

HCS SB 187 -- NUISANCE ACTIONS

SPONSOR: Lager (Guernsey)

COMMITTEE ACTION: Voted "do pass" by the Committee on Agri-Business by a vote of 8 to 0.

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

(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 real property;

(2) Prohibits a county from enacting a nuisance abatement ordinance relating to agricultural structures or operations including, but not limited to, the raising of livestock or row crops and specifies that no county of the first, second, third, or fourth classification will have 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 junkyard screening violation 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;

(4) Specifies that the exclusive compensatory 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:

(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 for a private nuisance where the alleged

nuisance originates from property primarily used for crop or animal production purposes, if any subsequent claim for a temporary nuisance related to a similar activity or use of the defendant's property is brought against the same defendant or the defendant's successor by the same claimant or the claimant's successor with ownership interest and the activity or use of property at issue is deemed a nuisance, the activity or use of property must be considered a permanent nuisance and the claimant and the claimant's successor 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;

(7) 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

(8) 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 a notice to any purchaser of the claimant's property that the property was related to a previous nuisance claim.

FISCAL NOTE: No impact on state funds in FY 2012, FY 2013, and FY 2014.

PROPOSERS: Supporters say that the bill will benefit farmers and agriculture, the number one industry in Missouri, by protecting farmers from continually being served with nuisance lawsuits. The bill gives several counties the ability to enact nuisance abatement ordinances to better address issues specific to the counties. The bill also protects agriculture by prohibiting county ordinances from providing abatement of an agricultural-related condition.

Testifying for the bill were Senator Lager; Missouri Pork Association; Missouri Association of Counties; Missouri Agribusiness Association; Shane Kinne, Missouri Corn Growers

Association; Missouri Farm Bureau; and Missouri Cattlemens Association.

OPPONENTS: Those who oppose the bill say that a temporary nuisance should not be considered a permanent nuisance if successive claims are brought for the same or similar activities.

Testifying against the bill were Department of Conservation; and Missouri Conservation Environmental Alliance.