

1 **AGRICULTURAL NUISANCE AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Scott D. Sandall**

5 House Sponsor: Joel Ferry

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses nuisances.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ addresses agricultural operations areas;
- 13 ▶ enacts the Agricultural Operations Nuisances Act, including:
 - 14 • defining terms;
 - 15 • addressing nuisance actions; and
 - 16 • providing for the relationship with other statutes;
- 17 ▶ repeals redundant language; and
- 18 ▶ makes technical and conforming changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **17-41-403**, as last amended by Laws of Utah 2009, Chapter 376

26 **23-28-303**, as enacted by Laws of Utah 2009, Chapter 273

27 **76-10-803**, as last amended by Laws of Utah 2009, Chapter 21

28 **78B-6-1101**, as last amended by Laws of Utah 2010, Chapter 193

29 ENACTS:

30 **4-44-101**, Utah Code Annotated 1953

31 **4-44-102**, Utah Code Annotated 1953

32 **4-44-201**, Utah Code Annotated 1953

33 **4-44-202**, Utah Code Annotated 1953

34 REPEALS:

35 **78B-6-1104**, as last amended by Laws of Utah 2009, Chapter 21



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

38 Section 1. Section **4-44-101** is enacted to read:

39 **CHAPTER 44. AGRICULTURAL OPERATIONS NUISANCES ACT**

40 **Part 1. General Provisions**

41 **4-44-101. Title.**

42 This chapter is known as "Agricultural Operations Nuisances Act."

43 Section 2. Section **4-44-102** is enacted to read:

44 **4-44-102. Definitions.**

45 As used in this chapter:

46 (1) (a) "Agricultural operation" means an activity engaged in the production for
47 commercial purposes of crops, orchards, livestock, poultry, aquaculture, livestock products, or
48 poultry products and the facilities, equipment, and property used to facilitate the activity.

49 (b) "Agricultural operation" includes an agricultural protection area established under
50 Title 17, Chapter 41, Agriculture and Industrial Protection Areas.

51 (2) "Fundamental change to the operation" does not include:

52 (a) a change in ownership or size;

53 (b) an interruption of farming for a period of no more than three years;

54 (c) participation in a government-sponsored agricultural program;

55 (d) employment of new technology; or

56 (e) a change in the type of agricultural product produced.

57 (3) "Nuisance" means anything that is injurious to health, indecent, offensive to the
58 senses, or an obstruction to the free use of property, so as to interfere with the comfortable
59 enjoyment of life or property.

60 Section 3. Section **4-44-201** is enacted to read:

61 **Part 2. Nuisance Actions**

62 **4-44-201. Defenses in nuisance actions.**

63 (1) It is a defense in a civil action for nuisance against an agricultural operation that:

64 (a) the plaintiff is not a legal possessor of the real property affected by the conditions
65 alleged to be the nuisance;

66 (b) the real property affected by the conditions alleged to be the nuisance is located
67 outside one-half mile of the source of the activity or structure alleged to be the nuisance; or

68 (c) the action is filed more than one year after:

69 (i) the establishment of the agricultural operation; or

70 (ii) the agricultural operation undergoes a fundamental change.

71 (2) This section may not be construed to invalidate any contract made before May 14,
72 2019.

73 (3) In a nuisance action against an agricultural operation, the court shall award costs
74 and expenses, including reasonable attorney fees, to:

75 (a) the agricultural operation when the court finds the agricultural operation is not a
76 nuisance and the nuisance action is frivolous or malicious; or

77 (b) the plaintiff when the court finds the agricultural operation is a nuisance and the
78 agricultural operation asserts an affirmative defense in the nuisance action that is frivolous and
79 malicious.

80 (4) A person who knowingly violates a judgment or order abating or otherwise
81 enjoining a nuisance is guilty of a class B misdemeanor.

82 Section 4. Section **4-44-202** is enacted to read:

83 **4-44-202. Application of other statutes -- Ordinances.**

84 (1) (a) In a civil action for nuisance or a criminal action for public nuisance under
85 Section 76-10-803, it is a defense if the action involves agricultural operations and those
86 agricultural operations are conducted in the normal and ordinary course of agricultural
87 operations or conducted in accordance with sound agricultural practices.

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

91 (2) If the agricultural operations occur in an agricultural protection area, as defined in
92 Section 17-41-101, Section 17-41-403 governs the action for nuisance.

93 (3) (a) An ordinance of a political subdivision that would make the operation of an
94 agricultural operation or appurtenances to an agricultural operation a nuisance or that provide
95 for abatement of the agricultural operation as a nuisance does not apply to an agricultural
96 operation that is conducted in the normal and ordinary course of agricultural operations or
97 conducted in accordance with sound agricultural practices.

