

Brady Brammer proposes the following substitute bill:

Nuisance Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Colin W. Jack

Senate Sponsor: Brady Brammer

LONG TITLE

General Description:

This bill addresses private and public nuisances.

Highlighted Provisions:

This bill:

- renumbers and repeals statutes in Title 47, Nuisances;
- modifies definitions for public nuisance crimes;
- repeals and renumbers statutes related to a civil action for a public nuisance;
- renumbers statutory provisions in Title 78B, Chapter 6, Part 11, Nuisance, to Title 78B, Chapter 6a, Civil Actions for Nuisances;
- defines terms related to public and private nuisances;
- abrogates the common law right of action for a public or private nuisance;
- provides an exception for the attorney general with regard to the abrogation of the common law civil right of action for a public or private nuisance;
- creates a reporting requirement for the Judiciary Interim Committee regarding the exception for the attorney general to the abrogation of the common law civil right of action for a public or private nuisance;
- creates rights of action for a public nuisance;
- clarifies and amends the right of action for a private nuisance;
- addresses defenses for private and public nuisance actions; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

29 AMENDS:

- 30 **10-3-703**, as last amended by Laws of Utah 2025, Chapter 141
- 31 **17-64-501**, as renumbered and amended by Laws of Utah 2025, First Special Session,
- 32 Chapter 13
- 33 **17-81-101**, as renumbered and amended by Laws of Utah 2025, First Special Session,
- 34 Chapter 14
- 35 **17-81-304**, as renumbered and amended by Laws of Utah 2025, First Special Session,
- 36 Chapter 14
- 37 **23A-13-303**, as last amended by Laws of Utah 2025, Chapter 173
- 38 **40-11-13**, as enacted by Laws of Utah 2022, Chapter 62
- 39 **72-6-112.5**, as last amended by Laws of Utah 2023, Chapter 22
- 40 **76-5c-103**, as renumbered and amended by Laws of Utah 2025, Chapter 173
- 41 **76-9-1301**, as renumbered and amended by Laws of Utah 2025, Chapter 173
- 42 **78B-6-802**, as last amended by Laws of Utah 2020, Sixth Special Session, Chapter 19
- 43 **78B-6-805**, as last amended by Laws of Utah 2018, Chapter 291
- 44 **78B-6-806**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 45 **78B-6-811**, as last amended by Laws of Utah 2025, Chapter 275
- 46 **78B-6-813**, as renumbered and amended by Laws of Utah 2008, Chapter 3

47 ENACTS:

- 48 **4-47-101**, Utah Code Annotated 1953
- 49 **78B-6a-102**, Utah Code Annotated 1953
- 50 **78B-6a-201**, Utah Code Annotated 1953
- 51 **78B-6a-202**, Utah Code Annotated 1953
- 52 **78B-6a-203**, Utah Code Annotated 1953
- 53 **78B-6a-204**, Utah Code Annotated 1953
- 54 **78B-6a-301**, Utah Code Annotated 1953
- 55 **78B-6a-303**, Utah Code Annotated 1953
- 56 **78B-6a-401**, Utah Code Annotated 1953
- 57 **78B-6a-407**, Utah Code Annotated 1953
- 58 **78B-6a-408**, Utah Code Annotated 1953

59 RENUMBERS AND AMENDS:

- 60 **4-47-102**, (Renumbered from 47-2-3, Utah Code Annotated 1953)
- 61 **4-47-201**, (Renumbered from 47-2-4, as last amended by Laws of Utah 2009, Chapter
- 62 388)

63 **4-47-202**, (Renumbered from 47-2-5, as last amended by Laws of Utah 1993, Chapter
64 227)
65 **4-47-203**, (Renumbered from 47-2-6, as last amended by Laws of Utah 2025, Chapter
66 302)
67 **4-47-204**, (Renumbered from 47-2-7, as last amended by Laws of Utah 1993, Chapter
68 227)
69 **53-5a-701**, (Renumbered from 47-3-102, as last amended by Laws of Utah 2015,
70 Chapter 258)
71 **53-5a-702**, (Renumbered from 47-3-201, as renumbered and amended by Laws of
72 Utah 2013, Chapter 155)
73 **53-5a-703**, (Renumbered from 47-3-202, as renumbered and amended by Laws of
74 Utah 2013, Chapter 155)
75 **53-5a-704**, (Renumbered from 47-3-301, as enacted by Laws of Utah 2013, Chapter
76 155)
77 **53-5a-705**, (Renumbered from 47-3-302, as enacted by Laws of Utah 2013, Chapter
78 155)
79 **53-5a-706**, (Renumbered from 47-3-303, as enacted by Laws of Utah 2013, Chapter
80 155)
81 **53-5a-707**, (Renumbered from 47-3-304, as enacted by Laws of Utah 2013, Chapter
82 155)
83 **53-5a-708**, (Renumbered from 47-3-305, as last amended by Laws of Utah 2025,
84 Chapters 173, 208)
85 **78B-6a-101**, (Renumbered from 78B-6-1101, as last amended by Laws of Utah 2025,
86 First Special Session, Chapter 15)
87 **78B-6a-103**, (Renumbered from 78B-6-1114, as last amended by Laws of Utah 2025,
88 Chapter 141)
89 **78B-6a-104**, (Renumbered from 78B-6-1102.5, as last amended by Laws of Utah
90 2025, Chapter 141)
91 **78B-6a-302**, (Renumbered from 78B-6-1102, as last amended by Laws of Utah 2025,
92 Chapter 141)
93 **78B-6a-304**, (Renumbered from 78B-6-1113, as last amended by Laws of Utah 2025,
94 Chapter 141)
95 **78B-6a-402**, (Renumbered from 78B-6-1103, as last amended by Laws of Utah 2025,
96 Chapters 141, 173)

97 **78B-6a-403**, (Renumbered from 78B-6-1115, as enacted by Laws of Utah 2019,
 98 Chapter 227)
 99 **78B-6a-404**, (Renumbered from 4-44-201, as enacted by Laws of Utah 2019, Chapter
 100 81)
 101 **78B-6a-405**, (Renumbered from 78B-6-1106, as last amended by Laws of Utah 2025,
 102 Chapter 141)

103 REPEALS:

104 **4-44-101**, as enacted by Laws of Utah 2019, Chapter 81
 105 **4-44-102**, as last amended by Laws of Utah 2025, First Special Session, Chapter 16
 106 **4-44-202**, as last amended by Laws of Utah 2025, Chapter 173
 107 **47-1-1**, Utah Code Annotated 1953
 108 **47-1-2**, as last amended by Laws of Utah 2024, Chapter 365
 109 **47-1-3**, as last amended by Laws of Utah 2024, Chapter 365
 110 **47-1-4**, as last amended by Laws of Utah 1986, Chapter 178
 111 **47-1-5**, as last amended by Laws of Utah 2025, Chapter 302
 112 **47-1-6**, Utah Code Annotated 1953
 113 **47-1-7**, as last amended by Laws of Utah 2024, Chapter 365
 114 **47-1-8**, as last amended by Laws of Utah 1986, Chapter 178
 115 **47-2-1**, Utah Code Annotated 1953
 116 **47-2-2**, Utah Code Annotated 1953
 117 **47-3-101**, as enacted by Laws of Utah 2013, Chapter 155
 118 **76-9-1306**, as renumbered and amended by Laws of Utah 2025, Chapter 173
 119 **76-9-1307**, as renumbered and amended by Laws of Utah 2025, Chapter 173
 120 **78B-6-1107**, as last amended by Laws of Utah 2025, Chapters 141, 173, 174, 178, and
 121 208
 122 **78B-6-1108**, as last amended by Laws of Utah 2025, Chapter 141
 123 **78B-6-1109**, as last amended by Laws of Utah 2025, Chapter 141
 124 **78B-6-1110**, as last amended by Laws of Utah 2025, Chapter 141
 125 **78B-6-1111**, as last amended by Laws of Utah 2025, Chapter 141
 126 **78B-6-1112**, as last amended by Laws of Utah 2025, Chapter 141

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

129 Section 1. Section **4-47-101** is enacted to read:

130 **CHAPTER 47. Abandoned Horses**

Part 1. General Provisions

4-47-101 . Definitions for chapter.

As used in this chapter:

- (1)(a) "Abandoned horse" means any horse, ass, mule, or other animal of the genus Equus, unbranded, or, if branded, that has escaped assessment for taxation for the year next preceding the killing of such animal as hereinafter provided for, and running at large upon the open range of this state.
- (b) "Abandoned horse" includes a foal running with a dam described in Subsection (1)(a).
- (2)(a) "Open range" means all land not privately owned.
- (b) "Open range" includes all roads, outside of private enclosures, used by the public, whether the same have been formally dedicated to the public or not.
- (3) "Unbranded" means an animal not bearing a decipherable brand recorded in accordance with Section 4-24-202.

Section 2. Section **4-47-102**, which is renumbered from Section 47-2-3 is renumbered and amended to read:

~~[47-2-3]~~ 4-47-102 . Abandoned horses on open range declared a public menace.

- (1) ~~It shall be unlawful for any person to suffer or permit any abandoned horse to run at large upon the open range[, and every abandoned horse is declared to be a public nuisance and a public menace, and is condemned subject to the right of its owner to reclaim it under the conditions hereinafter provided.] .~~
- (2) It is in the public interest that every abandoned horse be declared a public menace and is condemned, subject to the right of the horse's owner to reclaim the horse under the conditions described in this chapter.

Section 3. Section **4-47-201**, which is renumbered from Section 47-2-4 is renumbered and amended to read:

Part 2. Process for Abandoned Horses

~~[47-2-4]~~ 4-47-201 . Elimination by the county executive -- Notice of intention.

- (1) The county executive may provide for the elimination of abandoned horses in the respective counties in the following manner:
- (a) The county executive shall cause notice to be:
- (i)(A) published at least once a week for three successive weeks in a newspaper of general circulation published in the county; and
- (B) in accordance with Section 45-1-101, published for three weeks;

165 (ii) posted in at least five public places outside of the county seat on public highways
166 in such county; and

167 (iii) posted in three public places at the county seat, one of which shall be at the front
168 door of the courthouse.

169 (b) The notices posted outside of the county seat shall be posted not less than two miles
170 apart, and all posted notices shall be posted at least 30 days before the date which the
171 county executive shall fix for the beginning of the elimination of abandoned horses
172 from the range in such county as hereinafter provided.

173 (2) The notice shall be substantially in the following form:

174 Notice is hereby given that in accordance with the provisions of law the county
175 executive of ____ County, Utah, will proceed to eliminate abandoned horses from the open
176 range in said county, and that beginning on _____(month\day\year), a drive will be held,
177 and all abandoned horses running upon the open range will, under the direction and
178 supervision of the county executive, be eliminated. All owners of horses running upon the
179 open range are hereby given notice to file with the county executive a description of the
180 horses, and the brands or marks thereon.

181 Dated this _____(month\day\year).

182 By order of the county executive of ____ County, Utah.

183 _____

184 County Clerk.

185 Section 4. Section **4-47-202**, which is renumbered from Section 47-2-5 is renumbered
186 and amended to read:

187 **[47-2-5] 4-47-202 . Elimination by the county legislative body -- Method -- Sale.**

188 (1) A policy for the manner and method of eliminating abandoned horses from the
189 open range shall be in the discretion of the county legislative body, and it shall be [its]
190 the county legislative body's duty to so eliminate abandoned horses, using the means
191 most effective and economical under the circumstances.

192 (2) The county executive may sell all captured horses.

193 Section 5. Section **4-47-203**, which is renumbered from Section 47-2-6 is renumbered
194 and amended to read:

195 **[47-2-6] 4-47-203 . Owners may reclaim -- Damages -- Taxes.**

196 (1) Any person owning any horses which are running at large in any county in which
197 the county executive has given notice of intention to make a drive, as provided in this
198 chapter, may within 30 days after the posting or the first publication of the notice

199 mentioned in Section ~~[47-2-4]~~ 4-47-201 file with the county executive a description of
 200 such horses claimed by the person, giving the marks and brands, if any, which appear
 201 thereon, and, if the county executive shall take into ~~[its]~~ the county executive's
 202 possession any horses so claimed, ~~[it]~~ the county executive shall by registered letter
 203 addressed to the owner or claimant of such horses notify the owner or claimant that the
 204 same may be claimed within 10 days from the mailing of such notice; and such owner or
 205 claimant shall be permitted upon application to the county legislative body to take
 206 possession of such horses upon payment of the expense of caring for the same from the
 207 date of capture.

208 (2) If any horses are killed by order of the county executive under the provisions of this
 209 chapter, a description of which has been reported by the owner thereof to the county
 210 legislative body, and ownership of such animals can be satisfactorily established, such
 211 owner shall receive as damage therefor a sum not exceeding \$10 for each animal;
 212 provided, that the owner has paid all taxes assessed against said animal; provided
 213 further, that payment of such claims may be made only from proceeds of sales of
 214 captured horses.

215 Section 6. Section **4-47-204**, which is renumbered from Section 47-2-7 is renumbered
 216 and amended to read:

217 **~~[47-2-7]~~ 4-47-204 . Elimination from private property on request.**

218 Abandoned horses may be eliminated from privately owned land by the county
 219 executive in the same manner as from the open range when requested so to do by the owner of
 220 such land.

