

1-1 By: Ashby, et al. (Senate Sponsor - Perry) H.B. No. 2308  
 1-2 (In the Senate - Received from the House April 11, 2023;  
 1-3 April 20, 2023, read first time and referred to Committee on Water,  
 1-4 Agriculture & Rural Affairs; May 2, 2023, reported favorably by the  
 1-5 following vote: Yeas 7, Nays 1; May 2, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13		X		
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED  
 1-18 AN ACT

1-19 relating to nuisance actions and other actions against agricultural  
 1-20 operations.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 251.001, Agriculture Code, is amended to  
 1-23 read as follows:

1-24 Sec. 251.001. POLICY. Food security being essential, it  
 1-25 ~~[It]~~ is the policy of this state to conserve, protect, and encourage  
 1-26 the development and improvement of its agricultural land for the  
 1-27 production of food and other agricultural products. It is the  
 1-28 purpose of this chapter to reduce the loss to the state of its  
 1-29 agricultural resources by limiting the circumstances under which  
 1-30 agricultural operations may be legally threatened, subject to suit,  
 1-31 regulated, or otherwise declared [considered] to be a nuisance.

1-32 SECTION 2. Section 251.002(1), Agriculture Code, is amended  
 1-33 to read as follows:

1-34 (1) "Agricultural operation" includes the following  
 1-35 activities:

- 1-36 (A) cultivating the soil;
- 1-37 (B) producing crops for human food, animal feed  
 1-38 including hay and other forages, planting seed, or fiber;
- 1-39 (C) floriculture;
- 1-40 (D) viticulture;
- 1-41 (E) horticulture;
- 1-42 (F) silviculture;
- 1-43 (G) wildlife management;
- 1-44 (H) raising or keeping livestock or poultry,  
 1-45 including veterinary services; and
- 1-46 (I) planting cover crops or leaving land idle for  
 1-47 the purpose of participating in any governmental program or normal  
 1-48 crop or livestock rotation procedure.

1-49 SECTION 3. Sections 251.003, 251.004, and 251.006,  
 1-50 Agriculture Code, are amended to read as follows:

1-51 Sec. 251.003. ESTABLISHED DATE OF OPERATION. For purposes  
 1-52 of this chapter, the established date of operation is the date on  
 1-53 which an agricultural operation commenced agricultural operations  
 1-54 ~~[operation. If the physical facilities of the agricultural~~  
 1-55 ~~operation are subsequently expanded, the established date of~~  
 1-56 ~~operation for each expansion is a separate and independent~~  
 1-57 ~~established date of operation established as of the date of~~  
 1-58 ~~commencement of the expanded operation, and the commencement of~~  
 1-59 ~~expanded operation does not divest the agricultural operation of a~~  
 1-60 ~~previously established date of operation].~~

1-61 Sec. 251.004. NUISANCE OR OTHER ACTIONS. (a) No nuisance

2-1 action or other action to restrain an agricultural operation may be  
 2-2 brought against an agricultural operation that has lawfully been in  
 2-3 operation and substantially unchanged for one year or more prior to  
 2-4 the date on which the action is brought. A person who brings a  
 2-5 nuisance action or other action to restrain an agricultural  
 2-6 operation that is not prohibited by this section must establish  
 2-7 each element of the action by clear and convincing evidence [~~, if~~  
 2-8 ~~the conditions or circumstances complained of as constituting the~~  
 2-9 ~~basis for the nuisance action have existed substantially unchanged~~  
 2-10 ~~since the established date of operation].~~ This subsection does not  
 2-11 restrict or impede the authority of this state or a political  
 2-12 subdivision to [~~protect the public health, safety, and welfare or~~  
 2-13 ~~the authority of a municipality to]~~ enforce state law, including an  
 2-14 enforcement action by the Texas Commission on Environmental  
 2-15 Quality. For the purposes of this subsection, a substantial change  
 2-16 to an agricultural operation means a material alteration to the  
 2-17 operation of or type of production at an agricultural operation  
 2-18 that is substantially inconsistent with the operational practices  
 2-19 since the established date of operation.

2-20 (b) A person who brings a nuisance action or other action to  
 2-21 restrain an agricultural operation and seeks [~~for~~] damages or  
 2-22 injunctive relief against an agricultural operation that has  
 2-23 existed for one year or more prior to the date that the action is  
 2-24 instituted or who violates the provisions of Subsection (a) [~~of~~  
 2-25 ~~this section]~~ is liable to the agricultural operator for:

2-26 (1) all costs and expenses incurred in defense of the  
 2-27 action, including [~~but not limited to~~] attorney's fees, court  
 2-28 costs, travel, and other related incidental expenses incurred in  
 2-29 the defense; and

2-30 (2) any other damages found by the trier of fact.

2-31 (c) This section does not affect or defeat the right of any  
 2-32 person to recover for injuries or damages sustained because of an  
 2-33 agricultural operation or portion of an agricultural operation that  
 2-34 is conducted in violation of a federal, state, or local statute or  
 2-35 governmental requirement that applies to the agricultural  
 2-36 operation or portion of an agricultural operation.

2-37 Sec. 251.006. AGRICULTURAL IMPROVEMENTS. (a) An owner,  
 2-38 lessee, or occupant of agricultural land is not liable to the state,  
 2-39 a governmental unit, or the owner, lessee, or occupant of other  
 2-40 agricultural land for the construction or maintenance on the land  
 2-41 of an agricultural improvement if the construction is not expressly  
 2-42 prohibited by statute or a governmental requirement adopted in  
 2-43 accordance with Section 251.005 in effect at the time the  
 2-44 improvement is constructed. Such an improvement does not  
 2-45 constitute a nuisance and is not otherwise subject to suit or  
 2-46 injunction.

2-47 (b) [~~This section does not apply to an improvement that~~  
 2-48 ~~obstructs the flow of water, light, or air to other land.] This~~  
 2-49 section does not prevent the enforcement of a state or federal  
 2-50 statute [~~or governmental requirement to protect public health or~~  
 2-51 ~~safety].~~

2-52 (c) In this section:

2-53 (1) "Agricultural land" includes:

2-54 (A) any land the use of which qualifies the land  
 2-55 for appraisal based on agricultural use as defined under Subchapter  
 2-56 D, Chapter 23, Tax Code; and

2-57 (B) any other land on which agricultural  
 2-58 operations exist or may take place.

2-59 (2) "Agricultural improvement" includes pens, barns,  
 2-60 fences, arenas, and other improvements designed for:

2-61 (A) the sheltering, restriction, or feeding of  
 2-62 animal or aquatic life;

2-63 (B) [~~for~~] storage of produce or feed; [~~or~~]

2-64 (C) [~~for~~] storage or maintenance of:

2-65 (i) implements used for management  
 2-66 functions; or

2-67 (ii) equipment necessary to carry out  
 2-68 agricultural operations.

2-69 SECTION 4. Chapter 251, Agriculture Code, is amended by

3-1 adding Section 251.007 to read as follows:

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

3-4 SECTION 5. The changes in law made by this Act apply only to  
3-5 a cause of action that accrues on or after the effective date of  
3-6 this Act. A cause of action that accrued before the effective date  
3-7 of this Act is governed by the law applicable to the cause of action  
3-8 immediately before the effective date of this Act, and that law is  
3-9 continued in effect for that purpose.

3-10 SECTION 6. This Act takes effect September 1, 2023.

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