98 (b) An agricultural operation undertaken in conformity with federal, state, and local
99 laws and regulations, including zoning ordinances, are presumed to be operating within sound
100 agricultural practices.

101 Section 5. Section 17-41-403 is amended to read:

102 **17-41-403. Nuisances.**

103 (1) Each political subdivision shall ensure that any of its laws or ordinances that define
104 or prohibit a public nuisance exclude from the definition or prohibition:

105 (a) for an agriculture protection area, any agricultural activity or operation within an
106 agriculture protection area conducted using sound agricultural practices unless that activity or
107 operation bears a direct relationship to public health or safety; or

108 (b) for an industrial protection area, any industrial use of the land within the industrial
109 protection area that is consistent with sound practices applicable to the industrial use, unless

110 that use bears a direct relationship to public health or safety.

111 (2) In a civil action for nuisance or a criminal action for public nuisance under Section
112 76-10-803, it is a complete defense if the action involves agricultural activities and:

113 (a) those agricultural activities were:

114 ~~[(a)]~~ (i) conducted within an agriculture protection area; and

115 ~~[(b)]~~ (ii) not in violation of any federal, state, or local law or regulation relating to the
116 alleged nuisance or were conducted according to sound agricultural practices~~[-];~~ or

117 (b) a defense under Section 4-44-201 applies.

118 (3) (a) A vested mining use undertaken in conformity with applicable federal and state
119 law and regulations is presumed to be operating within sound mining practices.

120 (b) A vested mining use that is consistent with sound mining practices:

121 (i) is presumed to be reasonable; and

122 (ii) may not constitute a private or public nuisance under Section 76-10-803.

123 (c) A vested mining use in operation for more than three years may not be considered
124 to have become a private or public nuisance because of a subsequent change in the condition of
125 land within the vicinity of the vested mining use.

126 (4) (a) For any new subdivision development located in whole or in part within 300
127 feet of the boundary of an agriculture protection area, the owner of the development shall
128 provide notice on any plat filed with the county recorder the following notice:

129 "Agriculture Protection Area

130 This property is located in the vicinity of an established agriculture protection area in
131 which normal agricultural uses and activities have been afforded the highest priority use
132 status. It can be anticipated that such agricultural uses and activities may now or in the
133 future be conducted on property included in the agriculture protection area. The use
134 and enjoyment of this property is expressly conditioned on acceptance of any
135 annoyance or inconvenience which may result from such normal agricultural uses and
136 activities."

137 (b) For any new subdivision development located in whole or in part within 1,000 feet
138 of the boundary of an industrial protection area, the owner of the development shall provide
139 notice on any plat filed with the county recorder the following notice:

140 "Industrial Protection Area

141 This property is located in the vicinity of an established industrial protection area in
142 which normal industrial uses and activities have been afforded the highest priority use
143 status. It can be anticipated that such industrial uses and activities may now or in the
144 future be conducted on property included in the industrial protection area. The use and
145 enjoyment of this property is expressly conditioned on acceptance of any annoyance or
146 inconvenience which may result from such normal industrial uses and activities."

147 (c) For any new subdivision development located in whole or in part within 1,000 feet
148 of the boundary of a mining protection area, the owner of the development shall provide notice
149 on any plat filed with the county recorder the following notice:

150 "This property is located within the vicinity of an established mining protection area in
151 which normal mining uses and activities have been afforded the highest priority use status. It
152 can be anticipated that the mining uses and activities may now or in the future be conducted on
153 property included in the mining protection area. The use and enjoyment of this property is
154 expressly conditioned on acceptance of any annoyance or inconvenience that may result from
155 the normal mining uses and activities."

156 Section 6. Section **23-28-303** is amended to read:

157 **23-28-303. Nuisances.**

158 (1) (a) A county shall exclude the activities described in Subsection (1)(b) from the
159 definition of public nuisance in a county law or ordinance regulating a public nuisance.

160 (b) An activity or occurrence normally associated with a migratory bird production area
161 is not a nuisance, including:

162 (i) hunting;

163 (ii) discharging a firearm;

- 164 (iii) improving habitat;
- 165 (iv) trapping;
- 166 (v) eradicating weeds;
- 167 (vi) discing;
- 168 (vii) planting;
- 169 (viii) impounding water;
- 170 (ix) raising a bird or other domestic animal;
- 171 (x) grazing;
- 172 (xi) an activity conducted in the normal course of an agricultural operation as defined
- 173 in Section [~~78B-6-1101~~] [4-44-102](#); and
- 174 (xii) an odor.

