

1-1 By: Burrows, et al. (Senate Sponsor - Creighton) H.B. No. 2127
 1-2 (In the Senate - Received from the House April 19, 2023;
 1-3 April 20, 2023, read first time and referred to Committee on
 1-4 Business & Commerce; May 5, 2023, reported favorably by the
 1-5 following vote: Yeas 6, Nays 2; May 5, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10			X	
1-11	X			
1-12	X			
1-13		X		
1-14	X			
1-15		X		
1-16	X			
1-17			X	
1-18			X	

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to state preemption of and the effect of certain state or
 1-22 federal law on certain municipal and county regulation.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. This Act shall be known as the Texas Regulatory
 1-25 Consistency Act.

1-26 SECTION 2. The legislature finds that:

1-27 (1) the state has historically been the exclusive
 1-28 regulator of many aspects of commerce and trade in this state;

1-29 (2) in recent years, several local jurisdictions have
 1-30 sought to establish their own regulations of commerce that are
 1-31 different than the state's regulations; and

1-32 (3) the local regulations have led to a patchwork of
 1-33 regulations that apply inconsistently across this state.

1-34 SECTION 3. The purpose of this Act is to provide statewide
 1-35 consistency by returning sovereign regulatory powers to the state
 1-36 where those powers belong in accordance with Section 5, Article XI,
 1-37 Texas Constitution.

1-38 SECTION 4. This Act:

1-39 (1) may not be construed to prohibit a municipality or
 1-40 county from building or maintaining a road, imposing a tax, or
 1-41 carrying out any authority expressly authorized by statute;

1-42 (2) may not be construed to prohibit a home-rule
 1-43 municipality from providing the same services and imposing the same
 1-44 regulations that a general-law municipality is authorized to
 1-45 provide or impose;

1-46 (3) does not, except as expressly provided by this
 1-47 Act, affect the authority of a municipality to adopt, enforce, or
 1-48 maintain an ordinance or rule that relates to the control, care,
 1-49 management, welfare, or health and safety of animals;

1-50 (4) does not affect the authority of a municipality or
 1-51 county to conduct a public awareness campaign;

1-52 (5) does not affect the authority of a municipality or
 1-53 county to:

1-54 (A) enter into or negotiate terms of a collective
 1-55 bargaining agreement with its employees; or

1-56 (B) adopt a policy related to its employees; and

1-57 (6) does not affect the authority of a municipality or
 1-58 county to repeal or amend an existing ordinance, order, or rule that
 1-59 violates the provisions of this Act for the limited purpose of
 1-60 bringing that ordinance, order, or rule in compliance with this
 1-61 Act.

2-1 SECTION 5. Chapter 1, Agriculture Code, is amended by
2-2 adding Section 1.004 to read as follows:

2-3 Sec. 1.004. PREEMPTION. Unless expressly authorized by
2-4 another statute, a municipality or county may not adopt, enforce,
2-5 or maintain an ordinance, order, or rule regulating conduct in a
2-6 field of regulation that is occupied by a provision of this code.
2-7 An ordinance, order, or rule that violates this section is void,
2-8 unenforceable, and inconsistent with this code.

2-9 SECTION 6. Subchapter A, Chapter 1, Business & Commerce
2-10 Code, is amended by adding Section 1.109 to read as follows:

2-11 Sec. 1.109. PREEMPTION. Unless expressly authorized by
2-12 another statute, a municipality or county may not adopt, enforce,
2-13 or maintain an ordinance, order, or rule regulating conduct in a
2-14 field of regulation that is occupied by a provision of this code.
2-15 An ordinance, order, or rule that violates this section is void,
2-16 unenforceable, and inconsistent with this code.

2-17 SECTION 7. Title 5, Civil Practice and Remedies Code, is
2-18 amended by adding Chapter 102A to read as follows:

2-19 CHAPTER 102A. MUNICIPAL AND COUNTY LIABILITY FOR CERTAIN
2-20 REGULATION

2-21 Sec. 102A.001. DEFINITION. In this chapter, "person" means
2-22 an individual, corporation, business trust, estate, trust,
2-23 partnership, limited liability company, association, joint
2-24 venture, agency or instrumentality, public corporation, any legal
2-25 or commercial entity, or protected or registered series of a
2-26 for-profit entity.

