

REFERENCE TITLE: **agricultural operations; nuisance; liability**

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

HB 2372

Introduced by
Representative Dunn

AN ACT

REPEALING SECTION 3-112, ARIZONA REVISED STATUTES; AMENDING TITLE 3, CHAPTER 1, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 3-112; RELATING TO AGRICULTURAL ADMINISTRATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Repeal

3 Section ~~3-112~~, Arizona Revised Statutes, is repealed.

4 Sec. 2. Title 3, chapter 1, article 2, Arizona Revised Statutes, is
5 amended by adding a new section 3-112, to read:

6 ~~3-112. Agricultural operations; nuisance; liability;~~
7 ~~rebuttable presumption; state preemption~~

8 A. A NUISANCE ACTION MAY NOT BE FILED AGAINST AN AGRICULTURAL
9 OPERATION CONDUCTED ON FARMLAND UNLESS ALL OF THE FOLLOWING APPLY:

10 1. THE PLAINTIFF IS THE LEGAL POSSESSOR OF THE REAL PROPERTY
11 AFFECTED BY THE CONDITION ALLEGED TO BE A NUISANCE.

12 2. THE REAL PROPERTY AFFECTED BY THE CONDITION ALLEGED TO BE A
13 NUISANCE IS LOCATED WITHIN ONE-HALF MILE OF THE SOURCE OF THE ACTIVITY OR
14 STRUCTURE ALLEGED TO BE A NUISANCE.

15 3. THE ACTION IS BROUGHT WITHIN ONE YEAR AFTER THE AGRICULTURAL
16 OPERATION IS ESTABLISHED, REGARDLESS OF ANY SUBSEQUENT CHANGE IN THE
17 AGRICULTURAL OPERATION'S OWNERSHIP, SIZE OR AGRICULTURAL PRACTICE OR
18 PRODUCT PRODUCED.

19 B. NOTWITHSTANDING ANY OTHER LAW, IT IS A REBUTTABLE PRESUMPTION
20 THAT AN AGRICULTURAL OPERATION CONDUCTED ON FARMLAND IS NOT A PUBLIC OR
21 PRIVATE NUISANCE.

22 C. THE REBUTTABLE PRESUMPTION PRESCRIBED IN SUBSECTION B OF THIS
23 SECTION APPLIES NOTWITHSTANDING THAT THE AGRICULTURAL OPERATION DOES ANY
24 THE FOLLOWING:

25 1. CHANGES ITS OWNERSHIP OR SIZE.

26 2. TEMPORARILY CEASES OR INTERRUPTS ITS FARMING OPERATIONS.

27 3. PARTICIPATES IN ANY GOVERNMENT-SPONSORED AGRICULTURAL PROGRAM.

28 4. USES NEW TECHNOLOGY.

29 5. CHANGES THE TYPE OF AGRICULTURAL PRODUCT THE AGRICULTURAL
30 OPERATION PRODUCES.

31 D. THE REBUTTABLE PRESUMPTION PRESCRIBED IN SUBSECTION B OF THIS
32 SECTION MAY BE OVERCOME BY A PREPONDERANCE OF THE EVIDENCE ONLY IF THE
33 AGRICULTURAL OPERATION CONDUCTED ON FARMLAND IS VIOLATING APPLICABLE
34 FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS.

35 E. IN A NUISANCE ACTION AGAINST AN AGRICULTURAL OPERATION CONDUCTED
36 ON FARMLAND:

37 1. IF THE COURT FINDS THAT THE AGRICULTURAL OPERATION IS NOT A
38 NUISANCE, THE COURT SHALL AWARD COSTS AND EXPENSES, INCLUDING REASONABLE
39 ATTORNEY FEES, TO THE AGRICULTURAL OPERATION.

40 2. IF THE COURT FINDS THE ALLEGED NUISANCE EMANATED FROM THE
41 AGRICULTURAL OPERATION, THE COURT MAY AWARD COMPENSATORY DAMAGES TO A
42 PLAINTIFF ACTION AS FOLLOWS:

43 (a) IF THE NUISANCE IS A PERMANENT NUISANCE, COMPENSATORY DAMAGES
44 SHALL BE MEASURED BY THE REDUCTION IN THE FAIR MARKET VALUE OF THE
45 PLAINTIFF'S PROPERTY CAUSED BY THE NUISANCE BUT MAY NOT EXCEED THE FAIR

1 MARKET VALUE OF THE PROPERTY.

2 (b) IF THE NUISANCE IS A TEMPORARY NUISANCE, COMPENSATORY DAMAGES
3 SHALL BE LIMITED TO THE DIMINUTION OF THE FAIR RENTAL VALUE OF THE
4 PLAINTIFF'S PROPERTY CAUSED BY THE NUISANCE.

5 3. THE COURT MAY NOT AWARD PUNITIVE DAMAGES FOR A NUISANCE ACTION
6 UNLESS THE ALLEGED NUISANCE EMANATED FROM AN AGRICULTURAL OPERATION THAT
7 HAS BEEN SUBJECT TO A CRIMINAL CONVICTION OR A CIVIL ENFORCEMENT ACTION
8 TAKEN BY A STATE OR FEDERAL ENVIRONMENTAL REGULATORY AGENCY PURSUANT TO A
9 NOTICE OF VIOLATION FOR THE CONDUCT ALLEGED TO BE THE SOURCE OF THE
10 NUISANCE WITHIN THE THREE YEARS BEFORE THE FIRST ACTION ON WHICH THE
11 NUISANCE ACTION IS BASED.

12 F. THE CIRCUMSTANCES UNDER WHICH AGRICULTURAL OPERATIONS CONDUCTED
13 ON FARMLAND MAY BE REGULATED OR CONSIDERED TO BE A NUISANCE ARE A MATTER
14 OF STATEWIDE CONCERN. THIS SECTION SUPERSEDES ANY MUNICIPAL ORDINANCE THAT
15 MAKES AN AGRICULTURAL OPERATION CONDUCTED ON FARMLAND A NUISANCE OR
16 PROVIDES FOR AN ABATEMENT OF THE AGRICULTURAL OPERATION AS A NUISANCE, AND
17 ANY SUCH ORDINANCE IS, VOID AND HAS NO FORCE OR EFFECT.

18 Sec. 3. Legislative findings

19 The legislature finds that it is the policy of this state to
20 conserve, protect and encourage the development and improvement of its
21 agricultural land for producing food and other agricultural products. It
22 is the purpose of this act to reduce the loss to this state of its
23 agricultural resources by limiting the circumstances under which
24 agricultural operations conducted on farmland may be regulated or
25 considered to be a nuisance.