

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 303

BY SENATOR MAYNARD

[Originating in the Committee on the Judiciary;

reported on March 9, 2021]

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 and Consumer Marketing Regulatory Limitation Act;
4 prohibiting political subdivisions from enacting certain ordinances, regulations, local
5 policies, local resolutions, or other legal requirements; providing a short title; setting forth
6 legislative findings and declarations; defining terms; providing areas in which political
7 subdivisions may not adopt or enforce any ordinance, regulation, local policy, local
8 resolution, or other legal requirement; establishing a civil cause of action which, if proven
9 in a court of competent jurisdiction, may permit a person to obtain injunctive relief or any
10 other appropriate equitable relief against any political subdivision violating the Local
11 Government Labor and Consumer Marketing Regulatory Limitation Act; providing
12 exceptions; clarifying effect on prior written agreements; providing that any prohibited
13 ordinance, regulation, local policy, local resolution, or other legal requirement in effect prior
14 to the effective date of the act is void; and providing that the prohibitions do not apply to
15 employees of a political subdivision.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 8B. LOCAL GOVERNMENT LABOR AND CONSUMER
MARKETING REGULATORY LIMITATION ACT.**

**ARTICLE 1. LIMITATIONS ON LABOR AND CONSUMER MARKETING
REGULATIONS.**

§8B-1-1. Short title.

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

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

1 (a) Legislative findings. —

2 (1) An increasing number of political subdivisions across the United States have attempted
3 to enact labor and employment law and consumer marketing mandates on businesses operating
4 within their borders.

5 (2) Mandates above the state and federal minimums for wages, scheduling and overtime,
6 required paid leave, and efforts to reinstate the prevailing wage requirements previously repealed
7 by the Legislature to regulate labor-management relations at the local level are examples of
8 actions that, if taken by political subdivisions, would interfere with the uniformity of wage and hour
9 laws across the state.

10 (3) Bans on the use of plastic bags or drinking straws, or the sale of consumer products
11 such as soda or bottled water, are examples of improvident attempts by political subdivisions
12 across the United States to regulate consumer marketing activities within their borders.

13 (4) Such local mandates or restrictions, if allowed to happen in West Virginia, would create
14 an unworkable patchwork of regulations throughout the state.

15 (5) Regulation of employment law and consumer products in this manner would place a
16 burden on employers and retailers alike of having to comply with regulatory schemes on a city-
17 by-city or county-by-county basis.

18 (6) Piecemeal regulation of consumer products would also have the potential to harm both
19 our local retailers, who are subject to significant competition across our state borders, and our
20 economy.

21 (b) *Legislative intent.* — It is the intent of the Legislature that the provisions of this article
22 be construed as a limitation on the use of local ordinances, regulations, or other policies by
23 political subdivisions to regulate labor and employment law and the sale or marketing of consumer
24 merchandise in a manner contrary to existing state law or public policy.

§8B-1-3. Definitions.

1 For the purposes of this article:

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

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

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

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

13 (3) “Political subdivision” means any county commission, municipality, and county board
14 of education; any separate corporation or instrumentality established by one or more counties or
15 municipalities, as permitted by law; any instrumentality supported in most part by municipalities;
16 any public body charged by law with the performance of a government function and whose
17 jurisdiction is coextensive with one or more counties, cities, or towns; a combined city-county
18 health department created pursuant to §16-2-1 *et seq.* of this code; public service districts; and
19 other instrumentalities including, but not limited to, volunteer fire departments and emergency
20 services organizations as recognized by an appropriate public body and authorized by law to
21 perform a government function: *Provided*, That hospitals of a political subdivision and their
22 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) Regulating information an employer or potential employer may 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 use, sale, or marketing of
20 consumer merchandise that are different from, or in addition to, any state or federal law or
21 standard; and

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

24 (b) This section does not prohibit any lawfully enacted ordinance, local policy, or local
25 resolution relating to zoning or time, place, and manner of operation requirements in accordance
26 with state law, and does not apply to city solid waste or recycling collection programs, or
27 ordinances which prohibit littering, as described in §22-15A-2 of this code.

§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 preliminary and permanent
3 injunctive relief, and 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
10 West 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.