

EXHIBIT B

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2500

BY DELEGATES FOSTER, DEAN, STEELE, MANDT AND J.

JEFFRIES

[Introduced February 15, 2021; Referred to the
Committee on Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §16-63-1, §16-63-2, and §16-63-3, all relating to establishing statewide
3 uniformity for auxiliary container regulations.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 63. STATEWIDE UNIFORMITY FOR AUXILIARY CONTAINER
REGULATIONS.**

§16-63-1. Definitions.

1 As used in this article:

2 “Auxiliary container” means a bag, cup, bottle, or other packaging, whether reusable or
3 single-use, that meets both of the following requirements:

4 (1) Is made of cloth, paper, plastic, cardboard, corrugated material, aluminum, glass,
5 postconsumer recycled material, or similar material or substrates, including coated, laminated,
6 or multilayer substrates.

7 (2) Is designed for transporting, consuming, or protecting merchandise, food, or
8 beverages from or at a food service or retail facility.

9 “Local unit of government” means a county, municipality, or city.

§16-63-2. Local ordinance requirements.

1 Subject to §16-63-3 of this code, a local unit of government may not adopt or enforce an
2 ordinance that does any of the following:

3 (1) Regulates the use, disposition, or sale of auxiliary containers.

4 (2) Prohibits or restricts auxiliary containers.

5 (3) Imposes a fee, charge, or tax on auxiliary containers.

§16-63-3. Ordinances permitted.

1 (a) §16-63-2 of this code may not be construed to prohibit or restrict
2 any of the following:

- 3 (1) A curbside recycling program.
- 4 (2) A designated residential or commercial recycling location.
- 5 (3) A commercial recycling program.
- 6 (b) §16-63-2 of this code does not apply to any of the following:
- 7 (1) An ordinance that prohibits littering, as described in §22-15A-2 of this code.
- 8 (2) The use of auxiliary containers on property owned by a local unit of government.

NOTE: The purpose of this bill is to establish statewide uniformity for auxiliary container regulations.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENROLLED

House Bill 2500

BY DELEGATES FOSTER, DEAN, STEELE, MANDT AND J.

JEFFRIES

[Passed April 10, 2021; in effect from passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §16-63-1, §16-63-2, and §16-63-3, all relating to establishing statewide
3 uniformity for auxiliary container regulations.

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5 (3) Imposes a fee, charge, or tax on auxiliary containers.

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- 3 (1) A curbside recycling program.
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- 5 (3) A commercial recycling program.
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- 7 (1) An ordinance that prohibits littering, as described in §22-15A-2 of this code.
- 8 (2) The use of auxiliary containers on property owned by a local unit of government.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect from passage.

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Clerk of the House of Delegates

.....
Clerk of the Senate

.....
Speaker of the House of Delegates

.....
President of the Senate

The within this the.....
day of, 2021.

.....
Governor

West Virginia House of Delegates

85th Legislature - Regular Session 2021

HB 2500

Create an act for Statewide Uniformity for Auxiliary
Container Regulations

RCS# 644

4/10/2021 10:22 PM

Effective From Passage

Yeas: 90 Nays: 8 Absent: 2 Adopted

Yea: 90

Anderson	Forsht	Kessinger	Rohrbach
Barach	Foster	Kimble	Rowan
Barnhart	Garcia	Kimes	Rowe
Barrett	Gearheart	Linville	Skaff
Boggs	Graves	Longanacre	Smith
Booth	Griffith	Lovejoy	Statler
Bridges	Hamrick	Mallow	Steele
Brown	Hanna	Mandt	Storch
Bruce	Hardy	Martin	Summers
Burkhammer	Haynes	Maynard	Sypolt
Capito	Higginbotham	Mazzocchi	Thompson
Clark	Holstein	McGeehan	Toney
Conley	Hornbuckle	Miller	Tully
Criss	Horst	Nestor	Wamsley
Dean	Hott	Pack, J.	Ward, B.
Diserio	Householder	Pack, L.	Ward, G.
Doyle	Howell	Pethel	Westfall
Ellington	Jeffries, D.	Phillips	Williams
Espinosa	Jeffries, J.	Pinson	Worrell
Evans	Jennings	Pritt	Zatezalo
Fast	Keaton	Reed	Mr. Speaker
Ferrell	Kelly, D.	Reynolds	
Fleischauer	Kelly, J.	Riley	

Nay: 8

Bates	Hansen	Pushkin	Young
Fluharty	Paynter	Walker	Zukoff

Not Voting: 2

Cooper	Queen
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West Virginia Senate

