

By: Creighton, Bettencourt

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) the 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 authority powers to the state where those powers belong in accordance with the Texas Constitution, including Section 5, Article XI, of that 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

1 municipality from providing the same services and imposing the same
2 regulations that a general-law municipality is authorized to
3 provide or impose;

4 (3) does not affect the authority of a municipality or
5 county to conduct a public awareness campaign; and

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

11 SECTION 4. Chapter 102A, Civil Practice and Remedies Code,
12 is amended by adding Subchapter A, and a heading is added to that
13 subchapter to read as follows:

14 SUBCHAPTER A. PRIVATE ACTION

15 SECTION 5. Sections 102A.001, 102A.002, 102A.003,
16 102A.004, 102A.005, and 102A.006, Civil Practice and Remedies Code,
17 are transferred to Subchapter A, Chapter 102A, Civil Practice and
18 Remedies Code, as added by this Act, and amended to read as follows:

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

25 Sec. 102A.002. LIABILITY FOR CERTAIN REGULATION. Any
26 person who has sustained an injury in fact, actual or threatened,
27 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:

- (1) Section 1.004, Agriculture Code;
- (2) Section 1.109, Business & Commerce Code;
- (3) Section 1.023, Election Code;
- (4) Section 1.004, Finance Code;
- (5) Section 1.006, Health and Safety Code;
- (6) [~~(4)~~] Section 30.005, Insurance Code;
- (7) [~~(5)~~] Section 1.005, Labor Code;
- (8) [~~(6)~~] Section 229.901, Local Government Code;
- (9) [~~(7)~~] Section 1.003, Natural Resources Code;
- (10) [~~(8)~~] Section 1.004, Occupations Code;
- (11) Section 1.08(b), Penal Code; or
- (12) [~~(9)~~] Section 1.004, Property Code.

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

- (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 subchapter [~~chapter~~] costs and reasonable attorney's fees if the court finds the action to be frivolous.

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 subchapter [~~chapter~~].

Sec. 102A.005. NOTICE. A municipality or county is

entitled to receive notice of a claim against it under this subchapter [~~chapter~~] not later than three months before the date a claimant files an action under this subchapter [~~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 subchapter [~~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.

(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.

SECTION 6. Chapter 102A, Civil Practice and Remedies Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. ATTORNEY GENERAL ENFORCEMENT

Sec. 102A.051. DEFINITION. In this subchapter, "no-new-revenue tax rate" means the no-new-revenue tax rate calculated under Chapter 26, Tax Code.

Sec. 102A.052. ATTORNEY GENERAL INVESTIGATION AND ACTION.
(a) The attorney general may investigate an alleged violation of a law described by Section 102A.002 by a municipality or county.

(b) The attorney general may bring an action for injunctive,

1 declaratory, or mandamus relief against a municipality or county if
2 the attorney general determines after conducting an investigation
3 under Subsection (a) that the municipality or county violated a law
4 described by Section 102A.002.

5 (c) Notwithstanding any other law, including Chapter 15,
6 the attorney general may bring an action under this section in:

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

9 (2) if the defendant is a municipality, a county in
10 which the municipality is located.

11 Sec. 102A.053. EFFECTS OF PENDENCY OF ACTION. (a) During
12 the pendency of an action brought under Section 102A.052, with
13 respect to a municipality or county defending the action:

14 (1) the comptroller shall withhold payment of any
15 money due to the municipality or county under Section 321.502 or
16 323.502, Tax Code;

17 (2) the municipality or county may not adopt an ad
18 valorem tax rate that exceeds the municipality's or county's
19 no-new-revenue tax rate;

20 (3) the municipality or county may not adopt a budget
21 that exceeds the total expenditures of the budget under which the
22 municipality or county is operating at the time the attorney
23 general brings the action under Section 102A.052; and

24 (4) the municipality or county may not receive state
25 grant funds and any pending application for such funds shall be
26 denied.

