

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2231

BY DELEGATE FLEISCHAUER

[Introduced February 10, 2021; 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 section,
2 designated §29A-5-3a, relating to orders or decisions in state administrative proceedings
3 involving contested claims of sexual harassment, sexual abuse, or sexual assault;
4 prohibiting confidential financial terms of settlement or nondisclosure of defendant;
5 penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. CONTESTED CASES.

§29A-5-3a. Certain confidential settlement terms prohibited; civil penalty; termination from public service.

1 (a) In settlement of a contested case involving a claim of sexual harassment, sexual
2 abuse, or sexual assault, no agency may render an order or decision which provides for
3 confidential financial terms or provides for nondisclosure of the identity of the defendant accused
4 of the harassment or assault.

5 (b) In settlement of a contested case pursuant to §29A-5-1 et seq. of this code involving a
6 claim of sexual harassment, sexual abuse, or sexual assault, the defendant accused of the
7 harassment, abuse, or assault may not enter into a settlement agreement providing for
8 nondisclosure of financial terms of the agreement or the identity of the defendant.

9 (c) A person who, as an employer or under color of an employer's authority, violates this
10 section, is personally liable for a civil fine of not more than \$5,000. A civil fine which is collected
11 under this section shall be paid to the State Treasurer for deposit into the General Fund.

12 (d) In addition to subsection (c) of this section, and notwithstanding any provision in this
13 code to the contrary, if the court specifically finds that the person, while in the employment of a
14 public body, committed a violation of this section with the intent to discourage the disclosure of
15 information, the finding:

16 (1) Shall be deemed a finding of official misconduct and malfeasance in office, and may
17 be relied upon as admissible evidence in any subsequent proceeding or petition to remove the

- 18 person from public office; and
19 (2) May be relied upon by the public body as a basis to discipline the person, including,
20 but not limited to, termination from employment: *Provided*, That nothing shall be construed as
21 requiring a civil action, civil penalty, or a court finding under this section as a condition or
22 prerequisite for a public body to take disciplinary action against the person.

NOTE: The purpose of this bill is to prohibit confidential settlement terms of a contested case involving sexual harassment, sexual abuse, or sexual assault in a state administrative proceeding, and to provide penalties.

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