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# GAMBLING

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## CHAPTER 172.

[H. B. No. 228—Hill of Cass.]

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### COMMON NUISANCE.

AN ACT Declaring to be Common Nuisances any House, Building, Room or Place Where Gambling Paraphernalia are Kept, and Where Persons Resort, or are Permitted to Resort for Gambling or Disorderly Purpose, and Prescribing Remedies for the Prevention, and Penalties for the Violation of the Same.

*Be it Enacted by the Legislative Assembly of the State of North Dakotas*

§ 1. **GAMBLING HOUSES DECLARED TO BE PUBLIC NUISANCES, PENALTY FOR MAINTAINING.]** Any house, building, room or place where any table, cards, dice, or any article of apparatus whatever, useful or intended to be used in playing any game of cards, or faro, or other game of chance, upon which property or money is usually wagered, or where persons resort, or are permitted to resort for gambling, or any disorderly house, building, room, or place of public resort, by which the peace, comfort, or decency of the immediate neighborhood is habitually disturbed, are hereby declared to be a common nuisance; and if the existence of such nuisance is established, either in a criminal or equitable action, upon the judgment of a jury, court, or judge having jurisdiction, finding such place to be a nuisance, the sheriff, his deputy, or any constable of the proper county, or marshal of any city where the same is located shall be directed to shut up and abate such place by taking possession thereof, and close the same against its use by any one, and keep the same closed for the period of one (1) year from the date of the judgment decreeing such place to be a common nuisance; and the owner or keeper thereof, or anyone aiding, abetting, or assisting such owner or keeper, shall, if in a criminal action, upon conviction, be adjudged guilty of maintainng a common nuisance and be punished by a fine of not less than twenty-five (\$25.00) dollars, nor more than one thousand (\$1,000.00) dollars, and by imprisonment in the county jail not to exceed one (1) year.

§ 2. **INJUNCTION. PENALTY FOR VIOLATION.]** The attorney general, his assistant, or the state's attorney of the

county where such nuisance exists or is maintained, may maintain an action in the name of the state to abate and to perpetually enjoin the same. The injunction shall be granted at the commencement of the action in the usual manner of granting injunctions, except that the affidavit, or complaint, or both, may be made by the state's attorney, the attorney general, or his assistant, upon information and belief. Any person violating the terms of any injunction, either temporary or permanent, granted in such proceedings, shall be punished for contempt by a fine of not less than twenty-five (\$25.00) dollars, nor more than one thousand (\$1,000.00) dollars, and by imprisonment in the county jail not to exceed one (1) year. In case judgment is rendered in favor of the plaintiff in any action brought under the provisions of this Section, either civil or criminal, the court or judge rendering the same shall also render judgment for a reasonable attorney's fee in such action in favor of the plaintiff and against the defendants therein, which attorney's fee shall be taxed and collected as other costs therein, and when collected paid to the attorney or attorneys for the plaintiff therein. *Provided*, if such attorney is the attorney general or state's attorney, such attorney's fees shall be paid into the county treasury and credited to the general fund of said county.

§ 3. OFFICERS TO TAKE POSSESSION, WHEN.] If, at the time of granting the temporary injunction described in Section 2 above, an affidavit shall be presented to the court or judge, stating or showing that any of the offenses mentioned in Section 1 of this Act are transpiring or being carried on upon the premises mentioned in the affidavit, particularly describing the said premises where said nuisances are located contrary to law, the court or judge must, at the time of granting the injunction, issue his warrant commanding the officer serving said writ of injunction at the time of such service to take possession of said house, building, room, or place, and take the same into his custody and securely lock and hold the same to abide the final judgment in the action. The expenses for such holding to be taxed as a part of the costs in the action; and such officer shall also take and hold possession of all personal property found on such premises, and shall take and hold the possession of such premises and keep the same closed until final judgment is entered, or until the possession of the same shall be disposed of by an order of the court or judge upon a hearing had before it for such purpose.

