

SENATE AMENDMENTS

2nd Printing

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

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;

7 (4) does not affect the authority of a municipality or
8 county to conduct a public awareness campaign;

9 (5) does not affect the authority of a municipality or
10 county to:

11 (A) enter into or negotiate terms of a collective
12 bargaining agreement with its employees; or

13 (B) adopt a policy related to its employees; and

14 (6) does not affect the authority of a municipality or
15 county to repeal or amend an existing ordinance, order, or rule that
16 violates the provisions of this Act for the limited purpose of
17 bringing that ordinance, order, or rule in compliance with this
18 Act.

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

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

27 SECTION 6. Subchapter A, Chapter 1, Business & Commerce

Code, is amended by adding Section 1.109 to read as follows:

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

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

CHAPTER 102A. MUNICIPAL AND COUNTY LIABILITY FOR CERTAIN REGULATION

Sec. 102A.001. DEFINITION. In this chapter, "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.

Sec. 102A.002. LIABILITY FOR CERTAIN REGULATION. Any 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 in violation of any of the following provisions or a trade association representing the person has standing to bring and may bring an action against the municipality, county, or official:

(1) Section 1.004, Agriculture Code;

(2) Section 1.109, Business & Commerce Code;

- (3) Section 1.004, Finance Code;
- (4) Section 30.005, Insurance Code;
- (5) Section 1.005, Labor Code;
- (6) Section 229.901, Local Government Code;
- (7) Section 1.003, Natural Resources Code;
- (8) Section 1.004, Occupations Code; or
- (9) Section 1.004, Property Code.

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

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

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

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

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

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

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

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

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

3 (2) if the defendant is a municipality or municipal
4 official, a county in which the municipality is located.

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

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

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

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

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

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

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

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

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

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

(b) For purposes of Subsection (a), a field occupied by a provision of this 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.

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

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

1 state.

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

4 SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

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

13 (b) Except as provided by this subsection, a municipality
14 may not adopt, enforce, or maintain an ordinance or rule that
15 restricts, regulates, limits, or otherwise impedes the retail sale
16 of dogs or cats. A municipality may enforce or maintain an
17 ordinance or rule adopted before April 1, 2023, that restricts,
18 regulates, limits, or otherwise impedes the retail sale of dogs or
19 cats until the state adopts statewide regulation for the retail
20 sale of dogs or cats, as applicable.

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

23 Sec. 1.003. PREEMPTION. Unless expressly authorized by
24 another statute, a municipality or county may not adopt, enforce,
25 or maintain an ordinance, order, or rule regulating conduct in a
26 field of regulation that is occupied by a provision of this code.
27 An ordinance, order, or rule that violates this section is void,

1 unenforceable, and inconsistent with this code.

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

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

10 (b) Subsection (a) may not be construed to affect municipal
11 or county authority to regulate a massage establishment in
12 accordance with Section 455.005.

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

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

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

24 SECTION 17. This Act takes effect immediately if it
25 receives a vote of two-thirds of all the members elected to each
26 house, as provided by Section 39, Article III, Texas Constitution.
27 If this Act does not receive the vote necessary for immediate

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1 effect, this Act takes effect September 1, 2023.

ADOPTED

MAY 15 2023

FLOOR AMENDMENT NO. 1

Latey Law
Secretary of the Senate

BY:

Brunder Ceytlor

1 Amend H.B. 2127 (senate committee printing) in SECTION 7 of
2 the bill, in added Section 102A.003, Civil Practice and Remedies
3 Code, as follows:

4 (1) Between "REMEDIES." and "A" (page 2, line 44), insert
5 "(a)".

6 (2) Immediately after "fees." (page 2, between lines 47 and
7 48), insert the following:

8 (b) A municipality or county is entitled to recover in an
9 action brought under this chapter costs and reasonable attorney's
10 fees if the court finds the action to be frivolous.

