



Ohio Revised Code

Section 3767.05 Priority of action - evidence - permanent injunction - abatement orders.

Effective: July 2, 2010

Legislation: House Bill 48 - 128th General Assembly

(A) The civil action provided for in section 3767.03 of the Revised Code shall be set down for trial at the earliest possible time and shall have precedence over all other cases except those involving crimes, election contests, or injunctions regardless of the position of the proceedings on the calendar of the court. In the civil action, evidence of the general reputation of the place where the nuisance is alleged to exist or an admission or finding of guilt of any person under the criminal laws against prostitution, lewdness, assignation, or other prohibited conduct at the place is admissible for the purpose of proving the existence of the nuisance and is prima-facie evidence of the nuisance and of knowledge of and of acquiescence and participation in the nuisance on the part of the person charged with maintaining it.

(B) If the complaint for the permanent injunction is filed by a person who is a citizen of the county, it shall not be dismissed unless the complainant and the complainant's attorney submit a sworn statement setting forth the reasons why the civil action should be dismissed and the dismissal is approved by the prosecuting attorney in writing or in open court. If the person who files the complaint for the permanent injunction is a citizen of the county, if that person refuses or otherwise fails to prosecute the complaint to judgment, and if the civil action is not dismissed pursuant to this division, then, with the approval of the court, the attorney general, the prosecuting attorney of the county in which the nuisance exists, or the village solicitor, city director of law, or other similar chief legal officer of the municipal corporation in which the nuisance exists, may be substituted for the complainant and prosecute the civil action to judgment.

(C) If the civil action is commenced by a person who is a citizen of the county where the nuisance is alleged to exist and the court finds that there were no reasonable grounds or cause for the civil action, the costs may be taxed to that person.

(D) If the existence of the nuisance is established upon the trial of the civil action, a judgment shall be entered that perpetually enjoins the defendant and any other person from further maintaining the



nuisance at the place complained of and the defendant from maintaining the nuisance elsewhere.

(E) If the court finds that a nuisance described in division (C)(3) of section 3767.01 of the Revised Code exists, the court shall order the nuisance to be abated, and, in entering judgment for nuisance, the court shall do all of the following:

(1) Specify that judgment is entered pursuant to division (E) of this section;

(2) Order that no beer or intoxicating liquor may be manufactured, sold, bartered, possessed, kept, or stored in the room, house, building, structure, place, boat, or vehicle or any part thereof. The court need not find that the property was being unlawfully used at the time of the hearing on the matter if the court finds there existed a nuisance as described in division (C)(3) of section 3767.01 of the Revised Code.

(3) Order that the room, house, building, boat, vehicle, structure, or place not be occupied or used for one year after the judgment is rendered. The court may permit the premises to be occupied by a person other than the defendant or a business affiliate of the defendant in the nuisance action, or an agent of, or entity owned in whole or part by, the defendant, if the person, lessee, tenant, or occupant of the location posts a bond with sufficient surety, to be approved by the court issuing the order, in the sum of not less than one thousand nor more than five thousand dollars, payable to the state of Ohio, on the condition that no beer or intoxicating liquor thereafter shall be manufactured, sold, bartered, possessed, kept, stored, transported, or otherwise disposed of on the premises, and the person agrees to pay all fines, costs, and damages that may be assessed for a violation. A reasonable sum shall be allowed an officer by the issuing court for the cost of closing and keeping closed the premises that is the subject of the nuisance action.

(4) Send notice of the judgment entered to the division of liquor control, the liquor control commission, and the liquor enforcement division of the department of public safety.

(F) A defendant found to have maintained a nuisance as described in division (C)(3) of section 3767.01 of the Revised Code also is subject to liability and penalties under sections 4301.74 and 4399.09 of the Revised Code. The abatement of a nuisance under section 4399.09 of the Revised Code is in addition to and does not prevent the abatement of a nuisance under division (D) or (E) of



this section.

(G) If a court enters judgment pursuant to division (D) or (E) of this section finding that a nuisance exists at a liquor permit premises or as a result of the operation of a liquor permit premises, except in the case of a nuisance found as a result of a violation of a local zoning ordinance or resolution, the certified copy of the judgment required under division (A) of section 4301.331 of the Revised Code shall be filed with the board of elections in the county in which the nuisance exists, not later than four p.m. of the ninetieth day before the day of the next general or primary election. However, no election shall be conducted on sales at the liquor permit premises under section 4301.352 of the Revised Code until all appeals on the judgment are resolved. The court of appeals shall render a decision on any appeal of the judgment within six months after the date of the filing of the appeal of the judgment with the clerk of the court of appeals, and the supreme court shall render a decision on any appeal of the judgment within six months after the date of the filing of the appeal of the judgment with the clerk of the supreme court.