

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **Senate Bill 70**

BY SENATOR SWOPE

[ Introduced January 9, 2019; 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, and §21-5A-4, all relating to prohibiting  
 3 political subdivisions from enacting any ordinance, regulation, local policy, local resolution,  
 4 or other legal requirements regulating certain areas of the employer-employee relationship  
 5 and the sale or marketing of consumer merchandise; establishing a short title; establishing  
 6 areas where political subdivisions are prohibited from enacting or promulgating  
 7 ordinances, local policies, or local regulations; and providing for exceptions and  
 8 applicability.

*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; and

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-3c of this code, may 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 or

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

**§21-5A-4. Exceptions; applicability.**

1           (a) Nothing in this article may be construed 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 may be construed as prohibiting or limiting a political subdivision  
10 from complying with the West Virginia Drug and Alcohol 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.

NOTE: The purpose of this bill is to prohibit political subdivisions from enacting any ordinance, regulation, local policy, local resolution or other legal requirements regulating certain areas of the employer-employee relationship and the sale or marketing of consumer merchandise.

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