

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Ashby, Bailes, Rogers, Kitzman, Cain,  
et al.

H.B. No. 2308

A BILL TO BE ENTITLED

1 AN ACT

2 relating to nuisance actions and other actions against agricultural  
3 operations.

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

5 SECTION 1. Section 251.001, Agriculture Code, is amended to  
6 read as follows:

7 Sec. 251.001. POLICY. Food security being essential, it  
8 [~~It~~] is the policy of this state to conserve, protect, and encourage  
9 the development and improvement of its agricultural land for the  
10 production of food and other agricultural products. It is the  
11 purpose of this chapter to reduce the loss to the state of its  
12 agricultural resources by limiting the circumstances under which  
13 agricultural operations may be legally threatened, subject to suit,  
14 regulated, or otherwise declared [~~considered~~] to be a nuisance.

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

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

19 (A) cultivating the soil;

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

22 (C) floriculture;

23 (D) viticulture;

24 (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 and substantially unchanged for one year or more prior to  
24 the date on which the action is brought. A person who brings a  
25 nuisance action or other action to restrain an agricultural  
26 operation that is not prohibited by this section must establish  
27 each element of the action by clear and convincing evidence [~~if~~

1 ~~the conditions or circumstances complained of as constituting the~~  
2 ~~basis for the nuisance action have existed substantially unchanged~~  
3 ~~since the established date of operation].~~ This subsection does not  
4 restrict or impede the authority of this state or a political  
5 subdivision to [~~protect the public health, safety, and welfare or~~  
6 ~~the authority of a municipality to]~~ enforce state law, including an  
7 enforcement action by the Texas Commission on Environmental  
8 Quality. For the purposes of this subsection, a substantial change  
9 to an agricultural operation means a material alteration to the  
10 operation of or type of production at an agricultural operation  
11 that is substantially inconsistent with the operational practices  
12 since the established date of operation.

13 (b) A person who brings a nuisance action or other action to  
14 restrain an agricultural operation and seeks [~~for~~] damages or  
15 injunctive relief against an agricultural operation that has  
16 existed for one year or more prior to the date that the action is  
17 instituted or who violates the provisions of Subsection (a) [~~of~~  
18 ~~this section~~] is liable to the agricultural operator for:

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

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

24 (c) This section does not affect or defeat the right of any  
25 person to recover for injuries or damages sustained because of an  
26 agricultural operation or portion of an agricultural operation that  
27 is conducted in violation of a federal, state, or local statute or

1 governmental requirement that applies to the agricultural  
2 operation or portion of an agricultural operation.

3       Sec. 251.006. AGRICULTURAL IMPROVEMENTS. (a) An owner,  
4 lessee, or occupant of agricultural land is not liable to the state,  
5 a governmental unit, or the owner, lessee, or occupant of other  
6 agricultural land for the construction or maintenance on the land  
7 of an agricultural improvement if the construction is not expressly  
8 prohibited by statute or a governmental requirement adopted in  
9 accordance with Section 251.005 in effect at the time the  
10 improvement is constructed. Such an improvement does not  
11 constitute a nuisance and is not otherwise subject to suit or  
12 injunction.

13       (b) [~~This section does not apply to an improvement that~~  
14 ~~obstructs the flow of water, light, or air to other land.~~] This  
15 section does not prevent the enforcement of a state or federal  
16 statute [~~or governmental requirement to protect public health or~~  
17 ~~safety~~].

18       (c) In this section:

19           (1) "Agricultural land" includes:

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

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

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

27                   (A) the sheltering, restriction, or feeding of

1 animal or aquatic life;

2 (B) [~~7~~, for] storage of produce or feed; [~~7~~] or

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

4 (i) implements used for management  
5 functions; or

6 (ii) equipment necessary to carry out  
7 agricultural operations.

8 SECTION 4. Chapter 251, Agriculture Code, is amended by  
9 adding Section 251.007 to read as follows:

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

12 SECTION 5. The changes in law made by this Act apply only to  
13 a cause of action that accrues on or after the effective date of  
14 this Act. A cause of action that accrued before the effective date  
15 of this Act is governed by the law applicable to the cause of action  
16 immediately before the effective date of this Act, and that law is  
17 continued in effect for that purpose.

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

ADOPTED

MAY 04 2023

*Lacey Lewis*  
Secretary of the Senate

*Chad Perry*

FLOOR AMENDMENT NO. 1

BY: \_\_\_\_\_

1 Amend H.B. No. 2308 (senate committee report) as follows:

2 (1) In SECTION 2 of the bill, strike amended Section  
3 251.002(1)(B), Agriculture Code (page 1, lines 37 and 38), and  
4 substitute the following:

5 (B) producing crops or growing vegetation for  
6 human food, animal feed, livestock forage, forage for wildlife  
7 management, planting seed, or fiber;

8 (2) In the recital to SECTION 4 of the bill (page 3, line 1),  
9 strike "251.007" and substitute "251.008".

10 (3) In SECTION 4 of the bill, adding Section 251.007,  
11 Agriculture Code (page 3, line 2), strike "251.007. CONFLICT WITH  
12 OTHER STATUTES" and substitute "251.008. CONFLICT WITH OTHER LAW".

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**May 5, 2023**

**TO:** Honorable Dade Phelan, Speaker of the House, House of Representatives

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB2308** by Ashby (Relating to nuisance actions and other actions against agricultural operations.), **As Passed 2nd House**

**No significant fiscal implication to the State is anticipated.**

It is assumed that any costs associated with the bill could be absorbed using existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 551 Department of Agriculture

**LBB Staff:** JMc, CMA, SZ, MW, RSTE

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**April 28, 2023**

**TO:** Honorable Charles Perry, Chair, Senate Committee on Water, Agriculture & Rural Affairs

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB2308** by Ashby (Relating to nuisance actions and other actions against agricultural operations.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

It is assumed that any costs associated with the bill could be absorbed using existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 551 Department of Agriculture

**LBB Staff:** JMc, SZ, MW, RSTE



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**April 3, 2023**

**TO:** Honorable Briscoe Cain, Chair, House Committee on Agriculture & Livestock

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB2308** by Ashby (relating to nuisance actions and other actions against agricultural operations),  
**Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

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**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 551 Department of Agriculture

**LBB Staff:** JMc, SZ, MW, RSTE

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**March 27, 2023**

**TO:** Honorable Briscoe Cain, Chair, House Committee on Agriculture & Livestock

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB2308** by Ashby (Relating to nuisance actions and other actions against agricultural operations.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

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**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 551 Department of Agriculture

**LBB Staff:** JMc, SZ, MW, RSTE