27 (b) Section 109.004(a)(1), Local Government Code, does not

1 apply to a municipality if the comptroller is withholding payments
2 from the municipality in accordance with Subsection (a)(1).

3 (c) Notwithstanding Section 120.002, Local Government Code,
4 a county may not hold an election under that section if the
5 comptroller is withholding payments from the county in accordance
6 with Subsection (a)(1).

7 (d) Notwithstanding Subsection (a)(4), a municipality or
8 county may receive state grant funds for grants provided for the
9 purpose of:

10 (1) responding to a disaster declared under Chapter
11 418, Government Code, if:

12 (A) for a municipality, the municipality is
13 located in a county or a county adjacent to a county that includes
14 an area specified in the disaster declaration; and

15 (B) for a county, the county or a county adjacent
16 to the county includes an area specified in the disaster
17 declaration; or

18 (2) providing financial assistance to a municipal
19 police department, sheriff's department, constable's office,
20 district or county attorney's office, fire department, municipal or
21 county jail, or other municipal or county department providing law
22 enforcement or emergency response services.

23 Sec. 102A.054. ACTION PROCEDURES. (a) A municipality or
24 county defending an action brought under Section 102A.052 has the
25 burden of proof to establish that the municipality or county
26 complied with the law that is the subject of the action.

27 (b) The trial court shall set an action brought under

1 Section 102A.052:

2 (1) for an initial hearing not later than the 30th day
3 after the date the municipality or county defending the action was
4 served with process for the action; and

5 (2) for a trial on the merits not later than the 90th
6 day after the date the municipality or county defending the action
7 was served with process for the action, unless:

8 (A) the municipality or county and the attorney
9 general agree to a later date; and

10 (B) the court determines that holding trial at a
11 later date is in the interest of justice.

12 Sec. 102A.055. APPELLATE JURISDICTION; EXPEDITED APPEAL.

13 (a) The Fifteenth Court of Appeals has exclusive intermediate
14 appellate jurisdiction of an action brought under Section 102A.052.
15 A party must appeal the action not later than the 30th day after the
16 date the judgment is signed.

17 (b) An appellate court shall expedite an appeal of an action
18 brought under Section 102A.052.

19 Sec. 102A.056. RESOLUTION OF ACTION IN FAVOR OF ATTORNEY
20 GENERAL. (a) If the attorney general prevails in an action brought
21 under Section 102A.052:

22 (1) the municipality or county defending the action
23 may not, during the five fiscal years following the year in which
24 the judgment becomes final:

25 (A) adopt an ad valorem tax rate that exceeds the
26 municipality's or county's no-new-revenue tax rate; or

27 (B) receive state grant funds; and

(2) the court issuing the final judgment resolving the action shall provide in the judgment that the state is entitled to recover from the municipality or county defending the action a penalty equal to the balance of the suspense account maintained for the municipality or county under Section 321.501 or 323.501, Tax Code, as applicable, that exists on the date the judgment is signed, less the amount the comptroller may retain under Subsection (b) of this section.

(b) Except as provided by this subsection, the comptroller shall, on receipt of a copy of the final judgment in an action brought under Section 102A.052, deposit the balance of the suspense account maintained for the municipality or county defending the action under Section 321.501 or 323.501, Tax Code, as applicable, as of the date the judgment is signed to the credit of the general revenue fund. The comptroller may retain in the suspense account maintained for the municipality or county an amount not to exceed five percent of the balance of the suspense account as of the date the judgment is signed for the purpose of making refunds for overpayments to the suspense account or redeeming dishonored checks and drafts deposited to the credit of the suspense account. Not later than the fourth anniversary of the date the comptroller retains an amount in a suspense account under this subsection, the comptroller shall deposit the balance of that retained amount, if any, to the credit of the general revenue fund.

(c) Section 109.004(a)(1), Local Government Code, does not apply to a municipality subject to a final judgment in an action brought under Section 102A.052 for six state fiscal years following

1 the date the judgment is signed.

