

Support HB 2144

Let the Legislature Make Public Policy, Not the Courts

HB 2144 by Rep. Cody Harris (R-Palestine) codifies and clarifies the ill-defined tort of public nuisance. Traditionally, the common law doctrine of public nuisance has been used to enforce “established public rights,” which means the common interest of all members of the public to the use of public land, air, and water.

HB 2144 is necessary because state and local governments have expanded the use of public nuisance to pursue litigation, often using private contingent fee law firms, against businesses and others for conducting lawful activities, such as manufacturing, selling, distributing, advertising, or promoting a lawful product. Public nuisance has also been used to launch national litigation against, for example, the Texas energy industry, threatening the economic well-being of our state and its citizens. Businesses should not be punished for following the law. HB 2144 addresses this litigation trend by returning public nuisance to its original intent.

HB 2144 also restores the appropriate separation of powers between the legislature and the courts. As public nuisance litigation has expanded nationwide and in Texas, it has become clear that the proponents seek to substitute the opinion of judges for the wisdom of the people and their elected representatives. If those who are trying to use the courts to challenge the decisions of the legislature and their implementation by administrative and regulatory agencies, they should advocate for legislative policy changes and go through the same process everyone else does.

HB 2144 **does not** impair any regulatory or enforcement authority authorized by statute or affect the ability of state and local governments to pursue criminal or unlawful conduct or a public or common nuisance expressly defined by statute. The bill does require, however, that such an action be undertaken by government attorneys on behalf of the relevant governmental entity. HB 2144 further allows a private citizen to maintain an action to abate a public nuisance if the individual can show a special, unique injury by clear and convincing evidence. Finally, nothing in HB 2144 restricts or limits the ability of the state or a local government to protect public land, waterways, or ancillary space related to land or waterways, to which the public nuisance relates.

We urge you to support HB 2144. Let’s keep public policy decisions firmly in the hands of the Texas Legislature.