221 Section 7. Section **10-3-703** is amended to read:

222 **10-3-703 . Criminal penalties for violation of ordinance -- Civil penalties**
 223 **prohibited -- Exceptions.**

224 (1)(a) The governing body of a municipality may impose a criminal penalty for the
 225 violation of any municipal ordinance by a fine not to exceed the maximum class B
 226 misdemeanor fine under Section 76-3-301, by a term of imprisonment up to six
 227 months, or by both the fine and term of imprisonment.

228 (b) Notwithstanding Subsection (1)(a), a municipality may not impose a criminal penalty
 229 greater than an infraction for a violation pertaining to an individual's pet, as defined
 230 in Section 4-12-102, or an individual's use of the individual's residence unless:

231 (i) the violation:

232 (A) is a ~~[nuisance as that term is defined in Section 78B-6-1101]~~ private nuisance

- 233 as that term is defined in Section 78B-6a-101; and
- 234 (B) threatens the health, safety, or welfare of the individual or an identifiable third
- 235 party; or
- 236 (ii) the municipality has imposed a fine on the individual for a violation that involves
- 237 the same residence or pet on three previous occasions within the past 12 months.
- 238 (c) Subsection (1)(b) does not apply to municipal enforcement of a building code or fire
- 239 code ordinance in accordance with Title 15A, State Construction and Fire Codes Act.
- 240 (2)(a) Except as provided in Subsection (2)(b), the governing body may prescribe a civil
- 241 penalty for the violation of any municipal ordinance by a fine not to exceed the
- 242 maximum class B misdemeanor fine under Section 76-3-301.
- 243 (b) A municipality may not impose a civil penalty and adjudication for the violation of a
- 244 municipal moving traffic ordinance.
- 245 (3)(a) Except as provided in Subsection (3)(b) or Section 77-7-18, a municipal officer or
- 246 official who is not a law enforcement officer described in Section 53-13-103 or a
- 247 special function officer described in Section 53-13-105 may not issue a criminal
- 248 citation for a violation that is punished as a misdemeanor.
- 249 (b) Notwithstanding Subsection (1) or (3)(a), the following may issue a criminal citation
- 250 for a violation that is punished as a misdemeanor if the violation threatens the health
- 251 and safety of an animal or the public:
- 252 (i) a fire officer described in Section 53-7-102; or
- 253 (ii) an animal control officer described in Section 11-46-102.
- 254 (4) A municipality may not issue more than one infraction within a 14-day time period for a
- 255 violation described in Subsection (1)(b) that is ongoing.
- 256 Section 8. Section **17-64-501** is amended to read:
- 257 **17-64-501 . Ordinances -- Power to enact -- Penalty for violation.**
- 258 (1) A legislative body may:
- 259 (a) pass ordinances:
- 260 (i) necessary for carrying into effect or discharging the powers and duties conferred
- 261 by this title; and
- 262 (ii) as are necessary and proper to provide for the safety, and preserve the health,
- 263 promote the prosperity, improve the morals, peace, and good order, comfort, and
- 264 convenience of the county and county inhabitants, and for the protection of
- 265 property in the county;
- 266 (b) enforce obedience to ordinances with fines or penalties as the legislative body

- 267 considers proper;
- 268 (c) pass ordinances to control air pollution;
- 269 (d) pass resolutions; and
- 270 (e) make or adopt policies that conform with a county ordinance, county resolution, or
- 271 provision of state or federal law.
- 272 (2)(a)(i) Punishment imposed under Subsection (1)(b) shall be by fine, imprisonment,
- 273 or both fine and imprisonment.
- 274 (ii) A fine imposed under Subsection (2)(a)(i) may not exceed the maximum fine for
- 275 a class B misdemeanor under Section 76-3-301.
- 276 (b) Notwithstanding Subsection (2)(a), a county may not impose a criminal penalty
- 277 greater than an infraction for a violation pertaining to an individual's pet, as defined
- 278 in Section 4-12-102, or an individual's use of the individual's residence unless:
- 279 (i) the violation:
- 280 (A) is a [~~nuisance as that term is defined in Section 78B-6-1101~~] private nuisance
- 281 as described in Section 78B-6a-101; and
- 282 (B) threatens the health, safety, or welfare of the individual or an identifiable third
- 283 party; or
- 284 (ii) the county has imposed a fine on the individual for a violation that involves the
- 285 same residence or pet on three previous occasions within the past 12 months.
- 286 (c) Subsection (2)(b) does not apply to county enforcement of a building code or fire
- 287 code ordinance in accordance with Title 15A, State Construction and Fire Codes Act.
- 288 (d) When a penalty for a violation of an ordinance includes any possibility of
- 289 imprisonment, the legislative body shall include in the ordinance a statement that the
- 290 county is required, under Section 78B-22-301, to provide for indigent defense
- 291 services, as that term is defined in Section 78B-22-102.
- 292 (e) Notwithstanding any other provision of law, the following may issue a criminal
- 293 citation for a violation that is punished as a misdemeanor if the violation threatens the
- 294 health and safety of an animal or the public:
- 295 (i) a fire officer described in Section 53-7-102;
- 296 (ii) a law enforcement officer described in Section 53-13-103; or
- 297 (iii) an animal control officer described in Section 11-46-102.
- 298 (3)(a) Except as specifically authorized by statute, the legislative body may not impose a
- 299 civil penalty for the violation of a county traffic ordinance.
- 300 (b) Subsection (3)(a) does not apply to an ordinance regulating the parking of vehicles

301 on a highway.

302 (4) A county may not issue more than one infraction within a 14-day period for a violation
303 described in Subsection (2)(b) that is ongoing.

304 Section 9. Section **17-81-101** is amended to read:

305 **17-81-101 . Definitions.**

306 As used in this chapter:

307 (1) "Advisory board" means:

308 (a) for an agriculture protection area, the agriculture protection area advisory board
309 created as provided in Section 17-81-102;

310 (b) for an industrial protection area, the industrial protection area advisory board created
311 as provided in Section 17-81-102; and

312 (c) for a critical infrastructure materials protection area, the critical infrastructure
313 materials protection area advisory board created as provided in Section 17-81-102.

314 (2) "Agricultural land" means the same as the term "land in agricultural use" is defined in
315 Section 59-2-502.

316 (3) "Agricultural operation" means the same as that term is defined in Section 78B-6a-101.

317 [~~3~~] (4)(a) "Agriculture production" means production for commercial purposes of
318 crops, livestock, and livestock products.

319 (b) "Agriculture production" includes the processing or retail marketing of any crops,
320 livestock, and livestock products when more than 50% of the processed or
321 merchandised products are produced by the farm operator.

322 [~~4~~] (5) "Agriculture protection area" means a geographic area created under the authority
323 of this chapter that is granted the specific legal protections contained in this chapter.

324 [~~5~~] (6) "Applicable legislative body" means:

325 (a) with respect to a proposed agriculture protection area, industrial protection area, or
326 critical infrastructure materials protection area:

327 (i) the legislative body of the county in which the land proposed to be included in the
328 relevant protection area is located, if the land is within the unincorporated part of
329 the county; or

330 (ii) the legislative body of the city or town in which the land proposed to be included
331 in the relevant protection area is located; and

332 (b) with respect to an existing agriculture protection area, industrial protection area, or
333 critical infrastructure materials protection area:

334 (i) the legislative body of the county in which the relevant protection area is located,

- 335 if the relevant protection area is within the unincorporated part of the county; or
336 (ii) the legislative body of the city or town in which the relevant protection area is
337 located.
- 338 [~~(6)~~] (7) "Board" means the Board of Oil, Gas, and Mining created in Section 40-6-4.
339 [~~(7)~~] (8) "Commercial quantities" means critical infrastructure materials:
340 (a) extracted or processed by a commercial enterprise in the ordinary course of business;
341 and
342 (b) in a sufficient amount that the critical infrastructure materials introduction into
343 commerce would create a reasonable expectation of profit.
- 344 [~~(8)~~] (9) "Contiguous land" means surface or subsurface land that shares a common
345 boundary and is not separated by a highway as defined in Section 41-6a-102.
- 346 [~~(9)~~] (10) "Critical infrastructure materials" means sand, gravel, or rock aggregate.
347 [~~(10)~~] (11) "Critical infrastructure materials operations" means the extraction, excavation,
348 processing, or reprocessing of critical infrastructure materials.
- 349 [~~(11)~~] (12) "Critical infrastructure materials operator" means a natural person, corporation,
350 association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary,
351 agent, or other organization or representative, either public or private, including a
352 successor, assign, affiliate, subsidiary, and related parent company, that:
353 (a) owns, controls, or manages a critical infrastructure materials operation; and
354 (b) has produced commercial quantities of critical infrastructure materials from the
355 critical infrastructure materials operations.
- 356 [~~(12)~~] (13) "Critical infrastructure materials protection area" means a geographic area
357 created under the authority of this chapter on or after May 14, 2019, that is granted the
358 specific legal protections contained in this chapter.
- 359 [~~(13)~~] (14) "Critical infrastructure materials use" means the extraction, excavation,
360 processing, or reprocessing of critical infrastructure materials.
- 361 [~~(14)~~] (15) "Crops, livestock, and livestock products" includes:
362 (a) land devoted to the raising of useful plants and animals with a reasonable expectation
363 of profit, including:
364 (i) forages and sod crops;
365 (ii) grains and feed crops;
366 (iii) livestock, as that term is defined in Section 59-2-102;
367 (iv) trees and fruits; or
368 (v) vegetables, nursery, floral, and ornamental stock; or

369 (b) land devoted to and meeting the requirements and qualifications for payments or
370 other compensation under a crop-land retirement program with an agency of the state
371 or federal government.

372 ~~[(15)]~~ (16) "Division" means the Division of Oil, Gas, and Mining created in Section 40-6-15.

373 ~~[(16)]~~ (17) "Existing legal use" means a critical infrastructure materials use that has operated
374 in accordance with:

375 (a) a legal nonconforming use that has not been abandoned for more than 24 consecutive
376 months; or

377 (b) a permit issued by the applicable political subdivision.

378 ~~[(17)]~~ (18) "Industrial protection area" means a geographic area created under the authority
379 of this chapter that is granted the specific legal protections contained in this chapter.

380 ~~[(18)]~~ (19) "Mine operator" means a natural person, corporation, association, partnership,
381 receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other
382 organization or representative, either public or private, including a successor, assign,
383 affiliate, subsidiary, and related parent company, that, before January 1, 2019:

384 (a) owns, controls, or manages a mining use under a large mine permit issued by the
385 division or the board; and

386 (b) has produced commercial quantities of a mineral deposit from the mining use.

387 ~~[(19)]~~ (20) "Mineral deposit" means the same as that term is defined in Section 40-8-4.

388 ~~[(20)]~~ (21) "Mining protection area" means land where a vested mining use occurs,
389 including each surface or subsurface land or mineral estate that a mine operator with a
390 vested mining use owns or controls on January 1, 2026.

391 ~~[(21)]~~ (22) "Mining use":

392 (a) means:

393 (i) the full range of activities, from prospecting and exploration to reclamation and
394 closure, associated with the exploitation of a mineral deposit; and

395 (ii) the use of the surface and subsurface and groundwater and surface water of an
396 area in connection with the activities described in Subsection ~~[(21)(a)(i)]~~ (22)(a)(i)
397 that have been, are being, or will be conducted; and

398 (b) includes, whether conducted on-site or off-site:

399 (i) any sampling, staking, surveying, exploration, or development activity;

400 (ii) any drilling, blasting, excavating, or tunneling;

401 (iii) the removal, transport, treatment, deposition, and reclamation of overburden,
402 development rock, tailings, and other waste material;

- 403 (iv) any removal, transportation, extraction, beneficiation, or processing of ore;
- 404 (v) any smelting, refining, autoclaving, or other primary or secondary processing
- 405 operation;
- 406 (vi) the recovery of any mineral left in residue from a previous extraction or
- 407 processing operation;
- 408 (vii) a mining activity that is identified in a work plan or permitting document;
- 409 (viii) the use, operation, maintenance, repair, replacement, or alteration of a building,
- 410 structure, facility, equipment, machine, tool, or other material or property that
- 411 results from or is used in a surface or subsurface mining operation or activity;
- 412 (ix) any accessory, incidental, or ancillary activity or use, both active and passive,
- 413 including a utility, private way or road, pipeline, land excavation, working,
- 414 embankment, pond, gravel excavation, mining waste, conveyor, power line,
- 415 trackage, storage, reserve, passive use area, buffer zone, and power production
- 416 facility;
- 417 (x) the construction of a storage, factory, processing, or maintenance facility; and
- 418 (xi) an activity described in Subsection 40-8-4(19)(a).

419 ~~[(22)]~~ (23)(a) "Municipal" means of or relating to a city or town.

420 (b) "Municipality" means a city or town.

421 ~~[(23)]~~ (24) "New land" means surface or subsurface land or mineral estate that a mine

422 operator gains ownership or control of, whether that land or mineral estate is included in

423 the mine operator's large mine permit.

424 ~~[(24)]~~ (25) "Off-site" means the same as that term is defined in Section 40-8-4.

425 ~~[(25)]~~ (26) "On-site" means the same as that term is defined in Section 40-8-4.

