



ARIZONA STATE SENATE
Fifty-Seventh Legislature, Second Regular Session

AMENDED
FACT SHEET FOR S.C.R. 1048

public; private nuisance; marijuana smoke

Purpose

Subject to voter approval, statutorily deems the creation of excessive marijuana smoke or odor as a public and private nuisance.

Background

Residential property that is regularly used in the commission of a crime may be declared a nuisance and may be enjoined, abated and prevented through an action filed in superior court. The Attorney General (AG), county attorney, city attorney, certain homeowners' or property owners' associations, or an affected resident may bring action to abate the nuisance and, if an owner or responsible party knew or had reason to know of the criminal activity and failed to take reasonable, legally available actions to abate it, a governmental authority may abate the nuisance and assess the costs as a lien against the property ([A.R.S. § 12-991](#)).

A person commits *criminal nuisance* by recklessly creating or maintaining a condition that endangers the safety or health of others or knowingly conducting or maintaining a place where persons gather for unlawful conduct. Criminal nuisance is classified as a class 3 misdemeanor ([A.R.S. § 13-2908](#)).

A person commits *public nuisance* by anything injurious to health, indecent, offensive to the senses or an obstruction to the free use of property that interferes with the comfortable enjoyment of life or property by a community or neighborhood. The county attorney, AG or city attorney may bring an action to abate, enjoin and prevent a public nuisance. Knowingly maintaining or committing a public nuisance or knowingly failing to perform a legal duty relating to its removal is classified as a class 2 misdemeanor ([A.R.S. § 13-2917](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Deems that excessive marijuana smoke or odor that crosses a property boundary and substantially and unreasonably interferes with the use and enjoyment of a nearby private property is a private nuisance.
2. Deems that excessive marijuana smoke or odor is a public nuisance if the person's conduct is intentional or the person knowingly and substantially interferes with the comfortable enjoyment of life or property.

3. Specifies that lawful possession or use of marijuana does not preclude a finding of nuisance, except that a court may consider possession of a valid registry identification card as a mitigating factor.
4. Provides that a person is not liable for committing a private nuisance unless the person has received notice of the interference and fails to abate it within five days.
5. Allows an affected property owner or resident to seek injunctive relief, compensatory damages for loss of use and enjoyment, costs and reasonable attorney fees and other equitable relief the court deems appropriate.
6. States that state law does not preempt a local ordinance that is more protective of private property rights.
7. Requires an affected property owner or resident to first file a complaint with the local jurisdiction before filing an action with the state, if that city, town, or county has adopted an ordinance regulating excessive marijuana smoke or odor.
8. Allows an affected property owner or resident to bring an action in justice court if the local jurisdiction declines to act or does not take final action within 30 days after the complaint is filed.
9. States that a homeowner's association or condominium association is not precluded from taking action against a property owner.
10. Establishes that a person commits failure to comply with a marijuana smoke nuisance abatement order if both of the following exist:
 - a) a court of competent jurisdiction or a city, town or county acting under lawful authority has issued a written order directing the person to abate excessive marijuana smoke or odor that constitutes a nuisance; and
 - b) the person knowingly violates or refuses to comply with the order.
11. Specifies that each day a violation continues after an order is served constitutes a separate offense.
12. Establishes that failure to comply with a marijuana smoke nuisance abatement order is a petty offense.
13. Defines *excessive marijuana smoke or odor* as airborne emissions resulting from the burning, heating or vaporizing of marijuana or marijuana products that both:
 - a) are detectable by a reasonable person of ordinary sensibilities on other private property; and
 - b) occur for more than 30 consecutive minutes on a single occasion or on three or more separate days within a 30-day period.
14. Makes technical and conforming changes.
15. Requires the Secretary of State to submit the proposition at the next general election.
16. Becomes effective if approved by the voters and on proclamation of the Governor.

Amendments Adopted by Committee

1. Removes the provisions pertaining to the requirement of residential property owners to abate criminal nuisances.
2. Specifies that excessive marijuana smoke or odor is a public nuisance, rather than excessive marijuana smoke and odor.
3. Defines *excessive marijuana smoke or odor* as marijuana smoke or odor is capable of being detected by a person on the private property of another person.
4. Makes technical and conforming changes.

Amendments Adopted by Committee of the Whole

1. Removes the definition of *excessive marijuana smoke or odor* and removes the establishment of *excessive marijuana smoke or odor* as a criminal nuisance.
2. Redefines *excessive marijuana smoke or odor* as airborne emissions resulting from the burning, heating or vaporizing of marijuana or marijuana products that both:
 - a) are detectable by a reasonable person of ordinary sensibilities on other private property; and
 - b) occur for more than 30 consecutive minutes on a single occasion or on three or more separate days within a 30-day period.
3. Deems that excessive marijuana smoke or odor that crosses a property boundary and substantially and unreasonably interferes with the use and enjoyment of a nearby private property is a private nuisance.
4. Deems that excessive marijuana smoke or odor is a public nuisance if the person's conduct is intentional or the person knowingly and substantially interferes with the comfortable enjoyment of life or property.
5. Specifies that lawful possession or use of marijuana does not preclude a finding of nuisance, except that a court may consider possession of a valid registry identification card as a mitigating factor.
6. Provides that a person is not liable for committing a private nuisance unless the person has received notice of the interference and fails to abate it within five days.
7. Allows an affected property owner or resident to seek injunctive relief, compensatory damages for loss of use and enjoyment, costs and reasonable attorney fees and other equitable relief the court deems appropriate.
8. States that state law does not preempt a local ordinance that is more protective of private property rights.

9. Requires an affected property owner or resident to first file a complaint with the local jurisdiction before filing an action with the state, if that city, town, or county has adopted an ordinance regulating excessive marijuana smoke or odor.
10. Allows an affected property owner or resident to bring an action in justice court if the local jurisdiction declines to act or does not take final action within 30 days after the complaint is filed.
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14. Establishes that failure to comply with a marijuana smoke nuisance abatement order is a petty offense.

Senate Action

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Prepared by Senate Research

March 3, 2026

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