175 (2) In a civil action for nuisance or a criminal action for public nuisance under Section

176 [76-10-803](#), it is a complete defense if the action is:

- 177 (a) normally associated with a migratory bird production area;
- 178 (b) conducted within a migratory bird production area; and
- 179 (c) not in violation of any federal or state law.

180 (3) An owner of a new development located in whole or in part within 1,000 feet of a

181 migratory bird production area shall provide the following notice on any plat filed with the

182 county recorder:

183 "Migratory Bird Production Area

184 This property is located in the vicinity of an established migratory bird production area

185 in which hunting and activities related to the management and operation of land for the benefit

186 of migratory birds have been afforded the highest priority use status. It can be anticipated that

187 these uses and activities may now or in the future be conducted on land within the migratory

188 bird production area. The use and enjoyment of this property is expressly conditioned on

189 acceptance of any annoyance or inconvenience that may result from activities normally

190 associated with a migratory bird production area."

191 Section 7. Section **76-10-803** is amended to read:

192 **76-10-803. "Public nuisance" defined -- Agricultural operations.**

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

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

197 (b) offends public decency;

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

200 (d) is a nuisance as defined in Section [78B-6-1107](#); or

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

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

205 (3) (a) Activities conducted in the normal and ordinary course of agricultural
206 operations, as defined in [~~Subsection [78B-6-1101](#)(7)] [Section 4-44-102](#), and conducted in
207 accordance with sound agricultural practices are presumed to be reasonable and not constitute a
208 public nuisance under Subsection (1).~~

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

212 Section 8. Section **78B-6-1101** is amended to read:

213 **78B-6-1101. Definitions -- Nuisance -- Right of action -- Agriculture operations.**

214 (1) A nuisance is anything [~~which~~] that is injurious to health, indecent, offensive to the
215 senses, or an obstruction to the free use of property, so as to interfere with the comfortable
216 enjoyment of life or property. A nuisance may be the subject of an action.

217 (2) A nuisance may include the following:

- 218 (a) drug houses and drug dealing as provided in Section 78B-6-1107;
- 219 (b) gambling as provided in Title 76, Chapter 10, Part 11, Gambling;
- 220 (c) criminal activity committed in concert with two or more persons as provided in
- 221 Section 76-3-203.1;
- 222 (d) criminal activity committed for the benefit of, at the direction of, or in association
- 223 with any criminal street gang as defined in Section 76-9-802;
- 224 (e) criminal activity committed to gain recognition, acceptance, membership, or
- 225 increased status with a criminal street gang as defined in Section 76-9-802;
- 226 (f) party houses ~~[which]~~ that frequently create conditions defined in Subsection (1);
- 227 and
- 228 (g) prostitution as provided in Title 76, Chapter 10, Part 13, Prostitution.
- 229 (3) A nuisance under this part includes tobacco smoke that drifts into ~~[any]~~ a
- 230 residential unit a person rents, leases, or owns, from another residential or commercial unit and
- 231 the smoke:
 - 232 (a) drifts in more than once in each of two or more consecutive seven-day periods; and
 - 233 (b) creates any of the conditions under Subsection (1).
 - 234 (4) Subsection (3) does not apply to:
 - 235 (a) a residential rental ~~[units]~~ unit available for temporary rental, such as for
 - 236 ~~[vacations]~~ a vacation, or available for only 30 or fewer days at a time; or
 - 237 (b) a hotel or motel ~~[rooms]~~ room.
 - 238 (5) Subsection (3) does not apply to ~~[any]~~ a unit that is part of a timeshare
 - 239 development, as defined in Section 57-19-2, or subject to a timeshare interest as defined in
 - 240 Section 57-19-2.
 - 241 (6) An action may be brought by ~~[any]~~ a person whose property is injuriously affected,
 - 242 or whose personal enjoyment is lessened by the nuisance.
 - 243 ~~[(7) "Agricultural operation" means any activity engaged in the commercial production~~
 - 244 ~~of crops, orchards, aquaculture, livestock, poultry, livestock products, poultry products, and the~~

245 ~~facilities, equipment, and property used to facilitate the activity.]~~

246 (7) An action for nuisance against an agricultural operation is governed by Title 4,
247 Chapter 44, Agricultural Operations Nuisances Act.

248 (8) "Manufacturing facility" means ~~any~~ a factory, plant, or other facility including its
249 appurtenances, where the form of raw materials, processed materials, commodities, or other
250 physical objects is converted or otherwise changed into other materials, commodities, or
251 physical objects or where such materials, commodities, or physical objects are combined to
252 form a new material, commodity, or physical object.

253 Section 9. **Repealer.**

254 This bill repeals:

255 Section **78B-6-1104, Agricultural operations -- Nuisance liability.**