

SUBJECT: Preempting certain municipal and county regulation

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 8 ayes — Hunter, Dean, Geren, Metcalf, Raymond, Slawson, Smithee, Spiller

3 nays — Hernandez, Anchía, Turner

2 absent — Guillen, S. Thompson

WITNESSES: For — Chris Maberry, Airlines for America; Mark Roach, Associated Builders and Contractors of Texas; Skeeter Miller, County Line Restaurants; Alex Eagle, Freebirds World Burrito; Stephen Scurlock, Independent Bankers Association of Texas; Robert Mayfield, Mayfield DQ; Annie Spilman, NFIB; Martin Gutierrez, San Antonio Hispanic Chamber of Commerce; Mont McClendon, Texas Apartment Association; Donnie Evans, Scott Norman, Texas Association of Builders; Glenn Hamer, Texas Association of Business; Rod Bordelon, Texas Public Policy Foundation; Kelsey Streufert, Texas Restaurant Association; Tom Kenney, WFK Restaurant Group, DBA Napa Flats; Lisa Fullerton; Anthony Stergio (*Registered, but did not testify*); Corbin Van Arsdale, AGC-Texas Building Branch; Genevieve Collins, Samuel Sheetz, Americans for Prosperity; Caroline Messer, AT&T; Adam Aschmann, Greater Houston Builders Association; Buddy Garcia, Holcim; Regan Ellmer, Independent Insurance Agents of Texas; Jay Propes, Mercury Public Affairs; Brent Franks, North Texas Automobile Dealers; Travis McCormick, Panhandle Producers and Royalty Owners Association; Michael D. Lozano, Permian Basin Petroleum Association; Alina Carnahan, Real Estate Council of Austin; Charles Maley, South Texans' Property Rights Association; Jared Bryan, Temple Area Association of Builders; Tim Hardin, Texans for Fiscal Responsibility; Doug Deason, Justin Keener, Texans for Free Enterprise; Melissa Hamilton, Texas & Southwestern Cattle Raisers Association; Michael Grimes, Texas Aggregate and Concrete Association; J.D. Hale, Texas Association of Builders; Kyle Bush, Texas Association of Manufacturers; Kelly Hudson,

Texas Association of Staffing; Robert Braziel, Texas Automobile Dealers Association; Josh Winegarner, Texas Cattle Feeders Association; Chris Noonan, Texas Chemical Council; Drew DeBerry, Texas City Limits Coalition; Jennifer Fagan, Texas Construction Association; Gilianne Carter, Texas Credit Union Association; Charlie Leal, Texas Farm Bureau; Desiree Castro, Texas Food and Fuel Association; Garrett Coppedge, Texas Hotel and Lodging Association; Jeff Martin, Texas Independent Auto Dealers Assn.; Ryan Paylor, Texas Independent Producers & Royalty Owners Association; John Fleming, Texas Mortgage Bankers Association; Ryan Skrobarczyk, Texas Nursery & Landscape Association; Shana Joyce, Texas Oil & Gas Association; Lance Lively, Texas Package Stores Association; Seth Juergens, Texas REALTORS; Daniel Hodge, Texas Restaurant Association; John McCord, Texas Retailers Association; Ron Hinkle, Texas Travel Alliance; Rick Donley, The Beer Alliance of Texas; Jorge Martinez, The LIBRE Initiative; Frank Fuentes, US Hispanic Contractors Association; Tom Spilman, Wholesale Beer Distributors of Texas; Joey Bennett, Wine and Spirits Wholesalers of Texas; John Beckmeyer)

Against — Tim Morstad, AARP; Lauren Johnson, ACLU of Texas; Joseph Bowie, Beard Integrated Systems; Jeffrey Thompson, Central Texas Interfaith; Laura Morrison, City of Dallas; Jeff Coyle, City of San Antonio; Adam Haynes, Conference of Urban Counties; David Stout, El Paso County; Luis Figueroa, Every Texan; Ben Brenneman, International Brotherhood of Electrical Workers Local 520; Cyrus Reed, Lone Star Chapter Sierra Club; Collyn Peddie, Mayor's Office, City of Houston; Alex Birnel, MOVE Texas; Patrick Brophrey, North Texas Commission; Amos Humphries, Park Lake Drive Baptist; Adrian Shelley, Public Citizen; Rick Levy, Texas AFL-CIO; Ann Baddour, Texas Appleseed; John Litzler, Texas Baptist Christian Life Commission; Jenny Andrews, Texas Catholic Conference of Bishops; Bennett Sandlin, Texas Municipal League; David Chincanchan, Daniela Hernandez, Workers Defense Action Fund; and 7 individuals (*Registered, but did not testify*: Joe Hamill, AFSCME Local 123 Houston, Local 2021 San Antonio, Local 1624 Austin/Travis County, Local 1550 Harris County; Selena Xie, Austin EMS Association; Gary Pedigo, Brotherhood of Locomotive

