

CAUSE NO. D-1-GN-23-003474

THE CITY OF HOUSTON, <i>Plaintiff</i> , and	§	IN THE DISTRICT COURT OF
	§	
	§	
THE CITY OF SAN ANTONIO, <i>Intervenor</i>	§	TRAVIS COUNTY, TEXAS
	§	
v.	§	
	§	
THE STATE OF TEXAS, <i>Defendant</i>	§	345th JUDICIAL DISTRICT

PETITION IN INTERVENTION
OF THE CITY OF SAN ANTONIO

Intervenor the City of San Antonio, Texas (“San Antonio”), files this Petition in Intervention (the “Petition”) against the State of Texas (the “State”) regarding House Bill 2127 (“HB2127”).¹ Although it claims to be consistent with Section 5, Article XI, of the Texas Constitution, HB2127’s text contradicts the constitutional authority given to home-rule cities like San Antonio.

OVERVIEW

HB2127, titled the Texas Regulatory Consistency Act, veils its unconstitutional outcome by stating its purpose “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.*” HB2127, Section 3 (emphasis added). But HB2127 improperly abrogates the constitutional power of self-governance granted to home-rule

¹ HB2127 was passed by the Texas Legislature and signed by Governor Abbott on June 14, 2023. It is effective September 1, 2023. The enrolled version of HB2127 is attached as Appendix A to this Petition.

cities. HB2127 tries to preempt home-rule cities' local regulation of multiple areas of local authority through broad, generalized statements of preemption. However, HB2127's provisions are so vague as to constitute no regulation at all. Preemption of home-rule cities' local law requires unmistakable clarity, and HB2127 misses that mark by a long shot. Thus, San Antonio files this Petition seeking declaratory relief because HB2127 is unconstitutionally vague, and its terms violate provisions of the Constitutions of Texas and the United States.

DISCOVERY CONTROL PLAN

1. Pursuant to Rule 190.4 of the Texas Rules of Civil Procedure, discovery should be conducted under Level 3.

PARTIES

2. Intervenor San Antonio is a home-rule municipality located in Bexar County, Texas that is directly affected by HB2127 because it purports to preempt municipal regulations in areas in which San Antonio has adopted municipal ordinances. San Antonio therefore has a justiciable interest in the subject matter of this suit and standing to bring these claims relating to HB2127.

3. Plaintiff the City of Houston is a home-rule municipality located in Harris County, Texas.

4. Defendant is the State of Texas. It may be served with process through the Texas Secretary of State, 1019 Brazos Street, Austin, TX 78701.

JURISDICTION AND VENUE

5. This Court has jurisdiction to render the declaratory relief sought through this Petition under the Uniform Declaratory Judgment Act, Tex. Civ. Prac. & Rem. Code §§ 37.001–.011. Venue is proper in Travis County because all or a substantial part of the events giving rise to the claims occurred in Travis County. Tex. Civ. Prac. & Rem. Code § 15.002(a)(1).

6. San Antonio seeks only non-monetary relief, excluding costs and attorney’s fees.

BACKGROUND AND TEXT OF HB2127

A. Contradictions exist between HB2127’s stated purpose of preserving constitutional power and its actual text abrogating that power.

7. While HB2127 purports to preserve home-rule cities’ constitutional power, it actually abrogates that power by requiring “express authorization by statute” to carry out authority. HB2127, Section 4. Historically, such express authorization has been required only for general-law municipalities that—unlike home-rule municipalities—lack the power of self-governance and depend on the Legislature for express grants of power.

8. HB2127 first recites that its purpose 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.” HB2127, Section 3. This constitutional provision (“the Home Rule Amendment”) grants home-rule municipalities like San Antonio the right to self-governance through charters and ordinances that are consistent with the Texas Constitution and Texas’s general laws. Tex. Const. Art. XI, sec.

5 (empowering home-rule cities to adopt or amend charters and pass ordinances and providing that “no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State”).

9. But HB2127 far exceeds the guardrails of consistency. It provides, right up front, that it “may not be construed to prohibit a municipality or county from . . . carrying out any authority *expressly authorized* by statute” or, relatedly, “from providing the same services and imposing the same regulation that *a general-law municipality* is authorized to provide or impose.” HB2127, Section 4 (emphasis added). That conflict between what HB2127 says in one place and what it accomplishes in another continues throughout the flawed bill.

B. The general preemption language fails to clearly identify which San Antonio enactments it preempts.

10. HB2127 purports to preempt local regulation of various areas of local authority through the following provision, which it inserts verbatim into eight different state codes:

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.

