

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

- 2025

69th Legislature 2025

Drafter: Julianne Burkhardt,

HB0791.002.002

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

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

- 2025

69th Legislature 2025

Drafter: Julianne Burkhardt,

HB0791.002.002

1 ANY STATUTE, ORDINANCE, REGULATION, PERMIT, LICENSE, ORDER, RULE, OR OTHER SIMILAR MEASURE ISSUED,
2 ADOPTED, PROMULGATED, OR APPROVED BY A GOVERNMENT ENTITY EITHER BEFORE OR AFTER [THE EFFECTIVE DATE
3 OF THIS ACT].

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

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

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

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

13 (2) The following may not be considered a private nuisance or be the basis for a private nuisance
14 cause of action:

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

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

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

27 ~~NEW SECTION. Section 3. Preemption. This chapter abrogates the common law of public nuisance~~

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

- 2025

69th Legislature 2025

Drafter: Julianne Burkhardt,

HB0791.002.002

~~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 3. Liability for a public nuisance. (1) A person may be ~~liable under~~
SUBJECT TO 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, OR INSTRUCTING ANOTHER PERSON TO ENGAGE
IN, 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
manner as the one who first created it.

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

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

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

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

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

- 2025

69th Legislature 2025

Drafter: Julianne Burkhardt,

HB0791.002.002

1 and convincing evidence. All resources provided under this subsection must be spent to abate the private
2 nuisance itself.

3 (3) damages proximately caused by the private nuisance.
4

5 **NEW SECTION. Section 10. Emergency abatement of private nuisance by injured party.** A

6 person injured by a private nuisance may abate it by removing or, if necessary, destroying the thing that
7 constitutes the private nuisance so long as doing so would not constitute committing a breach of the peace or
8 cause unnecessary injury. When a private nuisance results from a mere omission of the wrongdoer and cannot
9 be abated without entering upon the wrongdoer's land, reasonable notice must be given to the wrongdoer
10 before entering to abate the private nuisance. Nothing in this section alters the remedies available in a private
11 nuisance cause of action.
12

13 **NEW SECTION. Section 11. Repealer.** The following sections of the Montana Code Annotated are

14 repealed:

- 15 27-30-102. Distinction between public and private nuisances.
16 27-30-103. Action for nuisance.
17 27-30-104. Right to recover damages unaffected by abatement.
18 27-30-105. Successive owners liable for nuisance.
19 27-30-201. Public nuisance not legalized by time.
20 27-30-202. Remedies for public nuisances.
21 27-30-203. When private person may maintain action for public nuisance.
22 27-30-301. Remedies for private nuisances.
23 27-30-302. Abatement of private nuisance by injured party.
24

25 **NEW SECTION. Section 12. Codification instruction.** (1) [~~Sections-Section 2-and-3~~] ~~are is~~ intended
26 to be codified as an integral part of Title 27, chapter 30, part 1, and the provisions of Title 27, chapter 30, part 1,
27 apply to [~~sections-section 2-and-3~~].

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

- 2025

69th Legislature 2025

Drafter: Julianne Burkhardt,

HB0791.002.002

1 (2) [Sections ~~4.3~~ through ~~6.5~~] are intended to be codified as an integral part of Title 27, chapter 30,
2 part 2, and the provisions of Title 27, chapter 30, part 2, apply to [sections ~~4.3~~ through ~~6.5~~].

3 (3) [Sections ~~8.7~~ through ~~44.10~~] are intended to be codified as an integral part of Title 27, chapter
4 30, part 3, and the provisions of Title 27, chapter 30, part 3, apply to [sections ~~8.7~~ through ~~44.10~~].

5
6 NEW SECTION. Section 13. Applicability -- nonapplicability. (1) [This act] applies to a cause of
7 action that accrues on or after October 1, 2025. A cause of action that accrued prior to October 1, 2025, is
8 governed by the law applicable immediately before October 1, 2025, and that law is continued in effect for that
9 purpose;

10 (2) Nothing in [this act] applies to an action filed by the Montana department of justice within 4
11 years from October 1, 2025, RELATING TO THE DESIGN, MANUFACTURING, DISTRIBUTING, SELLING, LABELING, OR
12 MARKETING OF OPIOIDS. WITH THE CONSENT OF THE ATTORNEY GENERAL, OTHER GOVERNMENT ENTITIES MAY JOIN AN
13 ACTION FILED BY THE MONTANA DEPARTMENT OF JUSTICE.

14 - END -