

SB0093S03 compared with SB0093S02

~~text~~ shows text that was in SB0093S02 but was deleted in SB0093S03.

Inserted text shows text that was not in SB0093S02 but was inserted into SB0093S03.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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

LONG TITLE

General Description:

This bill addresses nuisances.

Highlighted Provisions:

This bill:

- ▶ addresses agricultural operations areas;
- ▶ 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:

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None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

ENACTS:

4-44-101, Utah Code Annotated 1953

4-44-102, Utah Code Annotated 1953

4-44-201, Utah Code Annotated 1953

4-44-202, Utah Code Annotated 1953

REPEALS:

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

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

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

CHAPTER 44. AGRICULTURAL OPERATIONS NUISANCES ACT

Part 1. General Provisions

4-44-101. Title.

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

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

4-44-102. Definitions.

As used in this chapter:

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

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

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

- (a) a change in ownership or size;
- (b) an interruption of farming for a period of no more than three years;
- (c) participation in a government-sponsored agricultural program;
- (d) employment of new technology; or
- (e) a change in the type of agricultural product produced.

(3) "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.

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

Part 2. Nuisance Actions

4-44-201. Defenses in nuisance actions.

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

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

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

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

(i) the establishment of the agricultural operation; or

(ii) the agricultural operation undergoes a fundamental change.

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

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

~~—~~ (b) overflow onto lands of the person.

~~‡~~ (~~3~~2) This section may not be construed to invalidate any contract made before May 14, 2019.

(~~4~~3) In a nuisance action against an agricultural operation, the court shall award costs and expenses, including reasonable attorney fees, to:

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

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

(~~5~~4) A person who knowingly violates a judgment or order abating or otherwise enjoining a nuisance is guilty of a class B misdemeanor.

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

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

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

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

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

(3) (a) An ordinance of a political subdivision that would make the operation of an agricultural operation or appurtenances to an agricultural operation a nuisance or that provide for abatement of the agricultural operation as a nuisance does not apply to an agricultural operation that is conducted in the normal and ordinary course of agricultural operations 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, are presumed to be operating within sound agricultural practices.

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

17-41-403. Nuisances.

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

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

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(b) for an industrial protection area, any industrial use of the land within the industrial protection area that is consistent with sound practices applicable to the industrial use, unless that use bears a direct relationship to public health or safety.

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

(a) those agricultural activities were:

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

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

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

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

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

(i) is presumed to be reasonable; and

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

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

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

"Agriculture Protection Area

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

(b) For any new subdivision development located in whole or in part within 1,000 feet of the boundary of an industrial protection area, the owner of the development shall provide

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notice on any plat filed with the county recorder the following notice:

"Industrial Protection Area

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

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

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

Section ~~{4}~~6. Section ~~{4-44-202 is enacted to read:~~

~~4-44-202. Application of other statutes -- Ordinances.~~

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

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

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

~~(3) (a) An ordinance of a political subdivision that would make the operation of an agricultural operation or appurtenances to an agricultural operation a nuisance or that provide for abatement of the agricultural operation as a nuisance does not apply to~~

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~~an agricultural operation that is conducted in the normal and ordinary course of agricultural operations 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, are presumed to be operating within sound agricultural practices:~~

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

23-28-303 is amended to read:

23-28-303. Nuisances.

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

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

- (i) hunting;
- (ii) discharging a firearm;
- (iii) improving habitat;
- (iv) trapping;
- (v) eradicating weeds;
- (vi) discing;
- (vii) planting;
- (viii) impounding water;
- (ix) raising a bird or other domestic animal;
- (x) grazing;
- (xi) an activity conducted in the normal course of an agricultural operation as defined in Section ~~[78B-6-1101]~~ 4-44-102; and
- (xii) an odor.

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

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

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

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migratory bird production area shall provide the following notice on any plat filed with the county recorder:

"Migratory Bird Production Area

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

Section ~~6~~7. Section **76-10-803** is amended to read:

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

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

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

(b) offends public decency;

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

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

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

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

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

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

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Section ~~77~~8. Section 78B-6-1101 is amended to read:

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

(1) A nuisance is anything [~~which~~] 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 two 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 [~~which~~] 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 [~~any~~] 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 [~~units~~] unit available for temporary rental, such as for [~~vacations~~] a vacation, or available for only 30 or fewer days at a time; or

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

(5) Subsection (3) does not apply to [~~any~~] 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 [~~any~~] a person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.

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

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

(8) "Manufacturing facility" means ~~[any]~~ 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.

Section ~~{8}~~9. **Repealer.**

This bill repeals:

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