

A BILL TO BE ENTITLED

AN ACT

relating to liability for capturing and storing carbon dioxide.

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 100B to read as follows:

CHAPTER 100B. LIMITED LIABILITY FOR CAPTURING AND STORING CARBON DIOXIDE

Sec. 100B.001. DEFINITIONS. In this chapter:

(1) "Captured carbon dioxide" means carbon dioxide from any source that, through human effort or means, is seized for the purpose of sequestering the carbon dioxide with the intent of permanently preventing the carbon dioxide from being released into the atmosphere, including carbon dioxide that is:

(A) captured from the atmosphere;

(B) stripped, segregated, or divided from a fluid stream; or

(C) captured from an emissions source, including from:

(i) an advanced clean energy project as defined by Section 382.003, Health and Safety Code;

(ii) an electric generation facility; or

(iii) an industrial source of emissions.

(2) "Carbon dioxide" means the chemical compound composed of one carbon and two oxygen atoms. The term includes:

- 1 (A) anthropogenic carbon dioxide;
- 2 (B) naturally occurring carbon dioxide;
- 3 (C) carbon dioxide captured from the atmosphere;

4 and

5 (D) phases, mixtures, and combinations of carbon
6 dioxide that include:

7 (i) a substance incidentally derived from
8 the source materials for or process of capturing the carbon
9 dioxide;

10 (ii) a substance added to the carbon
11 dioxide stream to enable or improve storage of the carbon dioxide;

12 and

13 (iii) a substance incidentally captured
14 with carbon dioxide captured from the atmosphere.

15 (3) "Claimant" means a party seeking relief in an
16 action described by this chapter. The term includes a plaintiff,
17 counterclaimant, or cross-claimant.

18 (4) "Defendant" means a person against whom an action
19 described by this chapter is brought and who is:

20 (A) an owner or operator of:

21 (i) a facility used to store carbon
22 dioxide; or

23 (ii) a mechanism or instrumentality used to
24 transport captured carbon dioxide, including a pipeline or a tank
25 or vessel carried by motor vehicle, watercraft, or rail; or

26 (B) a producer of captured carbon dioxide.

27 (5) "Geologic storage" means the underground storage

1 of carbon dioxide in a reservoir.

2 (6) "Geologic storage facility" means the underground
3 reservoir, underground equipment, injection wells, and surface
4 buildings and equipment used or to be used for the geologic storage
5 of carbon dioxide and all surface and subsurface rights and
6 appurtenances necessary to the operation of a facility for the
7 geologic storage of carbon dioxide. The term includes any
8 reasonable and necessary areal buffer and subsurface monitoring
9 zones, pressure fronts, and other areas as may be necessary for this
10 state to receive delegation of any federal underground injection
11 control program relating to the storage of carbon dioxide.

12 (7) "Legal requirement" means a statute, regulation,
13 rule, order, judgment, or permit controlling or directing conduct
14 or the design, construction, or use of a facility or equipment that
15 was enacted, adopted, promulgated, or issued by the federal
16 government, an agency of the federal government, a federal court,
17 this state, an agency or court of this state, or a local government
18 in this state.

19 (8) "Reservoir" has the meaning assigned by Section
20 [27.002](#), Water Code.

21 (9) "Stored carbon dioxide" means captured carbon
22 dioxide that is being transported or temporarily or permanently
23 stored.

24 Sec. 100B.002. CAPTURED OR STORED CARBON DIOXIDE NOT
25 NUISANCE. (a) Stored carbon dioxide is not:

26 (1) a pollutant; or

27 (2) a nuisance, including a public nuisance, under

1 common law or the laws of this state, including Chapter 125.

2 (b) A person may not bring a nuisance action or similar
3 cause of action on the basis that captured carbon dioxide, stored
4 carbon dioxide, or a process associated with capturing or storing
5 carbon dioxide constitutes a nuisance.

