

SESSION OF 2026

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 462**

As Amended by Senate Committee on Judiciary

**Brief\***

SB 462, as amended, would prohibit certain public nuisance claims, require special injury for certain public nuisance actions, and provide an accrual period for the statute of limitations in public nuisance actions.

The bill would prohibit the following nonexclusive list of actions or conditions from being considered a public nuisance or to form the basis of a public nuisance cause of action, notwithstanding any existing law to the contrary:

- The design, manufacturing, distributing, selling, labeling, or marketing of a product sold in commerce unless such product is an illegal product;
- An action or condition that is authorized, approved, licensed, or mandated by law; or
- The aggregation of individual injuries or private rights, including, but not limited to, private nuisances.

***Burden of Proof in a Public Nuisance Claim***

The bill would require the plaintiff in a public nuisance claim to prove by a preponderance of the evidence that the defendant's actions were the cause-in-fact and proximate cause of the alleged public nuisance.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <https://klrd.gov/>

### *Cause-in-fact*

The bill would require the court to find the defendant's actions the cause-in-fact of the harm if:

- The alleged public nuisance would not otherwise exist in the plaintiff's jurisdiction; or
- The plaintiff's expenditures to abate or address the nuisance would decrease by more than 25 percent.

### *Proximate Cause*

The bill would require the court to find the defendant's actions the proximate cause of the harm if the defendant:

- Engaged in the activity that directly caused the public nuisance and such nuisance was a reasonably foreseeable result of the defendant's conduct; or
- Controlled or instructed one or more third persons to engage in the activity that directly caused the public nuisance and the resulting nuisance was a reasonably foreseeable result of such activity.

### ***Public Nuisance Claim Brought by a Private Person***

The bill would require a private person to have sustained a special injury to bring a public nuisance claim. A "special injury" would be defined as one that is different in kind, not just degree, from an injury sustained by the general public exercising the same public right.

### ***Burden of Proof***

The bill would require such private person to prove, by clear and convincing evidence, that the defendant's actions were the cause-in-fact and proximate cause of the special injury.

### ***Damages***

In claims brought by a private person, the bill would allow a court only to award compensatory damages for the special injury if such damages are not otherwise reimbursed by a governmental entity.

The bill would not preclude the right of a private person to recover damages by the abatement of such public nuisance by the defendant.

The bill would prohibit a private person from bringing a class action for a public nuisance claim.

### ***Statute of Limitations***

The bill would amend the civil statute of limitations for such claims to require that a cause of action for public nuisance that involves a continuing or recurring condition be deemed to have accrued when the plaintiff discovered, or should have discovered, the condition and the identity of the defendant. Recurrences of the condition would not restart the period of limitation.

Continuing law requires such claims to be brought within two years.

### ***Severability***

This bill's provisions would be severable. If any provision of the bill, or its application to any person or circumstance, is

found to be unconstitutional or invalid, the rest of the bill would continue to stand and would be enforceable so long as it could be enforced without the unconstitutional or invalid provisions.

### ***Application***

The bill's provisions would apply to all claims pending or filed on or after July 1, 2026. If a pending public nuisance claim may be brought only by the Attorney General under the provisions of the bill, the Attorney General would be substituted as plaintiff under continuing law.

### **Background**

The bill was introduced by the Senate Committee on Judiciary at the request of Senator Warren on behalf of Varidon Strategies.

### ***Senate Committee on Judiciary***

In the Senate Committee hearing, a representative of Alliance for Consumers Action Fund provided **proponent** testimony, stating the bill would protect consumers from political lawfare in the form of public nuisance claims while retaining public nuisance claims' legitimate purpose.

The Attorney General provided **neutral** testimony, generally stating the bill would diminish *parens patriae* jurisdiction, under which the Attorney General has the power to stand up for Kansans if there is a true nuisance. The Attorney General suggested amendments which, if included in the bill, would allow the Office of the Attorney General to support it.

**Opponent** testimony was provided by representatives of the City of Overland Park and the League of Kansas Municipalities. Opponents generally stated the bill would take

authority from local entities, constrain local nuisance enforcement, and prevent Kansans from benefiting from such public nuisance claims.

Written-only opponent testimony was provided by representatives of the City of El Dorado and Kansas Association of Counties.

No other testimony was provided.

The Senate Committee amended the bill to remove:

- The down-stream, post-sale misuse, or disposal of a product that is outside the defendant's control and other claims, actions, or conditions that do not constitute or give rise to a cause of action for public nuisance under common law, from the nonexclusive list of actions or conditions that would not be considered a public nuisance under the bill;
- A requirement that the Attorney General bring nuisance actions that are not wholly contained in one political subdivision;
- A requirement that a cause of action could be brought by a political subdivision of the State only if the alleged public nuisance is wholly contained within the jurisdiction of such political subdivision;
- A prohibition on courts awarding monetary damages or costs of abating potential future public nuisances in public nuisance actions filed by political subdivisions or the Attorney General; and
- A requirement that the Attorney General request a case be dismissed unless the Attorney General obtains the written approval of the Governor.

## **Fiscal Information**

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of the Attorney General indicates enactment of the bill would require \$513,228 from the State General Fund in FY 2027 and \$528,625 in FY 2028. This includes expenditures for 4 FTE positions: 2 Assistant Attorneys General, 1 Legal Assistant, and 1 Trial Assistant. It would also include \$117,907 for related operating costs.

The Office of Judicial Administration indicates the bill would have little fiscal effect on its expenditures, which could be absorbed within existing resources.

The Office of the Governor indicates the bill would have no fiscal effect on the Office.

The Kansas Association of Counties and League of Kansas Municipalities could not estimate precise fiscal effects on counties and cities, respectively, from enactment of the bill.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2027 Governor's Budget Report*.

Judiciary; public nuisance; civil actions; political subdivisions