

HOUSE BILL NO. 791

INTRODUCED BY A. NICASTRO

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING NUISANCE LAWS; REVISING THE DEFINITION OF "PUBLIC NUISANCE"; PROVIDING FOR PREEMPTION; REVISING LAWS RELATING TO LIABILITIES FOR PUBLIC NUISANCES; PROVIDING FOR PUBLIC NUISANCE ACTIONS BY THE GOVERNMENT; PROVIDING FOR A PRIVATE CAUSE OF ACTION FOR A PUBLIC NUISANCE; PROVIDING FOR ABATEMENT OF A PUBLIC NUISANCE BY THE GOVERNMENT; PROVIDING FOR PRIVATE NUISANCES, FOR LIABILITIES OF PRIVATE NUISANCES, AND FOR REMEDIES FOR PRIVATE NUISANCES; PROVIDING FOR EMERGENCY ABATEMENT OF PRIVATE NUISANCES BY INJURED PERSONS; AMENDING SECTIONS 27-30-101 AND 27-30-204, MCA; REPEALING SECTIONS 27-30-102, 27-30-103, 27-30-104, 27-30-105, 27-30-201, 27-30-202, 27-30-203, 27-30-301, AND 27-30-302, MCA; AND PROVIDING APPLICABILITY DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-30-101, MCA, is amended to read:

"27-30-101. Definition of public nuisance. ~~(1) Anything that is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or that unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin or any public park, square, street, or highway is a nuisance.~~

~~(2) Nothing that is done or maintained under the express authority of a statute may be deemed a public or private nuisance.~~

(1) A public nuisance is:

(a) a condition arising out of the use of real property that unlawfully interferes with a public right by endangering communal safety, being indecent to the community, or being offensive to the community; or

(b) a condition that unlawfully obstructs the public right to free passage or use, in the customary

(3) No lapse of time can legalize a public nuisance amounting to an actual obstruction of public right.

NEW SECTION. Section 5. Public nuisance actions by government. (1) A public nuisance cause of action is available to a government entity only if the public nuisance is within the jurisdiction of that government entity. Past, current, or future expenditures made by a government entity related to injunction of or any other response to a public nuisance does not itself confer standing to file or maintain a public nuisance action.

(2) In a public nuisance action brought by a government entity, the only remedies against a public nuisance are:

(a) indictment or information as regulated by Titles 45 and 46;

(b) injunctive relief to enjoin an unlawful activity that is proximately causing a public nuisance; and

(c) monetary and nonmonetary resources, if quantifiable, that a court determines are reasonably necessary to abate the public nuisance based on relevant and reliable cost factors and established by clear and convincing evidence. All resources provided under this subsection (2) must be spent to abate the public nuisance itself.

(3) Remedies available under this section may not include:

(a) the costs of abating a potential future public nuisance; or

(b) damages of any kind, including economic, noneconomic, and exemplary damages.

(4) For the purposes of this section, the term "government entity" means the state, an agency or a political subdivision of the state, or any other governing authority, including a tribal government.

NEW SECTION. Section 6. Private cause of action for public nuisance. (1) A public nuisance cause of action is available to a private person only if that person has sustained a special injury proximately caused by the public nuisance ~~and only if the person can show the existence of the special injury by clear and convincing evidence.~~

(2) A special injury is an injury that is different in kind, not just in degree, from an injury sustained by the general public exercising the same public right.

(3) Financial expenditures made by a private person related to an injunction of, or any other response to, a public nuisance does not constitute a special injury sufficient to confer standing on the person to file or maintain a public nuisance action.

(4) The remedy available to a private person in a public nuisance action is limited solely to compensatory damages for the special injury.

(5) The abatement of a public nuisance pursuant to 27-30-204 does not preclude the right of a person to recover compensatory damages under this section.

(6) Private persons may not bring a class action for special injuries arising out of a public nuisance.

Section 7. Section 27-30-204, MCA, is amended to read:

"27-30-204. Abatement of public nuisance by ~~public body~~ government entity or officer or injured party. A public nuisance may be abated by ~~any public body~~ a government entity or officer authorized by law. A person may abate a public nuisance that is specially injurious to that person by removing or, if necessary, destroying the thing that constitutes the nuisance, as long as doing so would not constitute without committing a breach of the peace or cause doing unnecessary injury. Nothing in this section alters the remedies to a government entity or private person in a public nuisance cause of action."

NEW SECTION. Section 8. Action for private nuisance. An action for private nuisance may be brought by a person whose property is injuriously affected or whose personal enjoyment of property is lessened by the private nuisance.

NEW SECTION. Section 9. Liability for private nuisance. (1) A person may be liable under a private nuisance cause of action only if that person proximately caused the private nuisance or, if that person is not available for a private nuisance lawsuit or cannot satisfy a private nuisance judgment, the person who owns or controls the real property where the private nuisance exists.

(2) Every successive owner or controller of real property who neglects to abate a continuing private nuisance upon or in the use of the property that was created under previous ownership is liable for the private nuisance in the same manner as the one who owned or controlled the real property when the private

1 nuisance was created.

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3 NEW SECTION. Section 10. Remedies for private nuisances. The remedies against a private
4 nuisance are:

5 (1) injunctive relief to enjoin an activity proximately causing the private nuisance;

6 (2) monetary and nonmonetary resources, if quantifiable, that a court determines are reasonably
7 necessary to abate the private nuisance based on relevant and reliable cost factors ~~and established by clear~~
8 ~~and convincing evidence~~. All resources provided under this subsection must be spent to abate the private
9 nuisance itself.

10 (3) damages proximately caused by the private nuisance.

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12 NEW SECTION. Section 11. Emergency abatement of private nuisance by injured party. A

13 person injured by a private nuisance may abate it by removing or, if necessary, destroying the thing that
14 constitutes the private nuisance so long as doing so would not constitute committing a breach of the peace or
15 cause unnecessary injury. When a private nuisance results from a mere omission of the wrongdoer and cannot
16 be abated without entering upon the wrongdoer's land, reasonable notice must be given to the wrongdoer
17 before entering to abate the private nuisance. Nothing in this section alters the remedies available in a private
18 nuisance cause of action.

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20 NEW SECTION. Section 12. Repealer. The following sections of the Montana Code Annotated are
21 repealed:

22 27-30-102. Distinction between public and private nuisances.

23 27-30-103. Action for nuisance.

24 27-30-104. Right to recover damages unaffected by abatement.

25 27-30-105. Successive owners liable for nuisance.

26 27-30-201. Public nuisance not legalized by time.

27 27-30-202. Remedies for public nuisances.

28 27-30-203. When private person may maintain action for public nuisance.