

## **BILL ANALYSIS**

Senate Research Center

S.B. 1034  
By: Middleton  
State Affairs  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Second Restatement of Torts, published in 1979, broadened the tort of public nuisance to include an "unreasonable interference" with a public right. It empowered individuals to enjoin a public nuisance "as a representative of the general public, as a citizen in a citizen's action or as a member of a class in a class action."

This broadened definition has led to plaintiffs utilizing the public nuisance tort to address large-scale public policy issues that are matters traditionally reserved for legislative bodies. This is a departure from the original meaning of public nuisance and has led to "politically incorrect" businesses becoming the target of frivolous lawsuits.

S.B. 1034 narrows the scope of available public nuisance claims. Actions authorized by a statute, ordinance, regulation, permit, order, rule, or other similar measures issued, adopted, promulgated, or approved by the federal government, a federal agency, a state, a state agency, or a political subdivision will not continue to face public nuisance threats.

Public nuisance claims will also be barred against actions where a statutory cause of action or administrative enforcement mechanism already exists to address conduct that is injurious to the public. Barred claims extend to a product or claim based on the manufacturing, distributing, selling, labeling, or marketing of a product, regardless of whether the product is defective.

Multiple private nuisance claims or injuries to individuals will not amount to a public nuisance claim. To the extent that S.B. 1034 conflicts with common law, this bill controls. The common law is otherwise supplemented by this bill.

As proposed, S.B. 1034 amends current law relating to the tort of public nuisance.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 5, Civil Practice and Remedies Code, by adding Chapter 100C, as follows:

#### **CHAPTER 100C. CIVIL ACTIONS RELATED TO PUBLIC NUISANCES**

Sec. 100C.001. DEFINITION. Defines "public nuisance claim."

Sec. 100C.002. LIMITATIONS ON CAUSE OF ACTION. (a) Provides that a public nuisance claim is not cognizable in this state if it seeks relief arising from:

- (1) an action or condition that is 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, a state, a state agency, or a political subdivision;

(2) 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

(3) a product or a claim based on the manufacturing, distributing, selling, labeling, or marketing of a product, regardless of whether the product is defective.

(b) 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.

(c) Prohibits this section from being construed to limit a claimant from obtaining relief provided by other law.

Sec. 100C.003. RELATIONSHIP TO COMMON LAW. Provides that this chapter, to the extent of a conflict between this chapter and common law, controls. Provides that this chapter, otherwise, supplements the common law of public nuisance, both as to the claim and defenses.

SECTION 2. Makes application of Chapter 100C, Civil Practice and Remedies Code, as added by this Act, prospective.

SECTION 3. Effective date: upon passage or September 1, 2023.