426 ~~[(26)]~~ (27)(a) "Open land" means land that is:

- 427 (i) preserved in or restored to a predominantly natural, open, and undeveloped
- 428 condition; and
- 429 (ii) used for:
- 430 (A) wildlife habitat;
- 431 (B) cultural or recreational use;
- 432 (C) watershed protection; or
- 433 (D) another use consistent with the preservation of the land in, or restoration of
- 434 the land to, a predominantly natural, open, and undeveloped condition.
- 435 (b) "Open land" includes land described in Subsection ~~[(26)(a)]~~ (27)(a) that contains
- 436 facilities, including trails, waterways, and grassy areas, that, in the judgment of the

- 437 county legislative body:
- 438 (i) enhance the natural, scenic, or aesthetic qualities of the land; or
- 439 (ii) facilitate the public's access to, or use of, the land for the enjoyment of the land's
- 440 natural, scenic, or aesthetic qualities and for compatible recreational activities.
- 441 (c) "Open land" does not include land whose predominant use is as a developed facility
- 442 for active recreational activities played on fields or courses, including baseball,
- 443 tennis, soccer, golf, or other sporting or similar activities.
- 444 ~~[(27)]~~ (28) "Planning commission" means:
- 445 (a) a countywide planning commission if the land proposed to be included in the
- 446 agriculture protection area, industrial protection area, or critical infrastructure
- 447 materials protection area is within the unincorporated part of the county and not
- 448 within a planning advisory area;
- 449 (b) a planning advisory area planning commission if the land proposed to be included in
- 450 the agriculture protection area, industrial protection area, or critical infrastructure
- 451 materials protection area is within a planning advisory area; or
- 452 (c) a planning commission of a city or town if the land proposed to be included in the
- 453 agriculture protection area, industrial protection area, or critical infrastructure
- 454 materials protection area is within a city or town.
- 455 ~~[(28)]~~ (29) "Political subdivision" means a county, city, town, school district, special
- 456 district, or special service district.
- 457 ~~[(29)]~~ (30) "Proposal sponsors" means the owners of land in agricultural production,
- 458 industrial use, or critical infrastructure materials operations who are sponsoring the
- 459 proposal for creating an agriculture protection area, industrial protection area, or critical
- 460 infrastructure materials protection area.
- 461 ~~[(30)]~~ (31) "Public land county" means a county in which over 50% of the land area is
- 462 publicly owned.
- 463 ~~[(31)]~~ (32) "Rollback tax funds" means the rollback taxes or in lieu fee payments paid to a
- 464 county in accordance with Sections 59-2-506, 59-2-511, 59-2-1705, and 59-2-1710.
- 465 ~~[(32)]~~ (33) "State agency" means each department, commission, board, council, agency,
- 466 institution, officer, corporation, fund, division, office, committee, authority, laboratory,
- 467 library, unit, bureau, panel, or other administrative unit of the state.
- 468 ~~[(33)]~~ (34) "Unincorporated" means not within a city or town.
- 469 ~~[(34)]~~ (35) "Vested critical infrastructure materials use" means a critical infrastructure
- 470 materials operations use by a critical infrastructure materials operator that is an existing

471 legal use.

472 [~~(35)~~] (36) "Vested mining use" means a mining use:

473 (a) by a mine operator; and

474 (b) that existed or was conducted or otherwise engaged in before a political subdivision
475 prohibits, restricts, or otherwise limits a mining use.

476 Section 10. Section **17-81-304** is amended to read:

477 **17-81-304 . Public nuisance ordinances.**

478 (1) A political subdivision shall ensure that any of the political subdivision's laws or
479 ordinances that define or prohibit a public nuisance exclude from the definition or
480 prohibition:

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

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

487 (c) for a critical infrastructure materials protection area, any critical infrastructure
488 materials operations on the land within the critical infrastructure materials protection
489 area that is consistent with sound practices applicable to the critical infrastructure
490 materials operations, unless that use bears a direct relationship to public health or
491 safety.

492 (2)(a) For an agricultural protection area, an ordinance of a political subdivision does not
493 apply to an agricultural operation that is conducted in the normal and ordinary course
494 of an agricultural operation or conducted in accordance with sound agricultural
495 practices if that ordinance:

496 (i) would make the agricultural operation, or appurtenances to the agricultural
497 operation, a public nuisance; or

498 (ii) provides for abatement of the agricultural operation as a public nuisance.

499 (b) An agricultural operation undertaken in conformity with federal, state, and local laws
500 and regulations, including zoning ordinances, is presumed to be operating within
501 sound agricultural practices.

502 [~~(2) In a civil action for nuisance or a criminal action for public nuisance under Section~~
503 ~~76-9-1301, it is a complete defense if the action involves agricultural activities and:]~~

504 [~~(a) those agricultural activities were:]~~

505 ~~[(i) conducted within an agriculture protection area; and]~~
 506 ~~[(ii) not in violation of any federal, state, or local law or regulation relating to the~~
 507 ~~alleged nuisance or were conducted according to sound agricultural practices; or]~~
 508 ~~[(b) a defense under Section 4-44-201 applies.]~~

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

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

512 (i) is presumed to be reasonable; and

513 (ii) may not constitute a ~~[private or public nuisance]~~ private nuisance or public
 514 nuisance under Title 78B, Chapter 6a, Civil Actions for Nuisance, or a public
 515 nuisance under Section 76-9-1301.

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

519 (4) The county recorder shall, from time to time, ensure compliance with Section 17-79-716
 520 in regard to subdivision development near a protection area.

521 Section 11. Section **23A-13-303** is amended to read:

522 **23A-13-303 . County public nuisance laws.**

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

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

528 (i) hunting;

529 (ii) discharging a firearm;

530 (iii) improving habitat;

531 (iv) trapping;

532 (v) eradicating weeds;

533 (vi) discing;

534 (vii) planting;

535 (viii) impounding water;

536 (ix) raising a bird or other domestic animal;

537 (x) grazing;

538 (xi) an activity conducted in the normal course of an agricultural operation as defined

539 in Section ~~[4-44-102]~~ 78B-6a-101; and

540 (xii) an odor.

541 ~~[(2) In a civil action for nuisance or a criminal action for public nuisance under Section~~

542 ~~76-9-1301, it is a complete defense if the action is:]~~

543 ~~[(a) normally associated with a migratory bird production area;]~~

544 ~~[(b) conducted within a migratory bird production area; and]~~

545 ~~[(c) not in violation of federal or state law.]~~

546 ~~[(3)]~~ (2) An owner of a new development located in whole or in part within 1,000 feet of a
547 migratory bird production area shall provide the following notice on a plat filed with the
548 county recorder:

549 "Migratory Bird Production Area

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

557 Section 12. Section **40-11-13** is amended to read:

558 **40-11-13 . Reservoir integrity.**

559 (1) Carbon dioxide injected into and stored in a reservoir in compliance with the
560 requirements of this section is not:

561 (a) pollution, as that term is defined in Section 4-18-103; or

562 (b) a private nuisance or a public nuisance, as defined in Section 78B-6a-101.

563 ~~[(b) a nuisance, as that term is defined in Section 4-44-102.]~~

564 (2) A reservoir is only appropriate for geologic carbon storage if the board determines and
565 the operator demonstrates that:

566 (a) carbon dioxide cannot escape the reservoir at a rate exceeding the lower of 1% or the
567 standard recommended by the Environmental Protection Agency;

568 (b) no additional substances will be introduced into the storage facility that could
569 compromise the integrity of the storage reservoir; and

570 (c) the operator has a plan to maintain the integrity of the reservoir.

571 (3) When making a determination described in Subsection (2), the board may rely upon:

572 (a) a finding from the Utah Geological Survey, created in Section 79-3-201 that the

573 reservoir is appropriate for the storage of carbon dioxide; and
 574 (b) reports and findings from the Department of Environmental Quality, created in
 575 Section 19-1-104.

576 (4) The board shall take action to enforce the provisions of this section.

577 Section 13. Section **53-5a-701**, which is renumbered from Section 47-3-102 is renumbered
 578 and amended to read:

579 **Part 7. Shooting Ranges**

580 **[47-3-102] 53-5a-701 . Definitions.**

581 As used in this [chapter] part:

- 582 (1) "Air gun" means a .177 or .20 caliber, or equivalent 4.5mm or 5.0mm, pellet rifle or
 583 pellet pistol whose projectile is pneumatically propelled by compressed air or
 584 compressed gas such as carbon dioxide.
- 585 (2) "Certified official" means a [~~Range Safety Officer, Firearms Instructor, or Shooting~~
 586 ~~Coach~~] range safety officer, firearms instructor, or shooting coach certified by the
 587 National Rifle Association or equivalent national shooting organization.
- 588 (3) "Group" means any organized club, organization, corporation, or association which at
 589 the time of use of the shooting range has a certified official in charge while shooting is
 590 taking place and while the range is open.
- 591 (4) "Military range" means a shooting range located on a state military installation.
- 592 (5) "Nonmilitary range" means a shooting range that is not a military range.
- 593 (6) "Political subdivision" has the same meaning as defined in Section 17B-1-102 and
 594 includes a school district.
- 595 (7) "Public funds" means funds provided by the federal government, the state, or a political
 596 subdivision of the state.
- 597 (8) "Shooting range" or "range" means an area designed and continuously operated under
 598 nationally recognized standards and operating practices for the use of rifles, shotguns,
 599 pistols, silhouettes, skeet, trap, black powder, archery, or any other similar shooting
 600 activities.

601 Section 14. Section **53-5a-702**, which is renumbered from Section 47-3-201 is renumbered
 602 and amended to read:

603 **[47-3-201] 53-5a-702 . Assumption of risk.**

- 604 (1) A person who participates in shooting at a shooting range or a public shooting
 605 range accepts the associated risks to the extent the risks are obvious and inherent. [
 606 ~~Those risks~~]

607 (2) The risks described in Subsection (1) include injuries that may result from noise,
 608 discharge of projectile or shot, malfunction of shooting equipment not owned by the
 609 shooting range or public shooting range, natural variations in terrain, surface or
 610 subsurface snow or ice conditions, bare spots, rocks, trees, and other forms of natural
 611 growth or debris.

612 Section 15. Section **53-5a-703**, which is renumbered from Section 47-3-202 is renumbered
 613 and amended to read:

614 **[47-3-202] 53-5a-703 . Shooting range as a public nuisance -- Notice for new**
 615 **subdivision development.**

616 (1) A state agency or political subdivision shall ensure that any of [its] the state agency's or
 617 political subdivision's rules or ordinances that define or prohibit a public nuisance
 618 exclude from the definition or prohibition any shooting range or public shooting range
 619 that was established, constructed, or operated [~~prior to~~] before the implementation of the
 620 rule or ordinance regarding public nuisance unless that activity or operation substantially
 621 and adversely affects public health or safety.

622 [~~(2) A person who operates or uses a shooting range or a public shooting range in this state~~
 623 ~~is not subject to civil liability or criminal prosecution for noise or noise pollution~~
 624 ~~resulting from the operation or use of the range if:]~~

625 [~~(a) the range:]~~

626 [~~(i) was established, constructed, or operated prior to the implementation of any noise~~
 627 ~~ordinances, rules, or regulations; and]~~

628 [~~(ii) does not substantially and adversely affect public health or safety; or]~~

629 [~~(b) the range:]~~

630 [~~(i) is in compliance with any noise control laws, ordinances, rules, or regulations~~
 631 ~~that applied to the range or public shooting range and its operation at the time of~~
 632 ~~establishment, construction, or initial operation of the range; and]~~

633 [~~(ii) does not substantially and adversely affect public health or safety.]~~

634 [~~(3) For purposes of this section, noise generated by a shooting range or public shooting~~
 635 ~~range that is operated in accordance with nationally recognized standards and operating~~
 636 ~~practices is not a public health nuisance.]~~

637 [~~(4)~~] (2) For any new subdivision development located in whole or in part within 1,000 feet
 638 of the boundary of any shooting range or public shooting range that was established,
 639 constructed, or operated [~~prior to~~] before the development of the subdivision, the owner
 640 of the development shall provide on any plat filed with the county recorder the following

641 notice:

642 "Shooting Range Area

643 This property is located in the vicinity of an established shooting range or public
644 shooting range. It can be anticipated that customary uses and activities at this shooting
645 range or public shooting range will be conducted now and in the future. The use and
646 enjoyment of this property is expressly conditioned on acceptance of any annoyance or
647 inconvenience that may result from these uses and activities."

648 Section 16. Section **53-5a-704**, which is renumbered from Section 47-3-301 is renumbered
649 and amended to read:

650 **[47-3-301] 53-5a-704 . Access to publicly funded ranges.**

651 A shooting range, whether indoor or outdoor, constructed with public funds and
652 operated or controlled by the state, an institution of higher education, or a political subdivision,
653 shall, unless specifically exempted in Section [47-3-305] 53-5a-708, be made available as
654 provided in this section for use by any group.

655 Section 17. Section **53-5a-705**, which is renumbered from Section 47-3-302 is renumbered
656 and amended to read:

657 **[47-3-302] 53-5a-705 . Use and availability.**

658 (1) Use of a shooting range by a group may not interfere with the use of the range by the
659 state agency, military, institution of higher education, or political subdivision for whom
660 the range was constructed.

661 (2) Outdoor shooting ranges shall be available on weekends and holidays, provided they are
662 not being used for shooting and training purposes by the owner or operator of the range.

663 (3)(a) Each group that uses a shooting range owned or operated by a state agency,
664 institution of higher education, or political subdivision shall provide a certified
665 official to oversee their shooting activities while on the range.

666 (b) If the group does not have a certified official that is currently available, the owner or
667 operator of the shooting range may provide one and charge a fee for that certified
668 official's time.

669 (4) A group using a public shooting range may not have anyone with the group who is
670 prohibited from possessing a firearm.

