

environmental control site owner all costs, including but not limited to direct and indirect costs of remedying the violation and costs of any other remedies provided by law or in the easement instrument.

(6) A claim or cause of action arising out of or relating to a violation of a term or provision of an environmental control easement must be filed in a court of appropriate jurisdiction within 10 years from the date upon which the party alleging violation of the easement had actual knowledge of the violation.

History: En. Sec. 18, Ch. 503, L. 1999.

76-7-212. Who may enforce easement. (1) The owner of any real property designated as a benefited property in the instrument creating the environmental control easement or the occupant of the benefited real property may maintain an action for enforcement of the easement.

(2) A public body or a qualified private organization holding an environmental control easement shall enforce the provisions of the easement.

(3) A person or entity specifically named as a beneficiary in the instrument creating the environmental control easement may enforce the provisions of the easement to the extent provided in the instrument.

History: En. Sec. 19, Ch. 503, L. 1999.

76-7-213. Liability. (1) The creation and approval of an environmental control easement do not waive or release any statutory liability or other obligation of a person for hazardous wastes or substances at an environmental control site. A federal public entity or public body may enforce any applicable law or obligation, without regard to any allocation of liability in an easement instrument and without regard to exhaustion of remedies against any party to an easement instrument.

(2) An owner of a site to which the environmental control easement applies and any lessee or licensee of the land are liable for any violation of the provisions of the easement and are liable for abating the violation and for all damages, costs, and attorney fees arising from or attributable to the violation.

(3) Notwithstanding any other provision of law, the holder or other named beneficiary of an environmental control easement or other person enforcing the easement is not liable for hazardous wastes or substances at the environmental control site or for the release of a hazardous or deleterious substance from a facility at the site based upon its ownership of the easement or based upon its maintenance, monitoring, enforcement, or other actions with respect to the easement.

History: En. Sec. 20, Ch. 503, L. 1999.

CHAPTER 8 RESERVED

CHAPTER 9 SHOOTING RANGES

Part 1 — Protection of Shooting Range Location and Investments

- 76-9-101. Policy.
- 76-9-102. Prohibitions.
- 76-9-103. Planning — effect on shooting ranges.
- 76-9-104. Zoning — effect on shooting ranges.
- 76-9-105. Closure of shooting ranges — limitations — relocation cost.

Part 1

Protection of Shooting Range Location and Investments

76-9-101. Policy. It is the policy of the state of Montana to provide for the health, safety, and welfare of the citizens of the state by promoting the safety and enjoyment of the shooting

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sports among the citizens of the state and by protecting the locations of and investment in shooting ranges for shotgun, archery, rifle, and pistol shooting.

History: En. Sec. 1, Ch. 415, L. 1991.

76-9-102. Prohibitions. (1) Standards adopted by a state agency or unit of local government to limit levels of noise that may occur in the outdoor atmosphere may not apply to shooting ranges.

(2) Standards adopted by a state agency or unit of local government promulgated pursuant to Title 75 and concerning pollution by lead, copper, or brass may not limit or prohibit the operation of a shooting range because of lead, copper, or brass deposition resulting from shooting activities.

History: En. Sec. 2, Ch. 415, L. 1991.

76-9-103. Planning — effect on shooting ranges. The laws of this state concerning planning or growth policies, as defined in 76-1-103, may not be construed to authorize an ordinance, resolution, or rule that would:

(1) prevent the operation of an existing shooting range as a nonconforming use;

(2) prohibit the establishment of new shooting ranges, but the ordinance, resolution, or rule may regulate the construction of safety improvements on existing shooting ranges.

(3) prevent the erection or construction of safety improvements on existing shooting ranges.

History: En. Sec. 3, Ch. 415, L. 1991; amd. Sec. 65, Ch. 44, L. 2007.

76-9-104. Zoning — effect on shooting ranges. A planning district growth policy, recommendation, resolution, rule, or zoning designation may not:

(1) prevent the operation of an existing shooting range as a nonconforming use;

(2) prohibit the establishment of new shooting ranges, but it may regulate the construction of shooting ranges to specified zones; or

(3) prevent the erection or construction of safety improvements on existing shooting ranges.

