

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 or growing vegetation for human food, animal feed, livestock forage, forage for wildlife management, planting seed, or fiber;
- (C) floriculture;
- (D) viticulture;

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

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

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

21 Sec. 251.004. NUISANCE OR OTHER ACTIONS. (a) No nuisance
22 action or other action to restrain an agricultural operation may be
23 brought against an agricultural operation that has lawfully been in
24 operation and substantially unchanged for one year or more prior to
25 the date on which the action is brought. A person who brings a
26 nuisance action or other action to restrain an agricultural
27 operation that is not prohibited by this section must establish

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

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

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

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

25 (c) This section does not affect or defeat the right of any
26 person to recover for injuries or damages sustained because of an
27 agricultural operation or portion of an agricultural operation that

1 is conducted in violation of a federal, state, or local statute or
2 governmental requirement that applies to the agricultural
3 operation or portion of an agricultural operation.

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

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

19 (c) In this section:

20 (1) "Agricultural land" includes:

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

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

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

1 (A) the sheltering, restriction, or feeding of
2 animal or aquatic life;

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

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

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

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

9 SECTION 4. Chapter 251, Agriculture Code, is amended by
10 adding Section 251.008 to read as follows:

11 Sec. 251.008. CONFLICT WITH OTHER LAW. If there is a
12 conflict between this chapter and other law, this chapter prevails.

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

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

President of the Senate

Speaker of the House

I certify that H.B. No. 2308 was passed by the House on April 11, 2023, by the following vote: Yeas 142, Nays 1, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2308 on May 8, 2023, by the following vote: Yeas 139, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2308 was passed by the Senate, with amendments, on May 4, 2023, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

APPROVED: _____

Date

Governor