Roll Call

HB 2500

Create an act for Statewide Uniformity for Auxiliary Container Regulations

Yea: 23

Nay: 11

Absent: 0

Excused: 0

Y AZINGER	Y MARONEY	Y STOVER
N BALDWIN	Y MARTIN	Y SWOPE
N BEACH	Y MAYNARD	Y SYPOLT
Y BOLEY	Y NELSON	Y TAKUBO
N CAPUTO	Y PHILLIPS	Y TARR
Y CLEMENTS	N PLYMALE	Y TRUMP
Y GRADY	Y ROBERTS	N UNGER
Y HAMILTON	N ROMANO	Y WELD
N IHLENFELD	Y RUCKER	N WOELFEL
N JEFFRIES	Y SMITH	Y WOODRUM
Y KARNES	N STOLLINGS	Y MR PRESIDENT
N LINDSAY		

3rd Reading

Effective From Passage

West Virginia Senate

Roll Call

HB 2500

Create an act for Statewide Uniformity for Auxiliary Container Regulations

Yea: 23

Nay: 11

Absent: 0

Excused: 0

Y AZINGER	Y MARONEY	Y STOVER
N BALDWIN	Y MARTIN	Y SWOPE
N BEACH	Y MAYNARD	Y SYPOLT
Y BOLEY	Y NELSON	Y TAKUBO
N CAPUTO	Y PHILLIPS	Y TARR
Y CLEMENTS	N PLYMALE	Y TRUMP
Y GRADY	Y ROBERTS	N UNGER
Y HAMILTON	N ROMANO	Y WELD
N IHLENFELD	Y RUCKER	N WOELFEL
N JEFFRIES	Y SMITH	Y WOODRUM
Y KARNES	N STOLLINGS	Y MR PRESIDENT
N LINDSAY		

3rd Reading

Effective From Passage

West Virginia House of Delegates

85th Legislature - Regular Session 2021

HB 2500

Create an act for Statewide Uniformity for Auxiliary
Container Regulations

RCS# 51

2/23/2021 11:18 AM

Passage

Yeas: 79 Nays: 19 Exc: 0 Absent: 2 Passed

Yea: 79

Anderson	Gearheart	Kimes	Reynolds
Barnhart	Graves	Linville	Riley
Barrett	Hamrick	Longanacre	Rohrbach
Boggs	Hanna	Mallow	Rowan
Booth	Hardy	Mandt	Smith
Bridges	Haynes	Martin	Statler
Brown	Higginbotham	Maynard	Steele
Bruce	Holstein	Mazzocchi	Storch
Burkhammer	Horst	McGeehan	Summers
Capito	Hott	Miller	Sypolt
Clark	Householder	Nestor	Toney
Conley	Howell	Pack, J.	Tully
Cooper	Jeffries, D.	Pack, L.	Wamsley
Criss	Jeffries, J.	Paynter	Ward, B.
Dean	Jennings	Pethtel	Ward, G.
Espinosa	Keaton	Phillips	Westfall
Fast	Kelly, D.	Pinson	Worrell
Ferrell	Kelly, J.	Pritt	Zatezalo
Forsht	Kessinger	Queen	Mr. Speaker
Foster	Kimble	Reed	

Nay: 19

Barach	Fluharty	Lovejoy	Walker
Diserio	Garcia	Pushkin	Williams
Doyle	Griffith	Rowe	Young
Evans	Hansen	Skaff	Zukoff
Fleischauer	Hornbuckle	Thompson	

Not Voting: 2

Bates	Ellington
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Senator Weld moved to amend the amendment on page four, section four, lines nineteen and twenty, by striking out subdivision (8) and inserting in lieu thereof a new subdivision, designated subdivision (8), to read as follows:

(8) Restricting the sale or offer of containers or consumer merchandise to persons within the political subdivision; and

Adopted

Rejected

HB2500 SFA #1 Takubo 4-9

Long 7952

Senator Takubo moved to amend the Government Organization committee amendment on page two, section three, line four, after the word merchandise by changing the period to a colon and inserting the following proviso: *Provided*, That for the purposes of this article, the term consumer merchandise does not include tobacco products, tobacco-derived products, alternative nicotine products and vapor products as defined in §16-9A-2.

Adopted

Rejected

Senator Karnes moves to amend the Government Organization committee amendment on page four, section four, after line twenty-two, by adding a new subdivision, designated subdivision (10), to read as follows:

(10) Adopting or enforcing any local law, ordinance, resolution, rule, or policy enacted after July 1, 2021, that creates a protected classification or prohibits discrimination on a basis not contained in state law.

Adopted

Rejected

Senator Karnes moves to amend the Government Organization committee amendment on page four, section four, after line twenty-two, by adding a new subdivision, designated subdivision (10), to read as follows:

(10) Adopting or enforcing any local law, ordinance, resolution, rule, or policy enacted after July 1, 2021, that creates a protected classification or prohibits discrimination on a basis not contained in state law.