HB2127 (the “General Clause”) (emphasis added).

11. HB2127 inserts the identical General Clause into the Texas Agriculture, Business & Commerce, Insurance, and Natural Resources Codes. As to those four codes,

HB2127 provides no additional detail or guidance regarding the scope of preemption or the meaning or parameters of the General Clause. *See id.*, Sections 5–6, 9, 13.

12. HB2127 inserts the same General Clause into four additional codes: the Texas Finance, Labor, Occupations, and Property Codes. *See id.*, Sections 8, 10, 14–15. But as to these four codes, HB2127 also inserts the following additional provisions immediately after the General Clause:

Finance 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.

HB2127, Section 8.

Labor 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.

HB2127, Section 10.

Occupations 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.

HB2127, Section 14.

Property Code

(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.

HB2127, Section 15.

13. HB2127 does not insert the General Clause into the Texas Local Government Code. Instead, it adds two unique provisions that purport to limit local regulations. First, it adds a provision that simply restates the existing black-letter rule that local governmental entities may not adopt ordinances that conflict with state law:

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.

HB2127, Section 11.

14. Section 51.001 of the Texas Local Government Code, which is referenced in that new provision, is a general grant of regulatory authority to municipalities:

Sec. 51.001. ORDINANCE, RULE, OR REGULATION NECESSARY TO CARRY OUT OTHER POWERS. The governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule, or police regulation that:

(1) is for the good government, peace, or order of the municipality or for the trade and commerce of the municipality; and

(2) is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality.

Tex. Loc. Gov't Code § 51.001.

15. Section 12 of HB2127 also adds the following provisions to the Local Government Code, addressing regulation of animal care:

Sec. 229.901. AUTHORITY TO REGULATE ANIMAL BUSINESSES.

(a) A municipality may not adopt, enforce, 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.

C. The new cause of action under HB2127 makes city taxpayers liable when cities, such as San Antonio, exercise the constitutional powers authorized to cities.

16. In addition to inserting the General Clause into eight codes and amending the Local Government Code as quoted above, HB2127 creates a new private right of action against municipalities and counties for “[a]ny 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” the General Clause in the eight amended codes. HB2127, Section 7. A claimant may recover declaratory and injunctive relief and attorney’s fees and costs. *See id.* There are also venue and notice provisions pertaining to the new private right of action. *See id.*

ARGUMENT AND AUTHORITY

A. A declaratory judgment should issue here to preserve San Antonio’s constitutional authority.

17. The Uniform Declaratory Judgments Act (“UDJA”) is remedial in nature. It is intended to settle and afford relief from uncertainty and insecurity with respect to rights under a statute and must be liberally construed to achieve that purpose. An actual controversy exists between the parties concerning San Antonio’s rights and obligations under Texas law. San Antonio’s key interest in maintaining the broad powers granted to home-rule cities by the Texas Constitution would be impeded improperly by HB2127.

18. Pursuant to the UDJA, Texas Civil Practice and Remedies Code §§ 37.001–.011, San Antonio seeks a declaratory judgment of the Court for the reasons set forth below.

1. HB2127 flouts the Home Rule Amendment and fails to meet the established standard for legislative preemption of enactments by home-rule cities.

19. To reiterate, San Antonio is a home-rule municipality that enjoys the stature and benefits enshrined in the Texas Constitution’s Home Rule Amendment, which was adopted in 1912 to grant municipalities like San Antonio the right of self-government. Tex. Const. Art. XI, sec. 5. “Home-rule cities may exercise all powers not denied to them by the Constitution or state law.” *Powell v. City of Houston*, 628 S.W.3d 838, 842 (Tex. 2021). They “possess the power of self-government and look to the Legislature not for grants of authority, but only for limitations on their authority.” *BCCA Appeal Group, Inc. v. City of Houston*, 496 S.W.3d 1, 7 (Tex. 2016). Consistent with that principle, the law is exacting when it comes to preemption of home-rule cities’ ordinances. Inference or possibility will not suffice.

