

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

Senate Bill 508

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CARMICHAEL, MULLINS AND PALUMBO

[Originating in the Committee on the Judiciary;
reported on February 19, 2016.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §55-7-30, relating generally to civil claims for private nuisance; establishing
3 pre-suit notice and other requirements to bringing a civil claim for private nuisance; tolling
4 the statute of limitations on private nuisance claims for sixty-one days after the required
5 pre-suit notice is provided; establishing and defining a “permit shield” defense to claims
6 for private nuisance; outlining the elements to that defense; providing for exceptions to
7 that defense; and requiring an ownership or possessory interest to assert a claim for
8 private nuisance.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 section, designated §55-7-30, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-30. Private nuisance claims.

1 (a) Prior to filing a claim for private nuisance in any court of competent jurisdiction, the
2 persons who wish to bring such cause of action must provide notice to all defendants of intent to
3 bring a claim for private nuisance. That notice must specify the conditions forming the basis of
4 the claim for private nuisance in sufficient detail that would permit the defendants to take remedial
5 action with respect to said conditions. The notice must also advise the defendants of the
6 opportunity to participate in a mediation within sixty days of the notice. The notice described in
7 this subsection is a jurisdictional prerequisite to filing a civil claim for private nuisance. The statute
8 of limitation period for the private nuisance claim described in the notice shall be tolled for sixty-
9 one days any time a notice is submitted pursuant to this subsection.

10 (b) A person may not maintain an action for private nuisance against any owner, operator,
11 contractor, subcontractor or other person or entity, or any person or entity acting under contract
12 with, as the agent or employee of, or at the behest or direction of any of the foregoing, for any
13 activity authorized by statute, regulation or rule, or authorized under a license, permit, order or

14 other written authorization issued by any municipality, county, state or federal agency, department
15 or division of government, or any activity necessary or incident thereto, unless the activity forming
16 the basis of the alleged private nuisance is in violation of a term or condition of: (1) An ordinance,
17 statute or regulation; (2) An applicable license, permit, or order or other authorization; or (3) A
18 court order or judgment. However, a violation does not provide a basis to maintain a private
19 nuisance action when the violation is not related to the alleged private nuisance.

20 (c) No person may bring an action for private nuisance unless the person has an
21 ownership interest or possessory interest in the property alleged to be affected by the nuisance.

NOTE: The purpose of this bill is to establish the standards applicable to the common law claim for private nuisance. The bill lists elements and establishes requirements including the requirement that physical property damage or bodily injury exist before a person can seek damages for a private nuisance. The bill also prohibits private nuisance claims if the activity at issue is conducted pursuant to and in compliance with a permit, license or other approval by a state or federal agency or other entity. The bill also requires a plaintiff to have either an ownership interest or possessory interest in the property at issue to have standing to bring a private nuisance claim.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.