

By: Burrows, Meyer, Goldman,
King of Hemphill, Raymond, et al.

H.B. No. 2127

Substitute the following for H.B. No. 2127:

By: Spiller

C.S.H.B. No. 2127

A BILL TO BE ENTITLED

AN ACT

relating to state preemption of and the effect of certain state or federal law on certain municipal and county regulation.

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

SECTION 1. This Act shall be known as the Texas Regulatory Consistency Act.

SECTION 2. The legislature finds that:

(1) the state has historically been the exclusive regulator of many aspects of commerce and trade in this state;

(2) in recent years, several local jurisdictions have sought to establish their own regulations of commerce that are different than the state's regulations; and

(3) the local regulations have led to a patchwork of regulations that apply inconsistently across this state.

SECTION 3. The purpose of this Act 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.

SECTION 4. This Act:

(1) may not be 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;

(2) may not be construed to prohibit a home-rule municipality from providing the same services and imposing the same

1 regulations that a general-law municipality is authorized to
2 provide or impose;

3 (3) does not, except as expressly provided by this
4 Act, affect the authority of a municipality to adopt, enforce, or
5 maintain an ordinance or rule that relates to the control, care,
6 management, welfare, or health and safety of animals; and

7 (4) does not affect the authority of a municipality or
8 county to repeal or amend an existing ordinance, order, or rule that
9 violates the provisions of this Act for the limited purpose of
10 bringing that ordinance, order, or rule in compliance with this
11 Act.

12 SECTION 5. Chapter 1, Agriculture Code, is amended by
13 adding Section 1.004 to read as follows:

14 Sec. 1.004. FIELD PREEMPTION. Unless expressly authorized
15 by another statute, a municipality or county may not adopt,
16 enforce, or maintain an ordinance, order, or rule regulating
17 conduct in a field of regulation that is occupied by a provision of
18 this code. An ordinance, order, or rule that violates this section
19 is void, unenforceable, and inconsistent with this code.

20 SECTION 6. Subchapter A, Chapter 1, Business & Commerce
21 Code, is amended by adding Section 1.109 to read as follows:

22 Sec. 1.109. FIELD PREEMPTION. Unless expressly authorized
23 by another statute, a municipality or county may not adopt,
24 enforce, or maintain an ordinance, order, or rule regulating
25 conduct in a field of regulation that is occupied by a provision of
26 this code. An ordinance, order, or rule that violates this section
27 is void, unenforceable, and inconsistent with this code.

1 SECTION 7. Title 5, Civil Practice and Remedies Code, is
2 amended by adding Chapter 102A to read as follows:

3 CHAPTER 102A. MUNICIPAL AND COUNTY LIABILITY FOR CERTAIN
4 REGULATION

5 Sec. 102A.001. DEFINITION. In this chapter, "person" means
6 an individual, corporation, business trust, estate, trust,
7 partnership, limited liability company, association, joint
8 venture, agency or instrumentality, public corporation, any legal
9 or commercial entity, or protected or registered series of a
10 for-profit entity.

11 Sec. 102A.002. LIABILITY FOR CERTAIN REGULATION. Any
12 person who has sustained an injury in fact, actual or threatened,
13 from a municipal or county ordinance, order, or rule adopted or
14 enforced by a municipality, county, or municipal or county official
15 acting in an official capacity in violation of any of the following
16 provisions or a trade association representing the person has
17 standing to bring and may bring an action against the municipality,
18 county, or official:

- 19 (1) Section 1.004, Agriculture Code;
- 20 (2) Section 1.109, Business & Commerce Code;
- 21 (3) Section 1.004, Finance Code;
- 22 (4) Section 30.005, Insurance Code;
- 23 (5) Section 1.005, Labor Code;
- 24 (6) Section 229.901, Local Government Code;
- 25 (7) Section 1.003, Natural Resources Code;
- 26 (8) Section 1.004, Occupations Code; or
- 27 (9) Section 1.004, Property Code.

1 Sec. 102A.003. REMEDIES. A claimant is entitled to recover
2 in an action brought under this chapter:

3 (1) declaratory and injunctive relief; and

4 (2) costs and reasonable attorney's fees.

5 Sec. 102A.004. IMMUNITY WAIVER AND PROHIBITED DEFENSES.

6 (a) Governmental immunity of a municipality or county to suit and
7 from liability is waived to the extent of liability created by this
8 chapter.

9 (b) Official and qualified immunity may not be asserted as a
10 defense in an action brought under this chapter.

11 Sec. 102A.005. NOTICE. A municipality or county is
12 entitled to receive notice of a claim against it under this chapter
13 not later than three months before the date a claimant files an
14 action under this chapter. The notice must reasonably describe:

15 (1) the injury claimed; and

16 (2) the ordinance, order, or rule that is the cause of
17 the injury.

18 Sec. 102A.006. VENUE. (a) Notwithstanding any other law,
19 including Chapter 15, a claimant may bring an action under this
20 chapter in:

21 (1) the county in which all or a substantial part of
22 the events giving rise to the cause of action occurred;

23 (2) if the defendant is a municipality or municipal
24 official, a county in which the municipality is located or a county
25 contiguous to a county in which the municipality is located; or

26 (3) if the defendant is a county or county official, a
27 county contiguous to the county.

