

Part 11

Nuisance

78B-6-1101 Definitions -- Nuisance -- Agriculture operations.

- (1) As used in this part:
- (a) "Controlled substance" means the same as that term is defined in Section 58-37-2.
 - (b) "Critical infrastructure materials operations" means the same as the term "critical infrastructure materials use" is defined in Section 10-9a-901.
 - (c) "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.
 - (d) "Nuisance" means 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.
 - (e)
 - (i) "Possession or use" means the joint or individual ownership, control, occupancy, holding, retaining, belonging, maintaining, or the application, inhalation, swallowing, injection, or consumption, as distinguished from distribution, of a controlled substance, and includes individual, joint, or group possession or use of a controlled substance.
 - (ii) For a person to be a possessor or user of a controlled substance, it is not required that the person be shown to have individually possessed, used, or controlled the substance, but it is sufficient if it is shown that the person jointly participated with one or more persons in the use, possession, or control of a controlled substance with knowledge that the activity was occurring, or the controlled substance is found in a place or under circumstances indicating that the person had the ability and the intent to exercise dominion and control over it.
- (2) A nuisance may be the subject of an action.
- (3) 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 9, Part 14, Gambling;
 - (c) criminal activity committed in concert with two or more individuals 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)(d);
 - (g) prostitution as provided in Title 76, Chapter 5d, Prostitution; or
 - (h) the unlawful discharge of a firearm as provided in state or local law.
- (4) A nuisance under this part includes:
- (a) tobacco smoke that drifts into a residential unit a person rents, leases, or owns, from another residential or commercial unit and the smoke:
 - (i) drifts in more than once in each of two or more consecutive seven-day periods; and
 - (ii) creates any of the conditions described in Subsection (1)(d); or

- (b) fumes resulting from the unlawful manufacturing or the unlawful possession or use of a controlled substance that drift into a residential unit a person rents, leases, or owns, from another residential or commercial unit.
- (5) Subsection (4)(a) 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.
- (6) Subsection (4)(a) 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.
- (7) An action for nuisance against an agricultural operation is governed by Title 4, Chapter 44, Agricultural Operations Nuisances Act.

Amended by Chapter 141, 2025 General Session

Amended by Chapter 173, 2025 General Session

Amended by Chapter 174, 2025 General Session

Amended by Chapter 178, 2025 General Session

Amended by Chapter 387, 2025 General Session

78B-6-1102 Right of action -- Remedies -- Jurisdiction for enforcement.

- (1) An action for nuisance may be brought before a court with jurisdiction by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.
- (2) Upon judgment, the court may, in addition to any other relief the court considers just and proper:
 - (a) award damages;
 - (b) order the nuisance to be enjoined or abated, which may include:
 - (i) requiring a defendant to make repairs to the nuisance property or property that is injuriously affected by the nuisance;
 - (ii) requiring a defendant to:
 - (A) install and maintain secure locks on the nuisance property's doors or windows;
 - (B) provide security personnel or video surveillance monitoring of the nuisance property; or
 - (C) install and maintain lighting in and around common areas; or
 - (iii) abatement by eviction as provided in this part;
 - (c) grant declaratory relief as described in Part 4, Declaratory Judgments; or
 - (d) award costs and reasonable attorney fees to the prevailing party as described in Section 76B-6-1114.
- (3) A court that issues a judgment or order under this part retains jurisdiction to enforce the judgment or order.

Amended by Chapter 141, 2025 General Session

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

A person who knowingly violates any judgment or order abating or enjoining a nuisance, as that term is defined in Section 78B-6-1101:

- (1) is guilty of a class B misdemeanor; and
- (2) is subject to a civil penalty of \$50 per day for each day that the nuisance continues in violation of the order.

Amended by Chapter 141, 2025 General Session

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

- (1)
 - (a) Notwithstanding Sections 76-9-1301 and 78B-6-1101, a manufacturing facility may not be considered a nuisance because of any changed circumstance in land uses near the facility if:
 - (i) the manufacturing facility has been in operation for more than three years; and
 - (ii) the manufacturing facility was not a nuisance at the time it began operation.
 - (b) The manufacturing facility may not increase the condition asserted to be a nuisance.
 - (c) The provisions of this Subsection (1) do not apply if a nuisance results from the negligent or improper operation of a manufacturing facility.
- (2) Nothing in this section affects the right of a person to recover damages for injuries or damage sustained as a result of the pollution or change in the conditions of the waters of a stream or overflow of the lands of any person.
- (3)
 - (a) 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.
 - (b) 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 141, 2025 General Session

Amended by Chapter 173, 2025 General Session

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

- (1) There is no cause of action for a nuisance under Subsection 78B-6-1101(4)(a) if the rental, lease, restrictive covenant, or purchase agreement for the unit states in writing that:
 - (a) tobacco 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(4).
- (2) A cause of action for a nuisance under Subsection 78B-6-1101(4)(a) 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 the renter or lessee 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(4) 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).
- (3) A cause of action for nuisance under Subsection 78B-6-1101(4)(b) may be brought against:

- (a) an individual who generates fumes by the unlawful manufacturing or the unlawful possession or use of a controlled substance;
- (b) a renter or lessee who permits or fails to control the generation of fumes from the unlawful manufacturing or the unlawful possession or use of a controlled substance on the premises the renter or lessee rents or leases; or
- (c) a landlord, but only if:
 - (i) the complaining renter or lessee has provided to the landlord a statement in writing indicating that fumes from the unlawful manufacturing or the unlawful possession or use of a controlled substance are creating a nuisance in the renter's or lessee's unit; and
 - (ii) the landlord knowingly allows the continuation of a nuisance under Subsection 78B-6-1101(4)(b) after receipt of written notice under Subsection (3)(c)(i).

