

By: Creighton

S.B. No. 2858

A BILL TO BE ENTITLED

AN ACT

relating to state preemption of certain municipal and county regulation.

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

SECTION 1. The legislature finds that:

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

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

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

SECTION 2. The purpose of this Act is to provide additional statewide consistency by returning sovereign regulatory powers to the state where those powers belong in accordance with Section 5, Article XI, Texas Constitution.

SECTION 3. 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 affect the authority of a municipality or
4 county to conduct a public awareness campaign; and

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

10 SECTION 4. Chapter 1, Elections Code, is amended by adding
11 Section 1.023 to read as follows:

12 Sec. 1.023. PREEMPTION. Unless expressly authorized by
13 another statute, a municipality or county may not adopt, enforce,
14 or maintain an ordinance, order, or rule regulating conduct in a
15 field of regulation that is occupied by a provision of this code.
16 An ordinance, order, or rule that violates this section is void,
17 unenforceable, and inconsistent with this code.

18 SECTION 5. Chapter 1, Penal Code, is amended by adding
19 Section 1.11 to read as follows:

20 Sec. 1.11. PREEMPTION. Unless expressly authorized by
21 another statute, a municipality or county may not adopt, enforce,
22 or maintain an ordinance, order, or rule regulating conduct in a
23 field of regulation that is occupied by a provision of this code.
24 An ordinance, order, or rule that violates this section is void,
25 unenforceable, and inconsistent with this code.

26 SECTION 6. Section 102A.002, Civil Practice and Remedies
27 Code, is amended to read as follows:

1 Sec. 102A.002. LIABILITY FOR CERTAIN REGULATION. Any
2 person who has sustained an injury in fact, actual or threatened,
3 from a municipal or county ordinance, order, or rule adopted or
4 enforced by a municipality or county in violation of any of the
5 following provisions or a trade association representing the person
6 has standing to bring and may bring an action against the
7 municipality or county:

- 8 (1) Section 1.004, Agriculture Code;
- 9 (2) Section 1.109, Business & Commerce Code;
- 10 (3) Section 1.004, Finance Code;
- 11 (4) Section 30.005, Insurance Code;
- 12 (5) Section 1.005, Labor Code;
- 13 (6) Section 229.901, Local Government Code;
- 14 (7) Section 1.003, Natural Resources Code;
- 15 (8) Section 1.004, Occupations Code; ~~or~~
- 16 (9) Section 1.004, Property Code;
- 17 (10) Section 1.023, Elections Code; or
- 18 (11) Section 1.11, Penal Code.

19 SECTION 7. Chapter 102A, Civil Practice and Remedies Code,
20 is amended by adding Sections 102A.008 through 102A.013 to read as
21 follows:

22 Sec. 102A.008. DEFINITIONS. In this chapter:

23 (1) "Local government" means a municipality or
24 county.

25 (2) "No-new-revenue tax rate" means the
26 no-new-revenue tax rate calculated under Chapter 26, Tax Code.

27 Sec. 102A.009. ATTORNEY GENERAL INVESTIGATION AND ACTION.

1 (a) The attorney general may investigate an alleged violation of
2 this chapter by a local government.

3 (b) If after conducting an investigation under Subsection
4 (a), the attorney general determines that a local government
5 adopted, enforced, or maintained an ordinance, order, or rule in
6 violation of the provisions listed in Section 102A.002, the
7 attorney general may bring an action in the name of the state
8 against the local government for the violation.

9 Sec. 102A.010. ENFORCEMENT ACTIONS DURING PENDENCY OF
10 ACTION. During the pendency of an action brought under Section
11 102A.009, with respect to a local government defending the action:

12 (1) the comptroller shall withhold payment of any
13 money due to the local government under Section 321.502 or 323.502,
14 Tax Code, as applicable;

15 (2) the local government may not adopt an ad valorem
16 tax rate that exceeds the local government's no-new-revenue tax
17 rate; and

18 (3) the local government may not receive state grant
19 funds and any pending application for such funds shall be denied.

