

SUBJECT: Limiting nuisance actions against agricultural operations

COMMITTEE: Agriculture & Livestock — committee substitute recommended

VOTE: 7 ayes — Cain, Anderson, Cody Harris, Kitzman, Rosenthal, Thimesch, Wilson
0 nays
2 absent — Bernal, Goodwin

WITNESSES: For — Stephen Diebel, Texas & Southwestern Cattle Raisers Association (*Registered, but did not testify*: Martha Landwehr, BASF Corporation; Charles Maley, South Texans’ Property Rights Association; Eric Opiela, South Texans’ Property Rights Association; James Bradbury, Texas & Southwestern Cattle Raisers Association; Josh Winegarner, Texas Cattle Feeders Association; Kenneth Hodges, Texas Corn Producers Association; Charlie Leal, Texas Farm Bureau; David Alders, Texas Forestry Association; Rob Hughes, Texas Forestry Association; Ryan Skrobarczyk, Texas Nursery & Landscape Association; JC Essler, Texas Poultry Federation; J Pete Laney, Texas Quarter Horse Association; Joe Morris, Texas Sheep and Goat Raisers Assoc.; Joey Park, Texas Wildlife Association; George Christian, WestRock)

Against — None

BACKGROUND: Texas Agriculture Code ch. 251 prohibits nuisance actions from being brought against agricultural operations that have been in lawful operation for at least one year prior to the action.

DIGEST: CSHB 2308 would revise provisions on legal protections for agricultural operations against nuisance actions. The bill would amend the current Agriculture Code to include more types of agricultural operations, such as hay production, other forages, and veterinary services for livestock. Nuisance actions or other actions to restrain such operations would be prohibited if the operations had been operating lawfully and substantially

unchanged for at least a year prior to the date of the action. A "substantial change" would be a material alteration to the operation of or type of production at an agricultural operation that was substantially inconsistent with the operational practices since the established date of operation. Under the bill, a person pursuing an action to restrain an agricultural operation would have to establish each element by clear and convincing evidence and would be liable for damages to the operation, as found by the trier of fact.

CSHB 2308 would add to the definition of "agricultural land" any land on which agricultural operations exist or may take place. The bill also would modify the definition of "agricultural improvements" to recognize equipment that was necessary to agricultural operations or implements used for management functions.

The bill would establish that the construction or maintenance of certain agricultural improvements would not be considered nuisances by law. It would remove a specification that this provision did not apply to improvements that obstructed the flow of water, light, or air to other land. It would specify that this provision did not prevent the enforcement of a state or federal statute.

CSHB 2308 would not restrict the authority of state or local authorities to enforce applicable state laws against agricultural operations. This bill would take effect September 1, 2023.

**SUPPORTERS
SAY:**

By updating current law, CSHB 2308 would help protect agricultural operations in Texas and address the growing food and clothing needs in the state. The bill would clarify the definitions of agricultural operations, agricultural land, and agricultural improvements to ensure their protection under current law. With recent population growth and droughts, Texas agriculture is already struggling to keep up with production demands. CSHB 2308 would guarantee that these operations did not face the added hardship of nuisance actions or other legal challenges without legitimate cause.

CRITICS
SAY:

The bill is unnecessary because the current Right to Farm protections are sufficient. CSHB 2308 could go too far in limiting neighboring homeowners' ability to seek recourse for legitimate damages caused by agricultural operations. While food security is important, the bill is too broad in its definition of agricultural operations and it is unclear whether environmentally destructive agricultural practices, such as the spraying of toxic chemicals for pest control or fertilization, were included. Also, limiting an action to restrain an agricultural operation to within one year of the operation's start could allow harmful practices to continue simply because they had been occurring for years.