

**Senator Scott D. Sandall** proposes the following substitute bill:

**AGRICULTURAL NUISANCE AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Scott D. Sandall**

House Sponsor: Joel Ferry

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**LONG TITLE**

**General Description:**

This bill addresses nuisances.

**Highlighted Provisions:**

This bill:

- ▶ enacts the Agricultural Operations Nuisances Act, including:
  - defining terms;
  - addressing nuisance actions; and
  - providing for the relationship with other statutes;
- ▶ repeals redundant language; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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



26 78B-6-1101, as last amended by Laws of Utah 2010, Chapter 193

27 ENACTS:

28 4-44-101, Utah Code Annotated 1953

29 4-44-102, Utah Code Annotated 1953

30 4-44-201, Utah Code Annotated 1953

31 4-44-202, Utah Code Annotated 1953

32 REPEALS:

33 78B-6-1104, as last amended by Laws of Utah 2009, Chapter 21



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

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

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

38 **Part 1. General Provisions**

39 **4-44-101. Title.**

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

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

42 **4-44-102. Definitions.**

43 As used in this chapter:

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

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

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

50 (a) a change in ownership or size;

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

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

53 (d) employment of new technology; or

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

55 (3) "Nuisance" means anything that is injurious to health, indecent, offensive to the  
56 senses, or an obstruction to the free use of property, so as to interfere with the comfortable

57 enjoyment of life or property.

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

59 **Part 2. Nuisance Actions**

60 **4-44-201. Defenses in nuisance actions.**

61 (1) It is a defense against a nuisance action against an agricultural operation that:

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

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

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

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

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

69 (2) Subsection (1) does not affect or defeat the right of a person to recover damages for  
70 injuries or damages sustained by the person on account of:

71 (a) pollution of, or change in condition of, the waters of any stream; or

72 (b) overflow onto lands of the person.

73 (3) This section may not be construed to invalidate any contract made before May 14,  
74 2019.

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

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

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

82 (5) A person who knowingly violates a judgment or order abating or otherwise  
83 enjoining a nuisance is guilty of a class B misdemeanor.

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

85 **4-44-202. Application of other statutes -- Ordinances.**

86 (1) (a) In a civil action for nuisance or a criminal action for public nuisance under  
87 Section [76-10-803](#), it is a defense if the action involves agricultural operations and those

88 agricultural operations are conducted in the normal and ordinary course of agricultural  
89 operations or conducted in accordance with sound agricultural practices.

90 (b) 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.

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

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

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

103 Section 5. Section **23-28-303** is amended to read:

104 **23-28-303. Nuisances.**

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

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

- 109 (i) hunting;
- 110 (ii) discharging a firearm;
- 111 (iii) improving habitat;
- 112 (iv) trapping;
- 113 (v) eradicating weeds;
- 114 (vi) discing;
- 115 (vii) planting;
- 116 (viii) impounding water;
- 117 (ix) raising a bird or other domestic animal;
- 118 (x) grazing;

119 (xi) an activity conducted in the normal course of an agricultural operation as defined  
120 in Section [~~78B-6-1101~~] [4-44-102](#); and

121 (xii) an odor.

122 (2) In a civil action for nuisance or a criminal action for public nuisance under Section  
123 [76-10-803](#), it is a complete defense if the action is:

124 (a) normally associated with a migratory bird production area;

125 (b) conducted within a migratory bird production area; and

126 (c) not in violation of any federal or state law.

127 (3) An owner of a new development located in whole or in part within 1,000 feet of a  
128 migratory bird production area shall provide the following notice on any plat filed with the  
129 county recorder:

130 "Migratory Bird Production Area

131 This property is located in the vicinity of an established migratory bird production area  
132 in which hunting and activities related to the management and operation of land for the benefit  
133 of migratory birds have been afforded the highest priority use status. It can be anticipated that  
134 these uses and activities may now or in the future be conducted on land within the migratory  
135 bird production area. The use and enjoyment of this property is expressly conditioned on  
136 acceptance of any annoyance or inconvenience that may result from activities normally  
137 associated with a migratory bird production area."

138 Section 6. Section [76-10-803](#) is amended to read:

139 **[76-10-803](#). "Public nuisance" defined -- Agricultural operations.**

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

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

144 (b) offends public decency;

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

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

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

149 (2) An act which affects three or more persons in any of the ways specified in this

150 section is still a nuisance regardless of the extent to which the annoyance or damage inflicted  
151 on individuals is unequal.

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

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

159 Section 7. Section **78B-6-1101** is amended to read:

160 **78B-6-1101. Definitions -- Nuisance -- Right of action -- Agriculture operations.**

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

164 (2) A nuisance may include the following:

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

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

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

169 (d) criminal activity committed for the benefit of, at the direction of, or in association  
170 with any criminal street gang as defined in Section 76-9-802;

171 (e) criminal activity committed to gain recognition, acceptance, membership, or  
172 increased status with a criminal street gang as defined in Section 76-9-802;

173 (f) party houses [~~which~~] that frequently create conditions defined in Subsection (1);  
174 and

175 (g) prostitution as provided in Title 76, Chapter 10, Part 13, Prostitution.

176 (3) A nuisance under this part includes tobacco smoke that drifts into [~~any~~] a  
177 residential unit a person rents, leases, or owns, from another residential or commercial unit and  
178 the smoke:

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

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

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

182 (a) a residential rental [units] unit available for temporary rental, such as for  
183 [vacations] a vacation, or available for only 30 or fewer days at a time; or

184 (b) a hotel or motel [rooms] room.

185 (5) Subsection (3) does not apply to ~~[any]~~ a unit that is part of a timeshare  
186 development, as defined in Section 57-19-2, or subject to a timeshare interest as defined in  
187 Section 57-19-2.

188 (6) An action may be brought by ~~[any]~~ a person whose property is injuriously affected,  
189 or whose personal enjoyment is lessened by the nuisance.

190 ~~[(7) "Agricultural operation" means any activity engaged in the commercial production~~  
191 ~~of crops, orchards, aquaculture, livestock, poultry, livestock products, poultry products, and the~~  
192 ~~facilities, equipment, and property used to facilitate the activity.]~~

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

195 (8) "Manufacturing facility" means ~~[any]~~ a factory, plant, or other facility including its  
196 appurtenances, where the form of raw materials, processed materials, commodities, or other  
197 physical objects is converted or otherwise changed into other materials, commodities, or  
198 physical objects or where such materials, commodities, or physical objects are combined to  
199 form a new material, commodity, or physical object.

200 Section 8. **Repealer.**

201 This bill repeals:

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