

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 664,
2 Page 6, Section 444.772, Line 108, by inserting after all of said section and line the following:

3
4 "537.296. 1. As used in this section, the following terms mean:

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

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

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

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

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

13 (6) "Property", real property.

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

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

20 (2) If the nuisance is a temporary nuisance, compensatory damages shall be measured by the
21 diminution in the fair rental value of the claimant's property caused by the nuisance;

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

26 3. Concerning a private nuisance where the alleged nuisance emanates from property
27 primarily used for crop or animal production purposes, if any claimant or claimant's successor with
28 ownership interest brings any subsequent claim against the same defendant or defendant's successors
29 for temporary nuisance related to a similar activity or use of the defendant's property, and such
30 activity or use of property is deemed a nuisance, the activity or use of property at issue shall be
31 considered a permanent nuisance and such claimant and claimant's successors shall be limited to and

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1 bound by the remedies available for a permanent nuisance.

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

7 5. Concerning a private nuisance where the alleged nuisance emanates from property
8 primarily used for crop or animal production purposes, no person shall have standing to bring an
9 action for private nuisance unless the person has an ownership interest in the property alleged to be
10 affected by the nuisance.

11 6. Nothing in this section shall:

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

15 (2) Prohibit the recovery of any damages, direct, consequential, or otherwise, resulting from
16 or relating to crop destruction, crop damage, contamination of the seed supply, or a diminution of
17 crop value resulting from contamination of the seed or grain supply, herbicide drift, or other
18 diminution of crop value.

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

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

26 9. No action shall be brought under this section if the owner of the property that is the
27 defendant of the action is in good faith compliance with any order or permit issued by the
28 department of natural resources, the United State Environmental Protection Agency, or the office of
29 the attorney general."; and

30
31 Further amend said bill by amending the title, enacting clause, and intersectional references
32 accordingly.