

## **BILL ANALYSIS**

C.S.H.B. 2308  
By: Ashby  
Agriculture & Livestock  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

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. C.S.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.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2308 amends the Agriculture Code, with respect to the effect of nuisance actions and governmental requirements on preexisting agricultural operations, to prohibit an action to restrain an agricultural operation 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 and to update related specifications currently applicable only to nuisance actions.

C.S.H.B. 2308 makes the following changes to the general policy regarding such actions and to the specific activities comprising an agricultural operation:

- specifies that food security is essential to the state's policy for the development and improvement of its agricultural land;
- revises the purpose of that policy to include the reduction of the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be legally threatened, subject to suit, or otherwise declared to be a nuisance;
- includes producing hay and other forages as an agricultural operation; and
- specifies that veterinary services are included as an agricultural operation in raising or keeping livestock or poultry.

C.S.H.B. 2308 makes the following changes to the nuisance provisions with respect to an established date of operation, nuisance actions and other actions brought against an operation, liability of a person bringing an applicable action, and agricultural improvements not expressly prohibited:

- with respect to the established date of operation of an agricultural operation:
  - provides that such date is the date on which an operation commenced agricultural operations; and
  - removes the provisions specifying that the established date of operation for each expansion, if the physical facilities of an 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 specifying that the commencement of expanded operation does not divest the agricultural operation of a previously established date of operation;
- with respect to bringing a nuisance or other action:
  - prohibits an 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 to establish each element of the action by clear and convincing evidence;
  - establishes that provisions relating to the prohibition of nuisance or other actions do not restrict or impede the authority of a political subdivision to enforce state law and includes an enforcement action by the Texas Commission on Environmental Quality among the actions those provisions do not restrict or impede; and
  - clarifies that a substantial change to an agricultural operation 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;
- with respect to liability of a person to the agricultural operator that currently applies only to a nuisance action:
  - extends the same liability to a person who brings an action to restrain an agricultural operation and seeks damages or injunctive relief against an operation that has existed for one year or more prior to the date that the action is instituted or who violates the bill's requirements for bringing either type of action; and
  - specifies that liability for a person bringing either a nuisance action or other action to restrain an agricultural operation includes any other damages found by the trier of fact; and
- with respect to agricultural improvements whose construction or maintenance under current law is not expressly prohibited by statute or a governmental requirement and for which 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:
  - adds a specification that such a governmental requirement is a requirement adopted in accordance with provisions prohibiting nuisance and other actions from being brought;
  - adds the specification that such an improvement is not otherwise subject to suit or injunction, in addition to not constituting a nuisance under current law; and
  - removes the specifications that the provision does not apply to an improvement that obstructs the flow of water, light, or air to other land and does not prevent the enforcement of a governmental requirement to protect health or public safety and replaces it with a provision establishing instead that the provision does not prevent the enforcement of a state or federal statute.

C.S.H.B. 2308 revises the definition of "agricultural land" for purposes of these provisions to include any land on which agricultural operations exist or may take place, includes arenas in the

definition of "agricultural improvement," and specifies that the storage or maintenance of implements that are considered to be agricultural improvements includes implements used for management functions or equipment necessary to carry out agricultural operations among such purposes.

C.S.H.B. 2308 establishes that provisions relating to the effect of nuisance actions and governmental requirements on preexisting agricultural operations prevail if there is a conflict between such provisions and other law.

C.S.H.B. 2308 applies only to a cause of action that accrues on or after the bill's effective date.

### **EFFECTIVE DATE**

September 1, 2023.

### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 2308 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute clarifies, but the introduced did not, that the prohibition against bringing an action 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 is applicable if such an operation has both been in operation and been substantially unchanged for one year or more prior to the date on which the action is brought. Moreover, the substitute includes a provision specifying what a substantial change means for purposes of the prohibition.

Both the introduced and the substitute remove the provision establishing that the prohibition against bringing an action against an agricultural operation does not restrict or impede the authority of a municipality to enforce state law. However, the substitute includes a clarification not in the introduced providing that the authority of any political subdivision, instead of only a municipality as in current law, to enforce state law is not restricted or impeded by the prohibition. The substitute includes a provision not in the introduced establishing that the prohibition also does not restrict or impede an enforcement action by the Texas Commission on Environmental Quality.

Both the introduced and the substitute revise provisions with respect to agricultural improvements whose construction or maintenance under current law is not expressly prohibited by statute or a governmental requirement and for which 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. However, while the introduced removed language in current law referencing improvements not expressly prohibited by a governmental requirement, the substitute retains the reference in current law to those improvements and specifies that such a governmental requirement is a requirement that is adopted in accordance with provisions prohibiting nuisance and other actions from being brought.