Adopted

Rejected

HB2500 SFA #1 Weld 4-10

Fletcher 7835

Senator Weld moved to amend the amendment on page four, section four, lines nineteen and twenty, by striking out subdivision (8) and inserting in lieu thereof a new subdivision, designated subdivision (8), to read as follows:

(8) Restricting the sale or offer of containers or consumer merchandise by all persons within the political subdivision; and

Adopted

Rejected

Senator Weld moved to amend the amendment on page four, section four, lines nineteen and twenty, by striking out subdivision (8) and inserting in lieu thereof a new subdivision, designated subdivision (8), to read as follows:

(8) Restricting the sale or offer of containers or consumer merchandise to persons within the political subdivision; and

Adopted

Rejected

HB2500 SFA #1 Weld 4-10

Fletcher 7835

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(8) Restricting the sale or offer of containers or consumer merchandise by all persons within the political subdivision; and

Adopted

Rejected

HB2500 SFA #1 Takubo 4-9

Long 7952

Senator Takubo moved to amend the Government Organization committee amendment on page two, section three, line four, after the word merchandise by changing the period to a colon and inserting the following proviso: *Provided*, That for the purposes of this article, the term consumer merchandise does not include tobacco products, tobacco-derived products, alternative nicotine products and vapor products as defined in §16-9A-2.

Adopted

Rejected

The Committee on Government Organization moved to amend the bill by striking out everything after the enacting clause and inserting in lieu thereof the following:

ARTICLE 1. LIMITATIONS ON LABOR AND CONSUMER MARKETING REGULATIONS.

§8B-1-1. Short title.

This chapter may be known and cited as the Local Government Labor and Consumer Marketing Regulatory Limitation Act.

§8B-1-2. Legislative findings and declarations.

(a) Legislative findings.

(1) An increasing number of political subdivisions across the United States have attempted to enact labor and employment law and consumer marketing mandates on businesses operating within their borders.

(2) Mandates above the state and federal minimums for wages, scheduling and overtime, required paid leave, and efforts to reinstate the prevailing wage requirements previously repealed by the Legislature to regulate labor-management relations at the local level are examples of actions that, if taken by political subdivisions, would interfere with the uniformity of wage and hour laws across the state.

(3) Bans on the use of plastic bags or drinking straws, or the sale of consumer products such as soda or bottled water, are examples of improvident attempts by political subdivisions across the United States to regulate consumer merchandise within their borders.

(4) Such local mandates or restrictions, if allowed to happen in West Virginia, would create an unworkable patchwork of regulations throughout the state.

(5) Regulation of employment law and consumer products in this manner would place a burden on employers and retailers alike of having to comply with regulatory schemes on a city-by-city or county-by-county basis.

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

(b) Legislative intent.- It is the intent of the Legislature that the provisions of this article be construed as a limitation on the use of local ordinances, regulations, or other policies by political subdivisions to regulate labor and employment law and the sale or marketing of consumer merchandise in a

manner contrary to existing state law or public policy.

§8B-1-3. Definitions.

For the purposes of this article:

(1) Consumer merchandise means goods offered for sale, or provided with a sale, primarily, but not exclusively, for personal, family, or household purposes, and includes any container used for consuming, carrying, or transporting the merchandise.

(2) Container means a bag, cup, package, container, bottle, device, or other packaging that is all of the following:

(A) Designed to be either reusable or single use;

(B) Made of cloth, paper, plastic, including foamed or expanded plastic, cardboard, corrugated material, aluminum, glass, or postconsumer recycled or similar material or substrates, including coated, laminated, or multilayer substrates; and

(C) Designed for consuming, transporting, or protecting merchandise, food, or beverages from or at a food service or retail facility.

(3) Political subdivision means any county commission, municipality, and county board of education; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; any instrumentality supported in most part by municipalities; any public body charged by law with the performance of a government function and whose jurisdiction is coextensive with one or more counties, cities, or towns; a combined city-county health department created pursuant to §16-2-1 *et seq.* of this code; public service districts; and other instrumentalities including, but not limited to, volunteer fire departments and emergency services organizations as recognized by an appropriate public body and authorized by law to perform a government function : *Provided*, That hospitals of a political subdivision and their employees are expressly excluded from the provisions of this article.

§8B-1-4. Prohibited areas of regulation.

(a) A political subdivision 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 may 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 consumer merchandise that are different from, or in addition to, any state or federal law or standard; and

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

(b) This section does not prohibit any lawfully enacted ordinance, local policy, or local resolution relating to zoning or time, place, and manner of operation requirements in accordance with state law, and does not apply to city solid waste or recycling collection programs, or ordinances which prohibit littering, as described in §22-15A-2 of this code.

§8B-1-5. Civil relief; damages.

