

SUBJECT: Authorizing license holders to bring an action for certain local laws

COMMITTEE: Judiciary & Civil Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Leach, Murr, Schofield, Slawson, Vasut

3 nays — Julie Johnson, Flores, Moody

1 absent — Davis

WITNESSES: For — Bill Lauderback, Texans for Economic Freedom (*Registered, but did not testify*: Stephen Scurlock, Independent Bankers Association of Texas; Arif Panju, Institute for Justice; Sarah Douglas, National Federation of Independent Business; Joshua Massingill, Texas Chiropractic Association; Derek Cohen, Texas Public Policy Foundation; Matthew Posey, Tx Aggregate & Concrete Association)

Against — Tim Morstad, AARP; Luis Figueroa, Every Texan; Ana Gonzalez, Texas AFL-CIO; Ann Baddour, Texas Appleseed; Jenny Andrews, Texas Catholic Conference of Bishops (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; Brie Franco, City of Austin; Jon Weist, City of Irving; Andrew Fortune, City of Plano; Nadia Islam, City of San Antonio; Kathy Mitchell, Just Liberty; Bill Kelly, Mayor’s Office, City of Houston; Rick Levy, Texas AFLCIO; John Litzler, Texas Baptist Christian Life Commission; Thomas Kennedy, Texas Building Trades; Carisa Lopez, Texas Freedom Network; Joshua Houston, Texas Impact; Monty Wynn, Texas Municipal League; Cynthia Van Maanen, Travis County Democratic Party; Kenneth Sumberlin, TSAEW/ IBEW; Daniela Hernandez, Workers Defense Action Fund; and 15 individuals)

BACKGROUND: Concerns have been raised that some municipalities may have occupational licensing ordinances that are more stringent than state law, which could negatively impact small businesses.

DIGEST: HB 2266 would allow occupational license holders subject to a local law

to bring actions against a municipality to enjoin certain local laws.

The license holder would be required to demonstrate that, by a preponderance of the evidence, the local law:

- would establish requirements for, impose restrictions on, or otherwise regulate the occupation or business activity of the license holder in a manner that was more stringent than the requirements, restrictions, or regulations imposed on the license holder under state law; or
- would result in an adverse economic impact on the license holder.

The license holder would be required to bring the action in a district court in a county that included any territory of the municipality that adopted the local law or in Travis County.

The license holder could provide evidence regarding the adverse economic impact of similar local laws in other jurisdictions inside or outside of the state.

If the license holder satisfied the burden of proof, the municipality defending the action would have the burden of establishing by clear and convincing evidence that the local law:

- did not conflict with state law; and
- was necessary and narrowly tailored to protect against actual and specific harm to the public's health or safety.

The court could grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, and a temporary or permanent injunction.

The bill would allow the court to award costs and reasonable and necessary attorney's fees to be paid by the defending municipality to the prevailing license holder.

This 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.