

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 209
96TH GENERAL ASSEMBLY

Reported from the Committee on Agriculture, Food Production and Outdoor Resources, April 7, 2011, with recommendation that the Senate Committee Substitute do pass.

0671L.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 67.402, 226.720, and 537.296, RSMo, and to enact in lieu thereof three new sections relating to nuisance actions, with penalty provisions.

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

Section A. Sections 67.402, 226.720, and 537.296, RSMo, are repealed and
2 three new sections enacted in lieu thereof, to be known as sections 67.402,
3 226.720, and 537.296, to read as follows:

67.402. 1. The governing body of **the following counties may enact**
2 **nuisance abatement ordinances as provided in this section:**

3 (1) Any county of the first classification with more than one hundred
4 thirty-five thousand four hundred but [less] **fewer** than one hundred thirty-five
5 thousand five hundred inhabitants[.];

6 (2) Any county of the first classification with more than seventy-one
7 thousand three hundred but [less] **fewer** than seventy-one thousand four
8 hundred inhabitants[, and];

9 (3) Any county of the first classification without a charter form of
10 government and with more than one hundred ninety-eight thousand but [less]
11 **fewer** than one hundred ninety-nine thousand two hundred inhabitants;

12 (4) Any county of the first classification with more than
13 **eighty-five thousand nine hundred but fewer than eighty-six thousand**
14 **inhabitants;**

15 (5) Any county of the third classification without a township
16 **form of government and with more than sixteen thousand four hundred**
17 **but fewer than sixteen thousand five hundred inhabitants;**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 **(6) Any county of the third classification with a township form**
19 **of government and with more than fourteen thousand five hundred but**
20 **fewer than fourteen thousand six hundred inhabitants.**

21 **2. The governing body of any county described in subsection 1**
22 **of this section** may enact ordinances to provide for the abatement of a condition
23 of any lot or land that has the presence of rubbish and trash, lumber, bricks, tin,
24 steel, parts of derelict motorcycles, derelict cars, derelict trucks, derelict
25 construction equipment, derelict appliances, broken furniture, or overgrown or
26 noxious weeds in residential subdivisions or districts which may endanger public
27 safety or which is unhealthy or unsafe and declared to be a public nuisance.

28 **[2.] 3.** Any ordinance enacted pursuant to this section shall:

29 (1) Set forth those conditions which constitute a nuisance and which are
30 detrimental to the health, safety, or welfare of the residents of the county;

31 (2) Provide for duties of inspectors with regard to those conditions which
32 may be declared a nuisance, and shall provide for duties of the building
33 commissioner or designated officer or officers to supervise all inspectors and to
34 hold hearings regarding such property;

35 (3) Provide for service of adequate notice of the declaration of nuisance,
36 which notice shall specify that the nuisance is to be abated, listing a reasonable
37 time for commencement, and may provide that such notice be served either by
38 personal service or by certified mail, return receipt requested, but if service
39 cannot be had by either of these modes of service, then service may be had by
40 publication. The ordinances shall further provide that the owner, occupant,
41 lessee, mortgagee, agent, and all other persons having an interest in the property
42 as shown by the land records of the recorder of deeds of the county wherein the
43 property is located shall be made parties;

44 (4) Provide that upon failure to commence work of abating the nuisance
45 within the time specified or upon failure to proceed continuously with the work
46 without unnecessary delay, the building commissioner or designated officer or
47 officers shall call and have a full and adequate hearing upon the matter before
48 the county commission, giving the affected parties at least ten days' written
49 notice of the hearing. Any party may be represented by counsel, and all parties
50 shall have an opportunity to be heard. After the hearings, if evidence supports
51 a finding that the property is a nuisance or detrimental to the health, safety, or
52 welfare of the residents of the county, the county commission shall issue an order
53 making specific findings of fact, based upon competent and substantial evidence,

54 which shows the property to be a nuisance and detrimental to the health, safety,
55 or welfare of the residents of the county and ordering the nuisance abated. If the
56 evidence does not support a finding that the property is a nuisance or detrimental
57 to the health, safety, or welfare of the residents of the county, no order shall be
58 issued.

