

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-interferes with~~ the public right to free passage or use, in

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

3 (2) The following nonexclusive list of ~~factors~~ actions or conditions may not be considered a public
4 nuisance or be the 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 ~~government entity federal, state, or local governmental entity or agency~~. This includes conditions
9 or actions that are 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) impairment of the spiritual, cultural, or emotional significance associated with a navigable lake,
13 river, bay, stream, 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) As used in this chapter, the term "unlawfully interferes" includes but is not limited to actions or
25 conditions that violate a statute, ordinance, regulation, permit, license, order, rule, or other similar measure
26 issued, adopted, promulgated, or approved by a government entity. This includes any statute, ordinance,
27 regulation, permit, license, order, rule, or other similar measure issued, adopted, promulgated, or approved by a
28 government entity either before or after [the effective date of this act].

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

NEW SECTION. Section 2. Definition of private nuisance. (1) A private nuisance is a condition 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 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 government entity ~~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 to the~~ extent common law is inconsistent with this chapter.

NEW SECTION. Section 4. Liability for a public nuisance. (1) A person may be ~~liable under~~

1 subject to a public nuisance cause of action only if that person proximately caused the public nuisance at the
2 time the public nuisance was created, which includes controlling, or instructing another person to engage in, the
3 ~~unlawful~~ activity that proximately caused the public nuisance. ~~Public nuisance is not a strict liability offense.~~

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

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

9
10 **NEW SECTION. Section 5. Public nuisance actions by government.** (1) A public nuisance cause
11 of action is available to a government entity only if the public nuisance is within the jurisdiction of that
12 government entity. Past, current, or future expenditures made by a government entity related to injunction of or
13 any other response to a public nuisance does not itself confer standing to file or maintain a public nuisance
14 action.

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

- 17 (a) indictment or information as regulated by Titles 45 and 46;
18 (b) injunctive relief to enjoin an unlawful activity that is proximately causing a public nuisance; and
19 (c) monetary and nonmonetary resources, if quantifiable, that a court determines are reasonably
20 necessary to abate the public nuisance based on relevant and reliable cost factors and established by clear and
21 convincing evidence. All resources provided under this subsection (2) must be spent to abate the public
22 nuisance itself.

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

- 24 (a) the costs of abating a potential future public nuisance; or
25 (b) damages of any kind, including economic, noneconomic, and exemplary damages.

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

(5) Nothing in this chapter limits the authority of a government entity to order any person to vacate the right-of-way of a public highway of this state classified within the commission-designated highway system or as a state highway, as provided in 60-1-201, or any navigable lake, river, bay, stream, canal, or basin or a public park, square, street, road, or highway.

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. A special injury is not one based upon impairment of the spiritual, cultural, or emotional significance associated with a navigable lake, river, bay, stream, canal, or basin or a public park, square, street, road, or highway.

(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

1 to a government entity or private person in a public nuisance cause of action."

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

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

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

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16 **NEW SECTION. Section 10. Remedies for private nuisances.** The remedies against a private
17 nuisance are:

- 18 (1) injunctive relief to enjoin an activity proximately causing the private nuisance;
19 (2) monetary and nonmonetary resources, if quantifiable, that a court determines are reasonably
20 necessary to abate the private nuisance based on relevant and reliable cost factors and established by clear
21 and convincing evidence. All resources provided under this subsection must be spent to abate the private
22 nuisance itself.
23 (3) damages proximately caused by the private nuisance.

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25 **NEW SECTION. Section 11. Emergency abatement of private nuisance by injured party.** A
26 person injured by a private nuisance may abate it by removing or, if necessary, destroying the thing that
27 constitutes the private nuisance so long as doing so would not constitute committing a breach of the peace or
28 cause unnecessary injury. When a private nuisance results from a mere omission of the wrongdoer and cannot

5 - END -



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