6 Sec. 100B.003. LIMITED LIABILITY FOR INJECTION, MIGRATION,
7 AND RELEASE OF CAPTURED CARBON DIOXIDE. (a) This section applies
8 to a civil action for damages for injury to a person or property,
9 including for interference with a possessory interest or an
10 ownership right or an injury to crops or an animal, resulting from:

11 (1) the transmission or injection of captured carbon
12 dioxide into a geologic storage facility, including an action for
13 damages caused by seismic activity;

14 (2) subsurface migration of stored carbon dioxide,
15 including a claim for trespass or conversion arising from the
16 subsurface migration of stored carbon dioxide into a pore space,
17 geologic formation, cavity, void, reservoir, aquifer, mineral
18 deposit, or other geologic formation; or

19 (3) captured or stored carbon dioxide being
20 inadvertently released, including an action alleging environmental
21 damage caused by the inadvertent release of captured or stored
22 carbon dioxide into the air or surface water.

23 (b) A claimant may not recover noneconomic damages in a
24 civil action described by Subsection (a) unless the claimant
25 establishes actual damages and one of the following:

26 (1) that:

27 (A) the defendant concealed, withheld, or

1 misrepresented information relevant to a permitting authority's
2 decision to grant the defendant a permit to:

3 (i) transport, capture, or store carbon
4 dioxide; or

5 (ii) conduct the process or operate the
6 equipment or facility being used to transport, capture, or store
7 carbon dioxide;

8 (B) the information described by Paragraph (A),
9 as applicable:

10 (i) relates to the safety or propriety of
11 injecting carbon dioxide into the geologic storage facility; or

12 (ii) is relevant to determining whether the
13 stored carbon dioxide could migrate or escape in the manner in which
14 it migrated or escaped;

15 (C) the permitting authority, in granting the
16 defendant's permit:

17 (i) reasonably relied on the information
18 provided by the defendant; and

19 (ii) did not receive the relevant accurate
20 information from another source before granting the defendant's
21 permit;

22 (D) the information described by Paragraph (A) is
23 of sufficient importance that a reasonable person with the
24 permitting authority's knowledge and experience would consider the
25 information material to the permitting authority's decision to
26 grant the permit; and

27 (E) the permit was granted not more than five

1 years before the date the carbon dioxide was injected, migrated, or
2 escaped;

3 (2) that:

4 (A) at the time of the event that caused the
5 damage that is the basis of the action, the defendant was not in
6 compliance with a legal requirement that governs an aspect of the
7 defendant's conduct, including conduct regarding the defendant's
8 equipment or facility, relevant to the event;

9 (B) the legal requirement is intended to protect
10 a person or property from the kind of damage that occurred in the
11 event; and

12 (C) if the defendant had been in compliance with
13 the legal requirement, the event would not have occurred; or

14 (3) that, only if the aspect of the defendant's
15 conduct, including conduct regarding the defendant's equipment or
16 facility, that is the basis of the action was not subject to a
17 permitting process described by Subdivision (1) or a legal
18 requirement described by Subdivision (2):

19 (A) the defendant's actions or omissions are
20 contrary to a standard industry practice for the conduct relevant
21 to the damage-causing event;

22 (B) the defendant chose not to comply with the
23 standard industry practice solely for an economic reason; and

24 (C) if the defendant had acted in accordance with
25 the standard industry practice, the damage-causing event would not
26 have occurred.

27 Sec. 100B.004. LIMITED LIABILITY FOR INTERFERENCE WITH

1 ACCESS TO UNDERGROUND MINERALS AND WATER DUE TO STORAGE OF CAPTURED
2 CARBON DIOXIDE. (a) A claimant may not recover noneconomic damages
3 in a civil action for a claim that a defendant prevented or impeded
4 access to, or interfered with the production of, underground
5 minerals or water due to the storage of captured carbon dioxide in a
6 geologic storage facility unless the claimant establishes, in
7 addition to other requirements under the law, actual damages and
8 that:

9 (1) the defendant withheld from or misrepresented to
10 the permitting authority information relevant to the authority
11 determining if storage of captured carbon dioxide in the geologic
12 storage facility would prevent or impede the claimant's access to
13 underground minerals or water or interfere with the claimant's
14 production of the minerals or water;

