

# SENATE BILL NO. 1174

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR ESLINGER.

5493S.02I

ADRIANE D. CROUSE, Secretary

## AN ACT

To amend chapter 537, RSMo, by adding thereto three new sections relating to civil actions for public nuisances.

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

Section A. Chapter 537, RSMo, is amended by adding thereto  
2 three new sections, to be known as sections 537.291, 537.292,  
3 and 537.293, to read as follows:

**537.291. 1. A statutory cause of action for damages  
2 arising out of a public nuisance is hereby created in  
3 sections 537.291 to 537.293, replacing any such common law  
4 cause of action to the contrary. The provisions of section  
5 537.293 provide the only remedies for a public nuisance  
6 action in this state.**

**7 2. The provisions of sections 537.291 to 537.293 shall  
8 not affect:**

**9 (1) The availability of a remedy provided by any other  
10 provision of law for conditions or activities involving  
11 criminal conduct and designated by law as a public and  
12 common nuisance; or**

**13 (2) The authority of a governmental entity to take a  
14 regulatory or enforcement action authorized by law in  
15 connection with a condition designated by statute or local  
16 ordinance as a public nuisance.**

**17 3. The provisions of sections 537.291 to 537.293 shall  
18 apply only to any cause of action that accrues on or after**

19 August 28, 2022. A cause of action that accrues before  
20 August 28, 2022, shall be governed by law applicable to the  
21 cause of action before August 28, 2022, and that law is  
22 continued in effect for that purpose.

23 4. As provided in sections 537.291 to 537.293, the  
24 following terms mean:

25 (1) "Established public right", a right, commonly held  
26 by all members of the public, to the use of public land,  
27 air, or water;

28 (2) "Government attorney", an attorney regularly  
29 employed on a salaried basis by this state or its agencies,  
30 or a political subdivision of this state. The term  
31 "governmental attorney" does not include an attorney hired  
32 on a contingency fee or hourly basis or an attorney hired on  
33 a short-term or temporary basis, including a legal fellow,  
34 special prosecutor, or other similar provisional position;

35 (3) "Public nuisance", an unlawful condition that  
36 violates an established public right;

37 (4) "Public nuisance action", a civil action for  
38 damages arising out of a public nuisance brought pursuant to  
39 sections 537.291 to 537.293;

40 (5) "Special injury", an injury to an individual that  
41 is different in kind, not just in degree, from an injury  
42 suffered by the public at large;

43 (6) "Unlawful condition", an ongoing circumstance or  
44 effect of an instrumentality that is expressly prohibited by  
45 the laws of this state.

537.292. 1. A person shall be held liable for a  
2 public nuisance if the person causes an unlawful condition  
3 and controls that unlawful condition at the time the  
4 condition violates an established public right.

5           2. Conditions arising from the following conduct shall  
6 not be considered unlawful conditions for purposes of a  
7 public nuisance action in this state:

8           (1) An activity expressly authorized or encouraged by  
9 a provision of law, ordinance, rule, or other similar  
10 measure adopted by this state, a political subdivision of  
11 this state, the United States, or an agency of this state or  
12 the United States; and

13           (2) The lawful manufacturing, distributing, selling,  
14 advertising, or promoting of a lawful product.

15           3. The provisions of subsection 2 of this section are  
16 not exhaustive. However, it may not be presumed that a  
17 person may be held liable for a public nuisance arising from  
18 conduct or conditions not provided in subsection 2 of this  
19 section.

20           4. The aggregation of multiple individual injuries or  
21 private nuisances does not constitute violations of an  
22 established public right for purposes of a public nuisance  
23 action.

24           5. Except as provided by subsection 8 of this section,  
25 only the state or a political subdivision thereof may bring  
26 a public nuisance action and may do so only by a government  
27 attorney of the relevant jurisdiction. A political  
28 subdivision that does not regularly retain a government  
29 attorney may retain an attorney for purposes of pursuing a  
30 public nuisance action if the contract with the retained  
31 attorney provides that:

32           (1) An official of the political subdivision shall  
33 have oversight, control, and decision-making authority over  
34 the retained attorney and the political subdivision's  
35 participation in the action; and

36           (2) The political subdivision's supervising official  
37 shall act in good faith and with reasonable diligence in  
38 carrying out the political subdivision's obligation to  
39 oversee and control the political subdivision's  
40 participation in the action.

41           6. To bring a public nuisance action, the state or the  
42 political subdivision thereof shall have a substantial  
43 ownership interest in or authority over the real property or  
44 waterway, or ancillary space related to the real property or  
45 waterway, to which the public nuisance relates.

46           7. A financial expenditure made by the state or a  
47 political subdivision thereof related to the remediation,  
48 abatement, or injunction of an unlawful condition does not  
49 constitute an injury sufficient to confer standing to file  
50 or maintain a public nuisance action.

51           8. (1) Absent a showing of clear and convincing  
52 evidence to the contrary, it shall be presumed that only a  
53 single governmental entity within this state has standing to  
54 file or maintain a public nuisance action relating to the  
55 real property or waterway, or ancillary space related to the  
56 real property or waterway, to which the public nuisance  
57 relates.

58           (2) An individual may maintain an action to enjoin a  
59 public nuisance only if the individual can show a special  
60 injury by clear and convincing evidence. As a matter of  
61 law, use of or damage to public land, air, or water with  
62 only personal, spiritual, cultural, or emotional  
63 significance to the individual is not a special injury for  
64 purposes of a public nuisance action. An individual shall  
65 not seek relief for both a public nuisance under the special  
66 injury exception provided by this section and for a private  
67 nuisance for a harm related to the same unlawful condition.

537.293. 1. Remedies available in a public nuisance  
2 action are limited to:

3 (1) Injunctive relief sufficient to prevent the  
4 unlawful condition from violating an established public  
5 right; and

6 (2) Monetary and nonmonetary resources necessary to  
7 abate the public nuisance, if quantifiable and based on  
8 relevant and reliable cost factors, which shall not include:

9 (a) Speculative estimates of current needs;

10 (b) Costs of future remediation;

11 (c) Costs of investigating and identifying the  
12 existence of an unlawful condition;

13 (d) Costs of public services provided as a result of  
14 the public nuisance; or

15 (e) Damages of any kind, except for compensatory  
16 damages for a special injury established in accordance with  
17 sections 537.291 to 537.293.

18 2. For the purposes of subdivision (2) of subsection  
19 (1) of this section, the necessity of monetary resources to  
20 abate the public nuisance shall be established by the  
21 plaintiff by clear and convincing evidence.

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