

FIRST REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 209**  
96TH GENERAL ASSEMBLY

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Reported from the Committee on Agriculture, Food Production and Outdoor Resources, April 7, 2011, with recommendation that the Senate Committee Substitute do pass.

0671L.02C

TERRY L. SPIELER, Secretary.

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**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.

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*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Section A. Sections 67.402, 226.720, and 537.296, RSMo, are repealed and  
2 three new sections enacted in lieu thereof, to be known as sections 67.402,  
3 226.720, and 537.296, to read as follows:

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

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

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

9 (3) Any county of the first classification without a charter form of  
10 government and with more than one hundred ninety-eight thousand but [less]  
11 **fewer** than one hundred ninety-nine thousand two hundred inhabitants;

12 (4) Any county of the first classification with more than  
13 **eighty-five thousand nine hundred but fewer than eighty-six thousand**  
14 **inhabitants;**

15 (5) Any county of the third classification without a township  
16 **form of government and with more than sixteen thousand four hundred**  
17 **but fewer than sixteen thousand five hundred inhabitants;**

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

18           **(6) Any county of the third classification with a township form**  
19 **of government and with more than fourteen thousand five hundred but**  
20 **fewer than fourteen thousand six hundred inhabitants.**

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

28           **[2.] 3.** Any ordinance enacted pursuant to this section shall:

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

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

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

44           (4) Provide that upon failure to commence work of abating the nuisance  
45 within the time specified or upon failure to proceed continuously with the work  
46 without unnecessary delay, the building commissioner or designated officer or  
47 officers shall call and have a full and adequate hearing upon the matter before  
48 the county commission, giving the affected parties at least ten days' written  
49 notice of the hearing. Any party may be represented by counsel, and all parties  
50 shall have an opportunity to be heard. After the hearings, if evidence supports  
51 a finding that the property is a nuisance or detrimental to the health, safety, or  
52 welfare of the residents of the county, the county commission shall issue an order  
53 making specific findings of fact, based upon competent and substantial evidence,

54 which shows the property to be a nuisance and detrimental to the health, safety,  
55 or welfare of the residents of the county and ordering the nuisance abated. If the  
56 evidence does not support a finding that the property is a nuisance or detrimental  
57 to the health, safety, or welfare of the residents of the county, no order shall be  
58 issued.

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

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

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

17 a junkyard without complying with the provisions of this section shall,  
18 upon their second or subsequent violation, be guilty of a class A  
19 misdemeanor and shall be ordered to either remove the junk from the  
20 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 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  
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:**

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

41 **(2) Prohibit the recovery of damages for crop destruction, crop**  
42 **damage, or a diminution of crop value resulting from contamination of**  
43 **the seed of grain supply.**

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

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

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