

House Bill 2127
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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 regulations that a general-law municipality is authorized to provide or impose;
- (3) does not, except as expressly provided by this Act, 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;

SENATE VERSION (IE)

SECTION 1. Same as House version.

SECTION 2. Same as House version.

SECTION 3. Same as House version.

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- (4) does not affect the authority of a municipality or county to conduct a public awareness campaign;
- (5) does not affect the authority of a municipality or county to:
 - (A) enter into or negotiate terms of a collective bargaining agreement with its employees; or
 - (B) adopt a policy related to its employees; and
- (6) does not affect the authority of a municipality or county to repeal or amend an existing ordinance, order, or rule that violates the provisions of this Act for the limited purpose of bringing that ordinance, order, or rule in compliance with this Act.

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

Sec. 1.004. 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 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

SENATE VERSION (IE)

SECTION 5. Same as House version.

SECTION 6. Same as House version.

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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

SENATE VERSION (IE)

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 or county 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 or county: [FA6(1)-(2)]

- (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.

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

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

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Sec. 102A.003. REMEDIES. (a) A claimant is entitled to recover in an action brought under this chapter: [FA1(1)]

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

(b) A municipality or county is entitled to recover in an action brought under this chapter costs and reasonable attorney's fees if the court finds the action to be frivolous. [FA1(2)]

Sec. 102A.004. IMMUNITY WAIVER. Governmental immunity of a municipality or county to suit and from liability is waived to the extent of liability created by this chapter. [FA6(3)-(4)]

(b) [Deleted by FA6(5)]

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) the county in which all or a substantial part of the events giving rise to the cause of action occurred; or
- (2) if the defendant is a municipality, a county in which the municipality is located. [FA6(6)]

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

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

Sec. 1.004. PREEMPTION. (a) Unless expressly authorized by another statute and except as provided by Subsection (b), 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) A municipality or county may enforce or maintain an ordinance, order, or rule regulating any conduct under Chapter 393 and any conduct related to a credit services organization, as defined by Section 393.001 or by any other provision of this code, or a credit access business, as defined by Section 393.601 or by any other provision of this code, if:

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

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

SENATE VERSION (IE)

SECTION 8. Same as House version.

SECTION 9. Same as House version.

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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 state.

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

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 229.901. AUTHORITY TO REGULATE ANIMAL BUSINESSES. (a) A municipality may not adopt, enforce,

SENATE VERSION (IE)

SECTION 10. Same as House version.

SECTION 11. Same as House version.

SECTION 12. Same as House version.

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or maintain 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.

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

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

Sec. 1.003. 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 14. Chapter 1, Occupations Code, is amended by adding Section 1.004 to read as follows:

Sec. 1.004. PREEMPTION. (a) Unless expressly authorized by another statute, a municipality or county may

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SECTION 13. Same as House version.

SECTION 14. Same as House version.

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

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

Sec. 1.004. 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 16. Chapter 102A, Civil Practice and Remedies Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act.

SENATE VERSION (IE)

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

Sec. 1.004. 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. [FA2(1)]

(b) For purposes of Subsection (a), a field occupied by a provision of this code includes an ordinance, order, or rule regulating evictions or otherwise prohibiting, restricting, or delaying delivery of a notice to vacate or filing a suit to recover possession of the premises under Chapter 24. [FA2(2)]

SECTION 16. Same as House version.

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

SENATE VERSION (IE)

SECTION 17. Same as House version.

CONFERENCE