History: En. Sec. 4, Ch. 415, L. 1991; amd. Sec. 33, Ch. 582, L. 1999.

76-9-105. Closure of shooting ranges — limitations — relocation cost. (1) Except as provided in subsection (2), an established shooting range may not be prevented from operation by a state agency, unit of local government, or court unless the range presents a clear and provable safety hazard to the adjacent population.

(2) If a pressing public need exists because of incompatibility with nearby population or land use, an established shooting range may be relocated by an agency of state government, unit of local government, or court, but only if all of the following conditions are met:

(a) pressing public need is documented through hearings, testimony, and a clear and precise statement of need by the agency, unit of local government, or court involved;

(b) the agency or unit of local government obtaining the closure pays the appraised cost of the land together with improvements to the operators of the shooting range. In return the shooting range operators shall relinquish their interest in the property to the agency or unit of local government obtaining the closure.

(3) If a shooting range presents a clear and provable safety hazard to adjacent population, the range may be suspended from operation if:

(a) reasonable notice and opportunity to respond are afforded the range operators; and

(b) reasonable opportunity is afforded the range operators to correct any safety defects.

History: En. Sec. 5, Ch. 415, L. 1991.

CHAPTER 10 REGULATION OF WILDCRAFTING

Part 1 — General Provisions

- 76-10-101. Purpose.
- 76-10-102. Definitions.
- 76-10-103. Written permission or permit to wildcraft required.
- 76-10-104. Exemption from written permission or permit requirement.
- 76-10-105. Requirements of buyer.
- 76-10-106. Restriction on liability of landowner.
- 76-10-107. Violations — penalties.

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EXHIBIT 1
DATE 3.8.11
SR 173

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7-5-2109. County control of litter. (1) (a) Except as provided in 7-5-2112, a governing body of a county may regulate, control, and prohibit littering on any county road and on land within the county by the adoption of an ordinance that substantially complies with the provisions of 7-5-103 through 7-5-107. The ordinance may apply to portions of the county and may apply to persons other than the owners of the property on which littering occurs.

(b) The ordinance does not apply to lead, copper, or brass deposits directly resulting from shooting activities at a shooting range.

(c) The ordinance does not apply to a "notice of violation" card placed on a motor vehicle illegally parked in a disability parking space.

(2) Except as provided in 7-5-2112, the governing body of a county may establish a fine not to exceed \$200 as a penalty for violation of the ordinance referred to in subsection (1). A violation of the ordinance may not be punishable by imprisonment.

History: En. Sec. 1, Ch. 508, L. 1983; amd. Sec. 6, Ch. 415, L. 1991; amd. Sec. 1, Ch. 406, L. 993; amd. Sec. 2, Ch. 67, L. 1997.

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Montana Code Annotated 2009

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7-5-2110. Community decay defined. (1) In 7-5-2111, "community decay" means a public nuisance created by allowing rubble, debris, junk, or refuse to accumulate resulting in conditions that are injurious to health, indecent, offensive to the senses, or obstruct the free use of property so as to interfere with the comfortable enjoyment of life or property.

(2) "Community decay" as used in 7-5-2111 may not be construed or defined to apply to:

(a) normal farming, ranching, or other agricultural operations or to a farm, ranch, or other agricultural facility, and any appurtenances thereof, during the course of its normal operations; or

(b) normal activities at a shooting range.

History: En. Sec. 1, Ch. 411, L. 1985; amd. Sec. 7, Ch. 415, L. 1991.

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Montana Code Annotated 2009

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45-8-101. Disorderly conduct. (1) A person commits the offense of disorderly conduct if the person knowingly disturbs the peace by:

- (a) quarreling, challenging to fight, or fighting;
- (b) making loud or unusual noises;
- (c) using threatening, profane, or abusive language;
- (d) discharging firearms, except at a shooting range during established hours of operation;
- (e) rendering vehicular or pedestrian traffic impassable;
- (f) rendering the free ingress or egress to public or private places impassable;
- (g) disturbing or disrupting any lawful assembly or public meeting;
- (h) transmitting a false report or warning of a fire or other catastrophe in a place where its occurrence would endanger human life;
- (i) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; or
- (j) transmitting a false report or warning of an impending explosion in a place where its occurrence would endanger human life.

