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HOUSE BILL NO. 791

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INTRODUCED BY A. NICASTRO

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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:

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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

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.

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.