ADOPTED
VV

MAY 15 2023

FLOOR AMENDMENT NO. 2

Latey Spaw
Secretary of the Senate

BY: *Brunder Ceytlor*

1 Amend H.B. 2127 (senate committee printing) in SECTION 15 of
2 the bill, in added Section 1.004, Property Code, as follows:

3 (1) Between "PREEMPTION." and "Unless" (page 4, line 21),
4 insert "(a)".

5 (2) Immediately after "code." (page 4, between lines 26 and
6 27), insert the following:

7 (b) For purposes of Subsection (a), a field occupied by a
8 provision of this code includes an ordinance, order, or rule
9 regulating evictions or otherwise prohibiting, restricting, or
10 delaying delivery of a notice to vacate or filing a suit to recover
11 possession of the premises under Chapter 24.

ADOPTED

MAY 15 2023

Latey Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 6

BY: Birdwell

1 Amend H.B. 2127 (senate committee printing) in SECTION 7 of
2 the bill, in added Chapter 102A, Civil Practice and Remedies Code,
3 as follows:

4 (1) In Section 102A.002 (page 2, lines 30-31), strike
5 "municipality, county, or municipal or county official acting in an
6 official capacity" and substitute "municipality or county".

7 (2) In Section 102A.002 (page 2, lines 33-34), strike
8 "municipality, county, or official" and substitute "municipality
9 or county".

10 (3) In the heading to Section 102A.004 (page 2, line 48),
11 strike "AND PROHIBITED DEFENSES".

12 (4) In Section 102A.004(a) (page 2, line 49), strike "(a)".

13 (5) Strike Section 102A.004(b) (page 2, lines 52-53).

14 (6) In Section 102A.006(a)(2) (page 2, lines 66-67), strike
15 "or municipal official".

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 18, 2023

TO: Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2127 by Burrows (Relating to state preemption of and the effect of certain state or federal law on certain municipal and county regulation.), **As Passed 2nd House**

No fiscal implication to the State is anticipated.

Local Government Impact

There could be an impact on municipalities and counties with regulations in place that would be preempted under the bill.

Source Agencies:

LBB Staff: JMc, CMA, NTh, SMAT

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 4, 2023

TO: Honorable Charles Schwertner, Chair, Senate Committee on Business & Commerce

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2127 by Burrows (Relating to state preemption of and the effect of certain state or federal law on certain municipal and county regulation.), **As Engrossed**

No fiscal implication to the State is anticipated.

Local Government Impact

There could be an impact on municipalities and counties with regulations in place that would be preempted under the bill.

Source Agencies:

LBB Staff: JMc, NTh, SMAT, CMA

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

Revision 1

April 14, 2023

TO: Honorable Todd Hunter, Chair, House Committee on State Affairs

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2127 by Burrows (Relating to state preemption of and the effect of certain state or federal law on certain municipal and county regulation.), **Committee Report 1st House, Substituted**

No fiscal implication to the State is anticipated.

Local Government Impact

There could be an impact on municipalities and counties with regulations in place that would be preempted under the bill.

Source Agencies:

LBB Staff: JMc, SMAT, CMA, NTh

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

April 6, 2023

TO: Honorable Todd Hunter, Chair, House Committee on State Affairs

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2127 by Burrows (relating to state preemption of and the effect of certain state or federal law on certain municipal and county regulation.), **Committee Report 1st House, Substituted**

No fiscal implication to the State is anticipated.

Local Government Impact

There could be an impact on municipalities and counties with regulations in place that would be preempted under the bill.

Source Agencies:

LBB Staff: JMc, SMAT, CMA, NTh

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

March 14, 2023

TO: Honorable Todd Hunter, Chair, House Committee on State Affairs

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2127 by Burrows (Relating to state preemption of certain municipal and county regulation.), **As Introduced**

No fiscal implication to the State is anticipated.

Local Government Impact

There could be an impact on municipalities and counties with regulations in place that would be preempted under the bill.

Source Agencies:

LBB Staff: JMc, SMAT, CMA, NTh