

## CSSB 779

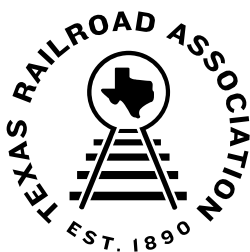
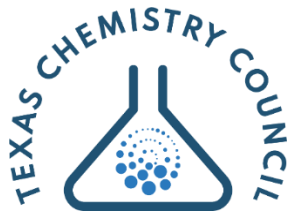
### The Proper Role of Public Nuisance Lawsuits by Middleton

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- *CSSB 779 sets reasonable boundaries for the tort of public nuisance by preventing abusive public nuisance lawsuits that target lawful activities like producing oil & gas and plastic packaging.*
- *CSSB 779 does not apply to the **Office of the Attorney General (OAG)** and does not prevent the OAG from pursuing public nuisance lawsuits when it deems appropriate.*
- *CSSB 779 does not prohibit local government or the state from pursuing public nuisance and common nuisance lawsuits against unlawful activities, such as human trafficking, gang or drug activity, or places of prostitution, nor does it curtail private nuisance actions of any kind.*
- *CSSB 779 corrects an error in the filed bill by stating that a public nuisance claim is not allowed against a lawful action or condition under Texas law or that of a Texas political subdivision.*

CSSB 779 specifies three things that cannot be brought as public nuisance claims:

1. A specifically allowed activity (i.e., a legal activity).
  - CSSB 779 prevents public nuisance claims for damages directed at explicitly lawful conduct in circumvention of legislative authority. The Legislature passes laws that make activities lawful or unlawful. It also creates and empowers administrative agencies to regulate the industries and activities being targeted, so long as it is done within the powers granted to them by the Legislature.
  - In this way, CSSB 779 recognizes the constitutional separation of powers between the executive, legislative and judicial branches of government.
2. Activities where a statutory cause of action or administrative enforcement mechanism already exists.
  - CSSB 779 requires the courts to defer to statutes and administrative processes that already exist to protect the public—not a duplicative and overbroad public nuisance lawsuit for damages. If a remedy is already available in law to protect the public, then a public nuisance lawsuit is not necessary or appropriate.
3. A product or marketing of a product.
  - CSSB 779 codifies longstanding court decisions related to defective products and deceptive product marketing. If a product is defective, Texas allows a product liability lawsuit. If marketing of a product is misleading, lawsuits may be pursued under the Deceptive Trade Practices Act or for fraud.
  - Courts have consistently ruled that public nuisance laws only apply to real property—not products—and that the appropriate remedy is abatement of the nuisance, not money damages.



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