(2) Except as provided in subsection (3), a person convicted of the offense of disorderly conduct shall be fined not to exceed \$100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

(3) A person convicted of a violation of subsection (1)(j) shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

History: En. 94-8-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-101; amd. Sec. 1, Ch. 508, L. 1989; amd. Sec. 8, Ch. 415, L. 1991; amd. Sec. 1693, Ch. 56, L. 2009.

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45-8-111. Public nuisance. (1) "Public nuisance" means:

(a) a condition that endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons;

(b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

(c) a condition that renders dangerous for passage any public highway or right-of-way or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if the person knowingly creates, conducts, or maintains a public nuisance.

(3) Any act that affects an entire community or neighborhood or any considerable number of persons, as specified in subsection (1)(a), is no less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

(4) An agricultural or farming operation, a place, an establishment, or a facility or any of its appurtenances or the operation of those things is not or does not become a public nuisance because of its normal operation as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

(5) Noises resulting from the shooting activities at a shooting range during established hours of operation are not considered a public nuisance.

(6) A person convicted of maintaining a public nuisance shall be fined not to exceed 500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. Each day of the conduct constitutes a separate offense.

History: En. 94-8-107 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 30, Ch. 359, L. 1977; R.C.M. 1947, 94-8-107(1) thru (4); amd. Sec. 2, Ch. 123, L. 1981; amd. Sec. 9, Ch. 415, L. 1991; amd. Sec. 1697, Ch. 56, L. 2009.

Provided by Montana Legislative Services

Part 1 — General Provisions

- 27-30-101. Definition of nuisance.
- 27-30-102. Distinction between public and private nuisances.
- 27-30-103. Action for nuisance.
- 27-30-104. Right to recover damages unaffected by abatement.
- 27-30-105. Successive owners liable for nuisance.

Part 2 — Public Nuisances

- 27-30-201. Public nuisance not legalized by time.
- 27-30-202. Remedies for public nuisances.
- 27-30-203. When private person may maintain action for public nuisance.
- 27-30-204. Abatement of public nuisance by public body or officer or injured party.

Part 3 — Private Nuisances

- 27-30-301. Remedies for private nuisances.
- 27-30-302. Abatement of private nuisance by injured party.

Part 1 General Provisions

27-30-101. Definition of nuisance. (1) Anything which is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or which unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin or any public park, square, street, or highway is a nuisance.

(2) Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.

(3) No agricultural or farming operation, place, establishment, or facility or any of its appurtenances or the operation thereof is or becomes a public or private nuisance because of the normal operation thereof as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

History: (1)En. Sec. 4550, Civ. C. 1895; re-en. Sec. 6162, Rev. C. 1907; re-en. Sec. 8642, R.C.M. 1921; Cal. Civ. C. Sec. 3479; re-en. Sec. 8642, R.C.M. 1935; Sec. 57-101, R.C.M. 1947; (2)En. Sec. 4553, Civ. C. 1895; re-en. Sec. 6165, Rev. C. 1907; re-en. Sec. 8645, R.C.M. 1921; Cal. Civ. C. Sec. 3482; Field Civ. C. Sec. 1952; re-en. Sec. 645, R.C.M. 1935; Sec. 57-104, R.C.M. 1947; R.C.M. 1947, 57-101, 57-104; (3)En. Sec. 1, Ch. 123, L. 1981.

Cross-References

- Criminal code — public nuisance, 45-8-111.
- Criminal code — action to abate — public nuisance, 45-8-112.
- Interference with canal or ditch easements, 70-17-112.
- Public ways, 85-1-111.
- Navigable waters, 85-1-112.

27-30-102. Distinction between public and private nuisances. (1) A public nuisance is one which affects, at the same time, an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

(2) Every nuisance not included in the definition of subsection (1) is private.

