WEST virginia legislature

2022 regular session

ENGROSSED

Committee Substitute

for

Senate Bill 71

By Senator Swope

[Originating in the Committee on the Judiciary; reported on February 23, 2022]

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; prohibiting political subdivisions from adopting, enforcing, or administering certain local requirements; clarifying effect on prior written agreements; providing that any prohibited local requirement in effect prior to the effective date is void; clarifying effect on lawfully enacted zoning ordinances; clarifying that article does not apply to municipal solid waste or recycling collection programs; clarifying that article does not apply to employees of a political subdivision; clarifying effect on the West Virginia Alcohol and Drug-Free Workplace Act and certain similar requirements; and clarifying that any provision of article that jeopardizes receipt of federal funding to political subdivision is deemed inoperative.

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.

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

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

A political subdivision, as defined in §29-12A-3 of this code, including but not limited to a municipality which is a participant in the Municipal Home Rule Program pursuant to §8-1-5a 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, except tobacco products or vapor products, in a retail establishment that are different from, or in addition to, any state law: or

(9) Regulating standards of care, conduct, or licensing fees 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 this article is void upon the effective date of this article.

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

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

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

(2) The employees of a political subdivision.

(e) 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.

(f) If any provision of this article jeopardizes the receipt by a political subdivision of any federal grant-in-aid funds or other federal allotment of money, the provisions of this article shall, insofar as the fund is jeopardized, be deemed to be inoperative.