

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 187

96TH GENERAL ASSEMBLY

2011

0974L.05T

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Section A. Sections 67.402, 226.720, and 537.296, RSMo, are repealed and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 **(7) Any county of the first classification with more than**
22 **eighty-two thousand but fewer than eighty-two thousand one hundred**
23 **inhabitants;**

24 **(8) Any county of the first classification with more than one**
25 **hundred four thousand six hundred but fewer than one hundred four**
26 **thousand seven hundred inhabitants;**

27 **(9) Any county of the third classification with a township form**
28 **of government and with more than seven thousand nine hundred but**
29 **fewer than eight thousand inhabitants; and**

30 **(10) Any county of the second classification with more than**
31 **fifty-two thousand six hundred but fewer than fifty-two thousand seven**
32 **hundred inhabitants.**

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

40 **[2.] 3. Any ordinance enacted pursuant to this section shall:**

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

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

47 **(3) Provide for service of adequate notice of the declaration of nuisance,**
48 **which notice shall specify that the nuisance is to be abated, listing a reasonable**
49 **time for commencement, and may provide that such notice be served either by**
50 **personal service or by certified mail, return receipt requested, but if service**
51 **cannot be had by either of these modes of service, then service may be had by**
52 **publication. The ordinances shall further provide that the owner, occupant,**
53 **lessee, mortgagee, agent, and all other persons having an interest in the property**

54 as shown by the land records of the recorder of deeds of the county wherein the
55 property is located shall be made parties;

56 (4) Provide that upon failure to commence work of abating the nuisance
57 within the time specified or upon failure to proceed continuously with the work
58 without unnecessary delay, the building commissioner or designated officer or
59 officers shall call and have a full and adequate hearing upon the matter before
60 the county commission, giving the affected parties at least ten days' written
61 notice of the hearing. Any party may be represented by counsel, and all parties
62 shall have an opportunity to be heard. After the hearings, if evidence supports
63 a finding that the property is a nuisance or detrimental to the health, safety, or
64 welfare of the residents of the county, the county commission shall issue an order
65 making specific findings of fact, based upon competent and substantial evidence,
66 which shows the property to be a nuisance and detrimental to the health, safety,
67 or welfare of the residents of the county and ordering the nuisance abated. If the
68 evidence does not support a finding that the property is a nuisance or detrimental
69 to the health, safety, or welfare of the residents of the county, no order shall be
70 issued.

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

86 **5. Nothing in this section authorizes any county to enact
87 nuisance abatement ordinances that provide for the abatement of any
88 condition relating to agricultural structures or agricultural operations,
89 including but not limited to the raising of livestock or row crops.**

90 **6. No county of the first, second, third, or fourth classification**
91 **shall have the power to adopt any ordinance, resolution, or regulation**
92 **under this section governing any railroad company regulated by the**
93 **Federal Railroad Administration.**

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 buyer 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, or in a leasehold interest;

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

13 **(6) "Property", real property.**

14 2. The exclusive compensatory damages that may be awarded to
15 a claimant for a private nuisance where the alleged nuisance emanates
16 from property primarily used for 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 claimant's property caused by the nuisance;

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

30 3. Concerning a private nuisance where the alleged nuisance
31 emanates from property primarily used for crop or animal production
32 purposes, if any claimant or claimant's successor with ownership
33 interest brings any subsequent claim against the same defendant or
34 defendant's successors for temporary nuisance related to a similar
35 activity or use of the defendant's property, and such activity or use of
36 property is deemed a nuisance, the activity or use of property at issue
37 shall be considered a permanent nuisance and such claimant and
38 claimant's successors shall be limited to and bound by the remedies
39 available for a permanent nuisance.

40 4. If a defendant in a private nuisance case where the nuisance
41 is alleged to emanate from property used for crop or animal production
42 purposes demonstrates a good faith effort to abate a condition that is
43 determined to constitute a nuisance, the nuisance shall be deemed to
44 be not capable of abatement. Substantial compliance with a court
45 order regarding such property shall constitute such a good faith effort
46 as a matter of law.

47 5. Concerning a private nuisance where the alleged nuisance
48 emanates from property primarily used for crop or animal production
49 purposes, no person shall have standing to bring an action for private

50 **nuisance unless the person has an ownership interest in the property**
51 **alleged to be affected by the nuisance.**

52 **6. Nothing in this section shall:**

53 **(1) Prohibit a person from recovering damages for annoyance,**
54 **discomfort, sickness, or emotional distress; provided that such damages**
55 **are awarded on the basis of other causes of action independent of a**
56 **claim of nuisance; or**

57 **(2) Prohibit the recovery of any damages, direct, consequential,**
58 **or otherwise, resulting from or relating to crop destruction, crop**
59 **damage, contamination of the seed supply, or a diminution of crop**
60 **value resulting from contamination of the seed or grain supply,**
61 **herbicide drift, or other diminution of crop value.**

62 **7. If any party requests the court or jury visit the property alleged to be**
63 **affected by the nuisance in an action for private nuisance where the amount in**
64 **controversy exceeds one million dollars, the court or jury shall visit the property.**

65 **8. A copy of the final judgment in any action alleging a private**
66 **nuisance shall be filed with the recorder of deeds in the county in**
67 **which the final judgment was issued and shall operate as notice to any**
68 **purchaser of the claimant's property that the property was related to**
69 **a previous claim for nuisance.**

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