WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 590

By Senator Swope

[Introduced January 29, 2024; referred

to the Committee on the Judiciary]

1   A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter,

2   designated §8B-1-1, §8B-1-2, §8B-1-3, §8B-1-4, §8B-1-5, and §8B-1-6, all relating to

3   creating the Local Government Labor Regulatory Limitation Act; prohibiting political

4   subdivisions from enacting certain ordinances, regulations, local policies, local resolutions,

5   or other legal requirements; providing a short title; setting forth legislative findings and

6   declarations; defining terms; providing that political subdivisions may not adopt or enforce

7   any ordinance, regulation, local policy, local resolution, or other legal requirement which

8   requires an employer to pay a wage higher than any applicable state or federal law;

9   providing that political subdivisions may not adopt or enforce any ordinance, regulation,

10   local policy, local resolution, or other legal requirement which requires an employer to pay

11   wages or fringe benefits based on a rate prevailing in the locality or the state; providing that

12   political subdivisions may not adopt or enforce any ordinance, regulation, local policy, local

13   resolution, or other legal requirement which requires an employer to provide paid or unpaid

14   leave time; providing that political subdivisions may not adopt or enforce any ordinance,

15   regulation, local policy, local resolution, or other legal requirement which regulates an

16   employee's hours and scheduling; providing for civil relief; establishing a civil cause of

17   action which, if proven in a court of competent jurisdiction, may permit a person to recover

18   damages, including compensatory and punitive damages, costs and attorney's fees,

19   injunctive relief, or any other appropriate equitable relief against any political subdivision

20   violating the Local Government Labor and Consumer Marketing Regulatory Limitation Act;

21   providing exceptions; clarifying effect on prior written agreements; providing that any

22   prohibited ordinance, regulation, local policy, local resolution, or other legal requirement in

23   effect prior to the effective date of chapter is void; providing that the prohibitions do not

24   apply to employees of a political subdivision; and clarifying the effect on the West Virginia

25   Alcohol and Drug-Free Workplace Act.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8B. LOCAL GOVERNMENT LABOR REGULATORY LIMITATION ACT.

ARTICLE 1. LIMITATIONS ON LABOR REGULATIONS.

§8B-1-1. Short title.

1   This chapter may be known and cited as the Local Government Labor Regulatory

2   Limitation Act.

§8B-1-2. Legislative findings and declarations.

1   (a) *Legislative findings*. —

2   (1) An increasing number of political subdivisions of this state have attempted to enact

3   labor and employment laws on employers operating within their borders that are contrary to the

4   existing laws or the public policy of the state, or both.

5   (2) Wage mandates above the state and federal minimums, scheduling and overtime,

6   required paid leave, and efforts to reinstate the prevailing wage requirements previously repealed

7   by the Legislature are all examples of recent attempts by political subdivisions to regulate labor-

8   management relations at the local level.

9   (3) These local mandates, if left unchecked, create an unworkable patchwork of

10   regulations throughout the state.

11   (4) Regulation of employment law in such a manner places a burden on employers of

12   having to comply with regulatory schemes on a city-by-city or county-by-county basis.

13   (b) *Legislative intent.* — It is the intent of the Legislature that the provisions of this article be

14   construed as a limitation on the use of local ordinances, regulations or other policies by political

15   subdivisions to regulate labor and employment law in a manner contrary to existing state law or

16   public policy.

§8B-1-3. Definitions.

1   For purposes of this article:

2   "Political subdivision" means any county commission, municipality, and county board of

3   education; any separate corporation or instrumentality established by one or more counties or

4   municipalities, as permitted by law; any instrumentality supported in most part by municipalities;

5   any public body charged by law with the performance of a government function and whose

6   jurisdiction is coextensive with one or more counties, cities or towns; a combined city-county

7   health department created pursuant to §16-2-1 *et seq.* of this of this code; public service districts;

8   and other instrumentalities including, but not limited to, volunteer fire departments and emergency

9   service organizations as recognized by an appropriate public body and authorized by law to

10   perform a government function*: Provided,* That hospitals of a political subdivision and their

11   employees are expressly excluded from the provisions of this article.

§8B-1-4. Prohibited areas of regulation.

1   (a) A political subdivision may not adopt, enforce, or administer an ordinance, regulation,

2   local policy, local resolution, or other legal requirement regarding any of the following specific

3   areas:

4   (1) Requiring an employer to pay to an employee a wage higher than any applicable state

5   or federal law;

6   (2) Requiring an employer to pay to an employee a wage or fringe benefit based on wage

7   and fringe benefit rates prevailing in the locality;

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

9   (4) Regulating hours and scheduling that an employer is required to provide to employees;

10   (b) This section does not prohibit any lawfully enacted ordinance, local policy, or local

11   resolution relating to zoning or time, place, and manner of operation requirements in accordance

12   with state law and does not apply to city solid waste or recycling collection programs.

§8B-1-5. Civil relief; damages.

1   Any person injured as a result of any violation of this article has a cause of action, and, if

2   proven in a court of competent jurisdiction, may be entitled to the following relief against the

3   political subdivision violating this article:

4   (1) Compensatory damages;

5   (2) Costs and reasonable attorney's fees, which shall be awarded if the injured person

6   substantially prevails;

7   (3) Punitive damages in accordance with the provisions of §55-7-29 of this code;

8   (4) Preliminary and permanent injunctive relief; and

9   (5) Any other appropriate equitable relief.

§8B-1-6. Exceptions; applicability.

1   (a) This article does not prohibit a political subdivision from enforcing a written agreement

2   voluntarily entered into and in effect prior to the effective date of this article.

3   (b) Any ordinance, regulation, local policy, local resolution, or other legal requirement

4   enacted or adopted prior to the effective date of this article, including those enacted or adopted

5   pursuant to §8-1-5a of this code, that would be prohibited under §8B-1-4 of this code is void upon

6   the effective date of this article.

7   (c) The provisions of §8B-1-4 of this code do not apply to the employees of a political

8   subdivision.

9   (d) This article does not prohibit or limit a political subdivision from complying with the West

10   Virginia Alcohol and Drug-Free Workplace Act, set forth in §21-1d-1 *et seq*. of this code, or

11   otherwise require similar drug and alcohol policies and testing of a political subdivision's vendors.

NOTE: The purpose of this bill is to create the Local Government Labor Regulatory Limitation Act. The bill prohibits political subdivisions from enacting any ordinance, regulation, local policy, local resolution or other legal requirements regulating certain areas of the employer-employee relationship. The bill sets forth prohibited areas of regulation. The bill identifies exceptions. The bill sets forth a purpose, defines terms, and provides for private causes of action.

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