

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 376

BY SENATOR MAYNARD

[Introduced January 21, 2019; Referred
to the Committee on Government Organization; and then
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 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 that political subdivisions
7 may not adopt or enforce any ordinance, regulation, local policy, local resolution, or other
8 legal requirement which regulates information requested, required, or excluded on an
9 application for employment; providing that political subdivisions may not adopt or enforce
10 any ordinance, regulation, local policy, local resolution, or other legal requirement which
11 requires an employer to pay a wage higher than any applicable state or federal law;
12 providing that political subdivisions shall not adopt or enforce any ordinance, regulation,
13 local policy, local resolution, or other legal requirement which requires an employer to pay
14 wages or fringe benefits based on a rate prevailing in the locality or the state; providing
15 that political subdivisions may not adopt or enforce any ordinance, regulation, local policy,
16 local resolution, or other legal requirement which regulate work stoppages, strike activity,
17 or means by which employees organize; providing that political subdivisions shall not
18 adopt or enforce any ordinance, regulation, local policy, local resolution, or other legal
19 requirement which requires an employer to provide paid or unpaid leave time; providing
20 that political subdivisions may not adopt or enforce any ordinance, regulation, local policy,
21 local resolution, or other legal requirement which requires an employer or its employees
22 to participate in an apprenticeship or apprenticeship training program not required by
23 federal or state law; providing that political subdivisions may not adopt or enforce any
24 ordinance, regulation, local policy, local resolution, or other legal requirement which
25 regulates an employee's hours and scheduling; providing that political subdivisions may
26 not adopt or enforce any ordinance, regulation, local policy, local resolution, or other legal

27 requirement which regulates standards or requirements regarding the sale or marketing
 28 of consumer merchandise that are different from or in addition to state law; providing that
 29 political subdivisions shall not adopt or enforce any ordinance, regulation, local policy,
 30 local resolution, or other legal requirement which regulates standards of care or conduct
 31 for certain professions; providing for civil relief; establishing a civil cause of action which,
 32 if proven in a court of competent jurisdiction, may permit a person to recover damages,
 33 including compensatory and punitive damages, costs and attorney’s fees, injunctive relief,
 34 or any other appropriate equitable relief against any political subdivision violating the Local
 35 Government Labor and Consumer Marketing Regulatory Limitation Act; providing
 36 exceptions; clarifying effect on prior written agreements; providing that any prohibited
 37 ordinance, regulation, local policy, local resolution, or other legal requirement in effect prior
 38 to the effective date of chapter is void; providing that the prohibitions do not apply to
 39 employees of a political subdivision; and clarifying the effect on the West Virginia Alcohol
 40 and Drug-Free Workplace Act.

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 shall 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 of this state have attempted to enact

3 labor and employment law and consumer marketing mandates on businesses operating within
4 their borders that are contrary to the existing laws and/or public policy of the state.

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

12 (4) These local mandates, if left unchecked, create an unworkable patchwork of
13 regulations throughout the state.

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

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

20 (7) At least 45 state legislatures have already realized the problems caused by such a
21 framework, enacting some form of economic preemption legislation as a result.

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

§8B-1-3. 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, and
4 includes any container used for consuming, carrying, or transporting such merchandise.

5 “Container” means a bag, cup, package, container, bottle, or other packaging that is all of
6 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 “Political subdivision” means any county commission, municipality and county board of
14 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 of this code; public service districts;
19 and other instrumentalities including, but not limited to, volunteer fire departments and emergency
20 service 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 political subdivision may not adopt, enforce, or administer an ordinance, regulation, local
2 policy, local resolution, or other legal requirement regarding any of the following specific areas:

3 (1) Regulating information an employer or potential employer must request, require, or
4 exclude on an application for employment from an employee or a potential
5 employee: *Provided*, That this section does not prohibit an ordinance, local policy, or local

6 resolution requiring a criminal background check for an employee or potential employee in
7 connection with the receipt of a license or permit from a local governmental body;

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

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

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

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

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

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

18 (8) Regulating standards or requirements regarding the sale or marketing of consumer
19 merchandise that are different from, or in addition to, any state law; or

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

22 However, this section does not prohibit any lawfully enacted ordinance, local policy, or
23 local resolution relating to zoning or time, place and manner of operation requirements in
24 accordance with state law and shall 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 shall have a cause of action,
2 and, if proven in a court of competent jurisdiction, may be entitled to the following relief against
3 the 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) Nothing in this article may be construed so as to prohibit a political subdivision from
2 enforcing a written agreement voluntarily entered into and in effect prior to the effective date of
3 this article.

4 (b) Any ordinance, regulation, local policy, local resolution, or other legal requirement
5 enacted or adopted prior to the effective date of this article, including those enacted or adopted
6 pursuant to §8-1-5a of this code, that would be prohibited under §8B-1-4 of this code is void upon
7 the effective date of this article.

8 (c) §8B-1-4 of this code does not apply to the employees of a political subdivision.

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

NOTE: The purpose of this bill is to create the Local Government Labor and Consumer Marketing 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 and the sale or marketing of consumer merchandise. The bill sets forth prohibited areas of regulation. The 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.