

FIRST REGULAR SESSION

SENATE BILL NO. 324

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MUNZLINGER.

Read 1st time January 27, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1447S.01I

AN ACT

To repeal section 537.296, RSMo, and to enact in lieu thereof one new section relating to private nuisance actions.

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

Section A. Section 537.296, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 537.296, to read as follows:

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
4 compelled to buy would pay and a seller who is willing but not compelled to sell
5 would accept for property;
- 6 (3) "Fair rental value", the price a lessee who is willing but not compelled
7 to lease would pay and a lessor who is willing but not compelled to lease would
8 accept;
- 9 (4) "Ownership interest", holding legal or equitable title to property in fee
10 or, in a life, or in a leasehold interest;
- 11 (5) "Possessory interest", lawfully possessing property but does not include
12 mere occupancy;
- 13 (6) "Property", real property **as defined in section 513.605.**

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

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

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

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

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

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

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

47 6. Nothing in this section shall:

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

51 (2) Prohibit the recovery of any damages, direct, consequential, or
52 otherwise, resulting from or relating to crop destruction, crop damage,
53 contamination of the seed supply, or a diminution of crop value resulting from
54 contamination of the seed or grain supply, herbicide drift, or other diminution of
55 crop value.

56 7. If any party requests the court or jury visit the property alleged to be

57 affected by the nuisance in an action for private nuisance where the amount in
58 controversy exceeds one million dollars, the court or jury shall visit the property.

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

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