

## PROHIBIT LOCAL ORDINANCES THAT REGULATE INTERVIEW INFORMATION

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**Senate Bill 353 as reported from committee w/o amendment**

Analysis available at  
<http://www.legislature.mi.gov>

**Sponsor: Sen. John Proos**

**House Committee: Commerce and Trade**

*(Enacted as Public Act 84 of 2018)*

**Senate Committee: Commerce**

**Complete to 3-6-18**

**BRIEF SUMMARY:** Senate Bill 353 would amend the Local Government Labor Regulatory Limitation Act to prohibit a local government from regulating information requested or provided during an employment interview.

**FISCAL IMPACT:** The provisions of the bill would have no fiscal impact on state or local units of government.

### **THE APPARENT PROBLEM:**

In 2015, the Michigan legislature passed and the governor signed into law Public Act 105, the Local Government Labor Regulatory Limitation Act. The Act's legislative findings and declarations state that the regulation of employment between a nonpublic employer and its employees is a matter of state concern and is outside the express or implied authority of local governmental bodies to regulate, absent the express delegation of that authority. Generally, the Act prohibits a local government from adopting and enforcing a policy that imposes certain requirements or regulations on an employer, including the information requested or excluded on an employment application, the payment of a minimum wage higher than the state minimum wage, or the provision of paid or unpaid leave time or other fringe benefits.

While Public Act 105 of 2015 generally prohibits a local government from regulating information on an employment *application*, it does not specifically address the regulation of information during an employment *interview*. Legislation has been introduced to extend the current prohibitions regarding applications to interviews.

### **THE CONTENT OF THE BILL:**

Currently under the Act, a local governmental body is prohibited from adopting, enforcing, or administering an ordinance, policy, or resolution that regulates information an employer or potential employer must request, require, or exclude on an application for employment from an employee or potential employee.

Senate Bill 353 would expand this prohibition to also apply during the interview process; that is, the existing prohibition on regulating information on employment applications would apply to both applications and interviews.

**Local governmental body** is defined in the Act as any local government or its subdivision, including a city, village, township, county or educational institution; a local public authority, agency, board, commission, or other local governmental, quasi-governmental, or quasi-public body; or a public body that acts or purports to act in a commercial, business, economic development, or similar capacity for a local government or its subdivisions. Local governmental body does not include an authority established by interlocal agreement under the Urban Cooperation Act of 1967 to which the state is a party.

**Employer** is defined as a person or entity engaging in or intending to engage in a commercial activity, enterprise, or business in Michigan, but excludes a local governmental body or an educational institution.

The bill would take effect 90 days after being enacted into law.

MCL 123.1384

**HOUSE COMMITTEE ACTION:**

The House Committee on Commerce and Trade reported the Senate-passed version of the bill without amendment.

**BACKGROUND INFORMATION:**

Certain other states do not have a preemption law similar to Public Act 105. Under local authority, cities in those states are now passing ordinances or policies that regulate the questions that may be asked during an employment interview. Philadelphia is one such city that has done so.<sup>1</sup> According to testimony and national news coverage, the employment interview question that is often the subject of a local or state policy is one regarding a job applicant's current or past salary. (See *Arguments*, below.)

**ARGUMENTS:**

**For:**

Proponents argue that the bill is a simple clarification of the existing law. The goal of Public Act 105 is to have one consistent policy regarding private hiring across the state, rather than a patchwork of local regulations. These local regulations are problematic for businesses, who would have to comply with different sets of regulations for the different locations in which they operate. Especially in today's tight labor market, any additional regulatory burdens on businesses will make it more difficult for them to fill job vacancies.

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<sup>1</sup> See, for example, "Philadelphia Adopts New Regulations Clarifying Salary History Law." *National Law Review*, November 22, 2017. <https://www.natlawreview.com/article/philadelphia-adopts-new-regulations-clarifying-salary-history-law>

***Against:***

Opponents regard the bill as a roadblock to one effort to eliminate bias in pay. They argue that asking about a job candidate's past or current salary serves to continue past discrimination, especially sex and race discrimination, in that when new or prospective salaries are set by a job candidate's past salary even an unbiased employer can perpetuate biases that may have contributed to lower pay in the past. A ban on the salary question requires an employee's wage to be "reset" at a new job, based on the value of the employee to the new employer, rather than based on what the employee earned in the past. Some argue that there should be a statewide policy to disallow the salary question, but in the absence of such a law believe that the policy should remain available to local units who choose to adopt it.

***Response:***

The bill's proponents hold that asking a question about the past or current salary of a job candidate is simply a standard business practice. It allows businesses to assess the applicant, decide whether past levels of responsibility and authority are appropriate for the open position, and understand where the applicant may move in the business. Moreover, the question is often a basic matter of budgeting for a business, which must ensure that any additional hiring fits within the budget. Proponents argue that businesses should be free to interview and hire in a manner that best meets their needs, while adhering to existing employment practices and policies that exist in state and federal civil rights and equal opportunity laws.

***POSITIONS:***

Representatives of the following entities testified in support of the bill:

National Federation of Independent Business (2-20-18)  
Michigan Chamber of Commerce (2-20-18)

Representatives of the following entities indicated support for the bill:

Michigan Manufacturers Association (2-20-18)  
United States Chamber of Commerce (2-20-18)  
Michigan Restaurant Association (2-20-18)  
Michigan Bankers Association (2-20-18)  
Michigan Retailers Association (2-20-18)

A representative of the American Association of University Women of Michigan testified in opposition to the bill. (2-20-18)

Legislative Analyst: Patrick Morris  
Fiscal Analyst: Ben Gielczyk

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.