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HOUSE BILL NO. 791

2

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:

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

1 (b) a condition that unlawfully ~~obstructs~~INTERFERES WITH the public right to free passage or use, in
2 the customary manner, of a navigable lake, river, bay, stream, canal, or basin or a public park, square, street,
3 road, or highway.

4 (2) The following nonexclusive list of ~~factors~~ACTIONS OR CONDITIONS may not be considered a
5 public nuisance or be the basis for a public nuisance cause of action:

6 (a) an action or condition that is lawful;

7 (b) 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 GOVERNMENT ENTITY ~~federal, state, or local governmental entity or agency~~. This includes
10 conditions or actions that are subject to an order, notice, or decree issued under 75-10-711 or 75-10-712;

11 (c) noises resulting from the shooting activities at a shooting range during established hours of
12 operation;

13 (d) IMPAIRMENT OF THE spiritual, cultural, or emotional significance associated with a navigable lake,
14 river, bay, stream, canal, or basin or a public park, square, street, road, or highway;

15 (e) the design, manufacturing, distributing, selling, labeling, or marketing of a product;

16 (f) the aggregation of individual injuries or private rights, including private nuisances; or

17 (g) the design, manufacturing, distributing, selling, labeling, or marketing of firearms, firearm
18 accessories, or ammunition, as defined in 30-20-301, or components of firearms, firearm accessories, or
19 ammunition.

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

25 (4) AS USED IN THIS CHAPTER, THE TERM "UNLAWFULLY INTERFERES" INCLUDES BUT IS NOT LIMITED TO
26 ACTIONS OR CONDITIONS THAT VIOLATE A STATUTE, ORDINANCE, REGULATION, PERMIT, LICENSE, ORDER, RULE, OR
27 OTHER SIMILAR MEASURE ISSUED, ADOPTED, PROMULGATED, OR APPROVED BY A GOVERNMENT ENTITY. THIS INCLUDES

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."~~

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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 ~~Noises resulting from the shooting activities on a shooting range during~~
14 established hours of operation may not be considered a private nuisance or be the basis for a private nuisance
15 cause of action:

16 (a) ~~an action or condition that is authorized, approved, licensed, or mandated by statute,~~
17 ~~ordinance, regulation, permit, license, order, rule, or other similar measure issued, adopted, promulgated, or~~
18 ~~approved by a GOVERNMENT ENTITY federal, state, or local governmental entity or agency. This includes~~
19 ~~conditions or actions that are subject to an order, notice, or decree issued under 75-10-711 or 75-10-712; or~~
20 (b) ~~noises resulting from the shooting activities on a shooting range during established hours of~~
21 ~~operation.~~

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

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