

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 22

FISCAL
NOTE

By Senator Swope

[Introduced January 11, 2023; referred to
the Committee on Government Organization; and
then to the Committee on Finance]

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 resolutions,
 4 or other legal requirements; providing a short title; defining terms; prohibiting political
 5 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; clarifying effect on the West Virginia Alcohol and Drug-Free
 11 Workplace Act and certain similar requirements; and clarifying that any provision of article
 12 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.

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

5 (1) Regulating information an employer or potential employer shall 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-
13 1D-1 et seq. of this code, or otherwise requiring similar drug and alcohol policies and testing of a
14 political subdivision's vendors.

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