

## SENATE BILL No. 462

By Committee on Judiciary

2-3

AN ACT concerning public nuisance; prohibiting civil actions for certain nuisances; requiring the attorney general to bring nuisance actions that are not wholly contained in one political subdivision; requiring special injury for certain public nuisance actions; providing an accrual period for the statute of limitations in public nuisance actions; amending K.S.A. 60-513 and repealing the existing section.

*Be it enacted by the Legislature of the State of Kansas:*

New Section 1. (a) Notwithstanding any provision of law to the contrary, the following nonexclusive list of actions or conditions shall not be considered a public nuisance or form the basis of a public nuisance cause of action:

(1) The design, manufacturing, distributing, selling, labeling or marketing of a product sold in commerce unless such product is an illegal product;

(2) the down-stream, post-sale misuse or disposal of a product that is outside the defendant's control;

(3) an action or condition that is authorized, approved, licensed or mandated by law;

(4) the aggregation of individual injuries or private rights, including, but not limited to, private nuisances; or

(5) any other claim, action or condition that does not constitute or give rise to a cause of action for public nuisance under common law.

(b) (1) Except as provided in subsection (d), in a public nuisance claim, the plaintiff shall have the burden of proving by a preponderance of the evidence that the defendant's actions were the cause-in-fact and proximate cause of the alleged public nuisance.

(2) When determining cause-in-fact for any public nuisance claim, the court shall find the defendant's actions the cause-in-fact of the harm if:

(A) The alleged public nuisance would not otherwise exist in the plaintiff's jurisdiction; or

(B) the plaintiff's expenditures to abate or address the nuisance would decrease by more than 25%.

(3) When determining proximate cause for any public nuisance claim, the court shall find the defendant's actions the proximate cause of the harm if:

1 (A) The defendant engaged in the activity that directly caused the  
2 public nuisance and the public nuisance was a reasonably foreseeable  
3 result of the defendant's conduct; or

4 (B) the defendant controlled or instructed one or more third persons  
5 to engage in the activity that directly caused the public nuisance and the  
6 resulting public nuisance was a reasonably foreseeable result of such  
7 activity.

8 (c) (1) A public nuisance cause of action may be brought by a  
9 political subdivision of the state only if the alleged public nuisance is  
10 wholly contained within the jurisdiction of such political subdivision.

11 (2) If the alleged public nuisance is not wholly contained within a  
12 political subdivision of the state, the attorney general is the only  
13 governmental official or agency in this state that may file a claim  
14 regarding such public nuisance. Prior to filing such claim, the attorney  
15 general shall consult with and obtain the written approval of the governor  
16 to file such claim.

17 (3) In a public nuisance action filed by a political subdivision or the  
18 attorney general, the court shall not award:

19 (A) Monetary damages of any kind, including, but not limited to,  
20 economic, noneconomic or punitive damages; or

21 (B) the costs of abating a potential future public nuisance.

22 (4) A public nuisance claim by a political subdivision or the attorney  
23 general shall be brought by verified complaint, counter-claim or third-  
24 party complaint that pleads each element with particularity as required by  
25 K.S.A. 60-209, and amendments thereto.

26 (d) In addition to all other legal requirements, a public nuisance claim  
27 may be brought by a private person only if such person has sustained a  
28 special injury. Such private person shall have the burden to prove, by clear  
29 and convincing evidence, that the defendant's actions were the cause-in-  
30 fact and proximate cause of the special injury. A public nuisance claim by  
31 a private person shall be brought by verified complaint, counter-claim or  
32 third-party complaint that pleads each element with particularity as  
33 required by K.S.A. 60-209, and amendments thereto. In a public nuisance  
34 claim brought by a private person, the court may only award damages in  
35 the form of compensatory damages for the special injury that are not  
36 otherwise reimbursed by a governmental entity. Abatement of a public  
37 nuisance by the defendant does not preclude the right of a private person to  
38 recover damages under this subsection. A private person shall not bring a  
39 class action pursuant to K.S.A. 60-223, and amendments thereto, for a  
40 public nuisance claim.

41 (e) This section applies to all claims that are pending on or filed after  
42 July 1, 2026. If a pending public nuisance claim may only be brought by  
43 the attorney general pursuant to subsection (c), the attorney general shall

1 be substituted as plaintiff pursuant to K.S.A. 60-225, and amendments  
2 thereto. The attorney general shall request that such case be dismissed  
3 unless the attorney general obtains the written approval of the governor  
4 pursuant to subsection (c).

5 (f) As used in this section:

6 (1) "Governmental entity" means an officer, agency or  
7 instrumentality of the federal government, the state or a political  
8 subdivision of the state.

9 (2) "Illegal product" means a product, the possession of which by the  
10 party alleged to be creating the nuisance is specifically prohibited by law,  
11 including, but not limited to, a controlled substance as defined in K.S.A.  
12 21-5701, and amendments thereto.