Engineers and Trainmen; Brie Franco, City of Austin; Thomas Reeves, City of Baytown; Wendy Herman, City of Corpus Christi; Guadalupe Cuellar, City of El Paso; Brian England, City of Garland; Josh Schroeder, City of Georgetown; Angela Hale, City of McKinney, McKinney Chamber of Commerce, Texas Competes Action; Andrew Fortune, City of Plano City Council; Claudia Russell, City of San Marcos; Trisha Dang, City of Sugar Land; Rebekah Chenelle, Dallas County Commissioners Court; Elisa M. Tamayo, El Paso County; Tsion Amare, Environmental Defense Fund; Jason Sabo, Environment Texas; Ricardo Martinez, EQTX Equality Texas; Joseph Hernandez, Ryan Pollock, IBEW Local 520; Kathy Mitchell, Just Liberty; Carol Olewin, League of Women Voters of Texas; Joe Cooper, Local 286 Plumbers and Pipefitters; Bill Kelly, Mayor's Office, City of Houston; Blaire Parker, San Antonio Water System; Phil Bunker, Teamsters JC 58; Thomas Kennedy, Texas Building and Construction Trades; Dwight Harris, Texas Federation of Teachers; Carisa Lopez, Texas Freedom Network; Joshua Houston, Texas Impact; Tyler Sheldon, Texas State Employees Union; Portia Bosse, Texas State Teachers Association; Laura Atlas Kravitz, Texas Women's Foundation; Landon Richie, Transgender Education Network of Texas; Julie Wheeler, Travis County Commissioners Court; Nicole Ma, Sarah Syed, Steven Wu, Woori Juntos; and 28 individuals)

DIGEST:

CSHB 2127, the Texas Regulatory Consistency Act, would prohibit a municipality or county from adopting, enforcing, or maintaining an ordinance, order, or rule regulating conduct in a field of regulation occupied by a provision of certain statutory codes unless the municipal or county regulation was expressly authorized by another statute. The prohibition would apply to the following codes:

- Agriculture
- Business & Commerce
- Finance
- Insurance
- Labor
- Natural Resources
- Occupations
- Property

The bill would specify that for the prohibition under the Labor Code, an occupied field would include employment leave, hiring practices, breaks, benefits, scheduling practices, and any other terms of employment that exceeded or conflicted with federal or state law for employers other than a municipality or county.

A municipality or county could enforce or maintain any ordinance, order, or rule regulating any conduct related to credit service organizations and credit access businesses, if the regulation had been adopted before January 1, 2023, and would have been valid under the law as it existed before the bill's enactment.

CSHB 2127 would prohibit a municipality from adopting, enforcing, or maintaining an ordinance or rule that restricted, regulated, limited, or otherwise impeded 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 operator held a license for the business issued by the federal government or a state.

Liability. CSHB 2127 would authorize any person who had sustained an injury in fact, actual or threatened, from a municipal or county regulation in violation of the provisions above to bring an action against the municipality, county, or an official who adopted or enforced the regulation. A trade association representing the person also could bring such an action. The claimant could recover declaratory and injunctive relief along with costs and reasonable attorney's fees. Governmental immunity of a municipality or county would be waived to the extent of liability created by the bill, and official and qualified immunity could not be asserted as a defense.

A claimant could bring the action in:

- the county in which all or a substantial part of the events giving rise to the cause of action occurred;
- if the defendant was a municipality or municipal official, the

county in which the municipality was located or a contiguous county;

- if the defendant was a county or county official, a contiguous county.

An action could not be transferred to a different venue without the written consent of all parties.

A municipality or county would be entitled to receive notice of a claim against at least three months before a claimant filed an action.

Other provisions. CSHB 2127 would amend the Local Government Code to specify that a municipality could adopt, enforce, or maintain an ordinance or rule only if it was consistent with the laws of the state.

CSHB 2127 would specify that the bill could not be construed to prohibit:

- a municipality or county from building or maintaining a road, imposing a tax, or carrying out any authority expressly allowed by statute; or
- a home rule municipality from providing the same services and imposing the same regulations authorized for general-law municipalities.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2023.