671 (5) Each group shall provide documentation of current and applicable liability insurance or
672 waivers of liability to cover each state agency, institution of higher education, or a
673 political subdivision, for each person shooting on or controlling the shooting range.

674 (6) Shooting range operations shall be in accordance with safety standards adopted by the

675 National Rifle Association or equivalent national shooting organization.

676 (7) Staff from the owner or operator of the shooting range is not required to be present
677 unless there is no certified official present with the group.

678 (8) The certified official in charge at the applicable time shall be responsible for opening
679 and securely closing the shooting range.

680 Section 18. Section **53-5a-706**, which is renumbered from Section 47-3-303 is renumbered
681 and amended to read:

682 **[47-3-303] 53-5a-706 . Rulemaking.**

683 (1) The State Armory Board, any state agency, or institution of higher education that
684 operates or has control of a shooting range shall make rules in accordance with Title
685 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement procedures for use
686 of the range by the public.

687 (2) The rules shall include provisions requiring indoor shooting ranges to be available on a
688 reservation basis, for firearms not exceeding the range design criteria:

689 (a) at least twice per week;

690 (b) after 4 p.m. on work or school days, or after students and faculty are excused or
691 dismissed on the work or school day; and

692 (c) between 8 a.m. and 10 p.m. on weekends.

693 Section 19. Section **53-5a-707**, which is renumbered from Section 47-3-304 is renumbered
694 and amended to read:

695 **[47-3-304] 53-5a-707 . Fees.**

696 (1) Reasonable fees for the use of a shooting range to cover the incidental material and
697 supply costs incurred by making the range available to a group, may be established by:

698 (a) the State Armory Board established under Title 39A, Chapter 2, State Armory Board,
699 for a military range; and

700 (b) for a nonmilitary range, the state agency, institution of higher education, or political
701 subdivision that operates or has control of the range.

702 (2) Fees for nonmilitary shooting range use may not exceed fees charged by the Department
703 of Natural Resources for the same or similar activity.

704 (3) Fees collected under Subsection (1) shall be:

705 (a) for a shooting range operated or controlled by a state agency or an institution of
706 higher education, deposited ~~[in]~~ into the General Fund as dedicated credits to be used
707 for the operation and maintenance of the range; and

708 (b) for a shooting range operated or controlled by a political subdivision, deposited in

709 the political subdivision's general fund.

710 Section 20. Section **53-5a-708**, which is renumbered from Section 47-3-305 is renumbered
711 and amended to read:

712 **[~~47-3-305~~] 53-5a-708 . Exceptions and prohibitions.**

713 (1) [~~This part does~~] Sections 53-5a-704 through 53-5a-707 do not apply to:

- 714 (a) shooting ranges that are otherwise open to the public;
- 715 (b) shooting ranges that are operated as a public shooting range staffed by and operated
716 by Division of Wildlife Resources;
- 717 (c) the Utah National Guard ranges located at Camp Williams and the Salt Lake
718 International Airport;
- 719 (d) Department of Corrections ranges; and
- 720 (e) ranges owned, operated, or currently leased as of March 26, 2013, by a state or local
721 public safety agency.

722 (2)(a) Firearms may not be allowed in a school building, except under the provision of
723 Section 76-11-205 or 76-11-205.5, unless there is an outdoor entrance to the shooting
724 range and the most direct access to the range is used.

725 (b) An outdoor entrance to a shooting range may not be blocked by fences, structures, or
726 gates for the purpose of blocking the outdoor entrance.

727 (3)(a) Only air guns may be used in public ranges where the ventilation systems do not
728 meet current OSHA standards as applied to the duration of exposure of the
729 participants.

730 (b) For the purposes of this part, an air gun does not include larger caliber pneumatic
731 weapons, paintball guns, or air shotguns.

732 (4) Group range use is a lawful, approved activity under Subsection 76-11-205(4)(f) or
733 76-11-205.5(4)(g).

734 Section 21. Section **72-6-112.5** is amended to read:

735 **72-6-112.5 . Definitions -- Nighttime highway construction noise -- Exemptions --**
736 **Permits.**

737 (1) As used in this section:

738 (a) "Commuter rail" means the same as that term is defined in Section 63N-3-602.

739 (b)(i) "Front row receptor" means a noise-sensitive residential receptor that is:

740 (A) immediately adjacent to a transportation facility; or

741 (B) within 800 feet of a transportation facility that is within a commercial or
742 industrialized area.

- 743 (ii) "Front row receptor" includes a residence that is contiguous to a property
 744 immediately adjacent to a transportation facility in a residential area.
- 745 (c) "Nighttime construction" means highway or public transit facility construction
 746 occurring between the hours of 10:00 p.m. and 7:00 a.m.
- 747 [~~(d) "Nuisance" means the same as that term is defined in Section 78B-6-1101.~~]
- 748 [(e)] (d)(i) "Permitted activities" means activities occurring between the hours of 7:00
 749 p.m. and 7:00 a.m. that are related to and necessary for nighttime construction,
 750 whether occurring at the construction site or at a gravel pit or other site for
 751 production of raw materials, and includes:
- 752 (A) loading and unloading of trucks;
 - 753 (B) asphalt mixing and hauling; and
 - 754 (C) concrete mixing and hauling.
- 755 (ii) "Permitted activities" does not include:
- 756 (A) blasting; or
 - 757 (B) crushing.
- 758 (e) "Private nuisance" means the same as that term is defined in Section 78B-6a-101.
- 759 (2) The following projects are exempt from any noise ordinance, regulation, or standard of
 760 a local jurisdictional authority:
- 761 (a) a state highway construction project conducted on a road where the normal posted
 762 speed limit is 55 miles per hour or greater; or
 - 763 (b) a commuter rail construction project.
- 764 (3) Except for a project described in Subsection (2), a state highway or a public transit
 765 facility construction project is exempt from any noise ordinance, regulation, or standard
 766 of a local jurisdictional authority if the department:
- 767 (a) provides reasonable written notice at least 48 hours in advance of any required
 768 nighttime construction to each residential dwelling located within front row receptors
 769 of the activity;
 - 770 (b) determines a net community, including traveler community, benefit exists to conduct
 771 nighttime highway construction after considering the following:
- 772 (i) public health;
 - 773 (ii) project completion time;
 - 774 (iii) air quality;
 - 775 (iv) traffic;
 - 776 (v) economics;

- 777 (vi) safety; and
778 (vii) local jurisdiction concerns; and
779 (c) institutes best management noise reduction practices, as determined by the
780 department, for front row receptors, in consultation with local government or the
781 local jurisdictional authority for all nighttime construction, which may include:
782 (i) equipment maintenance;
783 (ii) noise shielding;
784 (iii) scheduling the most noise intrusive activities during the day; and
785 (iv) other noise mitigation methods.
- 786 (4)(a) Subject to Subsection (2) or (3), a state highway project or public transit facility
787 construction shall secure required noise permits from the local jurisdictional authority
788 to conduct nighttime construction.
- 789 (b) To the extent practical, the department shall coordinate with the local jurisdictional
790 authority during the pre-construction phase of a project to address noise exemption
791 conditions.
- 792 (5) A local jurisdictional authority shall issue a nighttime construction permit limited to
793 permitted activities if:
794 (a) the applicant provides evidence that the permitted activities are directly related to and
795 necessary for a nighttime construction project for which the department has obtained
796 a noise permit from a local jurisdictional authority [~~pursuant to~~] in accordance with
797 Subsection (4); and
798 (b) the local jurisdictional authority determines that any private nuisance that may be
799 caused by the nighttime construction may be reasonably mitigated.
- 800 (6) A local jurisdictional authority shall issue a nighttime construction noise permit without
801 additional requirements to the department at the request of the department or the
802 department's designated project agent if the requirements of Subsection (2) or (3) are
803 met.
- 804 (7)(a) A local jurisdictional authority may request adjustments to a nighttime
805 construction permit to mitigate unreasonable noise disturbances caused by nighttime
806 construction or permitted activities.
807 (b) If adjustments are requested as described in Subsection (7)(a), the nighttime
808 construction permit holder shall use best management noise reduction practices to
809 mitigate unreasonable noise disturbances.
- 810 (8)(a) For the exemption provided in Subsection (3) and in accordance with Title 63G,

811 Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules
812 establishing procedures:

813 (i) for a local jurisdictional authority or local government to appeal the decision of
814 the department to conduct nighttime construction; and

815 (ii) for the local jurisdictional authority to request that the department enforce the
816 terms of a noise permit.

817 (b) After review and upon receiving a written notice from a local jurisdictional authority
818 that the conditions for the noise exemption permit are not met, the department shall
819 take corrective action to ensure nighttime construction activities meet requirements
820 of the local permit.

821 Section 22. Section **76-5c-103** is amended to read:

822 **76-5c-103 . Relation to other state and local laws.**

823 (1)(a) A county, city, or other political subdivision has the right to regulate pornographic
824 materials or materials harmful to minors as this chapter does not proscribe or limit
825 the regulation of pornographic materials or materials harmful to minors by a county,
826 city, or other political subdivision.

827 (b) Without limitation, a political subdivision may further regulate pornographic
828 materials or materials harmful to minors by ordinances relating to:

829 (i) zoning;

830 (ii) licensing;

831 (iii) public nuisances;

832 (iv) a specific type of business such as adult bookstores or drive-in movies; or

833 (v) use of blinder racks.

834 (2) This chapter does not preclude the application of other laws of this state to pornographic
835 materials or materials harmful to minors and, without limitation, this chapter is not in
836 derogation of Subsection 76-9-1301(2) and Section [~~76-9-1306~~] 78B-6a-204.

837 (3)(a) The commission of a crime under this chapter offends public decency under
838 Subsection 76-9-1301(2).

839 (b) It is the intent of this chapter to give the broadest meaning permissible under the
840 United States Constitution and the Utah Constitution to the words "offends public
841 decency" in Subsection 76-9-1301(2).

842 Section 23. Section **76-9-1301** is amended to read:

843 **76-9-1301 . Definitions.**

844 As used in this part:

- 845 (1) "Agricultural operation" means the same as that term is defined in Section 78B-6a-101.
- 846 (2) "Agricultural protection area" means the same as that term is defined in Section
- 847 17-18-101.
- 848 [(4)] (3) "Controlled substance" means the same as that term is defined in Section 58-37-2.
- 849 (4) "Critical infrastructure materials operation" means the same as the term "critical
- 850 infrastructure materials use" is defined in Section 10-20-701.
- 851 (5) "Manufacturing facility" means the same as that term is defined in Section 78B-6a-101.
- 852 (6) "Migratory bird production area" means the same as that term is defined in Section
- 853 23A-13-101.
- 854 [(2)] (7) "Nuisance" means an item, thing, manner, or condition that:
- 855 (a) is dangerous to human life or health; or
- 856 (b) renders soil, air, water, or food impure or unwholesome.
- 857 [(3)] (8)(a) "Public nuisance" means unlawfully committing an act or omitting to perform
- 858 a duty~~[, which]~~ and the act or duty:
- 859 (i) annoys, injures, or endangers the comfort, repose, health, or safety of three or
- 860 more persons, regardless of the extent to which the annoyance, injury, or
- 861 endangerment inflicted on the persons is unequal;
- 862 (ii) offends public decency;
- 863 (iii) unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous
- 864 for passage, a lake, stream, canal, or basin, or a public park, square, street, or
- 865 highway;
- 866 (iv) is a ~~[nuisance as described in Section 78B-6-1107, Nuisance -- Drug houses and~~
- 867 ~~drug dealing -- Gambling -- Group criminal activity -- Party house -- Prostitution~~
- 868 ~~-- Weapons -- Abatement by eviction]~~ private nuisance as defined in Section
- 869 78B-6a-101; or
- 870 (v) renders three or more persons insecure in life or the use of property, regardless of
- 871 the extent to which the effect inflicted on the persons is unequal.
- 872 (b) "Public nuisance" ~~[is presumed to]~~ does not include:
- 873 (i) ~~[activities]~~ an activity conducted in the normal and ordinary course of ~~[agricultural~~
- 874 ~~operations, as defined in Section 4-44-102,]~~ an agricultural operation and
- 875 conducted in accordance with sound agricultural practices, with the presumption
- 876 that ~~[agricultural operations]~~ an agricultural operation undertaken in conformity
- 877 with federal, state, and local laws and regulations, including zoning ordinances, [~~are]~~
- 878 is operating within sound agricultural practices; ~~[or]~~

- 879 (ii) ~~[activities]~~ an activity conducted in the normal and ordinary course of ~~[critical~~
 880 ~~infrastructure materials operations, as defined in Section 78B-6-1101,]~~ a critical
 881 infrastructure materials operation and conducted in accordance with sound critical
 882 infrastructure materials practices, with the presumption that a critical
 883 infrastructure materials ~~[operations]~~ operation undertaken in conformity with
 884 federal, state, and local laws and regulations, including zoning ordinances, ~~[are]~~ is
 885 operating within sound critical infrastructure materials ~~[operations.]~~ practices;
- 886 (iii) an activity normally associated with a migratory bird production area, that is
 887 conducted within a migratory bird production area, and is not in violation of state
 888 or federal law;
- 889 (iv) an activity at a manufacturing facility if the manufacturing facility has a defense
 890 against a civil action for the activity under Section 78B-6a-402;
- 891 (v) noise or noise pollution resulting from the operation or use of a shooting range if
 892 the shooting range:
- 893 (A)(I) was established, constructed, or operated before the implementation of
 894 any noise ordinances, rules, or regulations; and
 895 (II) does not substantially and adversely affect public health or safety; or
 896 (B)(I) is in compliance with any noise control laws, ordinances, rules, or
 897 regulations that applied to the shooting range and the shooting range's
 898 operation at the time of establishment, construction, or initial operation of
 899 the range; and
 900 (II) does not substantially and adversely affect public health or safety; or
- 901 (vi) noise generated by a shooting range that is operated in accordance with
 902 nationally recognized standards and operating practices.
- 903 (9) "Shooting range" means the same as that term is defined in Section 53-5a-701.
- 904 [(4)] (10)(a) "Supervised drug consumption site" means a facility or premises operated or
 905 intended to provide an environment for the unlawful use of a controlled substance.
- 906 (b) "Supervised drug consumption site" does not include a facility or premises that
 907 provides or facilitates:
- 908 (i) an opioid treatment program, as that term is defined in Section 58-17b-309.7; or
 909 (ii) the use of medication pursuant to a medication assisted treatment plan, as that
 910 term is defined in Section 64-13-25.1.