Amended by Chapter 141, 2025 General Session

78B-6-1107 Nuisance -- Drug houses and drug dealing -- Gambling -- Group criminal activity -- Party house -- Prostitution -- Weapons -- Discharge of a firearm -- Defense.

- (1) Every building or place is a nuisance where:
 - (a) the unlawful sale, manufacture, service, storage, distribution, dispensing, acquisition, or use occurs of any controlled substance, precursor, or analog described 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 9, Part 14, Gambling, which creates the conditions of a nuisance as that term is defined in Subsection 78B-6-1101(1);
 - (c) criminal activity is committed in concert with two or more individuals as described 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 that term is defined in Subsection 78B-6-1101(1);
 - (g) prostitution or promotion of prostitution is regularly carried on by one or more persons as described in Title 76, Chapter 5d, Prostitution;
 - (h) a violation of an offense under Title 76, Chapter 11, Weapons, occurs on the premises;
 - (i) the unlawful discharge of a firearm, as provided in state or local law, occurs on the premises; and
 - (j) human trafficking occurs as described in Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling.
- (2) It is a defense to nuisance under Subsection (1)(a) if the defendant can prove that the defendant is lawfully entitled to the possession or use of a controlled substance.
- (3) Evidence of a previous conviction for a crime described in Subsection (1) may not be used in an action for nuisance under this part.

Amended by Chapter 141, 2025 General Session

Amended by Chapter 173, 2025 General Session

Amended by Chapter 174, 2025 General Session

Amended by Chapter 178, 2025 General Session

Amended by Chapter 208, 2025 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 person or business doing business in the county, in their own name or names, may bring an action for abatement by eviction in a court with jurisdiction.
- (2) The court may designate a spokesperson from a group of citizens who would otherwise have the right to maintain an action in their individual names against the defendant under this section.

Amended by Chapter 141, 2025 General Session

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

A court shall issue an order of abatement by eviction if the applicant shows, 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 any damage the proposed order of abatement by eviction may cause the party to be evicted;
- (3) the order of abatement by eviction would not be adverse to the public interest; and
- (4) there is a substantial likelihood that:
 - (a) the applicant will prevail on the merits of the underlying claim; or
 - (b) the case presents serious issues on the merits which should be the subject of further litigation.

Amended by Chapter 141, 2025 General Session

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

At the time of application for abatement of a nuisance by eviction pursuant to Sections 78B-6-1108 and 78B-6-1109, upon a showing of good cause the court may issue an order to protect the applicant or, if proof of the existence of the nuisance depends in whole or in part upon the affidavit of a witness who is not a peace officer, the witness, which order may include nondisclosure of the name, address, or any other information which may identify the individual protected by the order.

Amended by Chapter 141, 2025 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 a third party upon the premises of the landlord, owner, or designated agent.
- (2) At the court's hearing on the action to abate the nuisance by eviction, the court shall notify the necessary parties, including the applicant, the tenant, and the landlord, owner, or designated agent, if:
 - (a) the court finds that a nuisance exists as described 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.

Amended by Chapter 141, 2025 General Session

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

- (1)
- (a) The court shall condition issuance of an order of abatement by eviction on the giving of security by the applicant, in such sum and form as the court determines proper, unless:
 - (i) the court determines 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;
 - (ii) the court determines that there exists some substantial reason for dispensing with the requirement of security; or
 - (iii) the applicant has proved, by a preponderance of the evidence, the existence of a nuisance described in Section 78B-6-1107.
 - (b) Security described in Subsection (1)(a) may not be required:
 - (i) of the United States, the state, or an officer, agency, or subdivision of the United States or the state; or
 - (ii) when prohibited by law.
- (2) The amount of security may not limit the award of:
- (a) reasonable attorney fees or costs incurred in connection with the order of abatement by eviction; or
 - (b) damages that may be awarded to a party who is found to have been wrongfully evicted.
- (3)
- (a) 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.
 - (b) The surety's liability may be enforced on motion without the necessity of an independent action.
 - (c) The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall immediately provide a copy to the applicant or other person giving the security by the means established at the time of the application.
- (4) Upon request, the applicant shall be granted a hearing to be held no later than three days from the date the defendant is served with notice of the applicant's giving of security, as described in Subsection (1).

Amended by Chapter 141, 2025 General Session

78B-6-1113 Evidence of nuisance.

In an action for nuisance or abatement by eviction, all evidence authorized by law, including evidence of reputation in a community, is admissible to prove the existence of a nuisance or the elements required for an order of abatement by eviction by a preponderance of the evidence.

Amended by Chapter 141, 2025 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 party brings an action to abate a nuisance under this part.

- (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.

Amended by Chapter 141, 2025 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