2-27 Sec. 102A.002. LIABILITY FOR CERTAIN REGULATION. Any
2-28 person who has sustained an injury in fact, actual or threatened,
2-29 from a municipal or county ordinance, order, or rule adopted or
2-30 enforced by a municipality, county, or municipal or county official
2-31 acting in an official capacity in violation of any of the following
2-32 provisions or a trade association representing the person has
2-33 standing to bring and may bring an action against the municipality,
2-34 county, or official:

- 2-35 (1) Section 1.004, Agriculture Code;
- 2-36 (2) Section 1.109, Business & Commerce Code;
- 2-37 (3) Section 1.004, Finance Code;
- 2-38 (4) Section 30.005, Insurance Code;
- 2-39 (5) Section 1.005, Labor Code;
- 2-40 (6) Section 229.901, Local Government Code;
- 2-41 (7) Section 1.003, Natural Resources Code;
- 2-42 (8) Section 1.004, Occupations Code; or
- 2-43 (9) Section 1.004, Property Code.

2-44 Sec. 102A.003. REMEDIES. A claimant is entitled to recover
2-45 in an action brought under this chapter:

- 2-46 (1) declaratory and injunctive relief; and
- 2-47 (2) costs and reasonable attorney's fees.

2-48 Sec. 102A.004. IMMUNITY WAIVER AND PROHIBITED DEFENSES.
2-49 (a) Governmental immunity of a municipality or county to suit and
2-50 from liability is waived to the extent of liability created by this
2-51 chapter.

2-52 (b) Official and qualified immunity may not be asserted as a
2-53 defense in an action brought under this chapter.

2-54 Sec. 102A.005. NOTICE. A municipality or county is
2-55 entitled to receive notice of a claim against it under this chapter
2-56 not later than three months before the date a claimant files an
2-57 action under this chapter. The notice must reasonably describe:

- 2-58 (1) the injury claimed; and
- 2-59 (2) the ordinance, order, or rule that is the cause of
2-60 the injury.

2-61 Sec. 102A.006. VENUE. (a) Notwithstanding any other law,
2-62 including Chapter 15, a claimant may bring an action under this
2-63 chapter in:

- 2-64 (1) the county in which all or a substantial part of
2-65 the events giving rise to the cause of action occurred; or
- 2-66 (2) if the defendant is a municipality or municipal
2-67 official, a county in which the municipality is located.

2-68 (b) If the action is brought in a venue authorized by this
2-69 section, the action may not be transferred to a different venue

3-1 without the written consent of all parties.

3-2 SECTION 8. Chapter 1, Finance Code, is amended by adding
3-3 Section 1.004 to read as follows:

3-4 Sec. 1.004. PREEMPTION. (a) Unless expressly authorized
3-5 by another statute and except as provided by Subsection (b), a
3-6 municipality or county may not adopt, enforce, or maintain an
3-7 ordinance, order, or rule regulating conduct in a field of
3-8 regulation that is occupied by a provision of this code. An
3-9 ordinance, order, or rule that violates this section is void,
3-10 unenforceable, and inconsistent with this code.

3-11 (b) A municipality or county may enforce or maintain an
3-12 ordinance, order, or rule regulating any conduct under Chapter 393
3-13 and any conduct related to a credit services organization, as
3-14 defined by Section 393.001 or by any other provision of this code,
3-15 or a credit access business, as defined by Section 393.601 or by any
3-16 other provision of this code, if:

3-17 (1) the municipality or county adopted the ordinance,
3-18 order, or rule before January 1, 2023; and

3-19 (2) the ordinance, order, or rule would have been
3-20 valid under the law as it existed before the date this section was
3-21 enacted.

3-22 SECTION 9. Chapter 30, Insurance Code, is amended by adding
3-23 Section 30.005 to read as follows:

3-24 Sec. 30.005. PREEMPTION. Unless expressly authorized by
3-25 another statute, a municipality or county may not adopt, enforce,
3-26 or maintain an ordinance, order, or rule regulating conduct in a
3-27 field of regulation that is occupied by a provision of this code.
3-28 An ordinance, order, or rule that violates this section is void,
3-29 unenforceable, and inconsistent with this code.

3-30 SECTION 10. Chapter 1, Labor Code, is amended by adding
3-31 Section 1.005 to read as follows:

3-32 Sec. 1.005. PREEMPTION. (a) Unless expressly authorized
3-33 by another statute, a municipality or county may not adopt,
3-34 enforce, or maintain an ordinance, order, or rule regulating
3-35 conduct in a field of regulation that is occupied by a provision of
3-36 this code. An ordinance, order, or rule that violates this section
3-37 is void, unenforceable, and inconsistent with this code.

