

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

HOUSE BILL NO. 209

96TH GENERAL ASSEMBLY

0671S.03T

2011

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Section A. Sections 67.402, 226.720, and 537.296, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 67.402, 226.720, and 537.296, to read as follows:

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

(1) Any county of the first classification with more than one hundred thirty-five thousand four hundred but [less] **fewer** than one hundred thirty-five thousand five hundred inhabitants[.];

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

(3) Any county of the first classification without a 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;**

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.

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

18 **(7) Any county of the first classification with more than eighty-two thousand but**
19 **fewer than eighty-two thousand one hundred inhabitants;**

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

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

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

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

33 [2.] **3.** Any ordinance enacted pursuant to this section shall:

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

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

39 (3) Provide for service of adequate notice of the declaration of nuisance, which notice
40 shall specify that the nuisance is to be abated, listing a reasonable time for commencement, and
41 may provide that such notice be served either by personal service or by certified mail, return
42 receipt requested, but if service cannot be had by either of these modes of service, then service
43 may be had by publication. The ordinances shall further provide that the owner, occupant,
44 lessee, mortgagee, agent, and all other persons having an interest in the property as shown by the
45 land records of the recorder of deeds of the county wherein the property is located shall be made
46 parties;

47 (4) Provide that upon failure to commence work of abating the nuisance within the time
48 specified or upon failure to proceed continuously with the work without unnecessary delay, the
49 building commissioner or designated officer or officers shall call and have a full and adequate
50 hearing upon the matter before the county commission, giving the affected parties at least ten
51 days' written notice of the hearing. Any party may be represented by counsel, and all parties shall
52 have an opportunity to be heard. After the hearings, if evidence supports a finding that the

53 property is a nuisance or detrimental to the health, safety, or welfare of the residents of the
54 county, the county commission shall issue an order making specific findings of fact, based upon
55 competent and substantial evidence, which shows the property to be a nuisance and detrimental
56 to the health, safety, or welfare of the residents of the county and ordering the nuisance abated.
57 If the evidence does not support a finding that the property is a nuisance or detrimental to the
58 health, safety, or welfare of the residents of the county, no order shall be issued.

59 [3.] 4. Any ordinance authorized by this section may provide that if the owner fails to
60 begin abating the nuisance within a specific time which shall not be longer than seven days of
61 receiving notice that the nuisance has been ordered removed, the building commissioner or
62 designated officer shall cause the condition which constitutes the nuisance to be removed. If the
63 building commissioner or designated officer causes such condition to be removed or abated, the
64 cost of such removal shall be certified to the county clerk or officer in charge of finance who
65 shall cause the certified cost to be included in a special tax bill or added to the annual real estate
66 tax bill, at the county collector's option, for the property and the certified cost shall be collected
67 by the county collector in the same manner and procedure for collecting real estate taxes. If the
68 certified cost is not paid, the tax bill shall be considered delinquent, and the collection of the
69 delinquent bill shall be governed by the laws governing delinquent and back taxes. The tax bill
70 from the date of its issuance shall be deemed a personal debt against the owner and shall also be
71 a lien on the property until paid.

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

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

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

9 2. Any person, firm or corporation who establishes, conducts, owns, maintains or
10 operates a junkyard without complying with the provisions of this section shall, [on] **upon their**
11 **first** conviction, be guilty of a **class C** misdemeanor **and shall be ordered to either remove the**
12 **junk from the property or build a fence as described in this section. Any person, firm, or**

13 corporation who establishes, conducts, owns, maintains, or operates a junkyard without
14 complying with the provisions of this section shall, upon their second or subsequent
15 violation, be guilty of a class A misdemeanor and shall be ordered to either remove the
16 junk from the 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 not compelled to
4 buy would pay and a seller who is willing but not compelled to sell would accept for
5 property;
- 6 (3) "Fair rental value", the price a lessee who is willing but not compelled to lease
7 would pay and a lessor who is willing but not compelled to lease would accept;
- 8 (4) "Ownership interest", holding legal or equitable title to property in fee, in a life,
9 or in a leasehold interest;
- 10 (5) "Possessory interest", lawfully possessing property but does not include mere
11 occupancy;
- 12 (6) "Property", real property.

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

- 16 (1) If the nuisance is a permanent nuisance, compensatory damages shall be
17 measured by the reduction in the fair market value of the claimant's property caused by
18 the nuisance, but not to exceed the fair market value of the property;
- 19 (2) If the nuisance is a temporary nuisance, compensatory damages shall be
20 measured by the diminution in the fair rental value of the claimant's property caused by
21 the nuisance;
- 22 (3) If the nuisance is shown by objective and documented medical evidence to have
23 caused a medical condition to claimant, compensatory damages arising from that medical
24 condition may be awarded in addition to the exclusive damages permitted under
25 subdivisions 1 and 2 of this subsection.

26 3. If any claimant or claimant's successor with ownership interest brings any
27 subsequent claim against the same defendant or defendant's successors for temporary
28 nuisance related to a similar activity or use of the defendant's property, and such activity
29 or use of property is deemed a nuisance, the activity or use of property at issue shall be
30 considered a permanent nuisance and such claimant and claimant's successors shall be
31 limited to and bound by the remedies available for a permanent nuisance.

32 4. If a defendant in a private nuisance case where the nuisance is alleged to emanate
33 from property used for crop or animal production purposes demonstrates a good faith
34 effort to abate a condition that is determined to constitute a nuisance, then the nuisance

35 shall be deemed to be not capable of abatement. Substantial compliance with a court order
36 regarding such property shall constitute such a good faith effort as a matter of law.

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

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

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

43 **(2) Prohibit the recovery of any damages, direct, consequential, or otherwise,**
44 **resulting from or relating to crop destruction, crop damage, contamination of the seed**
45 **supply, or a diminution of crop value resulting from contamination of the seed or grain**
46 **supply, herbicide drift, or other diminution of crop value.**

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

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