

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 458

BY SENATORS SWOPE, RUCKER, TRUMP, CLINE, AND

BOSO

[Originating in the Committee on the Judiciary;

reported on February 12, 2018]

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, and §21-5A-4, all relating to prohibiting
3 political subdivisions from enacting certain ordinances, regulations, local policies, local
4 resolutions, or other legal requirements; providing a short title; defining terms; providing
5 that political subdivisions shall not adopt or enforce any ordinance, regulation, local policy,
6 local resolution, or other legal requirement which regulates information requested,
7 required, or excluded on an application for employment; providing an exception; providing
8 that political subdivisions shall not adopt or enforce any ordinance, regulation, local policy,
9 local resolution or other legal requirement which requires an employer to pay a wage
10 higher than any applicable state or federal law; providing that political subdivisions shall
11 not adopt or enforce any ordinance, regulation, local policy, local resolution, or other legal
12 requirement which requires an employer to pay wages or fringe benefits based on a rate
13 prevailing in the locality; providing that political subdivisions shall not adopt or enforce any
14 ordinance, regulation, local policy, local resolution, or other legal requirement which
15 regulates work stoppage, strike activity, or means by which employees organize; providing
16 that political subdivisions shall not adopt or enforce any ordinance, regulation, local policy,
17 local resolution, or other legal requirement which requires an employer to provide paid or
18 unpaid leave time; providing that political subdivisions shall not adopt or enforce any
19 ordinance, regulation, local policy, local resolution, or other legal requirement which
20 requires an employer or its employees to participate in an apprenticeship or
21 apprenticeship training program not required by federal or state law; providing that political
22 subdivisions shall not adopt or enforce any ordinance, regulation, local policy, local
23 resolution, or other legal requirement which regulates an employee's hours and
24 scheduling; providing that political subdivisions shall not adopt or enforce any ordinance,
25 regulation, local policy, local resolution, or other legal requirement which regulates
26 standards or requirements regarding the sale or marketing of consumer merchandise that

27 are different from or in addition to state law; providing an exception; providing that political
28 subdivisions shall not adopt or enforce any ordinance, regulation, local policy, local
29 resolution, or other legal requirement which regulates standards of care or conduct of
30 certain professions; clarifying effect on prior written agreements; providing that any
31 prohibited ordinance, regulation, local policy, local resolution, or other legal requirement
32 in effect prior to the effective date is void; providing that the prohibitions do not apply to
33 employees of a political subdivision; and clarifying the effect on the West Virginia Alcohol
34 and Drug-Free Workplace Act.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 5A. LOCAL GOVERNMENT LABOR AND CONSUMER MARKETING
REGULATORY LIMITATION ACT.**

§21-5A-1. Short title.

1 This article shall be known and cited as the Local Government Labor and Consumer
2 Marketing Regulatory Limitation Act.

§21-5A-2. Definitions.

1 For purposes of this article:

2 “Consumer merchandise” means merchandise offered for sale or lease, or provided with
3 a sale or lease, primarily but not exclusively for personal, family, or household purposes, and
4 includes any container used for consuming, carrying, or transporting such merchandise.

5 “Container” means a bag, cup, package, container, bottle, or other packaging that is all of
6 the following:

7 (1) Designed to be either reusable or single-use;

8 (2) Made of cloth, paper, plastic, including foamed or expanded plastic, cardboard,
9 corrugated material, aluminum, glass, or postconsumer recycled or similar material or substrates,
10 including coated, laminated, or multilayer substrates;

11 (3) Designed for consuming, transporting, or protecting merchandise, food or beverages
12 from or at a food service or retail facility.

§21-5A-3. Prohibited areas of regulation.

1 A political subdivision, as defined in §29-12A-3 of this code, shall not adopt, enforce, or
2 administer an ordinance, regulation, local policy, local resolution, or other legal requirement
3 regarding any of the following specific areas:

4 (1) Regulating information an employer or potential employer must request, require, or
5 exclude on an application for employment from an employee or a potential employee: *Provided,*
6 That this section does not prohibit an ordinance, local policy, or local resolution requiring a criminal
7 background check for an employee or potential employee in connection with the receipt of a
8 license or permit from a local governmental body;

9 (2) Requiring an employer to pay to an employee a wage higher than any applicable state
10 or federal law;

11 (3) Requiring an employer to pay to an employee a wage or fringe benefit based on wage
12 and fringe benefit rates prevailing in the locality;

13 (4) Regulating work stoppage or strike activity of employers and their employees or the
14 means by which employees may organize;

15 (5) Requiring an employer to provide to an employee paid or unpaid leave time;

16 (6) Requiring an employer or its employees to participate in any educational
17 apprenticeship or apprenticeship training program that is not required by state or federal law;

18 (7) Regulating hours and scheduling that an employer is required to provide to employees;

19 (8) Regulating standards or requirements regarding the sale or marketing of consumer
20 merchandise that are different from, or in addition to, any state law: *Provided,* That this section
21 does not prohibit an ordinance, local policy, or local resolution that limits the hours a business
22 may operate and shall not apply to city solid waste or recycling collection programs; or

23 (9) Regulating standards of care or conduct for any profession regulated, licensed, or
24 certified by the State of West Virginia.

§21-5A-4. Exceptions; applicability.

1 (a) Nothing in this article shall be construed so as to prohibit a political subdivision from
2 enforcing a written agreement voluntarily entered into and in effect prior to the effective date of
3 this article.

4 (b) Any ordinance, regulation, local policy, local resolution, or other legal requirement
5 enacted or adopted prior to the effective date of this article, including those enacted or adopted
6 pursuant to §8-1-5a of this code, that would be prohibited under §21-5A-3 of this code is void
7 upon the effective date of this article.

8 (c) §21-5A-3 of this code does not apply to the employees of a political subdivision.

9 (d) Nothing in this article shall be construed as prohibiting or limiting a political subdivision
10 from complying with the West Virginia Alcohol and Drug-Free Workplace Act, set forth in §21-
11 1d-1 et seq. of this code, or otherwise requiring similar drug and alcohol policies and testing of a
12 political subdivision's vendors.