

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 71**

BY SENATOR SWOPE

[Originating in the Committee on the Judiciary;

reported on February 23, 2022]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §21-5J-1, §21-5J-2, §21-5J-3, and §21-5J-4, all relating to prohibiting political  
3 subdivisions from enacting certain ordinances, regulations, local policies, local  
4 resolutions, or other legal requirements; providing a short title; defining terms; prohibiting  
5 political subdivisions from adopting, enforcing, or administering certain local requirements;  
6 clarifying effect on prior written agreements; providing that any prohibited local  
7 requirement in effect prior to the effective date is void; clarifying effect on lawfully enacted  
8 zoning ordinances; clarifying that article does not apply to municipal solid waste or  
9 recycling collection programs; clarifying that article does not apply to employees of a  
10 political subdivision; and clarifying effect on the West Virginia Alcohol and Drug-Free  
11 Workplace Act and certain similar requirements.

*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.**

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

**§21-5J-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.

4 “Retail establishment” means any entity or person within this state who sells, transfers, or  
5 distributes goods to an ultimate consumer.

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

1 A political subdivision, as defined in §29-12A-3 of this code, including but not limited to a  
2 municipality which is a participant in the Municipal Home Rule Program pursuant to §8-1-5a of

3 this code, may not adopt, enforce, or administer an ordinance, regulation, local policy, local  
4 resolution, or other legal requirement regarding any of the following specific areas:

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

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

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

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

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

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

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

20 (8) Regulating standards or requirements regarding the sale or marketing of consumer  
21 merchandise, except tobacco products or vapor products, in a retail establishment that are  
22 different from, or in addition to, any state law: or

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

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

1 (a) Nothing in this article may be construed to prohibit a political subdivision from enforcing  
2 a written agreement 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 this article is void upon the  
6 effective date of this article.

7           (c) The prohibitions under this article do not prohibit a lawfully enacted zoning ordinance.

8           (d) The prohibitions under this article do not apply to:

9           (1) A municipal solid waste or recycling collection program; or

10          (2) The employees of a political subdivision.

11          (e) Nothing in this article may be construed as prohibiting or limiting a political subdivision  
12 from complying with the West Virginia Alcohol and Drug-Free Workplace Act, set forth in §21-1D-  
13 1 et seq. of this code, or otherwise requiring similar drug and alcohol policies and testing of a  
14 political subdivision's vendors.