

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.

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

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

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

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

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

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

19 Sec. 100F.003. LIABILITY. A person may be held liable for a
20 public nuisance only if the person causes an unlawful condition and
21 controls that unlawful condition at the time the condition violates
22 an established public right.

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

26 (1) an activity expressly authorized or encouraged by
27 a statute, ordinance, rule, or other similar measure adopted by

1 this state, a political subdivision of this state, the United
2 States, or a regulatory agency of this state or the United States;
3 and

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

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

9 (c) The aggregation of multiple individual injuries or
10 private nuisances do not constitute violations of an established
11 public right for purposes of a public nuisance action.

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

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

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

26 (d) A financial expenditure made by the state or a political
27 subdivision related to the remediation, abatement, or injunction of

1 an unlawful condition does not constitute an injury sufficient to
2 confer standing to file or maintain a public nuisance action.

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

7 (b) As a matter of law, use of or damage to public land, air,
8 or water with only personal, spiritual, cultural, or emotional
9 significance to the individual is not a special injury for purposes
10 of a public nuisance claim.

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

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

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

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

22 (A) speculative estimates of current needs;

23 (B) the costs of future remediation;

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

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

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

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

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

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

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

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