

Part 11 Nuisance

78B-6-1101 Definitions -- Nuisance -- Right of action -- Agriculture operations.

- (1) A nuisance is anything that is injurious to health, indecent, 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. A nuisance may be the subject of an action.
- (2) A nuisance may include the following:
 - (a) drug houses and drug dealing as provided in Section 78B-6-1107;
 - (b) gambling as provided in Title 76, Chapter 10, Part 11, Gambling;
 - (c) criminal activity committed in concert with three or more persons as provided in Section 76-3-203.1;
 - (d) criminal activity committed for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802;
 - (e) criminal activity committed to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;
 - (f) party houses that frequently create conditions defined in Subsection (1); and
 - (g) prostitution as provided in Title 76, Chapter 10, Part 13, Prostitution.
- (3) A nuisance under this part includes tobacco smoke that drifts into a residential unit a person rents, leases, or owns, from another residential or commercial unit and the smoke:
 - (a) drifts in more than once in each of two or more consecutive seven-day periods; and
 - (b) creates any of the conditions under Subsection (1).
- (4) Subsection (3) does not apply to:
 - (a) a residential rental unit available for temporary rental, such as for a vacation, or available for only 30 or fewer days at a time; or
 - (b) a hotel or motel room.
- (5) Subsection (3) does not apply to a unit that is part of a timeshare development, as defined in Section 57-19-2, or subject to a timeshare interest as defined in Section 57-19-2.
- (6) An action may be brought by a person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.
- (7) An action for nuisance against an agricultural operation is governed by Title 4, Chapter 44, Agricultural Operations Nuisances Act.
- (8) "Critical infrastructure materials operations" means the same as that term is defined in Section 10-9a-901.
- (9) "Manufacturing facility" means a factory, plant, or other facility including its appurtenances, where the form of raw materials, processed materials, commodities, or other physical objects is converted or otherwise changed into other materials, commodities, or physical objects or where such materials, commodities, or physical objects are combined to form a new material, commodity, or physical object.

Amended by Chapter 207, 2021 General Session

78B-6-1102 Action.

- (1) An action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.
- (2) Upon judgment, the nuisance may be enjoined or abated, and damages may be recovered.

Enacted by Chapter 3, 2008 General Session

78B-6-1102.5 Violation of order enjoining a nuisance.

A person who knowingly violates any judgment or order abating or otherwise enjoining a nuisance as defined under Section 78B-6-1101 is guilty of a class B misdemeanor.

Enacted by Chapter 99, 2010 General Session

78B-6-1103 Manufacturing facility in operation over three years -- Limited application of restrictions.

- (1) Notwithstanding Sections 76-10-803 and 78B-6-1101, a manufacturing facility or operation may not be considered a nuisance, private or public, by virtue of any changed circumstance in land uses near the facility after it has been in operation for more than three years if the manufacturing facility or operation was not a nuisance at the time it began operation. The manufacturing facility may not increase the condition asserted to be a nuisance. The provisions of this Subsection (1) do not apply if a nuisance results from the negligent or improper operation of a manufacturing facility.
- (2) The provisions of Subsection (1) may not affect or defeat the right of any person to recover damages for any injuries or damage sustained because of any pollution of, or change in the condition of, the waters of any stream or the overflow of the lands of any person.
- (3) Any and all ordinances now or in the future adopted by any county or municipal corporation in which a manufacturing facility is located and which makes its operation a nuisance or providing for an abatement as a nuisance in the circumstances set forth in this section are null and void. The provisions of this Subsection (3) may not apply whenever a nuisance results from the negligent or improper operation of a manufacturing facility.

Amended by Chapter 185, 2011 General Session

78B-6-1105 Tobacco smoke -- Legislative intent.