15 (2) the permitting authority, in granting the
16 defendant's permit:

17 (A) reasonably relied on the information
18 provided by the defendant described by Subdivision (1); and

19 (B) did not receive the relevant accurate
20 information from another source before granting the defendant's
21 permit;

22 (3) the claimant did not know or receive notification
23 of the proceeding in which the defendant obtained a permit to
24 establish the geologic storage facility; and

25 (4) the information described by Subdivision (1) is of
26 sufficient importance that a reasonable person with the permitting
27 authority's knowledge and experience would consider the

1 information material to the permitting authority's decision to
2 grant the permit.

3 (b) A claimant who receives compensation, including through
4 a lease payment, a royalty payment, or the purchase of an easement,
5 in consideration of the possibility that a geologic storage
6 facility may prevent or impede access to or interfere with the
7 production of the claimant's underground minerals or water is not
8 entitled to recover damages from the owner or operator of the
9 facility if the facility prevents or impedes access to or
10 interferes with the production of the claimant's minerals or water.

11 (c) The economic damages available under this section to a
12 claimant not barred from recovering damages under Subsection (b)
13 are limited to:

14 (1) if the defendant's geologic storage facility
15 prevents or impedes access to the claimant's underground minerals
16 or water, the increased cost to access the minerals or water that
17 results from penetrating or circumventing the geologic storage
18 facility;

19 (2) if the defendant's geologic storage facility
20 interferes with the production of the claimant's underground
21 minerals or water, the:

22 (A) increased cost to produce the minerals or
23 water; and

24 (B) present value of the minerals or water that
25 the claimant cannot with reasonable probability produce because of
26 the interference; or

27 (3) if the defendant's geologic storage facility

1 prevents access to and the production of the claimant's underground
2 minerals or water, the present value of the minerals or water that
3 the claimant cannot with reasonable probability produce because of
4 the geologic storage facility.

5 (d) A claimant who recovers in a civil action the damages
6 described by Subsection (c)(3) from a defendant shall convey the
7 claimant's ownership interest in the underground minerals or water
8 that are the subject of the action to the defendant on receipt of
9 payment of the damages.

10 Sec. 100B.005. EXEMPLARY DAMAGES. In a civil action to
11 which Section 100B.003 or 100B.004 applies, a claimant may not
12 recover exemplary damages unless the claimant:

13 (1) proves the elements described by Section 100B.003
14 or 100B.004, as applicable; and

15 (2) meets the requirements for recovery of exemplary
16 damages under Chapter 41.

17 SECTION 2. Sections 382.508(b) and (c), Health and Safety
18 Code, are amended to read as follows:

19 (b) On the date the permanent school fund, under Section
20 382.507, acquires the right, title, and interest in carbon dioxide,
21 the producer of the carbon dioxide and any person who owned or
22 operated the carbon dioxide repository before that date are ~~[is]~~
23 relieved of liability for any act or omission regarding the carbon
24 dioxide in the carbon dioxide repository.

25 (c) Except as otherwise provided by Subsection (b), this
26 ~~[This]~~ section does not relieve a person who contracts with the
27 board under Section 382.504(b) of liability for any act or omission

1 regarding the construction or operation, as applicable, of the
2 carbon dioxide repository.

3 SECTION 3. Chapter 100B, Civil Practice and Remedies Code,
4 as added by this Act, is an exercise of authority under Section
5 66(c), Article III, Texas Constitution, and takes effect only if
6 this Act receives a vote of three-fifths of all the members elected
7 to each house, as provided by Subsection (e) of that section.

8 SECTION 4. The changes in law made by this Act apply only to
9 a cause of action that accrues on or after the effective date of
10 this Act. A cause of action that accrued before the effective date
11 of this Act is governed by the law as it existed immediately before
12 the effective date of this Act, and that law is continued in effect
13 for that purpose.

14 SECTION 5. This Act takes effect September 1, 2023.