

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 508

BY SENATORS FERNS, STOLLINGS, KIRKENDOLL,

CARMICHAEL, MULLINS AND PALUMBO

[Introduced February 4, 2016;

Referred to the Committee on the Judiciary.]

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 criteria to prove a claim for private nuisance; defining terms; and limiting damages to
 4 situations involving personal injury or property damage.

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) A private nuisance is defined as a substantial and unreasonable interference with the
 2 private use and enjoyment of another’s land which causes physical property damage or bodily
 3 injury. No person may bring an action for private nuisance unless proper evidence of physical
 4 property damage or bodily injury caused by the substantial and unreasonable interference exists.

5 (b) For purposes of this section, an interference with the private use and enjoyment of
 6 another’s land is substantial when the activity involves more than a slight inconvenience or petty
 7 annoyance and instead involve a real and appreciable invasion of that private use and enjoyment.

8 (c) For purposes of this section, an interference with the private use and enjoyment of
 9 another’s land is unreasonable when the gravity of the harm outweighs the social value of the
 10 activity alleged to cause the harm.

11 (d) A person may not maintain an action for private nuisance against any owner, operator,
 12 contractor, subcontractor or other person or entity, or any person or entity acting under contract
 13 with, as the agent or employee of, or at the behest or direction of any of the foregoing, who has a
 14 license, permit, order or other authorization from any municipal, county, state, federal or other
 15 agency, department or division unless the activity forming the basis of the alleged private
 16 nuisance is in violation of a term or condition of: (1) An ordinance, statute or regulation; (2) an
 17 applicable license, permit or order; or (3) a court order or judgment. However, a violation does

- 18 not provide a basis to maintain a private nuisance action where the violation is not related to the
19 alleged private nuisance.
- 20 (e) 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.