13 (3) "Special injury" means an injury that is different in kind, not just  
14 degree, from an injury sustained by the general public exercising the same  
15 public right. "Special injury" does not include:

16 (A) An injury based on impairment of the spiritual, cultural or  
17 emotional significance associated with a navigable lake, river, bay, stream,  
18 canal or basin or a public park, square, street, road or highway;

19 (B) an injury arising from odors or emissions that comply with  
20 applicable permits or objective standards; or

21 (C) financial expenditures made by a private person related to an  
22 injunction of or any response to a public nuisance.

23 (g) The provisions of this act are severable. If any portion of this act  
24 is held by a court to be unconstitutional or invalid, or the application of  
25 any portion of this act to any person or circumstance is held by a court to  
26 be unconstitutional or invalid, the invalidity shall not affect other portions  
27 of this act that can be given effect without the invalid portion or  
28 application, and the applicability of such other portions of this act to any  
29 person or circumstance remains valid and enforceable.

30 Sec. 2. K.S.A. 60-513 is hereby amended to read as follows: 60-513.

31 (a) The following actions shall be brought within two years:

32 (1) An action for trespass upon real property.

33 (2) An action for taking, detaining or injuring personal property,  
34 including actions for the specific recovery thereof.

35 (3) An action for relief on the ground of fraud, but the cause of action  
36 shall not be deemed to have accrued until the fraud is discovered.

37 (4) An action for injury to the rights of another, not arising on  
38 contract, and not herein enumerated.

39 (5) An action for wrongful death.

40 (6) An action to recover for an ionizing radiation injury as provided  
41 in K.S.A. 60-513a, 60-513b and 60-513c, and amendments thereto.

42 (7) An action arising out of the rendering of or failure to render  
43 professional services by a health care provider, not arising on contract.

1 (b) Except as provided in subsections (c)~~and~~, (d) *and* (e), the causes  
2 of action listed in subsection (a) shall not be deemed to have accrued until  
3 the act giving rise to the cause of action first causes substantial injury, or,  
4 if the fact of injury is not reasonably ascertainable until some time after the  
5 initial act, then the period of limitation shall not commence until the fact  
6 of injury becomes reasonably ascertainable to the injured party, but in no  
7 event shall an action be commenced more than 10 years beyond the time  
8 of the act giving rise to the cause of action.

9 (c) A cause of action arising out of the rendering of or the failure to  
10 render professional services by a health care provider shall be deemed to  
11 have accrued at the time of the occurrence of the act giving rise to the  
12 cause of action, unless the fact of injury is not reasonably ascertainable  
13 until some time after the initial act, then the period of limitation shall not  
14 commence until the fact of injury becomes reasonably ascertainable to the  
15 injured party, but in no event shall such an action be commenced more  
16 than four years beyond the time of the act giving rise to the cause of  
17 action.

18 (d) A negligence cause of action by a corporation or association  
19 against an officer or director of the corporation or association shall not be  
20 deemed to have accrued until the act giving rise to the cause of action first  
21 causes substantial injury, or, if the fact of injury is not reasonably  
22 ascertainable until some time after the initial act, then the period of  
23 limitation shall not commence until the fact of injury becomes reasonably  
24 ascertainable to the injured party, but in no event shall such an action be  
25 commenced more than five years beyond the time of the act giving rise to  
26 the cause of action. All other causes of action by a corporation or  
27 association against an officer or director of the corporation or association  
28 shall not be deemed to have accrued until the act giving rise to the cause of  
29 action first causes substantial injury and there exists a disinterested  
30 majority of nonculpable directors of the corporation or association, or, if  
31 the fact of injury is not reasonably ascertainable until some time after the  
32 initial act, then the period of limitation shall not commence until the fact  
33 of injury becomes reasonably ascertainable and there exists a disinterested  
34 majority of nonculpable directors of the corporation or association, but in  
35 no event shall such an action be commenced more than 10 years beyond  
36 the time of the act giving rise to the cause of action. For purposes of this  
37 subsection, the term "negligence cause of action" shall not include a cause  
38 of action seeking monetary damages for any breach of the officer's or  
39 director's duty of loyalty to the corporation or association, for acts or  
40 omissions not in good faith or which involve intentional misconduct or a  
41 knowing violation of law, for liability under K.S.A. 17-5812, 17-6410, 17-  
42 6423, 17-6424 or 17-6603 and amendments thereto, or for any transaction  
43 from which the officer or director derived an improper personal benefit.

1       (e) *A cause of action for public nuisance as described in section 1,*  
2 *and amendments thereto, that involves a continuing or recurring condition*  
3 *shall be deemed to have accrued at the time the plaintiff first discovered or*  
4 *should have discovered the condition and the identity of the defendant.*  
5 *Subsequent recurrences shall not restart the period of limitation.*

6       (f) The provisions of this section as it was constituted prior to July 1,  
7 1996, shall continue in force and effect for a period of two years from that  
8 date with respect to any act giving rise to a cause of action occurring prior  
9 to that date.

10       Sec. 3. K.S.A. 60-513 is hereby repealed.

11       Sec. 4. This act shall take effect and be in force from and after its  
12 publication in the statute book.