

FIRST REGULAR SESSION

HOUSE BILL NO. 209

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES GUERNSEY (Sponsor), KLIPPENSTEIN, WYATT, FISHER, LANT, HOUGHTON, DUGGER, RIDDLE, REIBOLDT, BERRY, SCHATZ, CURTMAN, COX, ENTLICHER, LICHTENEGGER, RUZICKA, NOLTE, HAMPTON, CROSS, BROWN (85), ZERR, HOUGH, SATER, SCHAD, BARNES, BRANDOM, CAUTHORN, THOMSON, NETH, WRIGHT, SMITH (150), LARGENT, CONWAY (14), JONES (89), FLANIGAN, DAY, REDMON, DIEHL, SCHARNHORST, ELMER, PARKINSON, BRATTIN, DAVIS, SHUMAKE, ROWLAND, CRAWFORD, GATSCHENBERGER, LONG, BROWN (116), FRAKER, COOKSON, FITZWATER, KEENEY, KORMAN, HOSKINS, MOLENDORP, KELLEY (126), GOSEN, FRANZ, BERNSKOETTER AND FREDERICK (Co-sponsors).

0671L.01H

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 537.296, RSMo, and to enact in lieu thereof one new section relating to private nuisances.

Be it enacted by the General Assembly of the state of Missouri, as follows:

- Section A. Section 537.296, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 537.296, to read as follows:
- 537.296. **1. As used in this section, the following terms mean:**
- (1) **"Claimant", a person who asserts a claim of private nuisance;**
- (2) **"Fair market value", the price that a person who is willing but not compelled to buy would pay and a seller who is willing but not compelled to sell would accept for property;**
- (3) **"Fair rental value", the price a lessee who is willing but not compelled to lease would pay and a lessor who is willing but not compelled to lease would accept;**
- (4) **"Ownership interest", holding legal or equitable title to property in fee or in a life;**
- (5) **"Possessory interest", lawfully possessing property but does not include mere occupancy;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 **(6) "Property" means real property.**

13 **2. The exclusive damages that may be awarded to a claimant for a private nuisance**
14 **where the alleged nuisance emanates from property used for farming, agriculture, crop,**
15 **or animal production purposes shall be as follows:**

16 **(1) If the nuisance is a permanent nuisance, compensatory damages shall be**
17 **measured by the reduction in the fair market value of the claimant's property caused by**
18 **the nuisance, but not to exceed the fair market value of the property;**

19 **(2) If the nuisance is a temporary nuisance, compensatory damages shall be**
20 **measured by the diminution in the fair rental value of the property which resulted from**
21 **the nuisance.**

22 **3. If the claimant or claimant's successor with ownership or possessory interest**
23 **brings successive claims against the same defendant or defendant's successors for**
24 **temporary nuisance related to a similar activity or use of the defendant's property, and**
25 **such activity or use of property is deemed a nuisance, the activity or use of property at**
26 **issue shall be considered a permanent nuisance and such claimant's successors shall be**
27 **limited to and bound by the remedies available for a permanent nuisance.**

28 **4. No person shall have standing to bring an action for private nuisance unless the**
29 **person has an ownership interest in the property alleged to be affected by the nuisance.**

30 **5. Nothing in this section shall be deemed to prohibit a person from recovering**
31 **damages for annoyance, discomfort, sickness, or emotional distress, provided that such**
32 **damages are awarded on the basis of other causes of action independent of a claim of**
33 **nuisance.**

34 **6. If any party requests the court or jury visit the property alleged to be affected by the**
35 **nuisance in an action for private nuisance [where the amount in controversy exceeds one million**
36 **dollars], the court or jury shall visit the property.**