SUBJECT: Limiting landowner liability for aviation activities on owner's land

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Smithee, Farrar, Clardy, Laubenberg, Raymond, Schofield, Sheets, S. Thompson

0 nays

1 absent — Hernandez

WITNESSES: For — Yasmina Platt, Aircraft Owners and Pilots Association; Chase Snodgrass, Presidio County; Robb Van Eman and Dana Martin, Spicewood Pilots Association; Mike Hull, Texans for Lawsuit Reform; Stephen Goebel; Clay Slack; (*Registered, but did not testify*: Jason Skaggs, Texas and Southwestern Cattle Raisers Association)

Against — Bryan Blevins, Jr. and Michael Slack, Texas Trial Lawyers Association

BACKGROUND: Under Civil Practice and Remedies Code, ch. 75, non-government landowners are not liable for any injury to a person they allow on or invite onto their property for recreation except in cases of gross negligence, malicious intent or bad faith. Landowners also do not assume responsibility or incur liability for injury to any individual or property caused by a person allowed or invited onto the property.

Under common law, a landowner owes a duty to protect a person they allow on or invite onto their property (for non-recreation reasons) from conditions that pose an unreasonable risk of harm that the landowner knows or should know about by either warning the person or making the conditions reasonably safe.

DIGEST: CSHB 750 would define "recreational aviation activities" to mean the recreational operation or use of an airplane or other aircraft, including the taxiing, handling, taking off, parking, flying, or landing of the airplane or

other aircraft.

The bill also would include in the list of activities under the definition of "recreation" in Civil Practice and Remedies Code, sec. 75.001 "recreational aviation activities occurring on or above land." This definition would specify that:

- the owner, lessee, or occupant of the land in question was not a governmental unit;
- the land was not held open to the public for recreational aviation activities; and
- the owner, lessee, or occupant of the land did not charge for the use of the land.

This bill would take effect September 1, 2015, and would apply to a cause of action that accrued on or after that date.

SUPPORTERS SAY:

CSHB 750 would give landowners the ability to allow the use of their airstrips without fear of liability. Currently, there are about 1,600 registered private airstrips across the state, along with numerous other "back country" airstrips. Pilots who request use of these airstrips are frequently turned down because landowners fear tort liability.

These airstrips tend to be in some of the most beautiful regions of the state, such as Big Bend National Park, so enabling landowners to open their airstrips could bring significant tourism revenue and general aviation jobs to the state. Most states in the western United States already have this type of provision, and this bill would help Texas compete with those states for tourism dollars.

This bill simply would shift the responsibility for any incidents that occurred during these activities to the pilots. Around 90 percent of pilots are insured for this type of activity, and they are the party best equipped to manage the risks involved.

As a practical matter, pilots have the ability to determine whether an

airstrip is safe to land on. When landing, pilots fly over the strip at about 100 feet to inspect it and ensure that they can make a safe landing. If they see anything that could pose a risk, they fly over again at a lower altitude to get a closer look before deciding whether to land on the strip. Because pilots are both insured and trained to manage the risks involved in using a private airstrip, any potential tort liability should rest on their shoulders.

Although pilots could add landowners to their insurance policies, it is an onerous process. This bill would provide a simpler solution for ensuring that pilots were able to enjoy flying as intended by the recreational use statute.

OPPONENTS SAY:

This bill could create a risk of uncompensated loss for injuries resulting from an inherently dangerous activity. There are cases of accidents that have occurred due to the exclusive negligence of airstrip owners. It can arise out of on-the-ground activity such as tying down aircraft, refueling, and maintenance of the airstrip. If a landowner improperly set a wrench next to a jet engine, put the wrong kind of fuel in a plane, or failed to tie a plane down properly, any loss that resulted from the landowner's negligence would be largely uncompensated under the bill.

Civil Practice and Remedies Code, ch. 33 establishes a system of proportionate responsibility under which a defendant is only required to pay a claimant for the percentage of damages equal to the defendant's percentage of responsibility. Under CSHB 750, if a claimant filed a suit against a pilot, the landowner could be brought in as a responsible third party. The immunity granted by the bill could immunize the landowner and any responsibility apportioned to the landowner go uncompensated.

The recreational use statute does not limit liability in cases of gross negligence, malicious intent, or bad faith, but these have been almost impossible to prove in aviation cases. A better solution could be for pilots to add owners of landing strips as additional insured on their insurance policies. This is available for a modest fee or at no cost and would protect landowners from liability without the possibility of uncompensated loss for anyone injured as a result of the landowner's negligence. The

landowners themselves also could insure their airstrips against the potential for injury.

Compared to other activities covered by the recreational use statute, the potential for loss in aviation activities is high. The planes themselves are expensive and could incur damages and diminution of value if improperly handled by landowners. Aviation accidents generally do not result in minor injuries but carry risks of serious injury and death. Although air travel is generally considered safe, there is a significant difference between large commercial airports and small privately owned airstrips. Large commercial airports have the benefit of control towers, weather reporting, air traffic controllers, and other safety measures. Private airstrips rarely have these, and the risk of injuries at one of these strips is greater. The incentive should be for landowners to be as careful as possible in the maintenance and operation of their airstrips.

OTHER OPPONENTS SAY:

Although the goal of this bill would be to provide immunity for recreational activity on private land, it could be broadly construed to include immunity for commercial activities. Many businesses own private airstrips and the bill might allow them to sidestep potential liability for those airstrips. It would restrict immunity to cases in which the landowner did not charge for the use of the airstrip, but the landowner could charge for associated activities, such as a restaurant, hotel, or golf course. Those businesses could profit from the airstrip and avoid liability for its operation. A more narrowly tailored bill could ensure that it provided immunity only when there was no profit-generating activity associated with use of the airstrip.

Numerous public airstrips operate without profit to facilitate recreational aviation. These airstrips adhere to strict Federal Aviation Administration safety requirements and should be granted the same protections as those airstrips that are closed to the public but grant select pilots use of their facilities. The rest of the recreational use statute protects landowners who open their land to the public for recreational use.