§ 4. INNOCENT PERSONS MAY RECOVER PROPERTY, HOW.] Where personal property is found in any house or room

mentioned in Section 3 of this Act, and it shall appear to the court or judge before whom said action is tried that the owner of such personal property or the person entitled to possession thereof is innocent and has not aided or abetted in carrying on the nuisance, the court shall, by order, direct the sheriff in possession of said property to deliver the same to such owner or person entitled to the possession thereof.

When leasehold premises are adjudged to be a nuisance, the owner thereof shall have the right to terminate the lease by giving three days' notice thereof, in writing, to the tenant, and when this is done the premises shall be turned over to the owner upon the order of the court or judge. But the release of the property shall be upon condition that the nuisance shall not be continued and the return of the property shall not release any lien upon said property, occasioned by any prosecution of the tenant. If the owner appears and pays all costs of the proceedings and files a bond with sureties to be approved by the clerk, in the full value of the property to be ascertained by the court or judge, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within the period of one year thereafter, the court, or in vacation, the judge, may, if satisfied of his good faith, order the premises taken and closed under the order of abatement to be delivered to said owner, and said order of abatement cancelled so far as the same may relate to said property, and if the proceedings is an action in equity and bond is given and costs therein paid before judgment and order of abatement, the action shall be thereby abated; *provided*, however, that the release of the property under the provisions of this Section shall not release it from any judgment, lien or penalty or liability to which it may be subject under any other statute or law.

§ 5. CONTEMPT PROCEEDINGS.] In contempt proceedings arising out of the violation of any injunction granted under the provisions of this Act, the court, or in vacation the judge thereof, shall have power to try summarily and punish the party or parties guilty, as required by law. Process shall run in the name of the State of North Dakota. The affidavits upon which the attachment for contempt issue shall make a prima facie case for the state. The accused may plead in the same manner as to an information or indictment, in so far as the same is applicable. Evidence may be oral, or in the form of affidavits, or both; the defendant may be required to make answer to interrogatories, either written or oral, as in the discretion of the

court or judge may seem proper; the defendant shall not necessarily be discharged upon his or her denial of the facts stated in the moving papers; the clerk of the court shall, upon the application of either party, issue subpoenas for witnesses.

§ 6. INJUNCTION. VIOLATION. HOW PUNISHED.] When an injunction, either temporary or permanent, has been granted under the provisions of this Act, the same shall be binding on the defendant or defendants, and for the violation of such injunction the offending party shall be punished as for contempt in the amount according to the rules in this Act prescribed.

§ 7. When an injunction, either temporary or permanent, has been granted under the provisions of this Act, the same shall be binding on the defendant or defendant's throughout the entire state, and for violation of such injunction any place in the state of North Dakota, the offending party shall be punished as for contempt in the amount and according to the rules in this Act prescribed.

§ 8. WHAT EVIDENCE ADMISSIBLE. IMMUNITY FROM PROSECUTION.] In prosecutions under this Act, either by civil or criminal proceedings, evidence of the general reputation of the place designated in the complaint shall be admissible for the purpose of proving the existence of such nuisance. And proof of the fact that anyone has pleaded guilty to having violated the provisions of any city ordinance or any other law of the land enacted to prevent the evils mentioned in this Chapter, if it can further be shown that such person, when so pleading guilty, was or had been at the time and place mentioned in the information, indictment or complaint in the action then pending before the court, a frequenter of such house, building, room, or place, shall be deemed prima facie evidence of the guilt of such defendant. No person shall be excused from testifying touching any offense committed by another against any of the provisions of this Act by reason of his testimony tending to incriminate himself (the witness), but the persons giving such testimony shall be forever exempt from prosecution for any offense under the provisions of this Act, of which such evidence shall directly or indirectly tend to incriminate him.

§ 9. All Acts and parts of Acts in conflict with this Act are hereby repealed.

Approved March 14, 1913.