SUPPORTERS
SAY:

CSHB 2127 would provide regulatory consistency and promote prosperity in Texas by preempting local government regulation in areas already regulated by the state. Local ordinances related to labor and employment practices, environmental regulation, and other topics have created a confusing and complex patchwork of requirements that can vary widely. This lack of consistency is especially burdensome for businesses that operate in multiple jurisdictions and must navigate compliance with

potentially contradictory regulatory schemes. These regulations can impede economic growth and job creation, especially for small businesses. CSHB 2127 would reassert the state's proper role as the sole regulator of commerce and trade within its jurisdiction and provide a more stable, uniform, and predictable regulatory environment in which business could grow and expand across multiple local jurisdictions. The bill would foster a more business-friendly environment, positioning Texas to take advantage of renewed interest in domestic manufacturing.

While local control is justified in certain circumstances, the intent of the state's constitution in granting home rule status to cities was not to allow them complete autonomy. Cities have begun to regulate far beyond the bounds of their historical roles; CSHB 2127 would provide clarity about the proper scope of local governments' authority and free them to direct resources to the traditional issues that they are equipped to address. Many areas of local authority would not be affected by the bill, including zoning, noise and nuisance ordinances, safety protections, and other powers expressly granted by state law. The bill also would encourage the state to better address areas in which more regulation was needed.

CSHB 2127 necessarily would cover a wide range of regulatory areas as it is not feasible or financially responsible for the Legislature to individually address each harmful local regulation once every two years. The bill is intended to be a living document interpreted based on case law, not to provide prescriptive specificity for every possible regulatory issue.

Many concerns about the bill's effect on specific protective local measures are misplaced. The bill would allow existing local ordinances regulating payday and auto title lending and credit access businesses to remain in force. If more work was needed on this issue, advocates could pursue change at the state level. The bill would not eliminate protections for workers because labor standards, including mandated rest breaks, are strongly enforced at the federal level by OSHA. There are also federal protections against anti-LGBT discrimination in employment and housing, and local governments are expressly authorized to prohibit employment discrimination by the state Labor Code.

CSHB 2127 would empower businesses and individuals whose interests were adversely affected by a regulation that conflicted with state law to take legal action against a local government or official and receive declaratory and injunctive relief and recover legal costs. The bill would also allow trade associations to bring an action on behalf of a member so that the business or individual could receive relief without fear of reprisal. The bill would not encourage excessive or frivolous litigation because it would require advance notice of a claim that a person had been harmed by a regulation in violation of state law, which would give the local government the opportunity to cure the violation. The bill would not create a financial incentive for lawsuits since a claimant could not receive compensatory relief, only recover costs and receive declaratory or injunctive relief. The goal of the bill's cause of action is not to incentivize litigation but to provide a concrete enforcement mechanism.

CRITICS
SAY:

CSHB 2127's broad preemptions would inhibit local governments' ability to protect their citizens' interests and well-being and pursue innovative and responsive policies tailored to diverse local needs. The bill would undermine the long-standing tradition of local control and home-rule in Texas. Local elected officials are best situated to understand the policies their communities need and want. Local government is more immediately accessible and accountable to individual voters than the state Legislature, which can only enact policy every two years. If voters are opposed to local regulations, they can petition to change them or elect new officials.

Texas is large and diverse, and the regulatory policies of one community or region are not necessarily appropriate for another. Although CSHB 2127 seeks consistency, it could create unnecessary confusion and complication as local governments tried to determine which ordinances they could or couldn't enforce, uncertainty which would be harmful for businesses.

The bill is overly broad and could have unintended consequences, as the state is not equipped to replace the many local services and functions that would be preempted. Additionally, the lack of specificity of the bill's

applicability could have the potential to stem local action, even on responsibilities within cities' authorized purview, for fear of litigation. If local governments were to overstep their proper authority, the state should craft specific laws with clear applicability to correct the problem.

Many local efforts to protect vulnerable community members, including regulations and initiatives related to public health and safety, affordable housing, and poverty alleviation could be undermined by the bill's preemptions. Although the bill contains an exemption for local ordinances aimed at curbing predatory lending by credit access businesses, it would not allow cities without similar ordinances to pass them, and would prevent existing ordinances from being updated to effectively address the evolution of predatory lending entities. The bill also could eliminate local requirements intended to ensure fair and humane working conditions, such as mandated rest and water breaks for construction workers. Local anti-discrimination ordinances that protect the LGBT community in employment and housing access could also be threatened.

By waiving local governments' liability immunity, the bill's private cause of action could incentivize excessive and costly litigation. The cost of such lawsuits would impose a significant financial burden on city and county resources, which would ultimately pass to taxpayers.