

**PROTECTIONS FOR AGRICULTURAL
PRACTICES**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill eliminates the presumption that agricultural operations are conducted in accordance with sound agricultural practices and provides that agricultural operations are not nuisances.

Highlighted Provisions:

This bill:

▸ states that agricultural activity is not a nuisance if conducted in accordance with sound agricultural practices.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-10-803, as last amended by Laws of Utah 2008, Chapter 3

78B-6-1101, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-6-1104, as renumbered and amended by Laws of Utah 2008, Chapter 3

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **76-10-803** is amended to read:

76-10-803. "Public nuisance" defined -- Agricultural operations.

30 (1) A public nuisance is a crime against the order and economy of the state and
31 consists in unlawfully doing any act or omitting to perform any duty, which act or omission:

32 (a) annoys, injures, or endangers the comfort, repose, health, or safety of three or more
33 persons;

34 (b) offends public decency;

35 (c) unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for
36 passage, any lake, stream, canal, or basin, or any public park, square, street, or highway;

37 (d) is a nuisance as defined in Section 78B-6-1107; or

38 (e) in any way renders three or more persons insecure in life or the use of property.

39 (2) An act which affects three or more persons in any of the ways specified in this
40 section is still a nuisance regardless of the extent to which the annoyance or damage inflicted
41 on individuals is unequal.

42 (3) (a) ~~[Agricultural operations that are consistent]~~ Activities conducted in the normal
43 and ordinary course of agricultural operations, as defined in Subsection 78B-6-1101(7), and
44 conducted in accordance with sound agricultural practices are presumed to be reasonable and
45 ~~[do]~~ not constitute a public nuisance under Subsection (1) ~~[unless the agricultural operation~~
46 ~~has a substantial adverse effect on the public health and safety]~~.

47 (b) Agricultural operations undertaken in conformity with federal, state, and local laws
48 and regulations, including zoning ordinances, are presumed to be operating within sound
49 agricultural practices.

50 Section 2. Section **78B-6-1101** is amended to read:

51 **78B-6-1101. Definitions -- Nuisance -- Right of action -- Judgment.**

52 (1) A nuisance is anything which is injurious to health, indecent, offensive to the
53 senses, or an obstruction to the free use of property, so as to interfere with the comfortable
54 enjoyment of life or property. A nuisance may be the subject of an action.

55 (2) A nuisance may include the following:

56 (a) drug houses and drug dealing as provided in Section 78B-6-1107;

57 (b) gambling as provided in Title 76, Chapter 10, Part 11;

58 (c) criminal activity committed in concert with two or more persons as provided in
59 Section 76-3-203.1;

60 (d) party houses which frequently create conditions defined in Subsection (1); and

61 (e) prostitution as provided in Title 76, Chapter 10, Part 13.

62 (3) A nuisance under this part includes tobacco smoke that drifts into any residential
63 unit a person rents, leases, or owns, from another residential or commercial unit and the
64 smoke:

65 (a) drifts in more than once in each of two or more consecutive seven-day periods; and

66 (b) creates any of the conditions under Subsection (1).

67 (4) Subsection (3) does not apply to:

68 (a) residential rental units available for temporary rental, such as for vacations, or
69 available for only 30 or fewer days at a time; or

70 (b) hotel or motel rooms.

71 (5) Subsection (3) does not apply to any unit that is part of a timeshare development,
72 as defined in Section 57-19-2, or subject to a timeshare interest as defined in Section 57-19-2.

73 (6) An action may be brought by any person whose property is injuriously affected, or
74 whose personal enjoyment is lessened by the nuisance.

75 (7) "Agricultural operation" means any ~~[facility for the]~~ activity engaged in the
76 commercial production [for commercial purposes] of crops, orchards, aquaculture, livestock,
77 poultry, livestock products, [or] poultry products, and the facilities, equipment, and property
78 used to facilitate the activity.

79 (8) "Manufacturing facility" means any factory, plant, or other facility including its
80 appurtenances, where the form of raw materials, processed materials, commodities, or other
81 physical objects is converted or otherwise changed into other materials, commodities, or
82 physical objects or where such materials, commodities, or physical objects are combined to
83 form a new material, commodity, or physical object.

84 Section 3. Section **78B-6-1104** is amended to read:

85 **78B-6-1104. Agricultural operations -- Nuisance liability.**

86 (1) [~~Agricultural operations that are consistent~~] Activities conducted in the normal and
87 ordinary course of agricultural operations or conducted in accordance with sound agricultural
88 practices are presumed to be reasonable and [~~do~~] not constitute a nuisance [~~unless the~~
89 ~~agricultural operation has a substantial adverse effect on the public health and safety~~].

90 (2) Agricultural operations undertaken in conformity with federal, state, and local laws
91 and regulations, including zoning ordinances, are presumed to be operating within sound
92 agricultural practices.