20 Sec. 102A.011. BURDEN OF PROOF; INITIAL HEARING. (a) A
21 local government defending an action brought under Section 102A.009
22 has the burden of proof to establish by a preponderance of the
23 evidence that the local government complied with the law the
24 alleged violation of which is the subject of the action.

25 (b) The court of original jurisdiction shall set an action
26 brought under Section 102A.009 for an initial hearing not later
27 than the 30th day after the date the local government defending the

1 action was served with process for the action.

2 Sec. 102A.012. RESOLUTION OF ACTION IN FAVOR OF ATTORNEY
3 GENERAL. (a) If the attorney general prevails in an action brought
4 under Section 102A.009:

5 (1) the local government defending the action may not,
6 during the five state fiscal years following the year in which the
7 judgment becomes final:

8 (A) adopt an ad valorem tax rate that exceeds the
9 local government's no-new-revenue tax rate; or

10 (B) receive state grant funds; and

11 (2) the court issuing the final judgment resolving the
12 action shall provide in the judgment that the state is entitled to
13 recover from the local government defending the action a penalty
14 equal to the balance of the suspense account maintained for the
15 local government under Section 321.501 or 323.501, Tax Code, as
16 applicable, that exists on the date the judgment is signed.

17 (b) The comptroller shall, on receipt of a copy of the final
18 judgment in an action brought under Section 102A.009 that includes
19 a provision described by Subsection (a)(2), deposit the balance of
20 the suspense account maintained for the local government defending
21 the action under Section 321.501 or 323.501, Tax Code, as
22 applicable, as of the date the judgment is signed to the credit of
23 the general revenue fund.

24 Sec. 102A.013. RESOLUTION OF ACTION IN FAVOR OF LOCAL
25 GOVERNMENT. If a local government prevails in an action brought
26 under Section 102A.009, the comptroller shall, notwithstanding any
27 other law, immediately send to the local government the balance of

1 the suspense account maintained for the local government under
2 Section 321.501 or 323.501, Tax Code, as applicable, as of the date
3 the judgment resolving the action is signed.

4 SECTION 8. Section 102A.002, Civil Practice and Remedies
5 Code, as amended by this Act, and Section 102A.009, Civil Practice
6 and Remedies Code, as added by this Act, apply only to a cause of
7 action that accrues on or after the effective date of this Act.

8 SECTION 9. Every provision, section, subsection, sentence,
9 clause, phrase, or word in this Act, and every application of the
10 provisions in this Act to every person, group of persons, or
11 circumstances, are severable from each other. If any application
12 of any provision in this Act to any person, group of persons, or
13 circumstances is found by a court to be invalid, preempted, or
14 unconstitutional, for any reason whatsoever, then the remaining
15 applications of the Act to all other persons and circumstances
16 shall be severed and preserved and shall remain in effect. All
17 constitutionally valid applications of the provisions in this Act
18 shall be severed from any applications that a court finds to be
19 invalid, preempted, or unconstitutional, because it is the
20 legislature's intent and priority that every single valid
21 application of every statutory provision be allowed to stand alone.
22 The legislature further declares that it would have enacted this
23 Act, and each provision, section, subsection, sentence, clause,
24 phrase, or word, and all constitutional applications of the
25 provisions of this Act, irrespective of the fact that any
26 provision, section, subsection, sentence, clause, phrase, or word,
27 or applications of this Act were to be declared invalid, preempted,

1 or unconstitutional.

2 SECTION 10. The Texas Supreme Court has exclusive and
3 original jurisdiction over a challenge to the constitutionality of
4 this Act or any part of this Act and may issue injunctive or
5 declaratory relief in connection with the challenge.

6 SECTION 11. This Act takes effect immediately if it
7 receives a vote of two-thirds of all the members elected to each
8 house, as provided by Section 39, Article III, Texas Constitution.
9 If this Act does not receive the vote necessary for immediate
10 effect, this Act takes effect September 1, 2025.