

By: Perry, et al.

S.B. No. 1421

A BILL TO BE ENTITLED

AN ACT

relating to the effect of nuisance actions, other actions, and governmental requirements on certain agricultural operations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 251, Agriculture Code, is amended to read as follows:

CHAPTER 251. EFFECT OF NUISANCE ACTIONS, OTHER ACTIONS, AND GOVERNMENTAL REQUIREMENTS ON CERTAIN [~~PREEXISTING~~] AGRICULTURAL OPERATIONS

SECTION 2. Section 251.001, Agriculture Code, is amended to read as follows:

Sec. 251.001. POLICY. Food security being essential, it [~~It~~] is the policy of this state to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. It is the purpose of this chapter to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be legally threatened, subject to suit, regulated, or otherwise declared [~~considered~~] to be a nuisance.

SECTION 3. Sections 251.002(1) and (2), Agriculture Code, are amended to read as follows:

(1) "Agricultural operation" includes the following activities:

(A) cultivating the soil;

1 (B) producing crops or growing vegetation for
2 human food, animal feed, including hay and other forages, planting
3 seed, or fiber;

4 (C) floriculture;

5 (D) viticulture;

6 (E) horticulture;

7 (F) silviculture;

8 (G) wildlife management;

9 (H) raising or keeping livestock or poultry,
10 including veterinary services; and

11 (I) planting cover crops or leaving land idle for
12 the purpose of participating in any governmental program or normal
13 crop or livestock rotation procedure.

14 (2) "Governmental requirement" includes any rule,
15 regulation, ordinance, zoning, license or permit requirement, or
16 other requirement or restriction enacted or promulgated by a
17 county, city, or other municipal corporation that has the power to
18 enact or promulgate the requirement or restriction.

19 SECTION 4. Sections 251.003 and 251.004, Agriculture Code,
20 are amended to read as follows:

21 Sec. 251.003. ESTABLISHED DATE OF OPERATION. For purposes
22 of this chapter, the established date of operation is the date on
23 which an agricultural operation commenced agricultural operations
24 ~~[operation. If the physical facilities of the agricultural~~
25 ~~operation are subsequently expanded, the established date of~~
26 ~~operation for each expansion is a separate and independent~~
27 ~~established date of operation established as of the date of~~

1 ~~commencement of the expanded operation, and the commencement of~~
2 ~~expanded operation does not divest the agricultural operation of a~~
3 ~~previously established date of operation].~~

4 Sec. 251.004. NUISANCE OR OTHER ACTIONS. (a) No nuisance
5 action or other action to restrain an agricultural operation may be
6 brought against an agricultural operation that has lawfully been in
7 operation and substantially unchanged for one year or more prior to
8 the date on which the action is brought. A person who brings a
9 nuisance action or other action to restrain an agricultural
10 operation that is not prohibited by this section must establish
11 each element of the action by clear and convincing evidence~~[, if the~~
12 ~~conditions or circumstances complained of as constituting the basis~~
13 ~~for the nuisance action have existed substantially unchanged since~~
14 ~~the established date of operation].~~ This subsection does not
15 restrict or impede the authority of this state to protect the public
16 health, safety, and welfare or ~~[the authority of a municipality]~~ to
17 enforce state law. For the purposes of this subsection, a
18 substantial change to an agricultural operation means a material
19 alteration to the operation of or type of production at an
20 agricultural operation that is substantially inconsistent with the
21 operational practices since the established date of operation.

22 (b) A person who brings a nuisance action or other action to
23 restrain an agricultural operation and seeks ~~[for]~~ damages or
24 injunctive relief against an agricultural operation that has
25 existed for one year or more prior to the date that the action is
26 instituted or who violates the provisions of Subsection (a) ~~[of~~
27 ~~this section]~~ is liable to the agricultural operator for:

1 (1) all costs and expenses incurred in defense of the
2 action, including [~~but not limited to~~] attorney's fees, court
3 costs, travel, and other related incidental expenses incurred in
4 the defense; and

5 (2) any other damages found by the trier of fact.

