

By: Shaheen

H.B. No. 3790

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the authority of a municipality to regulate statewide  
3 commerce.

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

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

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

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

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

17 (3) "Regulation of local land use" means taking action  
18 consistent with Chapters 211 through 214, including adopting and  
19 enforcing building construction standards, building permitting,  
20 and barring or limiting the use of designated property for one or  
21 more designated types or categories of commercial activity. The  
22 term does not include any restriction, condition, or regulation of  
23 the goods, services, transactions, operations, purchaser-seller  
24 interactions, employment practices, finances, advertising,

1 marketing, or any other conduct or practices by a person engaging in  
2 a commercial activity.

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

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

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

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

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

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

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

26 (5) requires nondiscrimination in the provision of  
27 employment or service to any person on the basis of any state or

1 federally protected class, sexual orientation, or gender identity.

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

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

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