

Senate Bill 842

Sponsored by Senator BAERTSCHIGER JR; Senators BOQUIST, CLOSE, FERRIOLI, GEORGE, HANSELL, KNOPP, KRUSE, OLSEN, THOMSEN, WHITSETT, Representatives BENTZ, WHITSETT

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**.

Provides that mining activities do not give rise to cause of action for nuisance or trespass in certain circumstances.

Provides for award of attorney fees in action alleging nuisance or trespass arising from mining. Authorizes State Department of Geology and Mineral Industries to adopt rules implementing Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to mining; and declaring an emergency.

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

SECTION 1. As used in sections 1 to 10 of this 2013 Act:

4
5 (1) **"Mine" means a quarry, pit, well, spring or other source from which any mineral is**
6 **obtained.**

7 (2) **"Mineral" means any and all mineral products, metallic and nonmetallic, solid, liquid**
8 **or gaseous, and mineral waters of all kinds.**

9 (3) **"Mining" means a mode of operation in a mine that:**

10 (a) **Is or may be used in a mine of a similar nature;**

11 (b) **Is a generally accepted, reasonable and prudent method for the operation of the mine**
12 **to obtain a profit in money;**

13 (c) **Is or may become a generally accepted, reasonable and prudent method in conjunction**
14 **with mine use;**

15 (d) **Complies with applicable laws; and**

16 (e) **Is done in a reasonable and prudent manner.**

17 (4) **"Nuisance" or "trespass" includes, but is not limited to, actions or claims based on**
18 **noise, vibration, odors, smoke, dust and mist from mining.**

SECTION 2. (1) The Legislative Assembly finds that:

19 (a) **Mining is critical to the economic welfare of this state.**

20 (b) **The expansion of residential and urban uses on and near lands zoned for resource**
21 **uses or used for mining may give rise to conflicts between resource and nonresource activ-**
22 **ities.**

23 (c) **In the interest of the continued welfare of the state, mining must be protected from**
24 **legal actions that may be intended to limit, or have the effect of limiting, mining.**

25 (2) **The Legislative Assembly declares that it is the policy of this state that:**

26 (a) **Mining on lands zoned for resource uses must be protected.**

27 (b) **Persons who locate on or near lands zoned for resource uses must accept the condi-**
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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 tions commonly associated with living in that particular setting.

2 (c) Certain private rights of action and the authority of local governments and special
3 districts to declare mining to be a nuisance or trespass must be limited because such claims
4 for relief and local government ordinances have adverse effects on the continuation of min-
5 ing and the full use of the resource base of this state.

6 **SECTION 3.** Any local government or special district ordinance or regulation that makes
7 mining a nuisance or trespass or provides for its abatement as a nuisance or trespass is in-
8 valid with respect to a mining practice for which no action or claim is allowed under section
9 4 or 5 of this 2013 Act.

10 **SECTION 4.** (1) Mining on lands zoned for resource uses does not give rise to any private
11 right of action or claim for relief based on nuisance or trespass.

12 (2) Subsection (1) of this section does not apply to a right of action or claim for relief for
13 death or serious physical injury as defined in ORS 161.015.

14 (3) Subsection (1) of this section applies regardless of whether the mining has undergone
15 any change or interruption.

16 **SECTION 5.** (1) Mining allowed as a preexisting nonconforming use does not give rise to
17 any private right of action or claim for relief based on nuisance or trespass.

18 (2) Subsection (1) of this section does not apply to a right of action or claim for relief for
19 death or serious physical injury as defined in ORS 161.015.

20 (3) Subsection (1) of this section applies only where a mine existed before the conflicting
21 nonmining use of real property that gave rise to the right of action or claim for relief.

22 (4) Subsection (1) of this section applies only where a mine has not significantly increased
23 in size or intensity since the date on which the land containing the mine has been included
24 within an urban growth boundary and planned and zoned for urban development.

25 **SECTION 6.** In any action or claim for relief alleging nuisance or trespass and arising
26 from a practice that is alleged by either party to be mining, the prevailing party is entitled
27 to judgment for reasonable attorney fees and costs incurred at trial and on appeal.

28 **SECTION 7.** Sections 1 to 10 of this 2013 Act do not impair the right of any person or
29 governmental body to pursue any remedy authorized by law that concerns matters other
30 than a nuisance or trespass.

31 **SECTION 8.** The State Department of Geology and Mineral Industries may adopt rules
32 to implement the provisions of sections 1 to 10 of this 2013 Act.

33 **SECTION 9.** The Department of Environmental Quality, the Department of State Lands
34 and the State Department of Geology and Mineral Industries are not required to investigate
35 complaints if the agency has reason to believe that the complaint is based on practices pro-
36 tected by sections 1 to 10 of this 2013 Act.

37 **SECTION 10.** The fact that an acknowledged comprehensive plan and land use regulations
38 allow the siting of destination resorts or other nonmining uses as provided in ORS 30.947,
39 197.435 to 197.467, 215.213, 215.283 and 215.284, does not in any way affect the provisions of
40 sections 1 to 10 of this 2013 Act.

41 **SECTION 11.** (1) Section 3 of this 2013 Act applies to all ordinances and regulations
42 adopted before, on or after the effective date of this 2013 Act.

43 (2) Sections 4 and 5 of this 2013 Act apply only to causes of action that arise on or after
44 the effective date of this 2013 Act.

45 **SECTION 12.** This 2013 Act being necessary for the immediate preservation of the public

1 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
2 **on its passage.**

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