

FIRST REGULAR SESSION

HOUSE BILL NO. 1119

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HARDWICK.

2358H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 537, RSMo, by adding thereto three new sections relating to civil actions for public nuisances.

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

Section A. Chapter 537, RSMo, is amended by adding thereto three new sections, to
2 be known as sections 537.291, 537.292, and 537.293, to read as follows:

3 **537.291. 1. A statutory cause of action for damages arising out of a public**
4 **nuisance is hereby created in sections 537.291 to 537.293, replacing any such common**
5 **law cause of action to the contrary. The provisions of section 537.293 provide the only**
6 **remedies for a public nuisance action in this state.**

7 **2. The provisions of sections 537.291 to 537.293 shall not affect:**

8 **(1) The availability of a remedy provided by any other provision of law for**
9 **conditions or activities involving criminal conduct and designated by law as a public and**
10 **common nuisance; or**

11 **(2) The authority of a governmental entity to take a regulatory or enforcement**
12 **action authorized by law in connection with a condition designated by statute or local**
13 **ordinance as a public nuisance.**

14 **3. The provisions of sections 537.291 to 537.293 shall apply only to any cause of**
15 **action that accrues on or after August 28, 2023. A cause of action that accrues before**
16 **August 28, 2023, shall be governed by law applicable to the cause of action before**
17 **August 28, 2023, and that law is continued in effect for that purpose.**

18 **4. As provided in sections 537.291 to 537.293, the following terms mean:**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

- 17 (1) "Established public right", a right, commonly held by all members of the
18 public, to the use of public land, air, or water;
- 19 (2) "Government attorney", an attorney regularly employed on a salaried basis
20 by this state or its agencies, or a political subdivision of this state. The term
21 "government attorney" does not include an attorney hired on a contingency fee or
22 hourly basis or an attorney hired on a short-term or temporary basis, including a legal
23 fellow, special prosecutor, or other similar provisional position;
- 24 (3) "Public nuisance", an unlawful condition that violates an established public
25 right;
- 26 (4) "Public nuisance action", a civil action for damages arising out of a public
27 nuisance brought pursuant to sections 537.291 to 537.293;
- 28 (5) "Special injury", an injury to an individual that is different in kind, not just
29 in degree, from an injury suffered by the public at large;
- 30 (6) "Unlawful condition", an ongoing circumstance or effect of an
31 instrumentality that is expressly prohibited by the laws of this state.

537.292. 1. A person shall be held liable for a public nuisance if the person
2 causes an unlawful condition and controls that unlawful condition at the time the
3 condition violates an established public right.

4 2. Conditions arising from the following conduct shall not be considered
5 unlawful conditions for purposes of a public nuisance action in this state:

6 (1) An activity expressly authorized or encouraged by a provision of law,
7 ordinance, rule, or other similar measure adopted by this state, a political subdivision of
8 this state, the United States, or an agency of this state or the United States; and

9 (2) The lawful manufacturing, distributing, selling, advertising, or promoting of
10 a lawful product.

11 3. The provisions of subsection 2 of this section are not exhaustive. However, it
12 may not be presumed that a person may be held liable for a public nuisance arising from
13 conduct or conditions not provided in subsection 2 of this section.

14 4. The aggregation of multiple individual injuries or private nuisances does not
15 constitute violations of an established public right for purposes of a public nuisance
16 action.

17 5. Except as provided by subsection 8 of this section, only the state or a political
18 subdivision thereof may bring a public nuisance action and may do so only by a
19 government attorney of the relevant jurisdiction. A political subdivision that does not
20 regularly retain a government attorney may retain an attorney for purposes of pursuing
21 a public nuisance action if the contract with the retained attorney provides that:

22 **(1) An official of the political subdivision shall have oversight, control, and**
23 **decision-making authority over the retained attorney and the political subdivision's**
24 **participation in the action; and**

25 **(2) The political subdivision's supervising official shall act in good faith and with**
26 **reasonable diligence in carrying out the political subdivision's obligation to oversee and**
27 **control the political subdivision's participation in the action.**

28 **6. To bring a public nuisance action, the state or the political subdivision thereof**
29 **shall have a substantial ownership interest in or authority over the real property or**
30 **waterway, or ancillary space related to the real property or waterway, to which the**
31 **public nuisance relates.**

32 **7. A financial expenditure made by the state or a political subdivision thereof**
33 **related to the remediation, abatement, or injunction of an unlawful condition does not**
34 **constitute an injury sufficient to confer standing to file or maintain a public nuisance**
35 **action.**

36 **8. (1) Absent a showing of clear and convincing evidence to the contrary, it shall**
37 **be presumed that only a single governmental entity within this state has standing to file**
38 **or maintain a public nuisance action relating to the real property or waterway, or**
39 **ancillary space related to the real property or waterway, to which the public nuisance**
40 **relates.**

41 **(2) An individual may maintain an action to enjoin a public nuisance only if the**
42 **individual can show a special injury by clear and convincing evidence. As a matter of**
43 **law, use of or damage to public land, air, or water with only personal, spiritual, cultural,**
44 **or emotional significance to the individual is not a special injury for purposes of a public**
45 **nuisance action. An individual shall not seek relief for both a public nuisance under the**
46 **special injury exception provided by this section and for a private nuisance for a harm**
47 **related to the same unlawful condition.**

537.293. 1. Remedies available in a public nuisance action are limited to:

2 **(1) Injunctive relief sufficient to prevent the unlawful condition from violating**
3 **an established public right; and**

4 **(2) Monetary and nonmonetary resources necessary to abate the public**
5 **nuisance, if quantifiable and based on relevant and reliable cost factors, which shall not**
6 **include:**

7 **(a) Speculative estimates of current needs;**

8 **(b) Costs of future remediation;**

9 **(c) Costs of investigating and identifying the existence of an unlawful condition;**

10 **(d) Costs of public services provided as a result of the public nuisance; or**

11 **(e) Damages of any kind, except for compensatory damages for a special injury**
12 **established in accordance with sections 537.291 to 537.293.**

13 **2. For the purposes of subdivision (2) of subsection 1 of this section, the necessity**
14 **of monetary resources to abate the public nuisance shall be established by the plaintiff**
15 **by clear and convincing evidence.**

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