20. “In the case of a home-rule city, the Legislature must demonstrate its intent to preempt local law ‘with unmistakable clarity.’” *City of Houston v. Houston Prof’l Fire Fighters’ Ass’n, Local 341*, 664 S.W.3d 790, 804 (Tex. 2023) (emphasis added) (quoting *Dall. Merch.’s & Concessionaire’s Ass’n v. City of Dallas*, 852 S.W.2d 489, 491 (Tex. 1993)); *Perez v. Turner*, 653 S.W.3d 191, 203 (Tex. 2022) (noting that limitations by the Legislature on the “the broad powers granted to home rule cities” must “be stated with ‘unmistakable clarity’” (quoting *City of Sweetwater v. Geron*, 380 S.W.2d 550, 552 (Tex. 1964))); *City of Laredo v. Laredo Merchants Ass’n*, 550 S.W.3d 586, 593 (Tex. 2018) (“A statutory limitation of local laws may be express or implied, but the Legislature’s intent to impose the limitation ‘must “appear with unmistakable clarity.”’” (quoting *Lower Colo. River Auth. v. City of San Marcos*, 523 S.W.2d 641, 645 (Tex. 1975))). The standard for preempting the enactments of home-rule cities is thus heightened, in keeping with the Home Rule Amendment, and it requires *unmistakable clarity*.

21. The crux of this suit is that HB2127 flouts the Home Rule Amendment by failing to meet the heightened standard for legislative action preempting local law. More specifically, HB2127 fails to identify, *with unmistakable clarity*, which City enactments are preempted.

2. HB2127’s General Clause is unconstitutionally vague and does not preempt local enactments “with unmistakable clarity.”

22. “A statute which prohibits conduct that is not sufficiently defined is void for vagueness. The vagueness doctrine is a component of the Constitution’s due process guarantee.” *Comm’n for Lawyer Discipline v. Benton*, 980 S.W.2d 425, 437 (Tex. 1998)

(citations omitted). “A statute is unconstitutionally vague if it does not give a person of ordinary intelligence a reasonable opportunity to know what is prohibited.” *Texas Democratic Party v. Abbott*, 961 F.3d 389, 409 (5th Cir. 2020) (cleaned up). “In the civil context, the statute must be so vague and indefinite as really to be no rule at all.” *Id.*

23. “The vagueness doctrine requires different levels of clarity depending on the nature of the law in question.” *Benton*, 980 S.W.2d at 437. Here, where the preemption issue impacts home-rule cities, the level of clarity required is heightened. Specifically, the law requires *unmistakable clarity* regarding the preemption. The General Clause of HB2127 comes nowhere near meeting that standard. Parsing it reveals that it is really no rule at all.

The General Clause, which HB2127 inserts into eight Texas codes, provides:

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.

24. There is no subject matter specified in the General Clause, nor any statutory provisions referenced. It offers no guidance regarding the scope of “field of regulation,” what it takes to “occupy” a field of regulation within a given code for purposes of preemption, or how “a provision” of any given code could sweep so broadly as to occupy a field of regulation. As to four of the codes at issue, HB2127 includes additional guidance regarding specific regulations that may be preempted or enforced. *See, e.g.*, HB2127 Section 8 (authorizing a city or county to enforce regulations of credit service organizations

under Chapter 393 of the Texas Labor Code). The existence of that specificity as to certain narrow areas highlights the utter lack of guidance or parameters in the General Clause.

25. In addition to the lack of guidance or parameters in the General Clause itself, the specific terminology sows further confusion regarding the scope of preemption because those terms already have a set meaning in the law. “Occupying the field” is a distinct category of preemption that applies when federal law excludes state legislation by occupying an entire field. *See Kurns v. R.R. Friction Products Corp.*, 565 U.S. 625, 630 (2012) (explaining that “we have deemed state law pre-empted ‘when the scope of a [federal] statute indicates that Congress intended federal law to *occupy a field* exclusively’”) (emphasis added); *BIC Pen Corp. v. Carter*, 346 S.W.3d 533, 537 (Tex. 2011) (“State law may be preempted . . . impliedly, by the scope of a federal law or regulation indicating Congress intended the federal law or regulation to exclusively *occupy the field.*”) (emphasis added). HB2127 plainly does not “occupy the field” of any given area of regulation, and none of the eight codes into which it inserts the General Clause “occupies the field” of its subject matter. The fact that the General Clause uses preemption terminology about occupying a field creates confusion regarding its scope.

26. Adding to the confusion is the General Clause’s opening provision— “[u]nless expressly authorized by another statute[.]” Myriad state statutes authorize regulations by municipalities and counties, any one of which operates as an exception to whatever preemption the General Clause purports to affect. How do those provisions interact with the General Clause, and how is a reasonable person to know which “field” is “occupied” or not by “a provision” in one of the eight affected codes?

27. A provision in a code purporting to preempt any municipal “ordinance, order, or rule regulating conduct in a field of regulation that is occupied by a provision of this code” is “so vague and indefinite as really to be no rule at all,” *Texas Democratic Party*, 961 F.3d at 409, particularly with respect to home-rule cities. Indeed, that capacious language of the General Clause is not preemption through *unmistakable clarity*; it is intentional ambiguity.

