

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,

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.

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.