

BILL ANALYSIS

C.S.H.B. 2127
By: Burrows
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Cities and towns need relief from the pressure to duplicate state regulatory and enforcement efforts. Additionally, job creators need a baseline of regulatory consistency across the state that allows them to focus their resources on growing their businesses and increasing their economic impact to the betterment of their employees, their communities, and the state, rather than dealing with unnecessary regulatory compliance. C.S.H.B. 2127, the Texas Regulatory Consistency Act, seeks to provide consistency and predictability by preempting local regulation of matters regulated by the state in the Agriculture Code, Business & Commerce Code, Finance Code, Insurance Code, Labor Code, Natural Resources Code, Occupations Code, or Property Code and empowering Texans to take legal action against a municipality, county, or official whose conflicting regulations adversely affected them with the possibility of recovering legal relief and associated legal costs.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2127 amends the Agriculture Code, Business & Commerce Code, Finance Code, Insurance Code, Labor Code, Natural Resources Code, Occupations Code, and Property Code to preempt the municipal and county regulation of conduct in a field of regulation occupied by a provision of those codes, unless expressly authorized by another statute. The bill renders void and unenforceable and deems inconsistent with the referenced codes any ordinance, order, or rule in violation of the state preemption established by the bill. The bill establishes an exception to its preemption provisions in the Finance Code by providing that a municipality or county may enforce or maintain an ordinance, order, or rule regulating any conduct under Finance Code provisions related to credit services organizations or any conduct related to a credit services organization or a credit access business, as those terms are defined by the Finance Code, that was adopted before January 1, 2023, and that would have been valid under the law as it existed before the date of preemption under the bill.

C.S.H.B. 2127 specifies that, for purposes of the preemption provided for under the Labor Code, a field occupied by a provision of the code includes employment leave, hiring practices, breaks, employment benefits, scheduling practices, and any other terms of employment that exceed or conflict with federal or state law for employers other than a municipality or county.

C.S.H.B. 2127 amends the Local Government Code to limit the ordinances or rules that the governing body of a municipality may adopt, enforce, or maintain to such ordinances and rules

that are consistent with state law. The bill prohibits a municipality from adopting, enforcing, or maintaining an ordinance or rule that restricts, regulates, limits, or otherwise impedes a business involving the breeding, care, treatment, or sale of animals or animal products, including a veterinary practice, or the business's transactions if the person operating that business holds a license for the business that is issued by the federal government or a state.

C.S.H.B. 2127 amends the Civil Practice and Remedies Code to grant standing to any person, or a trade association representing the person, who has sustained an injury in fact, actual or threatened, from a municipal or county ordinance, order, or rule, adopted or enforced by a municipality, county, or municipal or county official acting in an official capacity that is in violation of the bill's preemption provisions or the bill's limitation on municipal regulation of licensed animal businesses to bring an action against the municipality, county, or official. The bill provides the following with respect to such an action:

- a municipality or county is entitled to receive notice of a claim against it not later than three months before the date a claimant files the action and the notice must reasonably describe the injury claimed and the ordinance, order, or rule that is the cause of the injury;
- the claimant may bring the action in one of the following venues:
 - the county in which all or a substantial part of the events giving rise to the cause of action occurred;
 - if the defendant is a municipality or municipal official, a county in which the municipality is located or a county contiguous to a county in which the municipality is located; or
 - if the defendant is a county or county official, a county contiguous to the county;
- an action brought in an authorized venue may not be transferred to a different venue without the written consent of all parties;
- a claimant is entitled to recover declaratory and injunctive relief and costs and reasonable attorney's fees;
- governmental immunity of a municipality or county to suit and from liability is waived to the extent of liability created by the bill's provisions; and
- official and qualified immunity may not be asserted as a defense in the action.

For purposes of these provisions, "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, agency or instrumentality, public corporation, any legal or commercial entity, or protected or registered series of a for-profit entity. These provisions apply only to a cause of action that accrues on or after the bill's effective date.

C.S.H.B. 2127 prohibits its provisions from being construed to prohibit a municipality or county from building or maintaining a road, imposing a tax, or carrying out any authority expressly authorized by statute or to prohibit a home-rule municipality from providing the same services and imposing the same regulations that a general-law municipality is authorized to provide or impose. The bill does not, except as expressly provided by the bill, affect the authority of a municipality to adopt, enforce, or maintain an ordinance or rule that relates to the control, care, management, welfare, or health and safety of animals and does not affect the authority of a municipality or county to repeal or amend an existing ordinance, order, or rule that violates the bill's provisions for the limited purpose of bringing that ordinance, order, or rule in compliance with the bill.

