

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 399

BY SENATORS FERNS, BLAIR AND TRUMP

[Introduced February 22, 2017; Referred
to the Committee on the Workforce; and then to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-4 and §21-5A-5, all relating to
 3 prohibiting political subdivisions from enacting local ordinances regulating benefits
 4 employers provide to their employees.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-4 and §21-5A-5, all to read as follows:

ARTICLE 5A. UNIFORM EMPLOYER BENEFITS REQUIREMENTS.

§21-5A-1. Short title.

1 This article shall be known as the Employer Benefits Requirements Uniformity Act.

§21-5A-2. Legislative intent.

1 (a) Employers in this state are best able to grow and invest in their communities when
 2 operating under a clear, consistent regulatory system that imposes only those burdens absolutely
 3 necessary to promote the public welfare. Allowing localities to mandate employer provided
 4 benefits would create a patchwork of local regulations discouraging employers from growing and
 5 investing and imposing significant compliance burdens on them. Furthermore, locally mandated
 6 benefits frustrate the Legislature’s goal of a thriving statewide economy and place employers in
 7 this state at a competitive disadvantage to employers in other states not burdened with
 8 unnecessary local regulations.

9 (b) Preemption of burdensome and unnecessary local government mandates on
 10 employers provides a stable environment for employers and promotes economic development.

11 (c) The Legislature finds and declares that regulation of the employment relationship
 12 between a nonpublic employer and its employees is a matter of state concern and is outside the
 13 express or implied authority of local governmental bodies to regulate, absent express delegation
 14 of that authority to the local governmental body.

§21-5A-3. Definitions.

1 (a) "Political subdivision" means any local government or its subdivision, including, but
 2 not limited to, a city, village, township, county, or educational institution; a local public authority,
 3 agency, board, commission, or other local governmental, quasi-governmental, or quasi-public
 4 body; or a public body that acts or purports to act in a commercial, business, economic
 5 development, or similar capacity for a local government or its subdivision.

6 (b) "Employment benefits" means anything of value that an employee may receive from
 7 an employer in addition to wages and salary. The term includes, but is not limited to, health
 8 benefits; disability benefits; death benefits; group accidental death and dismemberment benefits;
 9 paid or unpaid days off for holidays, sick leave, vacation, or other purposes; retirement benefits;
 10 terms of employment, attendance or leave policies, and profit-sharing benefits.

11 (c) "Employee scheduling" means any requirements related to employee work schedules,
 12 including, but not limited to, notice of schedules, changes in schedules, and additional pay based
 13 on schedules or changes thereto.

14 (d) "Employee" means an individual employed in this state by an employer or a natural
 15 person who performs services for an employer for valuable consideration.

16 (e) "Employer" means a person engaging in any activity, enterprise, or business in this
 17 state employing one or more employees, or a person, association, or legal or commercial entity
 18 receiving services from an employee or independent contractor and, in return, giving
 19 compensation of any kind to such employee or independent contractor.

§21-5A-4. Preemption.

1 (a) Except as provided in section five of this article, a political subdivision may not adopt
 2 or enforce any ordinance, regulation, resolution, policy, or any other legal requirement that
 3 regulates or imposes any requirement upon an employer pertaining to:

4 (1) Any employee's compensation, including a minimum wage rate;

5 (2) Any employee's employment benefits;

6 (3) Employee scheduling, except that this section does not prohibit an ordinance, local

7 policy, or local resolution that limits the hours a business may operate; or

8 (4) The provision of overtime pay.

9 (b) A local governmental body may not adopt, enforce, or administer an ordinance, local
10 policy, or local resolution regulating information an employer or potential employer must request,
11 require, or exclude on an application for employment from an employee or a potential employee
12 or during the interview process. This subsection does not prohibit an ordinance, local policy, or
13 local resolution requiring a criminal background check for an employee or potential employee in
14 connection with the receipt of a license or permit from a local governmental body.

15 (c) A local governmental body may not adopt, enforce, or administer an ordinance, local
16 policy, or local resolution regulating work stoppage or strike activity of employers and their
17 employees or the means by which employees may organize into a union or employee association.

18 (d) A local governmental body may not adopt, enforce, or administer an ordinance, local
19 policy, or local resolution requiring an employer or its employees to participate in any educational
20 apprenticeship or apprenticeship training program that is not required by state or federal law.

21 (e) A local governmental body may not adopt, enforce, or administer an ordinance, local
22 policy, or local resolution regulating or creating administrative or judicial remedies for wage, hour,
23 or benefit disputes, including, but not limited to, any benefits described in subsections (a) through
24 (d).

25 (f) Any ordinance, regulation, resolution, policy, or other legal requirement enacted or
26 adopted prior to the effective date of this article that would be prohibited under this section is void
27 upon the effective date of this article.

§21-5A-5. Exceptions.

1 (a) Section four of this article does not apply to the employees of a political subdivision.

2 (b) This article does not prohibit a local governmental body from adopting or enforcing an
3 ordinance, policy, or resolution prohibiting employment discrimination.

NOTE: The purpose of this bill is to prohibiting political subdivisions from enacting local ordinances regulating benefits employers provided to their employees.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.