History: (1)En. Sec. 4551, Civ. C. 1895; re-en. Sec. 6163, Rev. C. 1907; re-en. Sec. 8643, R.C.M. 1921; Cal. Civ. C. Sec. 3480; Based on Field Civ. C. Sec. 1950; re-en. Sec. 8643, R.C.M. 1935; Sec. 57-102, R.C.M. 1947; (2)En. Sec. 4552, Civ. C. 1895; re-en. Sec. 6164, Rev. C. 1907; re-en. Sec. 8644, R.C.M. 1921; Cal. Civ. C. Sec. 81; Field Civ. C. Sec. 1951; re-en. Sec. 8644, R.C.M. 1935; Sec. 57-103, R.C.M. 1947; R.C.M. 1947, 57-102, -103.

1

SENATE BILL NO. 173

2

INTRODUCED BY B. TUTVEDT

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT ~~NORMAL OPERATIONS OF NOISES~~
5 RESULTING FROM SHOOTING ACTIVITIES AT SHOOTING RANGES MAY NOT BE CONSIDERED TO BE
6 PUBLIC OR PRIVATE NUISANCES; AND AMENDING SECTION 27-30-101, MCA."

7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9

10 **Section 1.** Section 27-30-101, MCA, is amended to read:

11 **"27-30-101. Definition of nuisance.** (1) Anything ~~which~~ that is injurious to health, indecent or offensive
12 to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of
13 life or property, or ~~which~~ that unlawfully obstructs the free passage or use, in the customary manner, of any
14 navigable lake, river, bay, stream, canal, or basin or any public park, square, street, or highway is a nuisance.

15 (2) Nothing ~~which~~ that is done or maintained under the express authority of a statute, ~~including normal~~
16 ~~operations of shooting ranges authorized under 76-9-101 through 76-9-105,~~ can may be deemed a public or
17 private nuisance.

18 (3) ~~No~~ An agricultural or farming operation, a place, an establishment, or a facility or any of its
19 appurtenances or the operation ~~thereof is or becomes~~ of those things is not or does not become a public or
20 private nuisance because of the its normal operation ~~thereof~~ as a result of changed residential or commercial
21 conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been
22 in operation longer than the complaining resident has been in possession or commercial establishment has been
23 in operation.

24 (4) NOISES RESULTING FROM THE SHOOTING ACTIVITIES AT A SHOOTING RANGE DURING ESTABLISHED HOURS
25 OF OPERATION ARE NOT CONSIDERED A PUBLIC OR PRIVATE NUISANCE."

26

- END -

How the title of SB 173 would appear with Amendment SB017301.alk (January 25, 2011, 5:14 p.m.):

AN ACT CLARIFYING THAT ~~NORMAL OPERATIONS OF~~ NOISES RESULTING FROM SHOOTING ACTIVITIES AT SHOOTING RANGES MAY NOT BE CONSIDERED TO BE PUBLIC OR PRIVATE NUISANCES; AND AMENDING SECTION 27-30-101, MCA

How Section 27-30-101 in SB 173 would read with Amendment SB017301.alk (January 25, 2011, 5:14 p.m.):

27-30-101. Definition of nuisance. (1) Anything ~~which that~~ is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or ~~which that~~ unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin or any public park, square, street, or highway is a nuisance.

(2) Nothing ~~which that~~ is done or maintained under the express authority of a statute, ~~including normal operations of shooting ranges authorized under 76-9-101 through 76-9-105,~~ can ~~may~~ be deemed a public or private nuisance.

(3) ~~No~~ An agricultural or farming operation, a place, an establishment, or a facility or any of its appurtenances or the operation thereof ~~is or becomes~~ of those things is not or does not become a public or private nuisance because of the its normal operation thereof as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

(4) Noises resulting from the shooting activities at a shooting range during established hours of operation are not considered a public or private nuisance.

How Section 27-30-101 would be codified upon passage and approval of SB 173 with the amendment:

27-30-101. Definition of nuisance. (1) Anything that is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or that unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin or any public park, square, street, or highway is a nuisance.

(2) Nothing that is done or maintained under the express authority of a statute can be deemed a public or private nuisance.

(3) An agricultural or farming operation, a place, an establishment, or a facility or any of its appurtenances or the operation of those things is not or does not become a public or private nuisance because of its normal operation as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

(4) Noises resulting from the shooting activities at a shooting range during established hours of operation are not considered a public or private nuisance.

*Prepared for the
Senate Local Government Committee by Leanne Kurtz, Legislative Services Division staff*