6 (c) This section does not affect or defeat the right of any
7 person to recover for injuries or damages sustained because of an
8 agricultural operation or portion of an agricultural operation that
9 is conducted in violation of a federal, state, or local statute or
10 governmental requirement that applies to the agricultural
11 operation or portion of an agricultural operation.

12 SECTION 5. Section 251.005(c), Agriculture Code, is amended
13 to read as follows:

14 (c) A governmental requirement of a city:

15 (1) does not apply to any agricultural operation
16 located [~~situated~~] outside the corporate boundaries of the city;
17 and

18 (2) applies to an agricultural operation located in
19 the corporate boundaries of the city only if the governmental
20 requirement complies with Section 251.0055 [~~on the effective date~~
21 ~~of this chapter. If an agricultural operation so situated is~~
22 ~~subsequently annexed or otherwise brought within the corporate~~
23 ~~boundaries of the city, the governmental requirements of the city~~
24 ~~do not apply to the agricultural operation unless the requirement~~
25 ~~is reasonably necessary to protect persons who reside in the~~
26 ~~immediate vicinity or persons on public property in the immediate~~
27 ~~vicinity of the agricultural operation from the danger of:~~

1 ~~[(1) explosion, flooding, vermin, insects, physical~~
2 ~~injury, contagious disease, removal of lateral or subjacent~~
3 ~~support, contamination of water supplies, radiation, storage of~~
4 ~~toxic materials, or traffic hazards, or~~

5 ~~[(2) discharge of firearms or other weapons, subject~~
6 ~~to the restrictions in Section 229.002, Local Government Code].~~

7 SECTION 6. Chapter 251, Agriculture Code, is amended by
8 adding Section 251.0055 to read as follows:

9 Sec. 251.0055. LIMITATIONS ON CITY GOVERNMENTAL
10 REQUIREMENTS APPLICABLE WITHIN CORPORATE BOUNDARIES. (a) A city
11 may not impose a governmental requirement that applies to
12 agricultural operations located in the corporate boundaries of the
13 city unless:

14 (1) there is evidence that the purposes of the
15 requirement cannot be addressed through less restrictive means and
16 the requirement is reasonably necessary to protect persons who
17 reside in the immediate vicinity or persons on public property in
18 the immediate vicinity of the agricultural operation from the
19 imminent danger of:

20 (A) explosion;

21 (B) flooding;

22 (C) an infestation of vermin or insects;

23 (D) physical injury;

24 (E) the significant spread of an identified
25 contagious disease that is directly attributable to the
26 agricultural operation;

27 (F) the removal of lateral or subjacent support;

1 (G) an identified source of contamination of
2 water supplies;

3 (H) radiation;

4 (I) improper storage of toxic materials;

5 (J) crops planted or vegetation grown in a manner
6 that will cause traffic hazards; or

7 (K) discharge of firearms or other weapons,
8 subject to the restrictions in Section 229.002, Local Government
9 Code;

10 (2) the governing body of the city makes a finding by
11 resolution, based on a report described by Subsection (b), that the
12 requirement is necessary to protect public health; and

13 (3) the requirement is not otherwise prohibited by
14 this section.

15 (b) Before making a finding described by Subsection (a)(2),
16 the governing body of the city must obtain and review a report
17 prepared by the city health officer or a consultant that:

18 (1) identifies evidence of the health hazards related
19 to agricultural operations;

20 (2) determines the necessity of regulation and the
21 manner in which agricultural operation should be regulated;

22 (3) states whether each manner of regulation under
23 Subdivision (2) will restrict or prohibit a generally accepted
24 agricultural practice listed in the manual prepared under Section
25 251.007; and

26 (4) if applicable, includes an explanation why the
27 report recommends a manner of regulation that will restrict or

1 prohibit the use of a generally accepted agricultural practice that
2 the manual indicates does not pose a threat to public health.

3 (c) A city may not impose a governmental requirement that
4 directly or indirectly:

5 (1) prohibits the use of a generally accepted
6 agricultural practice listed in the manual prepared under Section
7 251.007, except as provided by Subsections (a) and (b);

8 (2) prohibits or restricts the growing or harvesting
9 of vegetation for animal feed or forage, except as provided by
10 Subsection (d);

11 (3) prohibits the use of pesticides or other measures
12 to control vermin or disease-bearing insects to the extent
13 necessary to prevent an infestation; or

14 (4) requires an agricultural operation be designated
15 for:

16 (A) agricultural use under Section 1-d, Article
17 VIII, Texas Constitution; or

18 (B) farm, ranch, wildlife management, or timber
19 production use under Section 1-d-1, Article VIII, Texas
20 Constitution.

