

FIRST REGULAR SESSION

SENATE BILL NO. 187

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS LAGER, PURGASON, BROWN, KEHOE,
PARSON, MUNZLINGER, MAYER AND STOUFFER.

Read 1st time January 26, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

0974S.011

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Section A. Section 537.296, RSMo, is repealed and one new section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 person who is willing but
4 not compelled to buy would pay and a seller who is willing but not
5 compelled to sell would accept for property;

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

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

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

13 (6) "Property", real property.

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

18 (1) If the nuisance is a permanent nuisance, compensatory

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 damages shall be measured by the reduction in the fair market value
20 of the claimant's property caused by the nuisance, but not to exceed the
21 fair market value of the property;

22 (2) If the nuisance is a temporary nuisance, compensatory
23 damages shall be measured by the diminution in the fair rental value
24 of the property which resulted from the nuisance.

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

33 4. No person shall have standing to bring an action for private
34 nuisance unless the person has an ownership interest in the property
35 alleged to be affected by the nuisance.

36 5. Nothing in this section shall be deemed to prohibit a person
37 from recovering damages for annoyance, discomfort, sickness, or
38 emotional distress, provided that such damages are awarded on the
39 basis of other causes of action independent of a claim of nuisance.

40 6. If any party requests the court or jury visit the property alleged to be
41 affected by the nuisance in an action for private nuisance [where the amount in
42 controversy exceeds one million dollars], the court or jury shall visit the property.

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