

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

1 manner, of a navigable lake, river, bay, stream, canal, or basin or a public park, square, street, road, or  
2 highway.

3 (2) The following nonexclusive list of factors may not be considered a public nuisance or be the  
4 basis for a public nuisance cause of action:

5 (a) an action or condition that is lawful;

6 (b) an action or condition that is authorized, approved, licensed, or mandated by statute,  
7 ordinance, regulation, permit, license, order, rule, or other similar measure issued, adopted, promulgated, or  
8 approved by a federal, state, or local governmental entity or agency. This includes conditions or actions that are  
9 subject to an order, notice, or decree issued under 75-10-711 or 75-10-712;

10 (c) noises resulting from the shooting activities at a shooting range during established hours of  
11 operation;

12 (d) spiritual, cultural, or emotional significance associated with a navigable lake, river, bay, stream,  
13 canal, or basin or a public park, square, street, road, or highway;

14 (e) the design, manufacturing, distributing, selling, labeling, or marketing of a product;

15 (f) the aggregation of individual injuries or private rights, including private nuisances; or

16 (g) the design, manufacturing, distributing, selling, labeling, or marketing of firearms, firearm  
17 accessories, or ammunition, as defined in 30-20-301, or components of firearms, firearm accessories, or  
18 ammunition.

19 (3) An agricultural or farming operation, a place, an establishment, or a facility or any of its  
20 appurtenances or the operation of those things is not or does not become a public or private nuisance because  
21 of its normal operation as a result of changed residential or commercial conditions in or around its locality if the  
22 agricultural or farming operation, place, establishment, or facility has been in operation longer than the  
23 complaining resident has been in possession or commercial establishment has been in operation.

24 ~~(4) Noises resulting from the shooting activities at a shooting range during established hours of~~  
25 ~~operation are not considered a public nuisance."~~

26  
27 **NEW SECTION. Section 2. Definition of private nuisance.** (1) A private nuisance is a condition  
28 arising out of the use of real property that:

(a) is injurious to health or safety, indecent or offensive to the senses of an individual on an adjacent or neighboring property, or

(b) obstructs the free use of an adjacent or neighboring property so as to interfere with the comfortable enjoyment of life or property.

(2) The following Noises resulting from the shooting activities on a shooting range during established hours of operation may not be considered a private nuisance or be the basis for a private nuisance cause of action:

~~(a) an action or condition that is authorized, approved, licensed, or mandated by statute, ordinance, regulation, permit, license, order, rule, or other similar measure issued, adopted, promulgated, or approved by a federal, state, or local governmental entity or agency. This includes conditions or actions that are subject to an order, notice, or decree issued under 75-10-711 or 75-10-712; or~~

~~(b) noises resulting from the shooting activities on a shooting range during established hours of operation.~~

(3) An agricultural or farming operation, a place, an establishment, or a facility or any of its appurtenances or the operation of those things is not or does not become a private nuisance because of its normal operation as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

NEW SECTION. Section 3. Preemption. This chapter abrogates the common law of public nuisance and private nuisance in this state and supersedes any other state statute to the extent there is a conflict.

NEW SECTION. Section 4. Liability for a public nuisance. (1) A person may be liable under a public nuisance cause of action only if that person proximately caused the public nuisance at the time the public nuisance was created, which includes controlling the unlawful activity that proximately caused the public nuisance. Public nuisance is not a strict liability offense.

(2) Every successive owner of property who neglects to abate a continuing public nuisance upon or in the use of the property that was created by a former owner is liable for the public nuisance in the same