. Sec. 17. There is added to chapter 127, Laws of 1913 and to chapter 7.48 RCW a new section to read as follows:

If a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of maintaining a moral nuisance, such use makes void at the option of the owner the lease or other title under which he holds, and without any act of the owner causes the right of possession to revert and vest in such owner, who may without process of law make immediate entry upon the premises.

Sec. 18. Section 5, chapter 127, Laws of 1913 as amended by section 1, chapter 94, Laws of 1927 and RCW 7.48.090 are each amended to read as follows:

~~((If the existence of a nuisance be established in an action as provided in RCW 7.48.050 through 7.48.110, or in a criminal proceeding, 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 where such nuisance is maintained, of all furniture, musical instruments and movable property, used in conducting the nuisance, and may direct the sale thereof in the manner provided for the sale of chattels under execution, and there shall be entered as a part of the judgment in the case, an order effectually closing the building or place against its use for any purpose, and so keeping it closed for a period of not exceeding six months, and such judgment shall contain a decree perpetually enjoining the person or persons found to have maintained such nuisance, from maintaining such nuisance, and such judgment shall impose a penalty of three hundred dollars for the maintenance of such nuisance, which penalty shall be imposed against the person or persons found to have maintained the nuisance, and, in case the owner, or agent, of the building is found to have had actual or constructive notice of the maintenance of such nuisance, against such owner, or agent, and against the building kept or used for the purposes prohibited by RCW 7.48.050 through 7.48.110, which penalty shall be collected by execution as in civil actions, and when collected, shall be paid into the current expense fund of the county in which the judgment is had. If any person shall break and enter or use a building or place so directed to be closed, he shall be punished as for~~

~~contempt as provided in RCW 7.48.080. For removing and selling all movable property, and collecting the penalty, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property, or collecting money, on execution, and for closing the premises and keeping them closed, a reasonable sum shall be allowed by the court.)) Lewd matter is contraband, and there are no property rights therein. All personal property declared to be a moral nuisance in sections 2 and 3 of this 1977 amendatory act and all moneys and other consideration declared to be a moral nuisance under section 4 of this 1977 amendatory act are the subject of forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited, or otherwise used. Such moneys may be traced to and shall be recoverable from persons who, under section 8 of this 1977 amendatory act, have knowledge of the nuisance at the time such moneys are received by them.~~

Upon judgment against the defendants in legal proceedings brought pursuant to RCW 7.48.050 through 7.48.100 as now or hereafter amended, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a public nuisance under this section. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such matter is sold or exhibited, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise and as partial restitution for damages done to the public welfare, public health, and public morals.

Where the action is brought pursuant to RCW 7.48.050 through 7.48.100 as now or hereafter amended, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to the following:

- (1) Investigative costs;
- (2) Court costs;
- (3) Reasonable attorney's fees arising out of the preparation for and trial of the cause, appeals therefrom, and other costs allowed on appeal;
- (4) Printing costs of trial and appellate briefs, and all other papers filed in such proceedings.

Sec. 19. Section 6, chapter 127, Laws of 1913 as amended by section 2, chapter 94, Laws of 1927 and RCW 7.48.100 are each amended to read as follows:

~~((The proceeds of the sale of the personal property, as provided in RCW 7.48.090, shall be applied in payment of the costs of the action and abatement, and the penalty imposed upon the owners of such personal property, and the balance, if any, shall be paid to the person owning such property prior to said sale.)) The provisions of any criminal statutes with respect to the exhibition of, or the possession with the intent to exhibit, any obscene~~

film shall not apply to a motion picture projectionist, usher, or ticket taker acting within the scope of his employment, if such projectionist, usher, or ticket taker (1) has no financial interest in the place wherein he is so employed, other than his salary, and (2) freely and willingly gives testimony regarding such employment in any judicial proceedings brought under RCW 7.48.050 through 7.48.100 as now or hereafter amended, including pretrial discovery proceedings incident thereto, when and if such is requested, and upon being granted immunity by the trial judge sitting in such matters.

NEW SECTION. Sec. 20. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

Filed in Office of Secretary of State January 18, 1977.

Passed by the vote of the people at the November 8, 1977 state general election.

Proclamation signed by the Governor, December 8, 1977.

CHAPTER 2

[Initiative Measure No. 345]

SALES AND USE TAX EXEMPTION—FOOD PRODUCTS

AN ACT Relating to revenue and taxation; amending section 82.08.030, chapter 15, Laws of 1961 as last amended by section 10, chapter 291, Laws of 1975 1st ex. sess. and RCW 82.08.030; amending section 82.12.030, chapter 15, Laws of 1961 as last amended by section 11, chapter 291, Laws of 1975 1st ex. sess. and RCW 82.12.030; and prescribing an effective date.

Be it enacted by the People of the State of Washington:

Section 1. Section 82.08.030, chapter 15, Laws of 1961 as last amended by section 10, chapter 291, Laws of 1975 1st ex. sess. and RCW 82.08.030 are each amended to read as follows:

The tax hereby levied shall not apply to the following sales:

(1) Casual and isolated sales of property or service, unless made by a person who is engaged in a business activity taxable under chapters 82.04, 82.16 or 82.28 RCW: PROVIDED, That the exemption provided by this paragraph shall not be construed as providing any exemption from the tax imposed by chapter 82.12 RCW;

(2) Sales made by persons in the course of business activities with respect to which tax liability is specifically imposed under chapter 82.16 RCW, when the gross proceeds from such sales must be included in the measure of the tax imposed under said chapter;

(3) The distribution and newsstand sale of newspapers;

(4) Sales which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States;