C.S.H.B. 2127 establishes that its purpose is to provide statewide consistency by returning sovereign regulatory powers to the state where those powers belong in accordance with Section 5, Article XI, Texas Constitution. The bill also sets out the following legislative findings:

- the state has historically been the exclusive regulator of many aspects of commerce and trade in Texas;
- in recent years, several local jurisdictions have sought to establish their own regulations of commerce that are different than the state's regulations; and

- the local regulations have led to a patchwork of regulations that apply inconsistently across Texas.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 2127 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute expands the scope of the state preemption of local regulation provided for in the introduced to provide also for the preemption of any local regulations regulating conduct in a field of regulation that is occupied by either the Business & Commerce Code or the Property Code, unless expressly authorized by another statute. The substitute revises the specific language of the preemption provisions in the following manner:

- the substitute provides for the preemption of an ordinance, order, or rule, while the introduced also provided for the preemption of policies;
- the substitute, in preempting applicable local regulations, prohibits a violating ordinance, order, or rule from being adopted, enforced, or maintained, while the introduced prohibited a violating ordinance, order, rule, or policy from being adopted or enforced; and
- the substitute includes a provision specifying that a violating ordinance, order, or rule is inconsistent with the applicable code, which the introduced did not.

With respect to municipal and county liability for certain regulations that violate the bill's provisions and to the authority, as granted in the introduced, to certain persons to bring an action against a municipality, county, or official, the substitute revises the introduced's provisions as follows:

- changes the persons to whom standing is granted and such authority is given from any person, including a taxpayer, adversely affected by an applicable municipal or county ordinance, order, rule, or policy to any person who has sustained an injury in fact, actual or threatened, from an applicable municipal or county ordinance, order, or rule;
- extends the grant of standing and the authority to bring an action also to a trade association representing any such person;
- omits from the definition of "person" for these purposes a government or governmental subdivision;
- incorporates references absent from the introduced to preemption provisions added by the substitute to the Business & Commerce Code and Property Code and provisions added by the substitute limiting municipal authority to regulate licensed animal businesses;
- includes a provision absent from the introduced entitling a municipality or county to receive notice of a claim against it, not later than three months before the date a claimant files an action, that reasonably describes the injury claimed and the ordinance, order, or rule that is the cause of the injury; and
- changes the authorized venue for such an action from any county in Texas to the following:
 - the county in which all or a substantial part of the events giving rise to the cause of action occurred;
 - if the defendant is a municipality or municipal official, a county in which the municipality is located or a county contiguous to a county in which the municipality is located; or
 - if the defendant is a county or county official, a county contiguous to the county.

The substitute includes, but the introduced did not, a grandfather clause allowing the continued enforcement or maintenance of certain municipal or county regulations of conduct under Finance Code provisions related to credit services organizations or any conduct related to credit services organizations or a credit access business.

The substitute includes provisions absent from the introduced that do the following:

- specify that, for purposes of the state preemption of local regulations regulating conduct in a field of regulation occupied by a provision of the Labor Code, such a field includes employment leave, hiring practices, breaks, employment benefits, scheduling practices, and any other terms of employment that exceed or conflict with federal or state law for employers other than a municipality or county;
- limit the ordinances or rules that the governing body of a municipality may adopt, enforce, or maintain to only those that are consistent with state law; and
- prohibit a municipality from adopting, enforcing, or maintaining an ordinance or rule that restricts, regulates, limits, or otherwise impedes a business involving the breeding, care, treatment, or sale of animals or animal products, including a veterinary practice, or the business's transactions if the person operating that business holds a license for the business that is issued by the federal government or a state.

The substitute includes provisions absent from the introduced regarding the construction of the bill's provisions and the bill's effect on the following:

- the authority of a municipality to adopt, enforce, or maintain an ordinance or rule that relates to the control, care, management, welfare, or health and safety of animals; and
- the authority of a municipality or county to repeal or amend an existing ordinance, order, or rule that violates the bill's provisions for the limited purpose of bringing that ordinance, order, or rule in compliance with the bill.