

Amendment - 2nd Reading/2nd House-tan - Requested by: Andrea Olsen - (S) Committee of the Whole

- 2025

69th Legislature 2025

Drafter: Julianne Burkhardt,

HB0791.002.001

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

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

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

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

4 (4) For the purposes of this ~~section~~ CHAPTER, the term "government entity" means the state, an
5 agency or a political subdivision of the state, A FEDERAL ENTITY OR AGENCY, or any other governing authority,
6 including a tribal government.

7 (5) NOTHING IN THIS CHAPTER LIMITS THE AUTHORITY OF A GOVERNMENT ENTITY TO ORDER ANY PERSON
8 TO VACATE THE RIGHT-OF-WAY OF A PUBLIC HIGHWAY OF THIS STATE CLASSIFIED WITHIN THE COMMISSION-DESIGNATED
9 HIGHWAY SYSTEM OR AS A STATE HIGHWAY, AS PROVIDED IN 60-1-201, OR ANY NAVIGABLE LAKE, RIVER, BAY, STREAM,
10 CANAL, OR BASIN OR A PUBLIC PARK, SQUARE, STREET, ROAD, OR HIGHWAY.

11
12 NEW SECTION. Section 6. Private cause of action for public nuisance. (1) A public nuisance
13 cause of action is available to a private person only if that person has sustained a special injury proximately
14 caused by the public nuisance ~~and only if the person can show the existence of the special injury by clear and~~
15 ~~convincing evidence.~~

16 (2) A special injury is an injury that is different in kind, not just in degree, from an injury sustained
17 by the general public exercising the same public right. A SPECIAL INJURY IS NOT ONE BASED UPON IMPAIRMENT OF
18 THE SPIRITUAL, CULTURAL, OR EMOTIONAL SIGNIFICANCE ASSOCIATED WITH A NAVIGABLE LAKE, RIVER, BAY, STREAM,
19 CANAL, OR BASIN OR A PUBLIC PARK, SQUARE, STREET, ROAD, OR HIGHWAY.

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

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

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

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