

House Engrossed Senate Bill

~~Arizona department of agriculture; continuation.~~  
(now: agricultural operations; nuisance; costs; damages)

State of Arizona  
Senate  
Fifty-fifth Legislature  
First Regular Session  
2021

# SENATE BILL 1448

AN ACT

AMENDING SECTION 3-112, ARIZONA REVISED STATUTES; RELATING TO AGRICULTURAL OPERATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 3-112, Arizona Revised Statutes, is amended to  
3 read:

4 3-112. Agricultural operations; nuisance liability; damages;  
5 state preemption

6 A. Agricultural operations conducted on farmland that are  
7 consistent with good agricultural practices and established ~~prior to~~  
8 BEFORE surrounding nonagricultural uses are presumed to be reasonable and  
9 do not constitute a nuisance unless the agricultural operation has a  
10 substantial adverse effect on the public health and safety.

11 B. Agricultural operations undertaken in conformity with federal,  
12 state and local laws and regulations are presumed to be good agricultural  
13 ~~practice~~ PRACTICES and not adversely affecting the public health and  
14 safety.

15 C. IN A NUISANCE ACTION AGAINST AN AGRICULTURAL OPERATION CONDUCTED  
16 ON FARMLAND:

17 1. THE COURT MAY AWARD COSTS AND EXPENSES, INCLUDING REASONABLE  
18 ATTORNEY FEES, TO THE PREVAILING PARTY.

19 2. IF THE COURT DETERMINES THAT A PARTY FILED A NUISANCE ACTION  
20 UNDER ONE OF THE FOLLOWING CIRCUMSTANCES, THE COURT SHALL AWARD REASONABLE  
21 COSTS AND ATTORNEY FEES TO THE OTHER PARTY:

22 (a) THE ACTION WAS NOT FILED IN GOOD FAITH.

23 (b) THE ACTION WAS NOT GROUNDED IN FACT OR BASED ON LAW.

24 (c) THE ACTION WAS FILED FOR AN IMPROPER PURPOSE, SUCH AS TO HARASS  
25 THE OTHER PARTY, TO CAUSE AN UNNECESSARY DELAY OR TO INCREASE THE COST OF  
26 LITIGATION TO THE OTHER PARTY.

27 3. THE COURT MAY NOT AWARD PUNITIVE DAMAGES FOR A NUISANCE ACTION  
28 UNLESS THE ALLEGED NUISANCE EMANATED FROM AN AGRICULTURAL OPERATION THAT  
29 HAS BEEN SUBJECT TO A CRIMINAL CONVICTION OR A CIVIL ENFORCEMENT ACTION  
30 TAKEN BY A STATE OR FEDERAL ENVIRONMENTAL OR HEALTH REGULATORY AGENCY  
31 PURSUANT TO A NOTICE OF VIOLATION FOR THE CONDUCT ALLEGED TO BE THE SOURCE  
32 OF THE NUISANCE.

33 D. FOR THE PURPOSES OF THIS SECTION, COSTS AND EXPENSES MAY INCLUDE  
34 ATTORNEY FEES, DEPOSITION COSTS AND OTHER REASONABLE EXPENSES AS THE COURT  
35 FINDS NECESSARY TO THE FULL AND PROPER PRESENTATION OF THE ACTION,  
36 INCLUDING ANY APPEAL.

37 E. A CITY, TOWN, COUNTY, SPECIAL TAXING DISTRICT OR OTHER POLITICAL  
38 SUBDIVISION OF THIS STATE MAY NOT DECLARE AN AGRICULTURAL OPERATION  
39 CONDUCTED ON FARMLAND TO BE A NUISANCE IF THE AGRICULTURAL OPERATION'S  
40 PRACTICES ARE LAWFUL, CUSTOMARY, REASONABLE, SAFE AND NECESSARY TO THE  
41 AGRICULTURE INDUSTRY AS THE PRACTICES PERTAIN TO AN AGRICULTURAL  
42 OPERATION'S PRACTICES AS DETERMINED BY THE AGRICULTURAL BEST MANAGEMENT  
43 PRACTICES COMMITTEE ESTABLISHED BY SECTION 49-457, THE ARIZONA DEPARTMENT  
44 OF AGRICULTURE OR THE DEPARTMENT OF ENVIRONMENTAL QUALITY.