1 (b) If the action is brought in a venue authorized by this
2 section, the action may not be transferred to a different venue
3 without the written consent of all parties.

4 SECTION 8. Chapter 1, Finance Code, is amended by adding
5 Section 1.004 to read as follows:

6 Sec. 1.004. FIELD PREEMPTION. (a) Unless expressly
7 authorized by another statute and except as provided by Subsection
8 (b), a municipality or county may not adopt, enforce, or maintain an
9 ordinance, order, or rule regulating conduct in a field of
10 regulation that is occupied by a provision of this code. An
11 ordinance, order, or rule that violates this section is void,
12 unenforceable, and inconsistent with this code.

13 (b) A municipality or county may enforce or maintain an
14 ordinance, order, or rule regulating any conduct under Chapter 393
15 and any conduct related to a credit services organization, as
16 defined by Section 393.001 or by any other provision of this code,
17 or a credit access business, as defined by Section 393.601 or by any
18 other provision of this code, if:

19 (1) the municipality or county adopted the ordinance,
20 order, or rule before January 1, 2023; and

21 (2) the ordinance, order, or rule would have been
22 valid under the law as it existed before the date this section was
23 enacted.

24 SECTION 9. Chapter 30, Insurance Code, is amended by adding
25 Section 30.005 to read as follows:

26 Sec. 30.005. FIELD PREEMPTION. Unless expressly authorized
27 by another statute, a municipality or county may not adopt,

1 enforce, or maintain an ordinance, order, or rule regulating
2 conduct in a field of regulation that is occupied by a provision of
3 this code. An ordinance, order, or rule that violates this section
4 is void, unenforceable, and inconsistent with this code.

5 SECTION 10. Chapter 1, Labor Code, is amended by adding
6 Section 1.005 to read as follows:

7 Sec. 1.005. FIELD PREEMPTION. (a) Unless expressly
8 authorized by another statute, a municipality or county may not
9 adopt, enforce, or maintain an ordinance, order, or rule regulating
10 conduct in a field of regulation that is occupied by a provision of
11 this code. An ordinance, order, or rule that violates this section
12 is void, unenforceable, and inconsistent with this code.

13 (b) For purposes of Subsection (a), a field occupied by a
14 provision of this code includes employment leave, hiring practices,
15 breaks, employment benefits, scheduling practices, and any other
16 terms of employment that exceed or conflict with federal or state
17 law for employers other than a municipality or county.

18 SECTION 11. Subchapter A, Chapter 51, Local Government
19 Code, is amended by adding Section 51.002 to read as follows:

20 Sec. 51.002. ORDINANCE OR RULES INCONSISTENT WITH STATE LAW
21 PROHIBITED. Notwithstanding Section 51.001, the governing body of
22 a municipality may adopt, enforce, or maintain an ordinance or rule
23 only if the ordinance or rule is consistent with the laws of this
24 state.

25 SECTION 12. Chapter 229, Local Government Code, is amended
26 by adding Subchapter Z to read as follows:

27 SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

1 Sec. 229.901. AUTHORITY TO REGULATE LICENSED ANIMAL
2 BUSINESSES. A municipality may not adopt, enforce, or maintain an
3 ordinance or rule that restricts, regulates, limits, or otherwise
4 impedes a business involving the breeding, care, treatment, or sale
5 of animals or animal products, including a veterinary practice, or
6 the business's transactions if the person operating that business
7 holds a license for the business that is issued by the federal
8 government or a state.

9 SECTION 13. Chapter 1, Natural Resources Code, is amended
10 by adding Section 1.003 to read as follows:

11 Sec. 1.003. FIELD PREEMPTION. Unless expressly authorized
12 by another statute, a municipality or county may not adopt,
13 enforce, or maintain an ordinance, order, or rule regulating
14 conduct in a field of regulation that is occupied by a provision of
15 this code. An ordinance, order, or rule that violates this section
16 is void, unenforceable, and inconsistent with this code.

17 SECTION 14. Chapter 1, Occupations Code, is amended by
18 adding Section 1.004 to read as follows:

19 Sec. 1.004. FIELD PREEMPTION. Unless expressly authorized
20 by another statute, a municipality or county may not adopt,
21 enforce, or maintain an ordinance, order, or rule regulating
22 conduct in a field of regulation that is occupied by a provision of
23 this code. An ordinance, order, or rule that violates this section
24 is void, unenforceable, and inconsistent with this code.

25 SECTION 15. Chapter 1, Property Code, is amended by adding
26 Section 1.004 to read as follows:

27 Sec. 1.004. FIELD PREEMPTION. Unless expressly authorized

1 by another statute, a municipality or county may not adopt,
2 enforce, or maintain an ordinance, order, or rule regulating
3 conduct in a field of regulation that is occupied by a provision of
4 this code. An ordinance, order, or rule that violates this section
5 is void, unenforceable, and inconsistent with this code.

6 SECTION 16. Chapter 102A, Civil Practice and Remedies Code,
7 as added by this Act, applies only to a cause of action that accrues
8 on or after the effective date of this Act.

9 SECTION 17. This Act takes effect immediately if it
10 receives a vote of two-thirds of all the members elected to each
11 house, as provided by Section 39, Article III, Texas Constitution.
12 If this Act does not receive the vote necessary for immediate
13 effect, this Act takes effect September 1, 2023.