

SENATE SUBSTITUTE  
FOR  
SENATE COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 209  
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.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

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2 repealed and three new sections enacted in lieu thereof, to be  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

5       67.402. 1. The governing body of the following counties  
6 may enact nuisance abatement ordinances as provided in this  
7 section:

8       (1) Any county of the first classification with more than  
9 one hundred thirty-five thousand four hundred but ~~[less]~~ fewer  
10 than one hundred thirty-five thousand five hundred  
11 inhabitants~~[,]~~;

12       (2) Any county of the first classification with more than  
13 seventy-one thousand three hundred but ~~[less]~~ fewer than  
14 seventy-one thousand four hundred inhabitants~~[, and]~~;

15       (3) Any county of the first classification without a  
16 charter form of government and with more than one hundred

ninety-eight thousand but ~~[less]~~ fewer than one hundred  
ninety-nine thousand two hundred inhabitants;

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

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

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

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

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

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

(2) Provide for duties of inspectors with regard to those  
conditions which may be declared a nuisance, and shall provide

1 for duties of the building commissioner or designated officer or  
2 officers to supervise all inspectors and to hold hearings  
3 regarding such property;

4 (3) Provide for service of adequate notice of the  
5 declaration of nuisance, which notice shall specify that the  
6 nuisance is to be abated, listing a reasonable time for  
7 commencement, and may provide that such notice be served either  
8 by personal service or by certified mail, return receipt  
9 requested, but if service cannot be had by either of these modes  
10 of service, then service may be had by publication. The  
11 ordinances shall further provide that the owner, occupant,  
12 lessee, mortgagee, agent, and all other persons having an  
13 interest in the property as shown by the land records of the  
14 recorder of deeds of the county wherein the property is located  
15 shall be made parties;

16 (4) Provide that upon failure to commence work of abating  
17 the nuisance within the time specified or upon failure to proceed  
18 continuously with the work without unnecessary delay, the  
19 building commissioner or designated officer or officers shall  
20 call and have a full and adequate hearing upon the matter before  
21 the county commission, giving the affected parties at least ten  
22 days' written notice of the hearing. Any party may be  
23 represented by counsel, and all parties shall have an opportunity  
24 to be heard. After the hearings, if evidence supports a finding  
25 that the property is a nuisance or detrimental to the health,  
26 safety, or welfare of the residents of the county, the county  
27 commission shall issue an order making specific findings of fact,  
28 based upon competent and substantial evidence, which shows the

1 property to be a nuisance and detrimental to the health, safety,  
2 or welfare of the residents of the county and ordering the  
3 nuisance abated. If the evidence does not support a finding that  
4 the property is a nuisance or detrimental to the health, safety,  
5 or welfare of the residents of the county, no order shall be  
6 issued.

7 [3.] 4. Any ordinance authorized by this section may  
8 provide that if the owner fails to begin abating the nuisance  
9 within a specific time which shall not be longer than seven days  
10 of receiving notice that the nuisance has been ordered removed,  
11 the building commissioner or designated officer shall cause the  
12 condition which constitutes the nuisance to be removed. If the  
13 building commissioner or designated officer causes such condition  
14 to be removed or abated, the cost of such removal shall be  
15 certified to the county clerk or officer in charge of finance who  
16 shall cause the certified cost to be included in a special tax  
17 bill or added to the annual real estate tax bill, at the county  
18 collector's option, for the property and the certified cost shall  
19 be collected by the county collector in the same manner and  
20 procedure for collecting real estate taxes. If the certified  
21 cost is not paid, the tax bill shall be considered delinquent,  
22 and the collection of the delinquent bill shall be governed by  
23 the laws governing delinquent and back taxes. The tax bill from  
24 the date of its issuance shall be deemed a personal debt against  
25 the owner and shall also be a lien on the property until paid.

26 5. Nothing in this section authorizes any county to enact  
27 nuisance abatement ordinances that provide for the abatement of  
28 any condition relating to agricultural structures or agricultural

1 operations including, but not limited to, the raising of  
2 livestock or row crops.