59 [3.] 4. Any ordinance authorized by this section may provide that if the
60 owner fails to begin abating the nuisance within a specific time which shall not
61 be longer than seven days of receiving notice that the nuisance has been ordered
62 removed, the building commissioner or designated officer shall cause the
63 condition which constitutes the nuisance to be removed. If the building
64 commissioner or designated officer causes such condition to be removed or abated,
65 the cost of such removal shall be certified to the county clerk or officer in charge
66 of finance who shall cause the certified cost to be included in a special tax bill or
67 added to the annual real estate tax bill, at the county collector's option, for the
68 property and the certified cost shall be collected by the county collector in the
69 same manner and procedure for collecting real estate taxes. If the certified cost
70 is not paid, the tax bill shall be considered delinquent, and the collection of the
71 delinquent bill shall be governed by the laws governing delinquent and back
72 taxes. The tax bill from the date of its issuance shall be deemed a personal debt
73 against the owner and shall also be a lien on the property until paid.

226.720. 1. No junkyard shall be established, maintained or operated
2 within two hundred feet of any other state or county road in this state unless
3 such junkyard is **fully** screened from the **state or county** road by a **permanent**
4 tight board or other screen fence not less than ten feet high, or of sufficient
5 height to **fully** screen the wrecked or disabled automobiles or junk kept therein
6 from the view of persons using the **state or county** road on foot or in vehicles
7 in the ordinary manner, except that nothing in this section shall apply to any
8 junkyard located in any incorporated town, village or city. The provisions of
9 sections 226.650 through 226.710 shall not apply to this section except the
10 definitions appearing in section 226.660.

11 2. Any person, firm or corporation who establishes, conducts, owns,
12 maintains or operates a junkyard without complying with the provisions of this
13 section shall, [on] **upon their first** conviction, be guilty of a **class C**
14 misdemeanor **and shall be ordered to either remove the junk from the**
15 **property or build a fence as described in this section. Any person, firm,**
16 **or corporation who establishes, conducts, owns, maintains, or operates**

17 a junkyard without complying with the provisions of this section shall,
18 upon their second or subsequent violation, be guilty of a class A
19 misdemeanor and shall be ordered to either remove the junk from the
20 property or build a fence as described in this section.

537.296. 1. As used in this section, the following terms mean:

2 (1) "Claimant", a person who asserts a claim of private nuisance;

3 (2) "Fair market value", the price that a person who is willing but
4 not compelled to buy would pay and a seller who is willing but not
5 compelled to sell would accept for property;

6 (3) "Fair rental value", the price a lessee who is willing but not
7 compelled to lease would pay and a lessor who is willing but not
8 compelled to lease would accept;

9 (4) "Ownership interest", holding legal or equitable title to
10 property in fee or in a life;

11 (5) "Possessory interest", lawfully possessing property but does
12 not include mere occupancy;

13 (6) "Property", real property.

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

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

22 (2) If the nuisance is a temporary nuisance, compensatory
23 damages shall be measured by the diminution in the fair rental value
24 of the property which resulted from the nuisance.

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

33 4. No person shall have standing to bring an action for private

34 nuisance unless the person has an ownership interest in the property
35 alleged to be affected by the nuisance.

36 5. Nothing in this section shall be deemed to:

37 (1) Prohibit a person from recovering damages for annoyance,
38 discomfort, sickness, or emotional distress, provided that such damages
39 are awarded on the basis of other causes of action independent of a
40 claim of nuisance; or

41 (2) Prohibit the recovery of damages for crop destruction, crop
42 damage, or a diminution of crop value resulting from contamination of
43 the seed of grain supply.

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

47 7. A copy of the final judgment in any action alleging a private
48 nuisance shall be filed with the recorder of deeds in the county in
49 which the final judgment was issued and shall operate as notice to any
50 purchaser of the claimant's property that the property was related to
51 a previous claim and judgment for nuisance.

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