911 Section 24. Section **78B-6-802** is amended to read:

912 **78B-6-802 . Unlawful detainer by tenant for a term less than life.**

- 913 (1) A tenant holding real property for a term less than life is guilty of an unlawful detainer
914 if the tenant:
- 915 (a) continues in possession, in person or by subtenant, of the property or any part of the
916 property, after the expiration of the specified term or period for which it is let to the
917 tenant, which specified term or period, whether established by express or implied
918 contract, or whether written or parol, shall be terminated without notice at the
919 expiration of the specified term or period;
- 920 (b) having leased real property for an indefinite time with monthly or other periodic rent
921 reserved:
- 922 (i) continues in possession of the property in person or by subtenant after the end of
923 any month or period, in cases where the owner, the owner's designated agent, or
924 any successor in estate of the owner, 15 calendar days or more before the end of
925 that month or period, has served notice requiring the tenant to quit the premises at
926 the expiration of that month or period; or
- 927 (ii) in cases of tenancies at will, remains in possession of the premises after the
928 expiration of a notice of not less than five calendar days;
- 929 (c) continues in possession, in person or by subtenant, after default in the payment of
930 any rent or other amounts due and after a notice in writing requiring in the alternative
931 the payment of the rent and other amounts due or the surrender of the detained
932 premises, has remained uncomplied with for a period of three business days after
933 service, which notice may be served at any time after the rent becomes due;
- 934 (d) assigns or sublets the leased premises contrary to the covenants of the lease, or
935 commits or permits waste on the premises after service of a three calendar days'
936 notice to quit;
- 937 (e) sets up or carries on any unlawful business on or in the premises after service of a
938 three calendar days' notice to quit;
- 939 (f) suffers, permits, or maintains on or about the premises any nuisance, including
940 private nuisance as defined in Section 78B-6-1107 after service of a three calendar
941 days' notice to quit;
- 942 (g) commits a criminal act on the premises and remains in possession after service of a
943 three calendar days' notice to quit;
- 944 (h) continues in possession, in person or by subtenant, after a neglect or failure to
945 perform any condition or covenant of the lease or agreement under which the
946 property is held, other than those previously mentioned, and after notice in writing

- 947 requiring in the alternative the performance of the conditions or covenant or the
948 surrender of the property, served upon the tenant and upon any subtenant in actual
949 occupation of the premises remains uncomplied with for three calendar days after
950 service; or
- 951 (i)(i) is a tenant under a bona fide tenancy as described in Section 702 of the
952 Protecting Tenants at Foreclosure Act; and
- 953 (ii) continues in possession after the effective date of a notice to vacate given in
954 accordance with Section 702 of the Protecting Tenants at Foreclosure Act.
- 955 (2) After service of the notice and the time period required for the notice, the tenant, any
956 subtenant in actual occupation of the premises, any mortgagee of the term, or other
957 person interested in the lease's continuance may perform the condition or covenant and
958 save the lease from forfeiture, except that if the covenants and conditions of the lease
959 violated by the lessee cannot afterwards be performed, or the violation cannot be
960 brought into compliance, a notice provided for in Subsections (1)(d) through (g) may be
961 given.
- 962 (3) Unlawful detainer by an owner resident of a mobile home is determined under Title 57,
963 Chapter 16, Mobile Home Park Residency Act.
- 964 (4) The notice provisions for nuisance in Subsections (1)(d) through (g) do not apply to [
965 ~~nuisance actions provided in Sections 78B-6-1107 through 78B-6-1114~~] an action for
966 abatement by eviction of a private nuisance as described in Section 78B-6a-303.
- 967 (5) The notice to vacate requirement under 15 U.S.C. Sec. 9058(c), which is part of the
968 Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136:
- 969 (a) applies only to a notice provided to a tenant of a covered dwelling in a covered
970 property as that term is defined in 15 U.S.C. Sec. 9058(a);
- 971 (b) applies only to the amount of time before a tenant may be required to vacate a
972 covered property through an order of restitution as provided by Section 78B-6-812;
- 973 (c) for a notice provided under Subsection (1)(c), applies only when delinquent rent or
974 other amounts have accrued during the 120-day moratorium described in 15 U.S.C.
975 Sec. 9058(b);
- 976 (d) does not require that a tenant be given more than three business days after service to
977 pay rent and other amounts due under a notice provided under Subsection (1)(c);
- 978 (e) does not apply to a notice provided under Subsections (1)(d) through (h);
- 979 (f) does not prohibit or nullify the service of any notice described in this section; and
- 980 (g) does not limit the accrual of damages under Section 78B-6-811.

981 (6) Service of a notice as provided by 15 U.S.C. Sec. 9058(c) or under Subsection (5) does
982 not nullify the service or validity of any other notice provided in accordance with this
983 section.

984 Section 25. Section **78B-6-805** is amended to read:

985 **78B-6-805 . Notice -- How served.**

986 (1) A notice required by this part may be served:

987 (a) by delivering a copy to the tenant personally or, if the tenant is a commercial tenant,
988 by delivering a copy to the commercial tenant's usual place of business by leaving a
989 copy of the notice with a person of suitable age and discretion;

990 (b) by sending a copy through registered mail, certified mail, or an equivalent means,
991 addressed to the tenant at the tenant's residence, leased property, or usual place of
992 business;

993 (c) if the tenant is absent from the residence, leased property, or usual place of business,
994 by leaving a copy with a person of suitable age and discretion at the tenant's
995 residence, leased property, or usual place of business;

996 (d) if a person of suitable age or discretion cannot be found at the place of residence,
997 leased property, or usual place of business, then by affixing a copy in a conspicuous
998 place on the leased property; or

999 (e) if an order of abatement by eviction of the nuisance is issued by the court as provided
1000 in Section [~~78B-6-1109~~] 78B-6a-303, when issued, the parties present shall be on
1001 notice that the abatement by eviction order is issued and immediately effective or as
1002 to any absent party, notice shall be given as provided in Subsections (1)(a) through [
1003 ~~(e)~~] (d).

1004 (2) Service upon a subtenant may be made in the same manner as provided in Subsection (1).

1005 Section 26. Section **78B-6-806** is amended to read:

1006 **78B-6-806 . Necessary parties defendant.**

1007 (1)(a) No person other than the tenant of the premises, a lease signer, and subtenant if
1008 there is one in the actual occupation of the premises when the action is commenced,
1009 may be made a party defendant in the proceeding, except as provided in Section [
1010 ~~78B-6-1111~~] 78B-6a-303.

1011 (b) A proceeding may not abate, nor the plaintiff be nonsuited, for the nonjoinder of any
1012 person who might have been made a party defendant.

1013 (c) If it appears that any of the parties served with process or appearing in the
1014 proceedings are guilty, judgment shall be rendered against those parties.

1015 (2)(a) If a person has become a subtenant of the premises in controversy after the service
 1016 of any notice as provided in this part, the fact that the notice was not served on the
 1017 subtenant is not a defense to the action.

1018 (b) All persons who enter under the tenant after the commencement of the action shall
 1019 be bound by the judgment the same as if they had been made parties to the action.

1020 (3) A landlord, owner, or designated agent is a necessary party defendant only in an
 1021 abatement by eviction action for an unlawful drug house [as provided in Section
 1022 ~~78B-6-1111~~] under Section 78B-6a-303.

1023 Section 27. Section **78B-6-811** is amended to read:

1024 **78B-6-811 . Judgment for restitution, damages, and rent -- Immediate**
 1025 **enforcement -- Remedies.**

1026 (1)(a) A court may:

1027 (i) enter a judgment upon the merits or upon default; and

1028 (ii) issue an order of restitution regardless of whether a judgment is entered.

1029 (b) A judgment entered in favor of the plaintiff shall include an order for the restitution
 1030 of the premises as provided in Section 78B-6-812.

1031 (c) If the proceeding is for unlawful detainer after neglect or failure to perform any
 1032 condition or covenant of the lease or agreement under which the property is held, or
 1033 after default in the payment of rent, the judgment shall also declare the forfeiture of
 1034 the lease or agreement.

1035 (d)(i) A forfeiture under Subsection (1)(c) does not release a defendant from any
 1036 obligation for payments on a lease for the remainder of the lease's term.

1037 (ii) Subsection (1)(d)(i) does not change any obligation on either party to mitigate
 1038 damages.

1039 (2) The jury or the court, if the proceeding is tried without a jury or upon the defendant's
 1040 default, shall also assess the damages resulting to the plaintiff from any of the following:

1041 (a) forcible entry;

1042 (b) forcible or unlawful detainer;

1043 (c) waste of the premises during the defendant's tenancy, if waste is alleged in the
 1044 complaint and proved at trial;

1045 (d) the amounts due under the contract; and

1046 (e) the abatement [~~of the nuisance by eviction as provided in Sections 78B-6-1107~~
 1047 ~~through 78B-6-1114~~] by eviction of a private nuisance as described in Section
 1048 78B-6a-303.

- 1049 (3) The court shall enter the judgment against the defendant for the rent and for three times
 1050 the amount of the damages assessed under Subsections (2)(a) through (2)(e).
- 1051 (4)(a) If the proceeding is for unlawful detainer, the court shall issue execution upon the
 1052 judgment immediately after the entry of the judgment.
- 1053 (b) In all cases, the judgment may be issued and enforced immediately.
- 1054 (5) In an action under this chapter, the court:
- 1055 (a) shall award costs and reasonable attorney fees to the prevailing party;
- 1056 (b) may modify a judgment for additional amounts owed if a motion is submitted within
 1057 180 days on the earlier of the day on which:
- 1058 (i) the order of restitution is enforced; or
- 1059 (ii) the defendant vacates the premises; and
- 1060 (c) may grant a party additional time for a motion under Subsection (5)(b).
- 1061 (6)(a) If the court issues an order of restitution, the defendant shall provide a current
 1062 address to the court and the plaintiff within 30 days of the day on which the court
 1063 issues the order of restitution.
- 1064 (b) Failure of a defendant to provide an address under Subsection (6)(a) does not require
 1065 the plaintiff or the court to bear the burden of seeking out the defendant to provide
 1066 notice for any subsequent proceeding.

1067 Section 28. Section **78B-6-813** is amended to read:

1068 **78B-6-813 . Time for appeal.**

- 1069 (1) Except as provided in Subsection (2), either party may, within 10 days, appeal from the
 1070 judgment rendered.
- 1071 (2) In a [~~nuisance action under Sections 78B-6-1107 through 78B-6-1114~~] private nuisance
 1072 action described in Section 78B-6a-303, any party may appeal from the judgment
 1073 rendered within three days.

1074 Section 29. Section **78B-6a-101**, which is renumbered from Section 78B-6-1101 is renumbered
 1075 and amended to read:

1076 **CHAPTER 6a. Civil Actions for Nuisances**

1077 **Part 1. General Provisions**

1078 **[~~78B-6-1101~~] 78B-6a-101 . Definitions for chapter.**

1079 [(+)] As used in this [part] chapter:

- 1080 (1)(a) "Agricultural operation" means the commercial production of crops, orchards,
 1081 livestock, poultry, aquaculture, livestock products, or poultry products.

