

House Bill 3226

Sponsored by COMMITTEE ON LAND USE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows person to bring civil proceeding to abate nuisance caused by wine vineyard infected or infested with pest. Requires notice to Director of Agriculture before bringing proceeding. Prohibits bringing proceeding if director is engaged in abating nuisance. Allows prevailing plaintiff to recover attorney fees and costs. Allows prevailing party to obtain lien for abatement performed by plaintiff.

A BILL FOR AN ACT

1
2 Relating to nuisance vineyards; creating new provisions; and amending ORS 30.936.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. (1) As used in this section:**

5 (a) **"Infected" means the appearance of a disease on wine grapes or wine grapevines to**
6 **an extent that may be a menace to horticultural or farm crops.**

7 (b) **"Infested" means that a pest is found on wine grapes or wine grapevines in such**
8 **numbers as to be a menace to horticultural or farm crops.**

9 (c) **"Nuisance vineyard" means wine grapes or wine grapevines that are infected or in-**
10 **festated with a pest for which treatment or eradication is not being performed.**

11 (d) **"Pest" means a vertebrate or invertebrate animal, insect, pathogen, parasite, disease,**
12 **fungus or other organism or condition that can cause damage to horticultural or farm crops.**

13 (2) **Subject to subsection (3) of this section, a person who exercises control over a**
14 **vineyard that is located within _____ miles of an alleged nuisance vineyard may institute**
15 **a civil proceeding to abate the alleged nuisance vineyard.**

16 (3) **Before commencing an action under this section, a person must give at least 60 days'**
17 **notice to the Director of Agriculture. The notice must identify the alleged nuisance**
18 **vineyard, identify the type of pest with which the vineyard is allegedly infected or infested,**
19 **request that the director undertake actions to abate the nuisance and state the person shall**
20 **undertake a civil proceeding to abate the action if the director does not act to abate the al-**
21 **leged nuisance. A person may not undertake a civil proceeding under this section if the di-**
22 **rector is engaged in actions or proceedings to ensure abatement of the nuisance. The**
23 **director may intervene or be joined as a party in any civil proceeding brought under this**
24 **section.**

25 (4) **A court finding in favor of a plaintiff in a civil proceeding brought under this section:**

26 (a) **Shall issue an order directing the person exercising control over the property where**
27 **a nuisance vineyard is located to abate the nuisance; and**

28 (b) **If the nuisance is not promptly abated as ordered by the court, may issue a writ of**
29 **assistance directing the county sheriff to assist the prevailing plaintiff in entering the prop-**
30 **erty and abating the nuisance.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **(5) The court shall order a person who exercises control over a nuisance vineyard to pay**
2 **attorney fees and costs to a plaintiff who prevails in a civil proceeding under this section.**

3 **(6) A court may issue a judgment that provides a prevailing plaintiff under this section**
4 **with a money award for any abatement expenses incurred by a plaintiff following issuance**
5 **of a writ under subsection (4)(b) of this section. The prevailing plaintiff may file the judgment**
6 **and money award under ORS 205.125 with the county clerk for the county where the nuisance**
7 **vineyard property is located.**

8 **(7) The remedy described in this section is in addition to any other remedies provided by**
9 **law. This section does not authorize the enactment of any local law or create any private**
10 **right of action.**

11 **SECTION 2.** ORS 30.936 is amended to read:

12 30.936. (1) No farming or forest practice on lands zoned for farm or forest use shall give rise to
13 any private right of action or claim for relief based on nuisance or trespass.

14 (2) Subsection (1) of this section shall not apply to a right of action or claim for relief for:

15 (a) Damage to commercial agricultural products; [*or*]

16 (b) Death or serious physical injury as defined in ORS 161.015[.]; **or**

17 **(c) Abatement of a nuisance vineyard under section 1 of this 2009 Act.**

18 (3) Subsection (1) of this section applies regardless of whether the farming or forest practice has
19 undergone any change or interruption.

20