

SS SCS HB 209 -- NUISANCE ACTIONS

(Vetoed by the Governor)

This bill changes the laws regarding county nuisance abatement ordinances, junkyards, and private nuisance actions. In its main provisions, the bill:

(1) Adds the counties of Andrew, Buchanan, Cass, Dade, Jasper, Livingston, and Newton to the list of counties authorized to enact nuisance abatement ordinances regarding the condition of any lot or land in residential subdivisions or districts which may endanger public safety or which is unhealthy or unsafe and is declared to be a public nuisance;

(2) Specifies that the provisions of the bill do not authorize a county to enact nuisance abatement ordinances that provide for the abatement of any condition relating to agricultural structures or operations including, but not limited to, the raising of livestock or row crops and prohibits any county of the first, second, third, or fourth classification from having the power to adopt any ordinance, resolution, or regulation governing any railroad company regulated by the Federal Railroad Administration;

(3) Changes the penalty for a screening violation by a junkyard located within 200 feet of a state or county road by making a first violation a class C misdemeanor and a second or subsequent violation a class A misdemeanor. In addition to the penalties, a violator must be ordered to remove the junk or build a fence to fully screen the junk from public view. These provisions will not apply to a junkyard located in any incorporated town, village, or city;

(4) Specifies that the exclusive damages that may be awarded to a claimant for a private nuisance originating from property primarily used for crop or animal production purposes will be as follows:

(a) For a permanent nuisance, compensatory damages must be measured by the reduction in the fair market value of the claimant's property caused by the nuisance not to exceed the fair market value of the property;

(b) For a temporary nuisance, compensatory damages must be measured by the reduction in the fair rental value of the claimant's property caused by the nuisance; and

(c) For a nuisance that has been shown by objective and documented evidence to have caused a medical condition to the

claimant, compensatory damages arising from the medical condition may be awarded in addition to the aforementioned damages;

(5) Specifies that if a person or his or her successor with ownership interest brings a subsequent claim against the same defendant or the defendant's successors for a temporary nuisance related to a similar activity or use of the property and the activity or use is deemed a nuisance, the activity or use of property at issue must be considered a permanent nuisance and the claimant and his or her successors must be limited to and bound by the remedies available for a permanent nuisance;

(6) Specifies that if a defendant in a private nuisance case where the alleged nuisance is from property used for crop or animal production purposes demonstrates a good faith effort to abate the condition determined to be a nuisance, the nuisance is to be deemed to be not capable of abatement. Substantial compliance with a court order regarding the property will constitute a good faith effort;

(7) Specifies that no person will have standing to bring an action for a private nuisance unless the person has an ownership interest in the property alleged to be affected by the nuisance;

(8) Specifies that a person is not prohibited from recovering damages for:

(a) Annoyance, discomfort, sickness, or emotional distress if the damages are awarded on the basis of a cause of action independent of a claim of nuisance; or

(b) Crop destruction, crop damage, contamination of the seed supply, or a reduction of crop value resulting from contamination of the seed or grain supply, herbicide drift, or other reduction of crop value; and

(9) Requires a copy of the final judgment in any action alleging a private nuisance to be filed with the recorder of deeds in the county in which the judgment was issued. The filing will operate as notice to any purchaser of the claimant's property that the property was related to a previous nuisance claim.