WEST virginia legislature

2022 regular session

Introduced

Senate Bill 71

By Senator Swope

[Introduced January 12, 2022; referred   
to the Committee on the Judiciary]

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 certain ordinances, regulations, local policies, local resolutions, or other legal requirements; providing a short title; defining terms; providing that political subdivisions may not adopt or enforce any ordinance, regulation, local policy, local resolution, or other legal requirement which regulates information requested, required, or excluded on an application for employment; providing an exception; providing that political subdivisions may not adopt or enforce any ordinance, regulation, local policy, local resolution, or other legal requirement which requires an employer to pay a wage higher than any applicable state or federal law; providing that political subdivisions may not adopt or enforce any ordinance, regulation, local policy, local resolution, or other legal requirement which requires an employer to pay wages or fringe benefits based on a rate prevailing in the locality; providing that political subdivisions may not adopt or enforce any ordinance, regulation, local policy, local resolution, or other legal requirement which regulates work stoppage, strike activity, or means by which employees organize; providing that political subdivisions may not adopt or enforce any ordinance, regulation, local policy, local resolution, or other legal requirement which requires an employer to provide paid or unpaid leave time; providing that political subdivisions may not adopt or enforce any ordinance, regulation, local policy, local resolution, or other legal requirement which requires an employer or its employees to participate in an apprenticeship or apprenticeship training program not required by federal or state law; providing that political subdivisions may not adopt or enforce any ordinance, regulation, local policy, local resolution, or other legal requirement which regulates an employee’s hours and scheduling; providing that political subdivisions may not adopt or enforce any ordinance, regulation, local policy, local resolution, or other legal requirement which regulates standards or requirements regarding the sale or marketing of consumer merchandise that are different from or in addition to state law; providing an exception; providing that political subdivisions may not adopt or enforce any ordinance, regulation, local policy, local resolution, or other legal requirement which regulates standards of care or conduct of certain professions; clarifying effect on prior written agreements; providing that any prohibited ordinance, regulation, local policy, local resolution, or other legal requirement in effect prior to the effective date is void; providing that the prohibitions do not apply to employees of a political subdivision; and clarifying the effect on the West Virginia Alcohol and Drug-Free Workplace Act.

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:

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

(2) 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

(3) 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-3 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 must 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;

(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 does not apply to city solid waste or recycling collection programs; or

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

§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 Alcohol and Drug-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.

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.