

BILL ANALYSIS

H.B. 2144
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Concerns have been raised that the public nuisance cause of action is being misused and expanded in ways that were never intended, with lawsuits brought by private plaintiffs claiming that everyday consumer products, as well as economic activities sanctioned and encouraged by the Texas and federal governments, create public nuisances. These lawsuits frequently seek monetary damages, whereas injunctive relief has traditionally been the remedy available to abate a nuisance. H.B. 2144 seeks to ensure that the tort of public nuisance is defined clearly and in a manner consistent with its traditional scope for purposes of its use as a cause of action in Texas.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 2144 amends the Civil Practice and Remedies Code to set out provisions governing the tort of public nuisance. The bill's provisions expressly abrogate the common law of public nuisance and supersede any other statute to the extent of a conflict. The bill's provisions expressly provide the only remedies for the tort of public nuisance, but do not affect the availability of a remedy provided by statutory provisions relating to suit to abate certain common nuisances or another statute relating to criminal conduct and designated as a common or public nuisance or the authority of a governmental entity to take a regulatory or enforcement action in connection with a condition designated by statute as a public nuisance.

H.B. 2144 establishes that a person may be held liable for a public nuisance only if the person causes an unlawful condition and controls that unlawful condition at the time the condition violates an established public right. Conditions arising from the following conduct are not considered unlawful conditions for purposes of a public nuisance action:

- an activity expressly authorized or encouraged by a statute, ordinance, rule, or other similar measure adopted by the state, a political subdivision of the state, the United States, or a regulatory agency of the state or the United States; and
- the lawful manufacturing, distributing, selling, advertising, or promoting of a lawful product.

The bill specifies that the list of conditions and conduct provided by the bill is not exhaustive and it may not be presumed that a person may be held liable for a public nuisance arising from conduct or conditions not listed. The aggregation of multiple individual injuries or private

nuisances do not constitute violations of an established public right for purposes of a public nuisance action.

H.B. 2144 restricts the authority to bring a public nuisance action to the state or a political subdivision of the state and establishes that only a government attorney of the relevant jurisdiction may bring an action. The bill establishes a presumption that only a single governmental entity has standing to file or maintain such an action relating to the real property or waterway to which a public nuisance relates in the absence of a clear and convincing showing otherwise. The state or a political subdivision must have a substantial ownership interest in or authority over the real property or waterway, or ancillary related space, to which the public nuisance relates to bring an action. The bill establishes that a financial expenditure made by the state or political subdivision related to the remediation, abatement, or injunction of an unlawful condition does not constitute injury sufficient to confer standing to file or maintain such an action.

H.B. 2144 limits a private citizen's maintenance of an action in the private citizen's individual capacity for purposes of enjoining a public nuisance to a private citizen who can show a special injury by clear and convincing evidence. The bill specifies that use of or damage to public land, air, or water with only personal, spiritual, cultural, or emotional significance to the individual is not a special injury for purposes of a public nuisance claim. The bill prohibits an individual from seeking relief for both a public nuisance under a special injury exception and for a private nuisance for a harm related to the same unlawful condition.

H.B. 2144 limits the remedies in a public nuisance action to:

- injunctive relief sufficient to prevent the unlawful condition from violating an established public right; and
- monetary and nonmonetary resources necessary to abate the public nuisance, if quantifiable and based on the following:
 - speculative estimates of current needs;
 - the costs of future remediation;
 - the costs of investigating and identifying the existence of an unlawful condition;
 - the costs of public services provided as a result of the public nuisance; or
 - damages of any kind, except for compensatory damages for a special injury established in accordance with this chapter.

The bill requires the necessity of monetary resources to abate the public nuisance to be established by the plaintiff by clear and convincing evidence.

H.B. 2144 defines "established public right," "government attorney," "public nuisance," "special injury," and "unlawful condition" for purposes of its provisions and makes a conforming change to a chapter heading to reflect its provisions

EFFECTIVE DATE

September 1, 2021.