- (1) The Legislature finds:
 - (a) the federal Environmental Protection Agency (EPA) has determined that environmental tobacco smoke is a Group A carcinogen, in the same category as other cancer-causing chemicals such as asbestos;
 - (b) the EPA has determined that there is no acceptable level of exposure to Class A carcinogens; and
 - (c) the EPA has determined that exposure to environmental tobacco smoke also causes an increase in respiratory diseases and disorders among exposed persons.
- (2) The Legislature finds that environmental tobacco smoke generated in a rental or condominium unit may drift into other units, exposing the occupants of those units to tobacco smoke, and that standard construction practices are not effective in preventing this drift of tobacco smoke.
- (3) The Legislature further finds that persons who desire to not be exposed to drifting environmental tobacco smoke should be able to determine in advance of entering into a rental, lease, or purchase agreement whether the subject unit may be exposed to environmental tobacco smoke.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1106 Rental units -- Tobacco smoke.

- (1) There is no cause of action for a nuisance under Subsection 78B-6-1101(3) if the rental, lease, restrictive covenant, or purchase agreement for the unit states in writing that:
 - (a) smoking is allowed in other units, either residential or commercial, and that tobacco smoke from those units may drift into the unit that is subject to the agreement; and
 - (b) by signing the agreement the renter, lessee, or buyer acknowledges he has been informed that tobacco smoke may drift into the unit he is renting, leasing, or purchasing, and he waives any right to a cause of action for a nuisance under Subsection 78B-6-1101(3).
- (2) A cause of action for a nuisance under Subsection 78B-6-1101(3) may be brought against:
 - (a) the individual generating the tobacco smoke;
 - (b) the renter or lessee who permits or fails to control the generation of tobacco smoke, in violation of the terms of the rental or lease agreement, on the premises he rents or leases; or
 - (c) the landlord, but only if:
 - (i) the terms of the renter's or lessee's contract provide the unit will not be subject to the nuisance of drifting tobacco smoke;
 - (ii) the complaining renter or lessee has provided to the landlord a statement in writing indicating that tobacco smoke is creating a nuisance in the renter's or lessee's unit; and
 - (iii) the landlord knowingly allows the continuation of a nuisance under Subsection 78B-6-1101(3) after receipt of written notice under Subsection (2)(c)(ii), and in violation of the terms of the rental or lease agreement under Subsection (2)(c)(i).

Enacted by Chapter 3, 2008 General Session

78B-6-1107 Nuisance -- Drug houses and drug dealing -- Gambling -- Group criminal activity -- Party house -- Prostitution -- Weapons -- Abatement by eviction.

- (1) Every building or place is a nuisance where:
 - (a) the unlawful sale, manufacture, service, storage, distribution, dispensing, or acquisition occurs of any controlled substance, precursor, or analog specified in Title 58, Chapter 37, Utah Controlled Substances Act;
 - (b) gambling is permitted to be played, conducted, or dealt upon as prohibited in Title 76, Chapter 10, Part 11, Gambling, which creates the conditions of a nuisance as defined in Subsection 78B-6-1101(1);
 - (c) criminal activity is committed in concert with three or more persons as provided in Section 76-3-203.1;
 - (d) criminal activity is committed for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802;
 - (e) criminal activity is committed to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;
 - (f) parties occur frequently which create the conditions of a nuisance as defined in Subsection 78B-6-1101(1);
 - (g) prostitution or promotion of prostitution is regularly carried on by one or more persons as provided in Title 76, Chapter 10, Part 13, Prostitution; and
 - (h) a violation of Title 76, Chapter 10, Part 5, Weapons, occurs on the premises.
- (2) It is a defense to nuisance under Subsection (1)(a) if the defendant can prove that the defendant is lawfully entitled to possession of a controlled substance.
- (3) Sections 78B-6-1108 through 78B-6-1114 govern only an abatement by eviction of the nuisance as defined in Subsection (1).

Amended by Chapter 207, 2021 General Session

78B-6-1108 Nuisance -- Abatement by eviction.

- (1) Whenever there is reason to believe that a nuisance under Sections 78B-6-1107 through 78B-6-1114 is kept, maintained, or exists in any county, the county attorney of the county, the city attorney of any incorporated city, any citizen or citizens of the state residing in the county, or any corporation, partnership or business doing business in the county, in his or their own names, may maintain an action in a court of competent jurisdiction to abate the nuisance and obtain an order for the automatic eviction of the tenant.
- (2) The court may designate a spokesperson of any group of citizens who would otherwise have the right to maintain an action in their individual names against the defendant under this section.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1109 Abatement by eviction order -- Grounds.

