

By: Ashby

H.B. No. 2308

A BILL TO BE ENTITLED

AN ACT

relating to nuisance actions and other actions against agricultural operations.

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

SECTION 1. 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 2. Section 251.002(1), Agriculture Code, is amended to read as follows:

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

(A) cultivating the soil;

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

(C) floriculture;

(D) viticulture;

(E) horticulture;

- 1 (F) silviculture;
- 2 (G) wildlife management;
- 3 (H) raising or keeping livestock or poultry,  
4 including veterinary services; and
- 5 (I) planting cover crops or leaving land idle for  
6 the purpose of participating in any governmental program or normal  
7 crop or livestock rotation procedure.

8 SECTION 3. Sections 251.003, 251.004, and 251.006,  
9 Agriculture Code, are amended to read as follows:

10 Sec. 251.003. ESTABLISHED DATE OF OPERATION. For purposes  
11 of this chapter, the established date of operation is the date on  
12 which an agricultural operation commenced agricultural operations  
13 ~~[operation. If the physical facilities of the agricultural~~  
14 ~~operation are subsequently expanded, the established date of~~  
15 ~~operation for each expansion is a separate and independent~~  
16 ~~established date of operation established as of the date of~~  
17 ~~commencement of the expanded operation, and the commencement of~~  
18 ~~expanded operation does not divest the agricultural operation of a~~  
19 ~~previously established date of operation].~~

20 Sec. 251.004. NUISANCE OR OTHER ACTIONS. (a) No nuisance  
21 action or other action to restrain an agricultural operation may be  
22 brought against an agricultural operation that has lawfully been in  
23 operation for one year or more prior to the date on which the action  
24 is brought. A person who brings a nuisance action or other action  
25 to restrain an agricultural operation that is not prohibited by  
26 this section must establish each element of the action by clear and  
27 convincing evidence ~~[, if the conditions or circumstances~~

1 ~~complained of as constituting the basis for the nuisance action~~  
2 ~~have existed substantially unchanged since the established date of~~  
3 ~~operation].~~ This subsection does not restrict or impede the  
4 authority of this state to [~~protect the public health, safety, and~~  
5 ~~welfare or the authority of a municipality to]~~ enforce state law.

6 (b) A person who brings a nuisance action or other action to  
7 restrain an agricultural operation and seeks [~~for~~] damages or  
8 injunctive relief against an agricultural operation that has  
9 existed for one year or more prior to the date that the action is  
10 instituted or who violates the provisions of Subsection (a) [~~of~~  
11 ~~this section~~] is liable to the agricultural operator for:

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

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

17 (c) This section does not affect or defeat the right of any  
18 person to recover for injuries or damages sustained because of an  
19 agricultural operation or portion of an agricultural operation that  
20 is conducted in violation of a federal, state, or local statute or  
21 governmental requirement that applies to the agricultural  
22 operation or portion of an agricultural operation.

23 Sec. 251.006. AGRICULTURAL IMPROVEMENTS. (a) An owner,  
24 lessee, or occupant of agricultural land is not liable to the state,  
25 a governmental unit, or the owner, lessee, or occupant of other  
26 agricultural land for the construction or maintenance on the land  
27 of an agricultural improvement if the construction is not expressly

1 prohibited by statute [~~or a governmental requirement~~] in effect at  
2 the time the improvement is constructed. Such an improvement does  
3 not constitute a nuisance and is not otherwise subject to suit or  
4 injunction.

5 (b) [~~This section does not apply to an improvement that~~  
6 ~~obstructs the flow of water, light, or air to other land.~~] This  
7 section does not prevent the enforcement of a state or federal  
8 statute [~~or governmental requirement to protect public health or~~  
9 ~~safety~~].

10 (c) In this section:

11 (1) "Agricultural land" includes:

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

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

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

19 (A) the sheltering, restriction, or feeding of  
20 animal or aquatic life;

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

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

23 (i) implements used for management  
24 functions; or

25 (ii) equipment necessary to carry out  
26 agricultural operations.

27 SECTION 4. Chapter 251, Agriculture Code, is amended by

1 adding Section 251.007 to read as follows:

2 Sec. 251.007. CONFLICT WITH OTHER STATUTES. If there is a  
3 conflict between this chapter and other law, this chapter prevails.

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

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