

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**Introduced**

## **Senate Bill 135**

BY SENATORS SWOPE AND MAYNARD

[Introduced January 8, 2020; 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 article,  
2 designated §21-5A-1, §21-5A-2, §21-5A-3, and §21-5A-4, all relating to prohibiting  
3 political subdivisions from enacting certain ordinances, regulations, local policies, local  
4 resolutions, or other legal requirements; providing a short title; defining terms; providing  
5 that political subdivisions may not adopt or enforce any ordinance, regulation, local policy,  
6 local resolution, or other legal requirement which regulates information requested,  
7 required, or excluded on an application for employment; providing an exception; providing  
8 that political subdivisions may not adopt or enforce any ordinance, regulation, local policy,  
9 local resolution, or other legal requirement which requires an employer to pay a wage  
10 higher than any applicable state or federal law; providing that political subdivisions may  
11 not adopt or enforce any ordinance, regulation, local policy, local resolution, or other legal  
12 requirement which requires an employer to pay wages or fringe benefits based on a rate  
13 prevailing in the locality; providing that political subdivisions may not adopt or enforce any  
14 ordinance, regulation, local policy, local resolution, or other legal requirement which  
15 regulates work stoppage, strike activity, or means by which employees organize; providing  
16 that political subdivisions may not adopt or enforce any ordinance, regulation, local policy,  
17 local resolution, or other legal requirement which requires an employer to provide paid or  
18 unpaid leave time; providing that political subdivisions may not adopt or enforce any  
19 ordinance, regulation, local policy, local resolution, or other legal requirement which  
20 requires an employer or its employees to participate in an apprenticeship or  
21 apprenticeship training program not required by federal or state law; providing that political  
22 subdivisions may not adopt or enforce any ordinance, regulation, local policy, local  
23 resolution, or other legal requirement which regulates an employee's hours and  
24 scheduling; providing that political subdivisions may not adopt or enforce any ordinance,  
25 regulation, local policy, local resolution, or other legal requirement which regulates  
26 standards or requirements regarding the sale or marketing of consumer merchandise that

27 are different from or in addition to state law; providing an exception; providing that political  
 28 subdivisions may not adopt or enforce any ordinance, regulation, local policy, local  
 29 resolution, or other legal requirement which regulates standards of care or conduct of  
 30 certain professions; clarifying effect on prior written agreements; providing that any  
 31 prohibited ordinance, regulation, local policy, local resolution, or other legal requirement  
 32 in effect prior to the effective date is void; providing that the prohibitions do not apply to  
 33 employees of a political subdivision; and clarifying the effect on the West Virginia Alcohol  
 34 and Drug-Free Workplace Act.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 5A. LOCAL GOVERNMENT LABOR AND CONSUMER MARKETING**  
**REGULATORY LIMITATION ACT.**

**§21-5A-1. Short title.**

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

**§21-5A-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, 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 (1) Designed to be either reusable or single-use;

8 (2) 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 (3) Designed for consuming, transporting, or protecting merchandise, food or beverages  
12 from or at a food service or retail facility.

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

1 A political subdivision, as defined in §29-12A-3 of this code, may not adopt, enforce, or  
2 administer an ordinance, regulation, local policy, local resolution, or other legal requirement  
3 regarding any of the following specific areas:

4 (1) Regulating information an employer or potential employer must 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 sale or marketing of consumer  
20 merchandise that are different from, or in addition to, any state law: *Provided,* That this section  
21 does not prohibit an ordinance, local policy, or local resolution that limits the hours a business  
22 may operate and does not apply to city solid waste or recycling collection programs; or

23 (9) Regulating standards of care or conduct for any profession regulated, licensed, or

24 certified by the State of West Virginia.

**§21-5A-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 §21-5A-3 of this code is void  
6 upon the effective date of this article.

7 (c) §21-5A-3 of this code does not apply to the employees of a political subdivision.

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