- 1082 (b) "Agricultural operation" includes:
- 1083 (i) the real property where the commercial production described in Subsection (1)(a)
- 1084 occurs;
- 1085 (ii) a facility, a property, or equipment used to facilitate the commercial production
- 1086 described in Subsection (1)(a);
- 1087 (iii) an agritourism activity, as defined in Section 78B-4-512; or
- 1088 (iv) an agricultural protection area established under Title 17, Chapter 81,
- 1089 Agriculture, Industrial, and Critical Infrastructure Materials.
- 1090 (2) "Agriculture protection area" means the same as that term is defined in Section
- 1091 17-81-101.
- 1092 ~~[(a)]~~ (3) "Controlled substance" means the same as that term is defined in Section 58-37-2.
- 1093 ~~[(b)]~~ (4) "Critical infrastructure materials operations" means the same as the term "critical
- 1094 infrastructure materials use" is defined in Section 10-20-701.
- 1095 (5) "Drug nuisance" means fumes resulting from the unlawful manufacturing or the
- 1096 unlawful possession or use of a controlled substance that drift into a residential unit a
- 1097 person rents, leases, or owns, from another residential or commercial unit.
- 1098 (6) "Government entity" means:
- 1099 (a) the state, any county, municipality, special district, special service district, or any
- 1100 other political subdivision or administrative unit of the state, including state
- 1101 institutions of education;
- 1102 (b) a federal entity or agency; or
- 1103 (c) a tribal government.
- 1104 (7) "Legal product" means a product for which possession generally, or by the person
- 1105 alleged to be causing the public nuisance, is not specifically prohibited by federal or
- 1106 state law.
- 1107 ~~[(e)]~~ (8) "Manufacturing facility" means a factory, plant, or other facility including its
- 1108 appurtenances, where the form of raw materials, processed materials, commodities, or
- 1109 other physical objects is converted or otherwise changed into other materials,
- 1110 commodities, or physical objects or where such materials, commodities, or physical
- 1111 objects are combined to form a new material, commodity, or physical object.
- 1112 ~~[(d)]~~ "Nuisance" means anything that is injurious to health, indecent, offensive to the
- 1113 senses, or an obstruction to the free use of property, so as to interfere with the
- 1114 comfortable enjoyment of life or property.]
- 1115 ~~[(e)]~~ (9)~~[(f)]~~ "Possession or use" means the joint or individual ownership, control,

1116 occupancy, holding, retaining, belonging, maintaining, or the application,
1117 inhalation, swallowing, injection, or consumption, as distinguished from
1118 distribution, of a controlled substance, and includes individual, joint, or group
1119 possession or use of a controlled substance.

1120 ~~[(ii) For a person to be a possessor or user of a controlled substance, it is not required~~
1121 ~~that the person be shown to have individually possessed, used, or controlled the~~
1122 ~~substance, but it is sufficient if it is shown that the person jointly participated with~~
1123 ~~one or more persons in the use, possession, or control of a controlled substance~~
1124 ~~with knowledge that the activity was occurring, or the controlled substance is~~
1125 ~~found in a place or under circumstances indicating that the person had the ability~~
1126 ~~and the intent to exercise dominion and control over it.]~~

1127 (10)(a) "Private nuisance" means a condition arising out of the use of real property that:

1128 (i) is injurious to health or safety, or is indecent or offensive to the senses, of an
1129 individual on an adjacent or neighboring property; or

1130 (ii) obstructs the free use of an adjacent or neighboring property so as to interfere
1131 with the comfortable enjoyment of life or property.

1132 (b) "Private nuisance" includes a condition that is:

1133 (i) gambling as provided in Title 76, Chapter 9, Part 14, Gambling;

1134 (ii) criminal activity committed in concert with two or more individuals as provided
1135 in Section 76-3-203.1;

1136 (iii) criminal activity committed for the benefit of, at the direction of, or in
1137 association with any criminal street gang as defined in Section 76-9-802;

1138 (iv) criminal activity committed to gain recognition, acceptance, membership, or
1139 increased status with a criminal street gang as defined in Section 76-9-802;

1140 (v) a party house that frequently creates a condition described in Subsection (10)(a);

1141 (vi) prostitution as provided in Title 76, Chapter 5d, Prostitution;

1142 (vii) an unsafe building or place;

1143 (viii) the unlawful discharge of a firearm as provided in state or local law;

1144 (ix) a drug nuisance; or

1145 (x) a tobacco nuisance.

1146 (c) "Private nuisance" does not include:

1147 (i) a public nuisance;

1148 (ii) an action or condition that is lawful; or

1149 (iii) an action or condition that is authorized, approved, licensed, or mandated by

1150 statute, ordinance, regulation, permit, license, order, rule, or other similar measure
1151 issued, adopted, promulgated, or approved by a government entity.

1152 (11)(a) "Public nuisance" means:

1153 (i) a condition arising out of the use of real property that unlawfully interferes with a
1154 public right by endangering community safety, being indecent to the community,
1155 or being offensive to the community; or

1156 (ii) a condition that unlawfully interferes with the public right to free passage or use,
1157 in the customary manner, of a navigable lake, river, bay, stream, canal, or basin or
1158 a public park, square, street, road, or highway.

1159 (b) "Public nuisance" does not include:

1160 (i) an action or condition that is lawful;

1161 (ii) an action or condition that is authorized, approved, licensed, or mandated by
1162 statute, ordinance, regulation, permit, license, order, rule, or other similar measure
1163 issued, adopted, promulgated, or approved by a government entity;

1164 (iii) impairment of the spiritual, cultural, or emotional significance associated with a
1165 navigable lake, river, bay, stream, canal, or basin or a public park, square, street,
1166 road, or highway;

1167 (iv) the design, manufacturing, distributing, selling, labeling, or marketing of a legal
1168 product;

1169 (v) the aggregation of individual injuries or private rights, including a private
1170 nuisance; or

1171 (vi) the design, manufacturing, distributing, selling, labeling, or marketing of
1172 firearms, firearm accessories, or ammunition, as defined in Section 53-5d-102, or
1173 components of firearms, firearm accessories, or ammunition.

1174 (12) "Residential unit" does not include:

1175 (a) a residential rental unit available for temporary rental, such as for a vacation, or
1176 available for only 30 or fewer days at a time;

1177 (b) a hotel or motel room; or

1178 (c) a unit that is part of a timeshare development, as defined in Section 57-19-2, or
1179 subject to a timeshare interest as defined in Section 57-19-2.

1180 (13) "Shooting range" means the same as that term is defined in Section 53-5a-701.

1181 (14) "Tobacco or illegal substance nuisance" means tobacco smoke that drifts into a
1182 residential unit a person rents, leases, or owns, from another residential or commercial
1183 unit and the smoke;

1184 (a) drifts in more than once in each of two or more consecutive seven-day periods; and
1185 (b) creates a condition described in Subsection (10)(a).

1186 (15)(a) "Unlawfully interferes" means a condition that violates a statute, ordinance,
1187 regulation, permit, license, order, rule, or other similar measure issued, adopted,
1188 promulgated, or approved by a government entity.

1189 (b) "Unlawfully interferes" includes any statute, ordinance, regulation, permit, license,
1190 order, rule, or other similar measure issued, adopted, promulgated, or approved by a
1191 government entity before, on, or after May 6, 2026.

1192 (16) "Unsafe building or place" means a building or place where:

1193 (a) the unlawful sale, manufacture, service, storage, distribution, dispensing, acquisition,
1194 or use occurs of any controlled substance, precursor, or analog described in Title 58,
1195 Chapter 37, Utah Controlled Substances Act;

1196 (b) gambling is permitted to be played, conducted, or dealt upon as prohibited in Title
1197 76, Chapter 9, Part 14, Gambling, which creates a condition described in Subsection
1198 (10)(a);

1199 (c) criminal activity is committed in concert with two or more individuals as described
1200 in Section 76-3-203.1;

1201 (d) criminal activity is committed for the benefit of, at the direction of, or in association
1202 with any criminal street gang as defined in Section 76-9-802;

1203 (e) criminal activity is committed to gain recognition, acceptance, membership, or
1204 increased status with a criminal street gang as defined in Section 76-9-802;

1205 (f) parties occur frequently that creates a condition described in Subsection (10)(a);

1206 (g) prostitution or promotion of prostitution is regularly carried on by one or more
1207 persons as described in Title 76, Chapter 5d, Prostitution;

1208 (h) a violation of an offense under Title 76, Chapter 11, Weapons, occurs on the
1209 premises;

1210 (i) the unlawful discharge of a firearm, as provided in state or local law, occurs on the
1211 premises; or

1212 (j) human trafficking occurs as described in Title 76, Chapter 5, Part 3, Kidnapping,
1213 Trafficking, and Smuggling.

1214 [~~(2) A nuisance may be the subject of an action.~~]

1215 [~~(3) A nuisance may include the following:~~]

1216 [~~(a) drug houses and drug dealing as provided in Section 78B-6-1107;~~]

1217 [~~(b) gambling as provided in Title 76, Chapter 9, Part 14, Gambling;~~]

- 1218 ~~[(e) criminal activity committed in concert with two or more individuals as provided in~~
 1219 ~~Section 76-3-203.1;]~~
- 1220 ~~[(d) criminal activity committed for the benefit of, at the direction of, or in association~~
 1221 ~~with any criminal street gang as defined in Section 76-9-802;]~~
- 1222 ~~[(e) criminal activity committed to gain recognition, acceptance, membership, or~~
 1223 ~~increased status with a criminal street gang as defined in Section 76-9-802;]~~
- 1224 ~~[(f) party houses that frequently create conditions defined in Subsection (1)(d);]~~
- 1225 ~~[(g) prostitution as provided in Title 76, Chapter 5d, Prostitution; or]~~
- 1226 ~~[(h) the unlawful discharge of a firearm as provided in state or local law.]~~
- 1227 ~~[(4) A nuisance under this part includes:-]~~
- 1228 ~~[(a) tobacco smoke that drifts into a residential unit a person rents, leases, or owns, from~~
 1229 ~~another residential or commercial unit and the smoke:]~~
- 1230 ~~[(i) drifts in more than once in each of two or more consecutive seven-day periods;~~
 1231 ~~and]~~
- 1232 ~~[(ii) creates any of the conditions described in Subsection (1)(d); or]~~
- 1233 ~~[(b) fumes resulting from the unlawful manufacturing or the unlawful possession or use~~
 1234 ~~of a controlled substance that drift into a residential unit a person rents, leases, or~~
 1235 ~~owns, from another residential or commercial unit.]~~
- 1236 ~~[(5) Subsection (4)(a) does not apply to:]~~
- 1237 ~~[(a) a residential rental unit available for temporary rental, such as for a vacation, or~~
 1238 ~~available for only 30 or fewer days at a time; or]~~
- 1239 ~~[(b) a hotel or motel room.]~~
- 1240 ~~[(6) Subsection (4)(a) does not apply to a unit that is part of a timeshare development, as~~
 1241 ~~defined in Section 57-19-2, or subject to a timeshare interest as defined in Section~~
 1242 ~~57-19-2.]~~
- 1243 ~~[(7) An action for nuisance against an agricultural operation is governed by Title 4, Chapter~~
 1244 ~~44, Agricultural Operations Nuisances Act.]~~
- 1245 Section 30. Section **78B-6a-102** is enacted to read:
- 1246 **78B-6a-102 . Abrogation of common law nuisance -- Exception -- Reporting**
 1247 **requirement.**
- 1248 (1)(a) This chapter abrogates any common law civil right of action for a public nuisance
 1249 or a private nuisance in this state.
- 1250 (b) Subsection (1)(a) does not abrogate a common law civil right of action for public
 1251 nuisance or a private nuisance that accrued, or is pending in a court, before May 6,

- 1252 2026.
- 1253 (2) Notwithstanding Subsection (1), the attorney general may bring a common law civil
- 1254 right of action for a public nuisance or private nuisance in this state if:
- 1255 (a) the attorney general determines that there is a substantial ongoing harm to a
- 1256 significant number of the citizens of Utah; and
- 1257 (b) the attorney general is bringing the common law civil right of action for a public
- 1258 nuisance or a private nuisance:
- 1259 (i) on behalf of the state, a state officer or agency, or a political subdivision of the
- 1260 state; or
- 1261 (ii) as parens patriae on behalf of individuals residing in the state.
- 1262 (3) A person other than the attorney general may not bring a common law civil right of
- 1263 action for a public nuisance or private nuisance.
- 1264 (4) The governor may direct the attorney general to bring a nuisance action under
- 1265 Subsection (2).
- 1266 (5) This chapter does not preclude the governor from declaring a public nuisance.
- 1267 (6) Before October 1, 2029, and every four years thereafter before October 1:
- 1268 (a) the attorney general shall report to the Judiciary Interim Committee on the attorney
- 1269 general's exercise of the common law right of action described in Subsection (2); and
- 1270 (b) the Judiciary Interim Committee shall review the attorney general's report and make
- 1271 a determination as to whether Subsections (2) and (3) should be repealed.

1272 Section 31. Section **78B-6a-103**, which is renumbered from Section 78B-6-1114 is renumbered

1273 and amended to read:

1274 ~~[78B-6-1114]~~ **78B-6a-103 . Award of costs and attorney fees.**

- 1275 (1) The court may award costs, including the costs of investigation and discovery, and
- 1276 reasonable attorney fees, which are not compensated for [~~pursuant to some other~~] in
- 1277 accordance with another provision of law, to the prevailing party in any case in which a
- 1278 party brings an action to abate a nuisance under this [~~part~~] chapter.
- 1279 (2) [~~The~~] If a defendant is a landlord, owner, or designated agency, the court may award
- 1280 costs, including the costs of investigation and discovery, and reasonable attorney fees
- 1281 against [~~a defendant landlord, owner, or designated agent~~] the defendant only when the
- 1282 court finds that the defendant[~~landlord, owner, or designated agent~~] had actual notice of
- 1283 the nuisance action and willfully failed to take reasonable action within a reasonable
- 1284 time to abate the nuisance.

1285 Section 32. Section **78B-6a-104**, which is renumbered from Section 78B-6-1102.5 is renumbered

1286 and amended to read:

1287 ~~[78B-6-1102.5]~~ **78B-6a-104 . Violation of order enjoining a public or private**
 1288 **nuisance -- Civil penalty.**

1289 A person who knowingly violates any judgment or order abating or enjoining a [
 1289a nuisance,

-1290 as that term is defined in Section ~~78B-6-1101~~] public nuisance or private nuisance:

1291 (1) is guilty of a class B misdemeanor; and

1292 (2) is subject to a civil penalty of \$50 per day for each day that the nuisance continues in
 1293 violation of the order.