28. San Antonio therefore asks this Court to declare that the General Clause is void as unconstitutionally vague.

B. Costs and Attorney’s Fees

29. San Antonio has engaged counsel. Pursuant to the Texas Civil Practices and Remedies Code, San Antonio is entitled to, and hereby seeks, recovery of its costs and reasonable and necessary attorney’s fees incurred in the prosecution of its declaratory judgment claim under Section 37.009 of the Texas Civil Practices and Remedies Code.

PRAYER

WHEREFORE, PREMISES CONSIDERED, for all of the reasons set forth above in this Petition, San Antonio requests respectfully that, upon final trial or other disposition of this suit, San Antonio have and recover judgment against the State for the following: (1) the declaration set forth above in this Petition; (2) reasonable and necessary attorneys’ fees; and (3) such other and further relief as may be just and proper under the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing Petition in Intervention of the City of San Antonio was served through the electronic filing system on counsel for Plaintiff the City of Houston on July 24, 2023.

/s/ Kennon L. Wooten
Kennon L. Wooten

Appendix A

1 AN ACT

2 relating to state preemption of and the effect of certain state or
3 federal law on certain municipal and county regulation.

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

5 SECTION 1. This Act shall be known as the Texas Regulatory
6 Consistency Act.

7 SECTION 2. The legislature finds that:

8 (1) the state has historically been the exclusive
9 regulator of many aspects of commerce and trade in this state;

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

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

15 SECTION 3. The purpose of this Act is to provide statewide
16 consistency by returning sovereign regulatory powers to the state
17 where those powers belong in accordance with Section 5, Article XI,
18 Texas Constitution.

19 SECTION 4. This Act:

20 (1) may not be construed to prohibit a municipality or
21 county from building or maintaining a road, imposing a tax, or
22 carrying out any authority expressly authorized by statute;

23 (2) may not be construed to prohibit a home-rule
24 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

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

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

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

10 CHAPTER 102A. MUNICIPAL AND COUNTY LIABILITY FOR CERTAIN
11 REGULATION

12 Sec. 102A.001. DEFINITION. In this chapter, "person" means
13 an individual, corporation, business trust, estate, trust,
14 partnership, limited liability company, association, joint
15 venture, agency or instrumentality, public corporation, any legal
16 or commercial entity, or protected or registered series of a
17 for-profit entity.

18 Sec. 102A.002. LIABILITY FOR CERTAIN REGULATION. Any
19 person who has sustained an injury in fact, actual or threatened,
20 from a municipal or county ordinance, order, or rule adopted or
21 enforced by a municipality or county in violation of any of the
22 following provisions or a trade association representing the person
23 has standing to bring and may bring an action against the
24 municipality or county:

- 25 (1) Section 1.004, Agriculture Code;
26 (2) Section 1.109, Business & Commerce Code;
27 (3) Section 1.004, Finance Code;

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

7 Sec. 102A.003. REMEDIES. (a) A claimant is entitled to
8 recover in an action brought under this chapter:

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

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

14 Sec. 102A.004. IMMUNITY WAIVER. Governmental immunity of a
15 municipality or county to suit and from liability is waived to the
16 extent of liability created by this chapter.

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

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

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

- 27 (1) the county in which all or a substantial part of

1 the events giving rise to the cause of action occurred; or

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

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

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

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

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

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

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

27 SECTION 9. Chapter 30, Insurance Code, is amended by adding

1 Section 30.005 to read as follows:

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

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

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

16 (b) For purposes of Subsection (a), a field occupied by a
17 provision of this code includes employment leave, hiring practices,
18 breaks, employment benefits, scheduling practices, and any other
19 terms of employment that exceed or conflict with federal or state
20 law for employers other than a municipality or county.

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

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

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

3 SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

4 Sec. 229.901. AUTHORITY TO REGULATE ANIMAL BUSINESSES. (a)

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

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

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

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

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

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

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

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

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

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

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

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

President of the Senate

Speaker of the House

I certify that H.B. No. 2127 was passed by the House on April 19, 2023, by the following vote: Yeas 92, Nays 55, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2127 on May 19, 2023, by the following vote: Yeas 84, Nays 58, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2127 was passed by the Senate, with amendments, on May 16, 2023, by the following vote: Yeas 18, Nays 13.

Secretary of the Senate

APPROVED: _____

Date

Governor