By:  Springer S.B. No. 1461

A BILL TO BE ENTITLED

AN ACT

relating to the authority of a municipality to regulate statewide commerce.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Subchapter A, Chapter 51, Local Government Code, is amended by adding Section 51.004 to read as follows:

Sec. 51.004.  REGULATION OF UNIQUE LOCAL CONCERNS AUTHORIZED; REGULATION OF STATEWIDE COMMERCE PROHIBITED. (a) In this section:

(1)  "Citizens' physical safety" means the protection of citizens from physical bodily injury inflicted by physical contact with another person, an animal, or a physical condition on real property.

(2)  "Commercial activity" means the purchase or sale of goods or services of any kind or quantity by a person who engages in that activity in more than one municipality in this state.

(3)  "Regulation of local land use" means taking action consistent with Chapters 211 through 214, including adopting and enforcing building construction standards, building permitting, and barring or limiting the use of designated property for one or more designated types or categories of commercial activity. The term does not include any restriction, condition, or regulation of the goods, services, transactions, operations, purchaser-seller interactions, employment practices, finances, advertising, marketing, or any other conduct or practices by a person engaging in a commercial activity.

(4)  "Uniquely local concern" means a particularized concern unique to the physical conditions in the municipality. The term does not include a commercial activity that is subject to state or federal regulation.

(b)  Notwithstanding any other law and except as provided by Subsection (c), a municipality may not adopt or enforce an ordinance, rule, or regulation that imposes a restriction, condition, or regulation on commercial activity. The prohibited action under this subsection impairs the free flow of commerce across the state and is inconsistent with the general law of this state.

(c)  A municipality may adopt and enforce an ordinance, rule, or regulation that:

(1)  is essential to directly regulating a uniquely local concern that the governing body of the municipality determines cannot be of similar concern in another municipality because of the uniqueness of the local concern;

(2)  is essential to necessary regulation of local land use;

(3)  is essential to protecting citizens' physical safety;

(4)  is expressly authorized to be adopted by a state statute; or

(5)  requires nondiscrimination in the provision of employment or service to any person on the basis of any state or federally protected class.

(d)  A municipality acting under Subsection (c)(1) must contemporaneously adopt a detailed written statement describing the uniquely local concern and the basis for the municipality's determination that the concern cannot be of similar concern in another municipality.

(e)  For purposes of Subsection (c)(4), a state statute that provides the statute does not preempt or affect municipal regulatory authority may not be construed to expressly authorize an ordinance, rule, or regulation.

SECTION 2.  This Act takes effect September 1, 2021.