

**AGRICULTURAL NUISANCE AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Scott D. Sandall**

House Sponsor: \_\_\_\_\_

**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; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

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:



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. Definition.**

43 As used in this chapter:

44 (1) "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 Agricultural operation includes an agricultural protection area established under Title 17,  
48 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:

**Part 2. Nuisance Actions**

**4-44-201. Requirements of nuisance actions.**

(1) A nuisance action may not be filed against an agricultural operation unless all of the following apply:

(a) the plaintiff is a legal possessor of the real property affected by the conditions alleged to be a nuisance;

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

(c) the action is filed within one year of:

(i) the establishment of the agricultural operation; or

(ii) the agricultural operation undergoing 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 of lands of the person.

(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 in the circumstance set forth in this section is void.

(b) Notwithstanding Subsection (3)(a), this section does not apply when a nuisance results from an agricultural operation located within the corporate limits of any city as of May 14, 2019.

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

(5) 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

(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.

90 (6) A person who knowingly violates a judgment or order abating or otherwise  
91 enjoining a nuisance is guilty of a class B misdemeanor.

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

93 **4-44-202. Application of other statutes.**

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

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

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

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

104 **17-41-403. Nuisances.**

105 (1) ~~[Each]~~ A political subdivision shall ensure that any of ~~[its]~~ the political  
106 subdivision's laws or ordinances that define or prohibit a public nuisance exclude from the  
107 definition or prohibition:

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

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

114 (2) In a civil action for nuisance or a criminal action for public nuisance under Section  
115 **76-10-803**, it is a complete defense if:

116 (a) the action involves agricultural activities and those agricultural activities were:

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

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

120 (b) the requirement of Section 4-44-201 related to agricultural operations are met.

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

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

124 (i) is presumed to be reasonable; and

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

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

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

132 "Agriculture Protection Area

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

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

143 "Industrial Protection Area

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

150 (c) For any new subdivision development located in whole or in part within 1,000 feet  
151 of the boundary of a mining protection area, the owner of the development shall provide notice

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

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

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

160 **23-28-303. Nuisances.**

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

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

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

178 (2) In a civil action for nuisance or a criminal action for public nuisance under Section  
179 [76-10-803](#), it is a complete defense if the action is:

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

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

186 "Migratory Bird Production Area

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

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

195 **76-10-803. "Public nuisance" defined -- Agricultural operations.**

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

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

200 (b) offends public decency;

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

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

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

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

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

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

214 agricultural practices.

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

216 **78B-6-1101. Definitions -- Nuisance -- Right of action -- Agriculture operations.**

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

220 (2) A nuisance may include the following:

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

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

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

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

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

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

230 and

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

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

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

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

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

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

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

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

244 (6) An action may be brought by [~~any~~] a person whose property is injuriously affected,



245 or whose personal enjoyment is lessened by the nuisance.

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

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

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

256 Section 9. **Repealer.**

257 This bill repeals:

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