1294 Section 33. Section **78B-6a-201** is enacted to read:

1295 **Part 2. Public Nuisance**

1296 **78B-6a-201 . Definitions for part.**

1297 As used in this part:

1298 (1) "Private party" means a person that is not a government entity.

1299 (2)(a) "Special injury" means an injury that is different in kind, not just in degree, from
 1300 an injury sustained by the general public exercising the same public right.

1301 (b) "Special injury" does not include:

1302 (i) an injury that is based upon impairment of the spiritual, cultural, or emotional
 1303 significance associated with a navigable lake, river, bay, stream, canal, or basin or
 1304 a public park, square, street, road, or highway; or

1305 (ii) a financial expenditure made by a person in responding, including seeking an
 1306 injunction in response, to a public nuisance.

1307 Section 34. Section **78B-6a-202** is enacted to read:

1308 **78B-6a-202 . Government right of action for a public nuisance.**

1309 (1) Except as otherwise provided by this section or Part 4, Defenses to Nuisances Actions, a
 1310 government entity has a right of action against a person for a public nuisance if:

1311 (a) the person:

1312 (i) engages in an activity that directly causes a public nuisance and the public
 1313 nuisance is a reasonably foreseeable result of the person's activity;

1314 (ii) controls or instructs at least one other person to engage in an activity that directly
 1315 causes the public nuisance and the public nuisance is a reasonably foreseeable
 1316 result of the other person's activity; or

1317 (iii) is the successive owner of property and neglects to abate a continuing public
 1318 nuisance upon, or in the use of the property, that was created by a former owner;

- 1319 and
- 1320 (b)(i) the public nuisance would not exist if not for the person's conduct under
- 1321 Subsection (1)(a); or
- 1322 (ii) the government entity's expenditures to abate or address the public nuisance
- 1323 would decrease by at least 25%.
- 1324 (2)(a) A government entity that is a political subdivision of the state may only bring a
- 1325 public nuisance action described in Subsection (1) if the alleged public nuisance is
- 1326 entirely within the jurisdiction of that government entity.
- 1327 (b) If an alleged public nuisance is not entirely within the jurisdiction of a political
- 1328 subdivision of the state, only the attorney general may bring an action described in
- 1329 Subsection (1) on behalf of the state.
- 1330 (c) The governor may direct the attorney general to bring an action described in
- 1331 Subsection (1) on behalf of the state.
- 1332 (3) A government entity that brings a public nuisance action under Subsection (1) shall
- 1333 plead each element of the public nuisance action:
- 1334 (a) by the verified complaint, counterclaim, or third party complaint; and
- 1335 (b) with particularity under the same standard required by Utah Rules of Civil
- 1336 Procedure, Rule 9.
- 1337 (4) A government entity does not have a right of action under Subsection (1) solely because
- 1338 the government entity has made past, current, or future expenditures in responding,
- 1339 including seeking an injunction in response, to a public nuisance.
- 1340 (5) If a government entity prevails in an action for a public nuisance, the court may only:
- 1341 (a) grant injunctive relief to enjoin the condition that is proximately causing the public
- 1342 nuisance; and
- 1343 (b) award monetary or nonmonetary resources to abate the public nuisance if the court
- 1344 determines the resources are reasonably necessary, by clear and convincing evidence,
- 1345 to abate the public nuisance based upon relevant and reliable cost factors.
- 1346 (6) A government entity may only spend resources awarded under Subsection (5)(b) to
- 1347 abate the public nuisance.
- 1348 (7) If an action is brought under this section, the court may not award:
- 1349 (a) resources for abating a potential future public nuisance; or
- 1350 (b) damages of any kind, including economic, noneconomic, or exemplary damages.
- 1351 (8) There is no statute of limitations for an action under this section if the public nuisance
- 1352 amounts to an actual ongoing obstruction of a public right.

- 1353 (9) This section does not limit the authority of a government entity to order a person to
1354 vacate the right of way of a navigable lake, river, bay, stream, canal, or basin or a public
1355 park, square, street, road, or highway.
- 1356 (10) A private party may not bring an action for a public nuisance under this section.
1357 Section 35. Section **78B-6a-203** is enacted to read:
1358 **78B-6a-203 . Private right of action for a public nuisance.**
- 1359 (1) Except as otherwise provided by this section and Part 4, Defenses to Nuisances Actions,
1360 a private party has a right of action for a public nuisance against a person if:
- 1361 (a) the person:
- 1362 (i) engages in an activity that directly causes the public nuisance and the public
1363 nuisance is a reasonably foreseeable result of the person's activity;
- 1364 (ii) controls or instructs at least one other person to engage in an activity that directly
1365 causes the public nuisance and the public nuisance is a reasonably foreseeable
1366 result of the other person's activity; or
- 1367 (iii) is the successive owner of property and neglects to abate a continuing public
1368 nuisance upon, or in the use of the property, that was created by a former owner;
- 1369 (b) not for the person's conduct under Subsection (1)(a):
- 1370 (i) the public nuisance would not exist; or
- 1371 (ii) the private party's expenditures to abate or address the public nuisance would
1372 decrease by at least 25%; and
- 1373 (c) the private party can establish, by clear and convincing evidence, that the private
1374 party has suffered special injury.
- 1375 (2) A private party that brings a public nuisance action under Subsection (1) shall plead
1376 each element of the public nuisance action:
- 1377 (a) by verified complaint, counterclaim, or third party complaint; and
- 1378 (b) with particularity under the same standard required by Utah Rules of Civil
1379 Procedure, Rule 9.
- 1380 (3) If a private party brings an action for a public nuisance, the court may only award
1381 compensatory damages for the special injury that may not be otherwise reimbursed, or
1382 have been reimbursed, by a government entity.
- 1383 (4) The abatement of a public nuisance by a government entity as described in Section
1384 78B-6a-204 does not preclude a right of action under this section.
- 1385 (5) A class action may not be brought under this section for special injuries arising out of a
1386 public nuisance.

1387 Section 36. Section **78B-6a-204** is enacted to read:

1388 **78B-6a-204 . Abatement of a public nuisance.**

1389 (1) A government entity, or an officer of a government entity who is authorized by law,
1390 may abate a public nuisance.

1391 (2) Nothing in this section alters the remedies available to a government entity or a private
1392 party in a right of action under Sections 78B-6a-202 and 78B-6a-203.

1393 Section 37. Section **78B-6a-301** is enacted to read:

1394 **Part 3. Private Nuisance**

1395 **78B-6a-301 . Definitions for part.**

1396 Reserved.

1397 Section 38. Section **78B-6a-302**, which is renumbered from Section 78B-6-1102 is renumbered
1398 and amended to read:

1399 **[78B-6-1102] 78B-6a-302 . Right of action for private nuisance.**

1400 [~~(1) An action for nuisance may be brought before a court with jurisdiction by any person~~
1401 ~~whose property is injuriously affected, or whose personal enjoyment is lessened by the~~
1402 ~~nuisance.]~~

1403 (1) Except as otherwise provided by this part or Part 4, Defenses for Nuisance Actions, a
1404 person has a right of action for a private nuisance if:

1405 (a) the person owns or possesses a legal interest in the real property that is the subject of
1406 the action; and

1407 (b) the person's real property is injuriously affected by the private nuisance or the
1408 person's personal enjoyment is lessened by the private nuisance.

1409 (2) [~~Upon judgment, the court may, in addition to any other relief the court considers just~~
1410 ~~and proper] If the person prevails in an action described in Subsection (1), the court may,
1411 in addition to any other relief the court considers just and proper:~~

1412 (a) award damages;

1413 (b) order the nuisance to be enjoined or abated, [~~which may include~~] including:

1414 (i) requiring a defendant to make repairs to the nuisance property or property that is
1415 injuriously affected by the nuisance;

1416 (ii) requiring a defendant to:

1417 (A) install and maintain secure locks on the nuisance property's doors or windows;

1418 (B) provide security personnel or video surveillance monitoring of the nuisance
1419 property; or

1420 (C) install and maintain lighting in and around common areas; or

- 1421 (iii) abatement by eviction as provided in this part;
- 1422 (c) grant declaratory relief as described in Chapter 4, Part 4, Declaratory Judgments; or
- 1423 (d) award costs and reasonable attorney fees to the prevailing party as described in
- 1424 Section [~~76B-6-1114~~] 78B-6a-103.

1425 (3) A court that issues a judgment or order under this [~~part~~] section retains jurisdiction to

1426 enforce the judgment or order.

1427 Section 39. Section **78B-6a-303** is enacted to read:

1428 **78B-6a-303 . Abatement by eviction of private nuisance.**

1429 (1)(a) The county attorney, or the county, the city attorney of any incorporated city in

1430 the county, any citizen or citizens of the state residing in the county, or any person or

1431 business doing business in the county, has a right of action for abatement by eviction

1432 if there is reason to believe that an unsafe building or place is kept, maintained, or

1433 exists in the city or county.

1434 (b) The court may designate a spokesperson from a group of citizens who would

1435 otherwise have the right to maintain an action in their individual names against the

1436 defendant under Subsection (1)(a).

1437 (2) A court shall issue an order of abatement by eviction if the plaintiff shows, by a

1438 preponderance of the evidence, that:

1439 (a) the plaintiff will suffer irreparable harm unless the order of abatement by eviction is

1440 issued;

1441 (b) the threatened injury to the plaintiff outweighs any damage the proposed order of

1442 abatement by eviction may cause the party to be evicted;

1443 (c) the order of abatement by eviction would not be adverse to the public interest; and

1444 (d) there is a substantial likelihood that:

1445 (i) the plaintiff will prevail on the merits of the underlying claim; or

1446 (ii) the case presents serious issues on the merits that should be the subject of further

1447 litigation.

1448 (3)(a) At the time of filing an action for abatement by eviction under Subsection (1), the

1449 court may issue an order, upon a showing of good cause:

1450 (i) to protect the plaintiff; or

1451 (ii) to protect a witness who is not a peace officer if proof of the existence of the

1452 unsafe building or place depends in whole or in part upon the affidavit of the

1453 witness.

1454 (b) The order under Subsection (3)(a) may include nondisclosure of the name, address,

- 1455 or any other information that may identify the individual protected by the order.
- 1456 (4)(a) A landlord, owner, or designated agent is a necessary defendant in an action for an
1457 unsafe building or place for entry of an order to abate the unsafe building or place by
1458 eviction where the acts complained of are those of a third party upon the premises of
1459 the landlord, owner, or designated agent.
- 1460 (b) At the court's hearing on the action to abate the unsafe building or place by eviction,
1461 the court shall notify the necessary parties, including the applicant, the tenant, and the
1462 landlord, owner, or designated agent, if:
- 1463 (i) the court finds that an unsafe building or place is a private nuisance; and
1464 (ii) as a result, the court is issuing an order to evict the tenant subject to compliance
1465 with the security requirement in Subsection (6).
- 1466 (5) In all cases, including default judgments, the order of abatement by eviction may be
1467 issued and enforced immediately.
- 1468 (6)(a) The court shall condition issuance of an order of abatement by eviction under this
1469 section on the giving of security by the plaintiff, in such sum and form as the court
1470 determines proper, unless:
- 1471 (i) the court determines that none of the parties will incur or suffer costs, attorney
1472 fees, or damages as the result of any wrongful order of abatement by eviction;
1473 (ii) the court determines that there exists some substantial reason for dispensing with
1474 the requirement of security; or
1475 (iii) the plaintiff has proved, by a preponderance of the evidence, the existence of an
1476 unsafe building or place.
- 1477 (b) Security described in Subsection (6)(a) may not be required:
- 1478 (i) of the United States, the state, or an officer, agency, or subdivision of the United
1479 States or the state; or
1480 (ii) when prohibited by law.
- 1481 (c) The amount of security may not limit the award of:
- 1482 (i) reasonable attorney fees or costs incurred in connection with the order of
1483 abatement by eviction; or
1484 (ii) damages that may be awarded to a party who is found to have been wrongfully
1485 evicted.
- 1486 (d)(i) A surety upon a bond or undertaking under this Subsection (6) submits to the
1487 jurisdiction of the court and irrevocably appoints the clerk of the court as agent
1488 upon whom any papers affecting the surety's liability on the bond or undertaking

- 1489 may be served.
- 1490 (ii) The surety's liability may be enforced on motion without the necessity of an
- 1491 independent action.
- 1492 (iii) The motion, and any notice of the motion as the court prescribes, may be served
- 1493 on the clerk of the court who shall immediately provide a copy to the plaintiff or
- 1494 other person giving the security by the means established at the time of the filing
- 1495 of the action.
- 1496 (e) Upon request, the plaintiff shall be granted a hearing to be held no later than three
- 1497 days from the date the defendant is served with notice of the applicant's giving of
- 1498 security, as described in Subsection (6)(a).

1499 Section 40. Section **78B-6a-304**, which is renumbered from Section 78B-6-1113 is renumbered

1500 and amended to read:

1501 **[78B-6-1113] 78B-6a-304 . Evidence of private nuisance -- Requirements for**

1502 **controlled substance nuisance.**

- 1503 (1) In an action [for nuisance or abatement by eviction] described in Section
- 1504 78B-6a-302 or 78B-6a-303, all evidence authorized by law, including evidence of
- 1505 reputation in a community, is admissible to prove the existence of a private nuisance or
- 1506 the elements required for an order of abatement by eviction by a preponderance of the
- 1507 evidence.
- 1508 (2) If the private nuisance is for fumes resulting from the unlawful manufacturing or the
- 1509 unlawful possession or use of a controlled substance that drift into a residential unit a
- 1510 person rents, leases, or owns, from another residential or commercial unit:
- 1511 (a) the plaintiff is not required to show that a person individually possessed, used, or
- 1512 controlled the substance; and
- 1513 (b) it is sufficient if the plaintiff shows that the person jointly participated with one or
- 1514 more persons in the use, possession, or control of a controlled substance with
- 1515 knowledge that the activity was occurring, or the controlled substance is found in a
- 1516 place or under circumstances indicating that the person had the ability and the intent
- 1517 to exercise dominion and control over the controlled substance.

