

**PROPOSED AMENDMENTS TO
SENATE BILL 838**

1 On page 1 of the printed bill, line 2, after “mining” insert a period and
2 delete the rest of the line and delete lines 3 through 17.

3 Delete lines 19 through 30 and delete pages 2 and 3 and insert:

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

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

7 **“(2) ‘Mineral’ means any and all mineral products, metallic and**
8 **nonmetallic, solid, liquid 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**
12 **operation of the mine to obtain a profit in money;**

13 **“(c) Is or may become a generally accepted, reasonable and prudent**
14 **method in conjunction 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**
18 **or claims based on noise, vibration, odors, smoke, dust and mist from**
19 **mining.**

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

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

22 **“(b) The expansion of residential and urban uses on and near lands**

1 zoned for resource uses or used for mining may give rise to conflicts
2 between resource and nonresource activities.

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

6 “(2) The Legislative Assembly declares that it is the policy of this
7 state that:

8 “(a) Mining on lands zoned for resource uses must be protected.

9 “(b) Persons who locate on or near lands zoned for resource uses
10 must accept the conditions commonly associated with living in that
11 particular setting.

12 “(c) Certain private rights of action and the authority of local gov-
13 ernments and special districts to declare mining to be a nuisance or
14 trespass must be limited because such claims for relief and local gov-
15 ernment ordinances have adverse effects on the continuation of min-
16 ing and the full use of the resource base of this state.

17 “SECTION 3. Any local government or special district ordinance or
18 regulation that makes mining a nuisance or trespass or provides for
19 its abatement as a nuisance or trespass is invalid with respect to a
20 mining practice for which no action or claim is allowed under section
21 4 or 5 of this 2013 Act.

22 “SECTION 4. (1) Mining on lands zoned for mining uses or mining
23 permitted on land zoned for farm or forest use does not give rise to
24 any private right of action or claim for relief based on nuisance or
25 trespass.

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

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

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

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

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

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

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

18 **“SECTION 7. Sections 1 to 10 of this 2013 Act do not impair the**
19 **right of any person or governmental body to pursue any remedy au-**
20 **thorized by law that concerns matters other than a nuisance or tres-**
21 **pass.**

22 **“SECTION 8. The State Department of Geology and Mineral Indus-**
23 **tries may adopt rules to implement the provisions of sections 1 to 10**
24 **of this 2013 Act.**

25 **“SECTION 9. The Department of Environmental Quality, the De-**
26 **partment of State Lands and the State Department of Geology and**
27 **Mineral Industries are not required to investigate complaints if the**
28 **agency has reason to believe that the complaint is based on practices**
29 **protected by sections 1 to 10 of this 2013 Act.**

30 **“SECTION 10. The fact that an acknowledged comprehensive plan**

1 and land use regulations allow the siting of destination resorts or
2 other nonmining uses as provided in ORS 30.947, 197.435 to 197.467,
3 215.213, 215.283 and 215.284 does not in any way affect the provisions
4 of sections 1 to 10 of this 2013 Act.

5 **“SECTION 11. (1) Section 3 of this 2013 Act applies to all ordinances**
6 **and regulations adopted before, on or after the effective date of this**
7 **2013 Act.**

8 **“(2) Sections 4 and 5 of this 2013 Act apply only to causes of action**
9 **that arise on or after the effective date of this 2013 Act.”.**

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