3 6. No county of the first, second, third, or fourth  
4 classification shall have the power to adopt any ordinance,  
5 resolution, or regulation under this section governing any  
6 railroad company regulated by the Federal Railroad  
7 Administration.

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

20 2. Any person, firm or corporation who establishes,  
21 conducts, owns, maintains or operates a junkyard without  
22 complying with the provisions of this section shall, ~~[on]~~ upon  
23 their first conviction, be guilty of a class C misdemeanor and  
24 shall be ordered to either remove the junk from the property or  
25 build a fence as described in this section. Any person, firm, or  
26 corporation who establishes, conducts, owns, maintains, or  
27 operates a junkyard without complying with the provisions of this  
28 section shall, upon their second or subsequent violation, be

1 guilty of a class A misdemeanor and shall be ordered to either  
2 remove the junk from the property or build a fence as described  
3 in this section.

4 537.296. 1. As used in this section, the following terms  
5 mean:

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

8 (2) "Fair market value", the price that a buyer who is  
9 willing but not compelled to buy would pay and a seller who is  
10 willing but not compelled to sell would accept for property;

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

14 (4) "Ownership interest", holding legal or equitable title  
15 to property in fee, in a life, or in a leasehold interest;

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

18 (6) "Property", real property.

19 2. The exclusive damages that may be awarded to a claimant  
20 for a private nuisance where the alleged nuisance emanates from  
21 property primarily used for crop or animal production purposes  
22 shall be as follows:

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

27 (2) If the nuisance is a temporary nuisance, compensatory  
28 damages shall be measured by the diminution in the fair rental

1 value of the claimant's property caused by the nuisance;

2 (3) If the nuisance is shown by objective and documented  
3 medical evidence to have caused a medical condition to claimant,  
4 compensatory damages arising from that medical condition may be  
5 awarded in addition to the exclusive damages permitted under  
6 subdivisions 1 and 2 of this subsection.

7 3. If any claimant or claimant's successor with ownership  
8 interest brings any subsequent claim against the same defendant  
9 or defendant's successors for temporary nuisance related to a  
10 similar activity or use of the defendant's property, and such  
11 activity or use of property is deemed a nuisance, the activity or  
12 use of property at issue shall be considered a permanent nuisance  
13 and such claimant and claimant's successors shall be limited to  
14 and bound by the remedies available for a permanent nuisance.

15 4. If a defendant in a private nuisance case where the  
16 nuisance is alleged to emanate from property used for crop or  
17 animal production purposes demonstrates a good faith effort to  
18 abate a condition that is determined to constitute a nuisance,  
19 then the nuisance shall be deemed to be not capable of abatement.  
20 Substantial compliance with a court order regarding such property  
21 shall constitute such a good faith effort as a matter of law.

22 5. No person shall have standing to bring an action for  
23 private nuisance unless the person has an ownership interest in  
24 the property alleged to be affected by the nuisance.

25 6. Nothing in this section shall:

26 (1) Prohibit a person from recovering damages for  
27 annoyance, discomfort, sickness, or emotional distress, provided  
28 that such damages are awarded on the basis of other causes of

1 action independent of a claim of nuisance; or

2 (2) Prohibit the recovery of any damages, direct,  
3 consequential, or otherwise, resulting from or relating to crop  
4 destruction, crop damage, contamination of the seed supply, or a  
5 diminution of crop value resulting from contamination of the seed  
6 or grain supply, herbicide drift, or other diminution of crop  
7 value.

8 7. If any party requests the court or jury visit the  
9 property alleged to be affected by the nuisance in an action for  
10 private nuisance [where the amount in controversy exceeds one  
11 million dollars], the court or jury shall visit the property.

12 8. A copy of the final judgment in any action alleging a  
13 private nuisance shall be filed with the recorder of deeds in the  
14 county in which the final judgment was issued and shall operate  
15 as notice to any purchaser of the claimant's property that the  
16 property was related to a previous claim for nuisance.