1518 Section 41. Section **78B-6a-401** is enacted to read:

1519 **Part 4. Defenses to Nuisance Actions**

1520 **78B-6a-401 . Definitions for part.**

1521 As used in this part, "fundamental change" does not include:

- 1522 (1) a change in ownership or size;

- 1523 (2) an interruption of farming for a period of no more than three years;
 1524 (3) participation in a government-sponsored agricultural program;
 1525 (4) employment of new technology; or
 1526 (5) a change in the type of agricultural product produced.

1527 Section 42. Section **78B-6a-402**, which is renumbered from Section 78B-6-1103 is renumbered
 1528 and amended to read:

1529 **[78B-6-1103] 78B-6a-402 . Defense in private nuisance action for manufacturing**
 1530 **facility in operation over three years.**

1531 (1)(a) [~~Notwithstanding Sections 76-9-1301 and 78B-6-1101, a manufacturing facility~~
 1532 ~~may not be considered a nuisance because of]~~ A person or government entity does not
 1533 have a right of action for a private nuisance under this chapter for any changed
 1534 circumstance in land uses near [the] a manufacturing facility if:

- 1535 (i) the manufacturing facility has been in operation for more than three years; and
 1536 (ii) the manufacturing facility was not a private nuisance at the time [it] the
 1537 manufacturing facility began operation.

1538 (b) The manufacturing facility may not increase the condition asserted to be a private
 1539 nuisance.

1540 (c) The provisions of this Subsection (1) do not apply if a private nuisance results from
 1541 the negligent or improper operation of a manufacturing facility.

1542 (2) Nothing in this section affects the right of a person in an action other than an action for
 1543 a private or public nuisance to recover damages for injuries or damage sustained as a
 1544 result of the pollution or change in the conditions of the waters of a stream or overflow
 1545 of the lands of any person.

1546 (3)(a) Any and all ordinances [~~now or in the future]~~ adopted by any county or municipal
 1547 corporation in which a manufacturing facility is located [~~and which makes its]~~ that
 1548 makes the manufacturing facility's operation a private nuisance or providing for an
 1549 abatement as a private nuisance in the circumstances set forth in this section are null
 1550 and void.

1551 (b) The provisions of this Subsection (3) may not apply whenever a private nuisance
 1552 results from the negligent or improper operation of a manufacturing facility.

1553 (4) This section does not apply to an action under Part 2, Public Nuisance.

1554 Section 43. Section **78B-6a-403**, which is renumbered from Section 78B-6-1115 is renumbered
 1555 and amended to read:

1556 **[78B-6-1115] 78B-6a-403 . Defense in private nuisance action for critical**

1557 **infrastructure materials operations.**

1558 (1) [Activities] A person or government entity does not have a right of action for a private
 1559 nuisance under this chapter for an activity conducted in the normal and ordinary course
 1560 of a critical infrastructure materials [operations] operation or conducted in accordance
 1561 with sound practices [are] is presumed to be reasonable[-and not constitute a nuisance].

1562 (2) [Critical] A critical infrastructure materials [operations] operation undertaken in
 1563 conformity with federal, state, and local laws and regulations, including zoning
 1564 ordinances, [are] is presumed to be operating within sound critical infrastructure
 1565 materials practices.

1566 (3) This section does not apply to an action under Part 2, Public Nuisance.

1567 Section 44. Section **78B-6a-404**, which is renumbered from Section 4-44-201 is renumbered
 1568 and amended to read:

1569 **[4-44-201] 78B-6a-404 . Defense in nuisance action for agricultural operations.**

1570 (1) [It is a defense in a civil action for nuisance against an agricultural operation that]

1571 (a) A person or government entity does not have a right of action under this chapter for a
 1572 private nuisance that is an agricultural operation if:

1573 [(a)] (i) the plaintiff is not a legal possessor of the real property affected by the
 1574 conditions alleged to be the public nuisance or private nuisance;

1575 [(b)] (ii) the real property affected by the conditions alleged to be the public nuisance
 1576 or private nuisance is located outside one-half mile of the source of the activity or
 1577 structure alleged to be the public nuisance or private nuisance; or

1578 [(c)] (iii) the action is filed more than one year after:

1579 [(i)] (A) the establishment of the agricultural operation; or

1580 [(ii)] (B) the agricultural operation undergoes a fundamental change.

1581 [(2)] (b) [This section] Subsection (1)(a) may not be construed to invalidate any contract
 1582 made before May 14, 2019.

1583 (2)(a) A person or government entity does not have a right of action under this chapter
 1584 for a private nuisance that is an agricultural operation if the agricultural operation is
 1585 conducted in the normal and ordinary course of an agricultural operation or
 1586 conducted in accordance with sound agricultural practices.

1587 (b) An agricultural operation undertaken in conformity with federal, state, and local laws
 1588 and regulations, including zoning ordinances, is presumed to be operating within
 1589 sound agricultural practices.

1590 (3) A person or government entity has no right of action for a public nuisance or private

1591 nuisance if the action involves an agricultural activity and the agricultural activity is:
 1592 (a) conducted within an agriculture protection area; and
 1593 (b) not in violation of any federal, state, or local law or regulation relating to the alleged
 1594 nuisance or was conducted according to sound agricultural practices.

1595 ~~[(3)]~~ (4) In a public nuisance or private nuisance action ~~[against]~~ for an agricultural
 1596 operation, the court shall award costs and expenses, including reasonable attorney fees,
 1597 to:

1598 (a) the ~~[agricultural operation]~~ defendant when the court finds the agricultural operation
 1599 is not a ~~[nuisance and the-]~~ public nuisance or private nuisance and the action is
 1600 frivolous or malicious; or

1601 (b) the plaintiff when the court finds the agricultural operation is a public nuisance or
 1602 private nuisance and the ~~[agricultural operation]~~ defendant asserts an affirmative
 1603 defense in the ~~[nuisance-]~~action that is frivolous and malicious.

1604 ~~[(4) A person who knowingly violates a judgment or order abating or otherwise enjoining a~~
 1605 ~~nuisance is guilty of a class B misdemeanor.]~~

1606 Section 45. Section **78B-6a-405**, which is renumbered from Section 78B-6-1106 is renumbered
 1607 and amended to read:

1608 **~~[78B-6-1106]~~ 78B-6a-405 . Limitations on tobacco and drug nuisance actions.**

1609 (1) ~~[There is no cause of action for a nuisance under Subsection 78B-6-1101(4)(a)]~~ There is
 1610 no right of action under this chapter for a tobacco nuisance if the rental, lease, restrictive
 1611 covenant, or purchase agreement for the unit states in writing that:

1612 (a) tobacco smoking is allowed in other units, either residential or commercial, and that
 1613 tobacco smoke from those units may drift into the unit that is subject to the
 1614 agreement; and

1615 (b) by signing the agreement the renter, lessee, or buyer acknowledges ~~[he has]~~ they have
 1616 been informed that tobacco smoke may drift into the unit [he is] they are renting,
 1617 leasing, or purchasing, and [he waives] they waive any right to a cause of action for a [
 1618 nuisance under Subsection 78B-6-1101(4)] tobacco nuisance.

1619 (2) A cause of action for ~~[a nuisance under Subsection 78B-6-1101(4)(a)]~~ a tobacco nuisance
 1620 may be brought against:

1621 (a) the individual generating the tobacco smoke;

1622 (b) the renter or lessee who permits or fails to control the generation of tobacco smoke,
 1623 in violation of the terms of the rental or lease agreement, on the premises the renter or
 1624 lessee rents or leases; or

- 1625 (c) the landlord, but only if:
- 1626 (i) the terms of the renter's or lessee's contract provide the unit will not be subject to
- 1627 the nuisance of drifting tobacco smoke;
- 1628 (ii) the complaining renter or lessee has provided to the landlord a statement in
- 1629 writing indicating that tobacco smoke is creating a nuisance in the renter's or
- 1630 lessee's unit; and
- 1631 (iii) the landlord knowingly allows the continuation of a [~~nuisance under Subsection~~
- 1632 ~~78B-6-1101(4)] tobacco nuisance after receipt of written notice under Subsection~~
- 1633 (2)(c)(ii), and in violation of the terms of the rental or lease agreement under
- 1634 Subsection [~~(2)(c)(i)~~] (2)(b).
- 1635 (3) A cause of action for [~~nuisance under Subsection 78B-6-1101(4)(b)] a drug nuisance~~
- 1636 may be brought against:
- 1637 (a) an individual who generates fumes by the unlawful manufacturing or the unlawful
- 1638 possession or use of a controlled substance;
- 1639 (b) a renter or lessee who permits or fails to control the generation of fumes from the
- 1640 unlawful manufacturing or the unlawful possession or use of a controlled substance
- 1641 on the premises the renter or lessee rents or leases; or
- 1642 (c) a landlord, but only if:
- 1643 (i) the complaining renter or lessee has provided to the landlord a statement in
- 1644 writing indicating that fumes from the unlawful manufacturing or the unlawful
- 1645 possession or use of a controlled substance are creating a nuisance in the renter's
- 1646 or lessee's unit; and
- 1647 (ii) the landlord knowingly allows the continuation of a [~~nuisance under Subsection~~
- 1648 ~~78B-6-1101(4)(b)] drug nuisance after receipt of written notice under Subsection~~
- 1649 (3)(c)(i).
- 1650 (4) It is a defense to a drug nuisance if the defendant can prove that the defendant is
- 1651 lawfully entitled to the possession or use of a controlled substance.
- 1652 Section 46. Section **78B-6a-407** is enacted to read:
- 1653 **78B-6a-407 . Defense in nuisance action for shooting range.**
- 1654 (1) A person or government entity does not have a right of action under this chapter against
- 1655 a person who operates or uses a shooting range in this state for noise or noise pollution
- 1656 resulting from the operation or use of the shooting range if the shooting range:
- 1657 (a)(i) was established, constructed, or operated before the implementation of any
- 1658 noise ordinances, rules, or regulations; and

- 1659 (ii) does not substantially and adversely affect public health or safety; or
 1660 **(b)(i) is in compliance with any noise control laws, ordinances, rules, or regulations**
 1661 **that applied to the shooting range and the shooting range's operation at the time of**
 1662 **establishment, construction, or initial operation of the shooting range; and**
 1663 (ii) does not substantially and adversely affect public health or safety.
- 1664 (2) For purposes of this section, noise generated by a shooting range that is operated in
 1665 accordance with nationally recognized standards and operating practices does not
 1666 constitute a public nuisance or a private nuisance.

1667 Section 47. Section **78B-6a-408** is enacted to read:

1668 **78B-6a-408 . Defense for migratory bird production area.**

1669 A person or government entity does not have a right of action under this chapter if the
 1670 public nuisance or private nuisance is:

- 1671 (1) normally associated with a migratory bird production area;
 1672 (2) conducted within a migratory bird production area; and
 1673 (3) not in violation of federal or state law.

1674 Section 48. **Repealer.**

1675 This bill repeals:

1676 Section **4-44-101, Title.**

1677 Section **4-44-102, Definitions.**

1678 Section **4-44-202, Application of other statutes -- Ordinances.**

1679 Section **47-1-1, Declared a nuisance -- Abatement.**

1680 Section **47-1-2, Injunction -- Notice to owner of premises.**

1681 Section **47-1-3, Evidence -- Dismissal of action -- Costs.**

1682 Section **47-1-4, Violation of injunction -- Proceedings for contempt.**

1683 Section **47-1-5, Order of abatement -- Execution -- Sale of personal property --**

1684 **Padlocking.**

1685 Section **47-1-6, Proceeds of sale -- Disposition.**

1686 Section **47-1-7, Bond to secure abatement -- Procedure.**

1687 Section **47-1-8, Permanent injunction -- Fine.**

1688 Section **47-2-1, "Abandoned horse" defined.**

1689 Section **47-2-2, "Open range" defined.**

1690 Section **47-3-101, Title.**

1691 Section **76-9-1306, Action for abatement of public nuisance.**

1692 Section **76-9-1307, Relief granted for a public nuisance that offends public decency.**

1693 Section **78B-6-1107, Nuisance -- Drug houses and drug dealing -- Gambling -- Group**
1694 **criminal activity -- Party house -- Prostitution -- Weapons -- Discharge of a firearm -- Defense.**
1695 Section **78B-6-1108, Nuisance -- Abatement by eviction.**
1696 Section **78B-6-1109, Abatement by eviction order -- Grounds.**
1697 Section **78B-6-1110, Prior acts or threats of violence -- Protection of applicant or witness.**
1698 Section **78B-6-1111, Landlord, owner, or designated agent -- Necessary party --**
1699 **Automatic eviction.**
1700 Section **78B-6-1112, Security requirement -- Amount not a limitation -- Jurisdiction over**
1701 **surety.**
1702 Section 49. **Effective Date.**
1703 This bill takes effect on May 6, 2026.