

1

HOUSE BILL NO. 791

2

INTRODUCED BY A. NICASTRO

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING NUISANCE LAWS; REVISING THE  
5 DEFINITION OF "PUBLIC NUISANCE"; PROVIDING FOR PREEMPTION; REVISING LAWS RELATING TO  
6 LIABILITIES FOR PUBLIC NUISANCES; PROVIDING FOR PUBLIC NUISANCE ACTIONS BY THE  
7 GOVERNMENT; PROVIDING FOR A PRIVATE CAUSE OF ACTION FOR A PUBLIC NUISANCE;  
8 PROVIDING FOR ABATEMENT OF A PUBLIC NUISANCE BY THE GOVERNMENT; PROVIDING FOR  
9 PRIVATE NUISANCES, FOR LIABILITIES OF PRIVATE NUISANCES, AND FOR REMEDIES FOR PRIVATE  
10 NUISANCES; PROVIDING FOR EMERGENCY ABATEMENT OF PRIVATE NUISANCES BY INJURED  
11 PERSONS; AMENDING SECTIONS 27-30-101 AND 27-30-204, MCA; REPEALING SECTIONS 27-30-102,  
12 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  
13 PROVIDING APPLICABILITY DATES."

14

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

16

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

18 **"27-30-101. Definition of public nuisance.** (1) Anything that is injurious to health, indecent or  
19 offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable  
20 enjoyment of life or property, or that unlawfully obstructs the free passage or use, in the customary manner, of  
21 any navigable lake, river, bay, stream, canal, or basin or any public park, square, street, or highway is a  
22 nuisance.

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

25 (1) A public nuisance is:

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

28 (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:

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

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

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

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

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

26 (2) Every successive owner of property who neglects to abate a continuing public nuisance upon  
27 or in the use of the property that was created by a former owner is liable for the public nuisance in the same  
28 manner as the one who first created it.

3

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

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

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

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

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

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

22

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

27 (2) A special injury is an injury that is different in kind, not just in degree, from an injury sustained  
28 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 (4) The remedy available to a private person in a public nuisance action is limited solely to  
5 compensatory damages for the special injury.

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

8 (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**

12 **injured party.** A public nuisance may be abated by any public body a government entity or officer authorized

13 by law. A person may abate a public nuisance that is specially injurious to that person by removing or, if

14 necessary, destroying the thing that constitutes the nuisance, as long as doing so would not constitute without  
15 committing a breach of the peace or cause doing unnecessary injury. Nothing in this section alters the remedies  
16 to a government entity or private person in a public nuisance cause of action."

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

19 brought by a person whose property is injuriously affected or whose personal enjoyment of property is lessened  
20 by the private nuisance.

21  
22        **NEW SECTION. Section 9. Liability for private nuisance.** (1) A person may be liable under a  
23        private nuisance cause of action only if that person proximately caused the private nuisance or, if that person is  
24        not available for a private nuisance lawsuit or cannot satisfy a private nuisance judgment, the person who owns  
25        or controls the real property where the private nuisance exists.

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

1 nuisance was created.

2

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.

11

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.

19

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.

1 27-30-301. Remedies for private nuisances.

2 27-30-302. Abatement of private nuisance by injured party.

3

4 **NEW SECTION. Section 13. Codification instruction.** (1) [Sections 2 and 3] are intended to be  
5 codified as an integral part of Title 27, chapter 30, part 1, and the provisions of Title 27, chapter 30, part 1,  
6 apply to [sections 2 and 3].

7 (2) [Sections 4 through 6] are intended to be codified as an integral part of Title 27, chapter 30,  
8 part 2, and the provisions of Title 27, chapter 30, part 2, apply to [sections 4 through 6].

9 (3) [Sections 8 through 11] are intended to be codified as an integral part of Title 27, chapter 30,  
10 part 3, and the provisions of Title 27, chapter 30, part 3, apply to [sections 8 through 11].

11

12 **NEW SECTION. Section 14. Applicability -- nonapplicability.** (1) [This act] applies to a cause of  
13 action that accrues on or after October 1, 2025. A cause of action that accrued prior to October 1, 2025, is  
14 governed by the law applicable immediately before October 1, 2025, and that law is continued in effect for that  
15 purpose;

16 (2) Nothing in [this act] applies to an action filed by the Montana department of justice within 4  
17 years from October 1, 2025.

18

- END -