87R5454 AJA-F

By:  Harris H.B. No. 2144

A BILL TO BE ENTITLED

AN ACT

relating to the tort of public nuisance.

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

SECTION 1.  Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 100F to read as follows:

CHAPTER 100F. PUBLIC NUISANCE

Sec. 100F.001.  PURPOSE; ABROGATION OF COMMON LAW; CONFLICTS. (a) The purpose of this chapter is 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 this state.

(b)  This chapter abrogates the common law of public nuisance and supersedes any other statute to the extent of a conflict. This chapter provides the only remedies for the tort of public nuisance in this state.

(c)  This chapter does not affect:

(1)  the availability of a remedy provided by Chapter 125 or another statute for conditions or activities involving criminal conduct and designated by statute as a common nuisance or public nuisance; or

(2)  the authority of a governmental entity to take a regulatory or enforcement action authorized by statute in connection with a condition designated by statute as a public nuisance.

Sec. 100F.002.  DEFINITIONS. In this chapter:

(1)  "Established public right" means a right, commonly held by all members of the public, to the use of public land, air, or water.

(2)  "Government attorney" means an attorney regularly employed on a salaried basis by this state or a political subdivision of this state. The term does not include an attorney hired on a contingency fee or hourly basis or an attorney hired on a short-term or temporary basis, including a legal fellow, special prosecutor, or other similar provisional position.

(3)  "Public nuisance" means an unlawful condition that violates an established public right.

(4)  "Special injury" means an injury that is different in kind, not just in degree, from an injury suffered by the public at large.

(5)  "Unlawful condition" means an ongoing circumstance or effect of an instrumentality that is expressly prohibited by the laws of this state.

Sec. 100F.003.  LIABILITY. 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.

Sec. 100F.004.  LIMITATIONS ON LIABILITY. (a) Conditions arising from the following conduct are not considered unlawful conditions for purposes of a public nuisance action in this state:

(1)  an activity expressly authorized or encouraged by a statute, ordinance, rule, or other similar measure adopted by this state, a political subdivision of this state, the United States, or a regulatory agency of this state or the United States; and

(2)  the lawful manufacturing, distributing, selling, advertising, or promoting of a lawful product.

(b)  Subsection (a) is not exhaustive. It may not be presumed that a person may be held liable for a public nuisance arising from conduct or conditions not listed in Subsection (a).

(c)  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.

Sec. 100F.005.  ENFORCEMENT BY GOVERNMENT. (a) Except as provided by Subsection (b), only the state or a political subdivision of this state may bring a public nuisance action and may do so only by a government attorney of the relevant jurisdiction.

(b)  Absent a clear and convincing showing otherwise, it shall be presumed that only a single governmental entity within this state has standing to file or maintain a public nuisance action relating to the real property or waterway to which the public nuisance relates.

(c)  To bring a public nuisance action, the state or the political subdivision must have substantial ownership interest in or authority over the real property or waterway, or ancillary space related to the real property or waterway, to which the public nuisance relates.

(d)  A financial expenditure made by the state or a political subdivision related to the remediation, abatement, or injunction of an unlawful condition does not constitute an injury sufficient to confer standing to file or maintain a public nuisance action.

Sec. 100F.006.  ENFORCEMENT BY PRIVATE CITIZEN. (a) A private citizen may maintain an action in the private citizen's individual capacity to enjoin a public nuisance only if the private citizen can show a special injury by clear and convincing evidence.

(b)  As a matter of law, 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.

(c)  An individual may not seek relief for both a public nuisance under the special injury exception provided by this section and for a private nuisance for a harm related to the same unlawful condition.

Sec. 100F.007.  REMEDIES. (a) Remedies in a public nuisance action are limited to:

(1)  injunctive relief sufficient to prevent the unlawful condition from violating an established public right; and

(2)  monetary and nonmonetary resources necessary to abate the public nuisance, if quantifiable and based on relevant and reliable cost factors, which may not include:

(A)  speculative estimates of current needs;

(B)  the costs of future remediation;

(C)  the costs of investigating and identifying the existence of an unlawful condition;

(D)  the costs of public services provided as a result of the public nuisance; or

(E)  damages of any kind, except for compensatory damages for a special injury established in accordance with this chapter.

(b)  For purposes of Subsection (a)(2), the necessity of monetary resources to abate the public nuisance must be established by the plaintiff by clear and convincing evidence.

SECTION 2.  The heading to Chapter 125, Civil Practice and Remedies Code, is amended to read as follows:

CHAPTER 125. REMEDIES FOR CERTAIN CONDITIONS AND CONDUCT DESIGNATED AS COMMON OR [~~AND~~] PUBLIC NUISANCE [~~NUISANCES~~]

SECTION 3.  The changes in law made by this Act apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law applicable to the cause of action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4.  This Act takes effect September 1, 2021.