

Effective 5/6/2026

78B-6a-404 Defense in nuisance action for agricultural operations.

- (1)
 - (a) A person or government entity does not have a right of action under this chapter for a private nuisance that is an agricultural operation if:
 - (i) the plaintiff is not a legal possessor of the real property affected by the conditions alleged to be the public nuisance or private nuisance;
 - (ii) the real property affected by the conditions alleged to be the public nuisance or private nuisance is located outside one-half mile of the source of the activity or structure alleged to be the public nuisance or private nuisance; or
 - (iii) the action is filed more than one year after:
 - (A) the establishment of the agricultural operation; or
 - (B) the agricultural operation undergoes a fundamental change.
 - (b) Subsection (1)(a) may not be construed to invalidate any contract made before May 14, 2019.
- (2)
 - (a) A person or government entity does not have a right of action under this chapter for a private nuisance that is an agricultural operation if the agricultural operation is conducted in the normal and ordinary course of an agricultural operation or conducted in accordance with sound agricultural practices.
 - (b) An agricultural operation undertaken in conformity with federal, state, and local laws and regulations, including zoning ordinances, is presumed to be operating within sound agricultural practices.
- (3) A person or government entity has no right of action for a public nuisance or private nuisance if the action involves an agricultural activity and the agricultural activity is:
 - (a) conducted within an agriculture protection area; and
 - (b) not in violation of any federal, state, or local law or regulation relating to the alleged nuisance or was conducted according to sound agricultural practices.
- (4) In a public nuisance or private nuisance action for an agricultural operation, the court shall award costs and expenses, including reasonable attorney fees, to:
 - (a) the defendant when the court finds the agricultural operation is not a public nuisance or private nuisance and the action is frivolous or malicious; or
 - (b) the plaintiff when the court finds the agricultural operation is a public nuisance or private nuisance and the defendant asserts an affirmative defense in the action that is frivolous and malicious.

Renumbered and Amended by Chapter 401, 2026 General Session