2 (d) Notwithstanding Section 120.002, Local Government Code,
3 a county may not hold an election under that section if the county
4 has been the subject of an adverse final judgment in an action
5 brought under Section 102A.052 before the sixth anniversary of the
6 date the judgment is signed.

7 Sec. 102A.057. RESOLUTION OF ACTION IN FAVOR OF
8 MUNICIPALITY OR COUNTY. If a municipality or county prevails in an
9 action brought under Section 102A.052, the comptroller shall
10 immediately send to the municipality or county any balance of the
11 suspense account maintained for the municipality or county under
12 Section 321.501 or 323.501, Tax Code, as applicable, being held
13 under Section 102A.053(a)(1) as of the date the final judgment
14 resolving the action is signed, including any interest that accrued
15 on the balance of the suspense account during the period the balance
16 was withheld.

17 SECTION 7. Chapter 1, Election Code, is amended by adding
18 Section 1.023 to read as follows:

19 Sec. 1.023. PREEMPTION. Unless expressly authorized by
20 another statute, a municipality or county may not adopt, enforce,
21 or maintain an ordinance, order, or rule regulating conduct in a
22 field of regulation that is occupied by a provision of this code.
23 An ordinance, order, or rule that violates this section is void,
24 unenforceable, and inconsistent with this code.

25 SECTION 8. Chapter 1, Health and Safety Code, is amended by
26 adding Section 1.006 to read as follows:

27 Sec. 1.006. PREEMPTION. Unless expressly authorized by

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

6 SECTION 9. Section 1.08, Penal Code, is amended to read as
7 follows:

8 Sec. 1.08. PREEMPTION. (a) No governmental subdivision or
9 agency may enact or enforce a law that makes any conduct covered by
10 this code an offense subject to a criminal penalty. This subsection
11 ~~[section]~~ shall apply only as long as the law governing the conduct
12 proscribed by this code is legally enforceable.

13 (b) Unless expressly authorized by another statute, a
14 municipality or county may not adopt, enforce, or maintain an
15 ordinance, order, or rule regulating conduct that is otherwise
16 prohibited by a provision of this code. An ordinance, order, or
17 rule that violates this subsection is void, unenforceable, and
18 inconsistent with this code.

19 SECTION 10. Subchapter B, Chapter 102A, Civil Practice and
20 Remedies Code, as added by this Act, applies only to a cause of
21 action that accrues on or after the effective date of this Act.

22 SECTION 11. Every provision, section, subsection,
23 sentence, clause, phrase, or word in this Act, and every
24 application of the provisions in this Act to every person, group of
25 persons, or circumstances, are severable from each other. If any
26 application of any provision in this Act to any person, group of
27 persons, or circumstances is found by a court to be invalid,

1 preempted, or unconstitutional, for any reason whatsoever, then the
2 remaining applications of the Act to all other persons and
3 circumstances shall be severed and preserved and shall remain in
4 effect. All constitutionally valid applications of the provisions
5 in this Act shall be severed from any applications that a court
6 finds to be invalid, preempted, or unconstitutional, because it is
7 the legislature's intent and priority that every single valid
8 application of every statutory provision be allowed to stand alone.
9 The legislature further declares that it would have enacted this
10 Act, and each provision, section, subsection, sentence, clause,
11 phrase, or word, and all constitutional applications of the
12 provisions of this Act, irrespective of the fact that any
13 provision, section, subsection, sentence, clause, phrase, or word,
14 or applications of this chapter were to be declared invalid,
15 preempted, or unconstitutional.

16 SECTION 12. The Texas Supreme Court has exclusive and
17 original jurisdiction over a challenge to the constitutionality of
18 this Act or any part of this Act and may issue injunctive or
19 declaratory relief in connection with the challenge.

20 SECTION 13. This Act takes effect September 1, 2025.