

TITLE 42 NUISANCES

CHAPTER 42-01 GENERAL PROVISIONS

42-01-01. Nuisance - Definition.

A nuisance consists in unlawfully doing an act or omitting to perform a duty, which act or omission:

1. Annoys, injures, or endangers the comfort, repose, health, or safety of others;
2. Offends decency;
3. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake, navigable river, bay, stream, canal, basin, public park, square, street, or highway; or
4. In any way renders other persons insecure in life or in the use of property.

42-01-01.1. Sport shooting range deemed not a nuisance.

If a sport shooting range has been in operation for one year since the date on which it began operation as a sport shooting range, it does not become a public or private nuisance as a result of changed conditions in or around the locality of the sport shooting range. If a sport shooting range remains in compliance with noise control or nuisance abatement rules or ordinances in effect on the date on which it commenced operation, it is not subject to a civil or criminal action resulting from or relating to noise generated by the operation of the sport shooting range. A person who acquires title to real property that is adversely affected by the operation of a permanently located and improved sport shooting range constructed and initially operated before that person acquired title to the property adversely affected may not maintain a civil action on the basis of noise or noise pollution against the person who owns or operates the sport shooting range. A rule, resolution, or ordinance relating to noise control, noise pollution, or noise abatement adopted by the state or a political subdivision may not be applied to prohibit the operation of a sport shooting range, provided the conduct was lawful and being conducted before the adoption of the rule, resolution, or ordinance. Except as otherwise provided in this section, a political subdivision may regulate the location and construction of a sport shooting range after August 1, 1999. Notwithstanding any other provision of law, a county or city enacting a home rule charter under chapter 11-09.1, 40-05.1, or 54-40.4 may not regulate a sport shooting range except as otherwise provided in this section. As used in this section, sport shooting range means an area designated and operated by a person for the sport shooting of firearms or any area so designated and operated by the state or a political subdivision, regardless of the terms for admission to the sport shooting range.

42-01-01.2. Disorderly house - Public nuisance.

An owner or lessee, or both, of a house or building that is used in a manner that habitually disturbs the peace, comfort, or decency of the immediate neighborhood is guilty of maintaining a public nuisance. A lessee is not guilty of an offense under this section unless the lessee is the cause of the nuisance.

42-01-02. Private nuisance - Definition.

A private nuisance is one which affects a single individual or a determinate number of persons in the enjoyment of some private right not common to the public.

42-01-03. Private nuisance - Remedies against.

The remedies against a private nuisance are:

1. A civil action; or
2. Abatement.

42-01-04. Abatement by private person.

A person injured by a private nuisance may abate it by removing, or, if necessary, destroying the thing which constitutes the nuisance, but the person shall not commit a breach of the peace or do unnecessary injury while exercising this right.

42-01-05. Abatement - When notice required.

When a private nuisance results from a mere omission of the wrongdoer and cannot be abated without entering upon the wrongdoer's land, reasonable notice shall be given to the wrongdoer before entering to abate it.

42-01-06. Public nuisance - Definition.

A public nuisance is one which at the same time affects an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal.

42-01-07. Public nuisance - Remedies against.

The remedies against a public nuisance are:

1. Indictment;
2. Filing an information;
3. Bringing a criminal action before a district judge;
4. A civil action; or
5. Abatement.

42-01-08. Civil action - When maintainable by a private person.

A private person may maintain an action for a public nuisance if it is specially injurious to that person or that person's property, but not otherwise.

42-01-09. Abatement by public officer.

A public nuisance may be abated by any public body or officer authorized thereto by law.

42-01-10. Abatement by private persons.

Any person may abate a public nuisance which is specially injurious to that person by removing, or, if necessary, destroying, the thing which constitutes the nuisance, but that person shall not commit a breach of the peace or do unnecessary injury while exercising this right.

42-01-11. Right to damages not prejudiced by abatement.

The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

42-01-12. Act done under statutory authority not deemed nuisance.

Nothing which is done or maintained under the express authority of a statute shall be deemed a nuisance.

42-01-13. Liability of successive owners of property for failure to abate nuisance.

Every successive owner of property who neglects to abate a continuing nuisance upon or in the use of such property created by a former owner is liable therefor in the same manner as the one who first created it.

42-01-14. Lapse of time - Effect on public nuisance.

No lapse of time can legalize a public nuisance amounting to an actual obstruction of public right.

42-01-15. Maintaining public nuisance - Penalty.

Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a class A misdemeanor.