

BILL ANALYSIS

Senate Research Center
88R19774 KBB-F

H.B. 2308
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Water, Agriculture & Rural Affairs
4/29/2023
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Right-to-Farm Law has not been updated in over a decade. Interested parties contend that revisions need to be made to the statute to protect rural Texas farmers and ranchers, as well as the state's food supply, in the 21st century. Under the current Right-to-Farm Law, agricultural operations are protected from nuisance actions. Interested parties note that current protections have fallen short with respect to other legal actions, creating a loophole that has been used to challenge and shut down working agricultural operations. H.B. 2308 closes a statutory loophole, making the legislature's intent clear by adding protections for agricultural operations and related agricultural services. The bill updates definitions to clarify that traditional agricultural operations and services, such as raising hay and owning a veterinary clinic, are agricultural and therefore protected under the Right-to-Farm Law.

H.B. 2308 amends current law relating to nuisance actions and other actions against agricultural operations.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 251.001, Agriculture Code, as follows:

Sec. 251.001. POLICY. Provides that food security being essential, 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. Provides that it is the purpose of Chapter 251 (Effect of Nuisance Actions and Governmental Requirements of Preexisting Agricultural Operations) to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations are authorized to be legally threatened, subject to suit, regulated, or otherwise declared, rather than considered, to be a nuisance.

SECTION 2. Amends Section 251.002(1), Agriculture Code, to redefine "agricultural operation."

SECTION 3. Amends Sections 251.003, 251.004, and 251.006, Agriculture Code, as follows:

Sec. 251.003. ESTABLISHED DATE OF OPERATION. Provides that the established date of operation, for purposes of this chapter, is the date on which an agricultural operation commenced agricultural operations. Deletes existing text providing that the established date of operation for each expansion, if the physical facilities of the agricultural operation are subsequently expanded, is a separate and independent established date of operation established as of the date of commencement of the expanded operation, and the commencement of expanded operation does not divest the agricultural operation of a previously established date of operation. Makes a nonsubstantive change.

Sec. 251.004. New heading: NUISANCE OR OTHER ACTIONS. (a) Prohibits any nuisance action or other action to restrain an agricultural operation from being brought against an agricultural operation that has lawfully been in operation and substantially unchanged for one year or more prior to the date on which the action is brought. Requires a person who brings a nuisance action or other action to restrain an agricultural operation that is not prohibited by this section to establish each element of the action by clear and convincing evidence. Provides that this subsection does not restrict or impede the authority of this state or a political subdivision to enforce state law, rather than to protect the public health, safety, and welfare or the authority of a municipality to enforce state law, including an enforcement action by the Texas Commission on Environmental Quality (TCEQ). Provides that a substantial change to an agricultural operation, for the purposes of this subsection, means a material alteration to the operation of or type of production at an agricultural operation that is substantially inconsistent with the operational practices since the established date of operation. Deletes existing text prohibiting any nuisance action from being brought against an agricultural operation that has lawfully been in operation for one year or more prior to the date on which the action is brought, if the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation.

(b) Provides that a person who brings a nuisance action or other action to restrain an agricultural operation and seeks damages or injunctive relief against an agricultural operation that has existed for one year or more prior to the date that the action is instituted or who violates the provisions of Subsection (a) is liable to the agricultural operator for any other damages found by the trier of fact. Makes nonsubstantive changes.

(c) Makes no changes to this subsection.

Sec. 251.006. AGRICULTURAL IMPROVEMENTS. (a) Provides that an owner, lessee, or occupant of agricultural land is not liable to the state, a governmental unit, or the owner, lessee, or occupant of other agricultural land for the construction or maintenance on the land of an agricultural improvement if the construction is not expressly prohibited by statute or a governmental requirement adopted in accordance with Section 251.005 (Effect of Governmental Requirements) in effect at the time the improvement is constructed. Provides that such an improvement does not constitute a nuisance and is not otherwise subject to suit or injunction.

(b) Provides that this section does not prevent the enforcement of a state or federal statute, rather than a statute or governmental requirement to protect public health or safety. Deletes existing text providing that this section does not apply to an improvement that obstructs the flow of water, light, or air to other land.

(c) Redefines "agricultural land" and "agricultural improvement."

SECTION 4. Amends Chapter 251, Agriculture Code, by adding Section 251.007, as follows:

Sec. 251.007. CONFLICT WITH OTHER STATUTES. Provides that this chapter prevails if there is a conflict between this chapter and other law.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2023.