

BILL ANALYSIS

C.S.H.B. 1372
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to Victor E. Schwartz and Phil Goldberg in their article, "The Law of Public Nuisance: Maintaining Rational Boundaries on a Rational Tort," the tort of public nuisance has developed over nine centuries of English and American common law. Schwartz and Goldberg state that the essence of the tort is "to allow governments to use the tort system to stop quasi-criminal conduct that, while not illegal, is unreasonable given the circumstances and could cause injury to someone exercising a common, societal right." They state that traditional examples are the blocking of a public roadway or dumping sewage into a public river. However, according to a study published by the U.S. Chamber Institute for Legal Reform in March 2019, "Waking the Litigation Monster," the public nuisance cause of action is being misused and expanded and lawsuits assert that everyday consumer products, as well as economic activities sanctioned and encouraged by the state and federal government, create public nuisances. Furthermore, these lawsuits frequently seek monetary damages, whereas injunctive relief was traditionally the exclusive remedy available to abate a nuisance. C.S.H.B. 1372 seeks to ensure that the tort of public nuisance is defined clearly and in a manner consistent with the traditional scope of its purposes by codifying instances when a public nuisance cause of action may not be recognized by Texas courts.

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

C.S.H.B. 1372 amends the Civil Practice and Remedies Code to establish that a public nuisance claim, defined by the bill as an assertion in a civil action of an injury caused to the public or a request in a civil action to recover damages, abatement, or other relief under the common law tort of public nuisance, is not cognizable in Texas if it seeks relief arising from any of the following:

- an action or condition authorized, licensed, approved, or mandated by a statute, ordinance, regulation, permit, order, rule, or other similar measure issued, adopted, promulgated, or approved by the federal government, a federal agency, the State of Texas, or an agency or a political subdivision of the State of Texas;
- an action or condition that occurs or exists in a context where a statutory cause of action or administrative enforcement mechanism already exists to address conduct that is injurious to the public; or

- a product or the manufacturing, distributing, selling, labeling, or marketing of a product, regardless of whether the product is defective.

C.S.H.B. 1372 establishes that the aggregation of multiple injuries to individuals or private nuisances does not constitute a public nuisance or give rise to a public nuisance claim. The bill prohibits its provisions from being construed to limit a claimant from obtaining relief provided by other law.

C.S.H.B. 1372 establishes that to the extent of a conflict between the bill and common law, the bill's provisions control. Otherwise, the bill's provisions supplement the common law of public nuisance, both as to the claim and defenses. The bill provides for the severability of the bill's provisions.

C.S.H.B. 1372 applies only to a cause of action that accrues on or after the bill's effective date.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 1372 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Both the introduced and the substitute provide parameters for what does not constitute a public nuisance claim, however the parameters established by each version differ.

Whereas the introduced defined "public nuisance action" as an action asserting a cause of action cognizable as the tort of public nuisance, the substitute defines "public nuisance claim" as an assertion in a civil action of an injury caused to the public under the common law tort of public nuisance or a request in a civil action to recover damages, abatement, or other relief under the common law tort of public nuisance.

With respect to what disqualifies a claim from being cognized as a public nuisance claim in Texas:

- the substitute omits the following specific types of claims, which were considered disqualified claims or actions in the introduced:
 - an action or condition authorized, approved, or mandated by a court order;
 - a claim that a product endangers the health, safety, or welfare of the public at large or has caused injury to one or more members of the public, which was replaced with language disqualifying any claims seeking relief arising from a product; and
 - any other claim, action, or condition determined by common law to not constitute or give rise to a cause of action cognizable as the tort of public nuisance;
- the substitute includes as a disqualified claim or action, which was not present in the introduced, an action or condition that occurs or exists in a context where a statutory cause of action or administrative enforcement mechanism already exists to address conduct that is injurious to the public; and
- whereas the introduced included as a disqualified claim or action an action or condition authorized, approved, or mandated by a statute, ordinance, regulation, permit, order, rule, or other similar measure issued, adopted, promulgated, or approved by the federal government, a federal agency, a state, a state agency, or a political subdivision, the substitute includes as a disqualified claim or action an action or condition authorized, licensed, approved, or mandated by a statute, ordinance, regulation, permit, order, rule,

or other similar measure issued, adopted, promulgated, or approved by the federal government, a federal agency, the state, or an agency or political subdivision of the state.

Whereas the introduced provided that the aggregation of multiple individual injuries or private nuisances does not constitute violation of an established public right for purposes of a public nuisance action, the substitute provides that the aggregation of multiple injuries to individuals or of private nuisances does not constitute a public nuisance or give rise to a public nuisance claim.

The substitute also includes provisions absent from the introduced that do the following:

- prohibit the bill's provisions from being construed to limit a claimant from obtaining relief provided by other law; and
- establish that, to the extent of a conflict between the bill and common law, the bill's provisions control, otherwise, the bill's provisions supplement the common law of public nuisance, both as to the claim and defenses.

The substitute omits provisions in the introduced that did the following:

- limited the remedies available to the governmental entity in a public nuisance action brought by the state, a state agency, or a political subdivision of the state to an injunction and any other relief that is available at law to abate the nuisance;
- prohibited a governmental entity from recovering applicable economic, noneconomic, or exemplary damages;
- prohibited certain provisions from being construed to limit a governmental entity from obtaining relief provided by other law;
- established that a financial expenditure made by the state or a political subdivision of the state 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;
- authorized an individual to bring a public nuisance action only for compensatory damages and only for an injury caused to the individual by the nuisance that is different in kind, not just in degree, from an injury suffered by the public at large; and
- established that interference with the use of or damage to public land, air, or water with only personal, spiritual, cultural, or emotional significance to the individual does not constitute or give rise to a cause of action cognizable as the tort of public nuisance.