21 (d) A city may impose a maximum height for vegetation that
22 applies to agricultural operations only if:

23 (1) the maximum vegetation height is at least 12
24 inches; and

25 (2) the requirement applies only to portions of an
26 agricultural operation located no more than 10 feet from a property
27 boundary that is adjacent to a public sidewalk, street, or highway.

1 (e) A governmental requirement of a city relating to the
2 restraint of a dog that would apply to an agricultural operation
3 does not apply to a dog used to protect livestock on property
4 controlled by the property owner while the dog is being used on such
5 property for that purpose.

6 SECTION 7. Section 251.006, Agriculture Code, is amended to
7 read as follows:

8 Sec. 251.006. AGRICULTURAL IMPROVEMENTS. (a) An owner,
9 lessee, or occupant of agricultural land is not liable to the state,
10 a governmental unit, or the owner, lessee, or occupant of other
11 agricultural land for the construction or maintenance on the land
12 of an agricultural improvement if the construction is not expressly
13 prohibited by statute [~~or a governmental requirement~~] in effect at
14 the time the improvement is constructed. Such an improvement does
15 not constitute a nuisance and is not otherwise subject to suit or
16 injunction.

17 (b) [~~This section does not apply to an improvement that~~
18 ~~obstructs the flow of water, light, or air to other land.~~] This
19 section does not prevent the enforcement of a state or federal
20 statute [~~or governmental requirement to protect public health or~~
21 ~~safety~~].

22 (c) In this section:

23 (1) "Agricultural land" includes:

24 (A) any land the use of which qualifies the land
25 for appraisal based on agricultural use as defined under Subchapter
26 D, Chapter 23, Tax Code; and

27 (B) any other land on which agricultural

1 operations exist or may take place.

2 (2) "Agricultural improvement" includes pens, barns,
3 fences, arenas, and other improvements designed for:

4 (A) the sheltering, restriction, or feeding of
5 animal or aquatic life;

6 (B) [~~for~~] storage of produce or feed; [~~or~~]

7 (C) [~~for~~] storage or maintenance of:

8 (i) implements used for management
9 functions; or

10 (ii) equipment necessary to carry out
11 agricultural operations.

12 SECTION 8. Chapter 251, Agriculture Code, is amended by
13 adding Sections 251.007 and 251.008 to read as follows:

14 Sec. 251.007. GENERALLY ACCEPTED AGRICULTURAL PRACTICES.
15 The Texas A&M AgriLife Extension Service shall develop a manual
16 that identifies generally accepted agricultural practices and
17 indicates which of those practices do not pose a threat to public
18 health, including a threat to public health posed by a danger listed
19 in Section 251.0055(a)(1).

20 Sec. 251.008. CONFLICT WITH OTHER LAW. If there is a
21 conflict between this chapter and other law, this chapter prevails.

22 SECTION 9. Sections 251.005(c-1) and (c-2), Agriculture
23 Code, are repealed.

24 SECTION 10. As soon as practicable after the effective date
25 of this Act, the Texas A&M AgriLife Extension Service shall develop
26 the manual described by Section 251.007, Agriculture Code, as added
27 by this Act.

1 SECTION 11. Sections 251.002 and 251.005, Agriculture Code,
2 as amended by this Act, and Section 251.0055, Agriculture Code, as
3 added by this Act, apply to a governmental requirement adopted
4 before, on, or after the effective date of this Act.

5 SECTION 12. The changes in law made by this Act apply only
6 to a cause of action that accrues on or after the effective date of
7 this Act. A cause of action that accrued before the effective date
8 of this Act is governed by the law applicable to the cause of action
9 immediately before the effective date of this Act, and that law is
10 continued in effect for that purpose.

11 SECTION 13. This Act takes effect September 1, 2023.