Any person injured as a result of any violation of this article has a cause of action, and, if proven in a court of competent jurisdiction, may be entitled to preliminary and permanent injunctive relief, and any other appropriate equitable relief.

§8B-1-6. Exceptions; applicability.

(a) This article does not prohibit a political subdivision from enforcing a written agreement voluntarily entered into and in effect prior to the effective date of this article.

(b) The provisions of §8B-1-4 of this code do not apply to the employees of a political subdivision.

(c) This article does not prohibit or limit 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 require similar drug and alcohol policies and testing of a political subdivisions vendors.

Adopted

Rejected

The Committee on Government Organization moved to amend the bill by striking out the title and substituting therefor a new title, to read as follows:

Eng. House Bill 2500 H. B. 2500 -- A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter, designated §8B-1-1, §8B-1-2, §8B-1-3, §8B-1-4, §8B-1-5, and §8B-1-6, all relating to creating the Local Government Labor and Consumer Marketing Regulatory Limitation Act; prohibiting political subdivisions from enacting certain ordinances, regulations, local policies, local resolutions, or other legal requirements; providing a short title; setting forth legislative findings and declarations; defining terms; providing areas in which political subdivisions may not adopt or enforce any ordinance, regulation, local policy, local resolution, or other legal requirement; establishing a civil cause of action which, if proven in a court of competent jurisdiction, may permit a person to obtain injunctive relief or any other appropriate equitable relief against any political subdivision violating the Local Government Labor and Consumer Marketing Regulatory Limitation Act; providing exceptions; clarifying effect on prior written agreements; and providing that the prohibitions do not apply to employees of a political subdivision.

Adopted

Rejected

The Committee on Government Organization moved to amend the bill by striking out everything after the enacting clause and inserting in lieu thereof the following:

ARTICLE 1. LIMITATIONS ON LABOR AND CONSUMER MARKETING REGULATIONS.

§8B-1-1. Short title.

This chapter may be known and cited as the Local Government Labor and Consumer Marketing Regulatory Limitation Act.

§8B-1-2. Legislative findings and declarations.

(a) Legislative findings.

(1) An increasing number of political subdivisions across the United States have attempted to enact labor and employment law and consumer marketing mandates on businesses operating within their borders.

(2) Mandates above the state and federal minimums for wages, scheduling and overtime, required paid leave, and efforts to reinstate the prevailing wage requirements previously repealed by the Legislature to regulate labor-management relations at the local level are examples of actions that, if taken by political subdivisions, would interfere with the uniformity of wage and hour laws across the state.

(3) Bans on the use of plastic bags or drinking straws, or the sale of consumer products such as soda or bottled water, are examples of improvident attempts by political subdivisions across the United States to regulate consumer merchandise within their borders.

(4) Such local mandates or restrictions, if allowed to happen in West Virginia, would create an unworkable patchwork of regulations throughout the state.

(5) Regulation of employment law and consumer products in this manner would place a burden on employers and retailers alike of having to comply with regulatory schemes on a city-by-city or county-by-county basis.

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

(b) Legislative intent.- It is the intent of the Legislature that the provisions of this article be construed as a limitation on the use of local ordinances, regulations, or other policies by political subdivisions to regulate labor and employment law and the sale or marketing of consumer merchandise in a

manner contrary to existing state law or public policy.

§8B-1-3. Definitions.

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(2) Container means a bag, cup, package, container, bottle, device, or other packaging that is all of the following:

(A) Designed to be either reusable or single use;

(B) Made of cloth, paper, plastic, including foamed or expanded plastic, cardboard, corrugated material, aluminum, glass, or postconsumer recycled or similar material or substrates, including coated, laminated, or multilayer substrates; and

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§8B-1-4. Prohibited areas of regulation.

(a) A political subdivision 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 may 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 consumer merchandise that are different from, or in addition to, any state or federal law or standard; and

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

(b) This section does not prohibit any lawfully enacted ordinance, local policy, or local resolution relating to zoning or time, place, and manner of operation requirements in accordance with state law, and does not apply to city solid waste or recycling collection programs, or ordinances which prohibit littering, as described in §22-15A-2 of this code.

§8B-1-5. Civil relief; damages.

Any person injured as a result of any violation of this article has a cause of action, and, if proven in a court of competent jurisdiction, may be entitled to preliminary and permanent injunctive relief, and any other appropriate equitable relief.

§8B-1-6. Exceptions; applicability.

(a) This article does not prohibit a political subdivision from enforcing a written agreement voluntarily entered into and in effect prior to the effective date of this article.

(b) The provisions of §8B-1-4 of this code do not apply to the employees of a political subdivision.

(c) This article does not prohibit or limit 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 require similar drug and alcohol policies and testing of a political subdivisions vendors.

Adopted

Rejected