

Amend SB 875 (house committee printing) as follows:

(1) In SECTION 2 of the bill (page 2, line 3), between "SECTION 2." and "Section 7.257," insert the following:

(a) Section 93.003, Civil Practice and Remedies Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

(b)

(2) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION _____. Chapter 93, Civil Practice and Remedies Code, is amended by adding Section 93.003 to read as follows:

Sec. 93.003. AFFIRMATIVE DEFENSE TO NUISANCE OR TRESPASS.

(a) In a nuisance or trespass action brought against a person, as defined by Section 382.003, Health and Safety Code, there is a rebuttable presumption that the person is not liable for any injury allegedly caused by the actions of the person if the person establishes that:

(1) the alleged conduct on which the nuisance or trespass claim is based was authorized by the federal or state government, or an agency of the federal or state government, through the issuance of a rule, order, or permit, as defined by Section 7.001, Water Code; and

(2) the person was in substantial compliance with that rule, order, or permit while the alleged nuisance or trespass was occurring.

(b) The claimant may rebut the presumption established under Subsection (a) by a showing of clear and convincing evidence that:

(1) the person knowingly withheld or misrepresented material information relevant to determining compliance with the rule or order or to obtaining the permit from the federal or state government or agency of the federal or state government; and

(2) such withholding or misrepresentation of information was the primary reason the person allegedly complied

with the rule or order or was successful in obtaining the permit.