3-38 (b) For purposes of Subsection (a), a field occupied by a
3-39 provision of this code includes employment leave, hiring practices,
3-40 breaks, employment benefits, scheduling practices, and any other
3-41 terms of employment that exceed or conflict with federal or state
3-42 law for employers other than a municipality or county.

3-43 SECTION 11. Subchapter A, Chapter 51, Local Government
3-44 Code, is amended by adding Section 51.002 to read as follows:

3-45 Sec. 51.002. ORDINANCE OR RULES INCONSISTENT WITH STATE LAW
3-46 PROHIBITED. Notwithstanding Section 51.001, the governing body of
3-47 a municipality may adopt, enforce, or maintain an ordinance or rule
3-48 only if the ordinance or rule is consistent with the laws of this
3-49 state.

3-50 SECTION 12. Chapter 229, Local Government Code, is amended
3-51 by adding Subchapter Z to read as follows:

3-52 SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

3-53 Sec. 229.901. AUTHORITY TO REGULATE ANIMAL BUSINESSES. (a)
3-54 A municipality may not adopt, enforce, or maintain an ordinance or
3-55 rule that restricts, regulates, limits, or otherwise impedes a
3-56 business involving the breeding, care, treatment, or sale of
3-57 animals or animal products, including a veterinary practice, or the
3-58 business's transactions if the person operating that business holds
3-59 a license for the business that is issued by the federal government
3-60 or a state.

3-61 (b) Except as provided by this subsection, a municipality
3-62 may not adopt, enforce, or maintain an ordinance or rule that
3-63 restricts, regulates, limits, or otherwise impedes the retail sale
3-64 of dogs or cats. A municipality may enforce or maintain an
3-65 ordinance or rule adopted before April 1, 2023, that restricts,
3-66 regulates, limits, or otherwise impedes the retail sale of dogs or
3-67 cats until the state adopts statewide regulation for the retail
3-68 sale of dogs or cats, as applicable.

3-69 SECTION 13. Chapter 1, Natural Resources Code, is amended

4-1 by adding Section 1.003 to read as follows:

4-2 Sec. 1.003. PREEMPTION. Unless expressly authorized by
4-3 another statute, a municipality or county may not adopt, enforce,
4-4 or maintain an ordinance, order, or rule regulating conduct in a
4-5 field of regulation that is occupied by a provision of this code.
4-6 An ordinance, order, or rule that violates this section is void,
4-7 unenforceable, and inconsistent with this code.

4-8 SECTION 14. Chapter 1, Occupations Code, is amended by
4-9 adding Section 1.004 to read as follows:

4-10 Sec. 1.004. PREEMPTION. (a) Unless expressly authorized
4-11 by another statute, a municipality or county may not adopt,
4-12 enforce, or maintain an ordinance, order, or rule regulating
4-13 conduct in a field of regulation that is occupied by a provision of
4-14 this code. An ordinance, order, or rule that violates this section
4-15 is void, unenforceable, and inconsistent with this code.

4-16 (b) Subsection (a) may not be construed to affect municipal
4-17 or county authority to regulate a massage establishment in
4-18 accordance with Section 455.005.

4-19 SECTION 15. Chapter 1, Property Code, is amended by adding
4-20 Section 1.004 to read as follows:

4-21 Sec. 1.004. PREEMPTION. Unless expressly authorized by
4-22 another statute, a municipality or county may not adopt, enforce,
4-23 or maintain an ordinance, order, or rule regulating conduct in a
4-24 field of regulation that is occupied by a provision of this code.
4-25 An ordinance, order, or rule that violates this section is void,
4-26 unenforceable, and inconsistent with this code.

4-27 SECTION 16. Chapter 102A, Civil Practice and Remedies Code,
4-28 as added by this Act, applies only to a cause of action that accrues
4-29 on or after the effective date of this Act.

4-30 SECTION 17. This Act takes effect immediately if it
4-31 receives a vote of two-thirds of all the members elected to each
4-32 house, as provided by Section 39, Article III, Texas Constitution.
4-33 If this Act does not receive the vote necessary for immediate
4-34 effect, this Act takes effect September 1, 2023.

4-35 * * * * *