An order of abatement by eviction may issue only upon a showing by the applicant by a preponderance of the evidence that:

- (1) the applicant will suffer irreparable harm unless the order of abatement by eviction issues;
- (2) the threatened injury to the applicant outweighs whatever damage the proposed order of abatement by eviction may cause the party so ordered;
- (3) the order of abatement by eviction, if issued, would not be adverse to the public interest; and
- (4) there is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1110 Prior acts or threats of violence -- Protection of witnesses.

At the time of application for abatement of the nuisance by eviction pursuant to Sections 78B-6-1108 and 78B-6-1109, if proof of the existence of the nuisance depends, in whole or in part, upon the affidavits of witnesses who are not peace officers, upon a showing of prior threats of violence or acts of violence by any defendant or other person, the court may issue orders to protect those witnesses, including, nondisclosure of the name, address, or any other information which may identify those witnesses.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1111 Landlord, owner, or designated agent -- Necessary party -- Automatic eviction.

- (1) A landlord, owner, or designated agent is a necessary party defendant in a nuisance action under Sections 78B-6-1107 through 78B-6-1114 for entry of an order to abate the nuisance by eviction where the acts complained of are those of third parties upon the premises of the landlord, owner, or designated agent.
- (2) In the presence of the applicant, the tenant and the landlord, owner, or designated agent at the court's hearing on the action to abate the nuisance by eviction, the court shall notify the necessary parties of its finding that:
 - (a) a nuisance exists as defined in Section 78B-6-1107; and
 - (b) as a result, the court is issuing an order to evict the tenant subject to compliance with the security requirement in Section 78B-6-1112.

- (3) In all cases, including default judgments, the order of abatement by eviction may be issued and enforced immediately.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1112 Security requirement -- Amount not a limitation -- Jurisdiction over surety.

- (1) The court shall condition issuance of the order of abatement by eviction on the giving of security by the applicant, in such sum and form as the court determines proper, unless it appears that none of the parties will incur or suffer costs, attorney fees, or damage as the result of any wrongful order of abatement by eviction, or unless there exists some other substantial reason for dispensing with the requirement of security. No such security shall be required of the United States, the State of Utah, or of an officer, agency, or subdivision of either; nor shall it be required when it is prohibited by law.
- (2) The amount of security shall not establish or limit the amount of costs, including reasonable attorney fees incurred in connection with the order of abatement by eviction, or damages that may be awarded to a party who is found to have been wrongfully evicted.
- (3) A surety upon a bond or undertaking under this section submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall immediately mail copies to the persons giving the security if their addresses are known.
- (4) The plaintiff, upon demand, shall be granted a hearing to be held prior to the expiration of three days from the date the defendant is served with notice of the plaintiff's giving of security as provided in Subsection 78B-6-1112(1).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1113 Evidence of nuisance.

In any action for abatement by eviction instituted pursuant to Sections 78B-6-1107 through 78B-6-1114, all evidence otherwise authorized by law, including evidence of reputation in a community, is admissible to prove the existence of a nuisance by a preponderance of the evidence.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1114 Award of costs and attorney fees.

- (1) The court may award costs, including the costs of investigation and discovery, and reasonable attorney fees, which are not compensated for pursuant to some other provision of law, to the prevailing party in any case in which a governmental agency, private citizen or citizens, corporation, partnership, or business seeks to abate the nuisance by eviction in or upon any building or place where the nuisance occurs as provided in Section 78B-6-1107.
- (2) The court may award costs, including the costs of investigation and discovery, and reasonable attorney fees against a defendant landlord, owner, or designated agent only when the court finds that the defendant landlord, owner, or designated agent had actual notice of the nuisance action and willfully failed to take reasonable action within a reasonable time to abate the nuisance.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1115 Critical infrastructure materials operations -- Nuisance liability.

- (1) Activities conducted in the normal and ordinary course of critical infrastructure materials operations or conducted in accordance with sound practices are presumed to be reasonable and not constitute a nuisance.
- (2) Critical infrastructure materials operations undertaken in conformity with federal, state, and local laws and regulations, including zoning ordinances, are presumed to be operating within sound critical infrastructure materials practices.

Enacted by Chapter 227, 2019 General Session