WEST virginia legislature

**FISCAL NOTE**

2023 regular session

Introduced

Senate Bill 16

By Senator Swope

[Introduced January 11, 2023; referred   
to the Committee on Government Organization; and then to the Committee on Finance]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-5J-1, §21-5J-2, §21-5J-3, and §21-5J-4, all relating to prohibiting 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; establishing a short title; establishing areas where political subdivisions are prohibited from enacting or promulgating ordinances, local policies, or local regulations; and providing for exceptions and applicability.

Be it enacted by the Legislature of West Virginia:

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

§21-5J-1. Short title.

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

§21-5J-2. Definitions.

For purposes of this article:

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

"Container" means a bag, cup, package, container, bottle, or other packaging that is all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

§21-5J-4. Exceptions; applicability.

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

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

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

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