

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 for one year or more prior to the date on which the action
8 is brought. A person who brings a nuisance action or other action
9 to restrain an agricultural operation that is not prohibited by
10 this section must establish each element of the action by clear and
11 convincing evidence [~~, if the conditions or circumstances~~
12 ~~complained of as constituting the basis for the nuisance action~~
13 ~~have existed substantially unchanged since the established date of~~
14 ~~operation]. This subsection does not restrict or impede the~~
15 authority of this state to [~~protect the public health, safety, and~~
16 ~~welfare or the authority of a municipality to]~~ enforce state law.

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

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

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

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

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

9 (c) A governmental requirement of a city:

10 (1) does not apply to any agricultural operation
11 located [situated] outside the corporate boundaries of the city;
12 and

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

23 [(1) explosion, flooding, vermin, insects, physical
24 injury, contagious disease, removal of lateral or subjacent
25 support, contamination of water supplies, radiation, storage of
26 toxic materials, or traffic hazards, or

27 [(2) discharge of firearms or other weapons, subject

1 ~~to the restrictions in Section 229.002, Local Government Code].~~

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

4 Sec. 251.0055. LIMITATIONS ON CITY GOVERNMENTAL
5 REQUIREMENTS APPLICABLE WITHIN CORPORATE BOUNDARIES. (a) A city
6 may not impose a governmental requirement that applies to
7 agricultural operations located in the corporate boundaries of the
8 city unless:

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

- 15 (A) explosion;
- 16 (B) flooding;
- 17 (C) an infestation of vermin or insects;
- 18 (D) physical injury;
- 19 (E) the significant spread of an identified
20 contagious disease that is directly attributable to the
21 agricultural operation;
- 22 (F) the removal of lateral or subjacent support;
- 23 (G) an identified source of contamination of
24 water supplies;
- 25 (H) radiation;
- 26 (I) improper storage of toxic materials;
- 27 (J) crops planted or vegetation grown in a manner

1 that will cause traffic hazards; or

2 (K) discharge of firearms or other weapons,
3 subject to the restrictions in Section 229.002, Local Government
4 Code;

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

8 (3) the requirement is not otherwise prohibited by
9 this section.

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

13 (1) identifies evidence of the health hazards related
14 to agricultural operations;

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

17 (3) states whether each manner of regulation under
18 Subdivision (2) will restrict or prohibit a generally accepted
19 agricultural practice listed in the manual prepared under Section
20 251.007; and

21 (4) if applicable, includes an explanation why the
22 report recommends a manner of regulation that will restrict or
23 prohibit the use of a generally accepted agricultural practice that
24 the manual indicates does not pose a threat to public health.

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

27 (1) prohibits the use of a generally accepted

1 agricultural practice listed in the manual prepared under Section
2 251.007;

3 (2) prohibits or restricts the growing or harvesting
4 of vegetation for animal feed or forage, except as provided by
5 Subsection (d);

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

9 (4) requires an agricultural operation be designated
10 for:

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

13 (B) farm, ranch, wildlife management, or timber
14 production use under Section 1-d-1, Article VIII, Texas
15 Constitution.

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

18 (1) the maximum vegetation height is at least 12
19 inches; and

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

23 (e) A governmental requirement of a city relating to the
24 restraint of a dog that would apply to an agricultural operation
25 does not apply to a dog used to protect livestock on property
26 controlled by the property owner while the dog is being used on such
27 property for that purpose.

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

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

12 (b) [~~This section does not apply to an improvement that~~
13 ~~obstructs the flow of water, light, or air to other land.~~] This
14 section does not prevent the enforcement of a state or federal
15 statute [~~or governmental requirement to protect public health or~~
16 ~~safety~~].

17 (c) In this section:

18 (1) "Agricultural land" includes:

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

22 (B) any other land on which agricultural
23 operations exist or may take place.

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

26 (A) the sheltering, restriction, or feeding of
27 animal or aquatic life;

- 1 (B) [~~7~~, ~~for~~] storage of produce or feed; [~~7~~] or
- 2 (C) [~~for~~] storage or maintenance of:
- 3 (i) implements used for management
- 4 functions; or
- 5 (ii) equipment necessary to carry out
- 6 agricultural operations.

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

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

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

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

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

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

27 SECTION 12. The changes in law made by this Act apply only

1 to a cause of action that accrues on or after the effective date of
2 this Act. A cause of action that accrued before the effective date
3 of this Act is governed by the law applicable to the cause of action
4 immediately before the effective date of this Act, and that law is
5 continued in effect for that purpose.

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