

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5442

By Delegates Dillon and Coop-Gonzalez

[Introduced February 05, 2024; Referred to the
Committee on Education then the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §2-2-10a, and to amend said code by adding thereto a new article, designated
 3 §18-34-1, §18-34-2, and §18-34-3, all relating to prohibiting adverse disciplinary or
 4 employment action in public schools and institutions of higher education for employees
 5 and students who refuse to give their pronouns or who refuse to call a person by a name or
 6 title that is inconsistent with that person's sex; providing definitions; and providing for a
 7 right to private cause of action for violations of this act.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 2. COMMON LAW, STATUTES, LEGAL HOLIDAYS,
 DEFINITIONS AND LEGAL CAPACITY.**

**ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF
 STATUTES; DEFINITIONS.**

§2-2-10a. Additional definitions.

1 (a) "Public school" means any school under the general supervision of the West Virginia
 2 Board of Education pursuant to section two, article XIII of the Constitution of West Virginia and
 3 includes any charter school pursuant to §18-5G-1 et seq. of this code.

4 (b) "State institution of higher education" means any university, college, or community and
 5 technical college under the jurisdiction of an institutional board of governors created by §18B-2A-1
 6 of this code;

7 (c) "Student" means an individual who is enrolled on a full-time or part-time basis at a
 8 public school or state institution of higher education.

9 (d) "Sex" means a person's immutable biological sex, either male or female.

10 (e) "Female" means an individual who has, had, will have, or would have but for a
 11 developmental or genetic anomaly or historical accident, the reproductive system that at some
 12 point produces, transports, and utilizes eggs for fertilization.

13 (f) "Male" means an individual who has, had, will have, or would have but for a
 14 developmental or genetic anomaly or historical accident, the reproductive system that at some
 15 point produces, transports, and utilizes sperm for fertilization.

16 (g) "Woman" means an adult human female.

17 (h) "Girl" means a minor human female.

18 (i) "Man" means an adult human male.

19 (j) "Boy" means a minor human male.

CHAPTER 18. EDUCATION.

ARTICLE 34. FREE TO SPEAK ACT.
§18-34-1. Clarifying the definition of sex.

1 (a) Unless context or explicit definition indicates otherwise, gender, when used alone—
 2 rather than with or as an adjective modifying other words—in pre-existing state law, administrative
 3 rules, or guidelines to refer to males, females, or the natural differences between males and
 4 females, shall be considered a synonym for sex.

5 (b) Gender, when used alone—rather than with or as an adjective modifying other words—
 6 in pre-existing state law, administrative rules, or guidelines to refer to males, females, or the
 7 natural differences between males and females, shall not be considered a synonym or short-hand
 8 expression for gender identity, gender expression, or gender role.

9 (c) Gender identity, as used in pre-existing state law, administrative rules, or guidelines,
 10 shall not be considered a synonym or substitute for sex.

§18-34-2. Protection against compelled speech.

1 (a) An employee of a public school or state institution of higher education, regardless of the
 2 scope of his or her official duties, shall not be subject to adverse employment action for declining
 3 to:

4 (1) Identify his or her pronouns while acting within the scope of employment; and

5 (2) Address a person using a name other than the person's legal name, or a derivative
6 thereof, or by a pronoun or title that is inconsistent with the person's sex.

7 (b) An employee of a public school or state institution of higher education, regardless of the
8 scope of his or her official duties:

9 (1) Shall not knowingly and intentionally address an unemancipated minor student by a
10 name other than the student's legal name, or a derivative thereof, or by a pronoun or title that is
11 inconsistent with the student's sex, without the written permission of the student's parent or
12 guardian; and

13 (2) Shall not be subject to adverse employment action for declining to address a student
14 using a name other than the student's legal name, or a derivative thereof, or by a pronoun or title
15 that is inconsistent with the student's sex.

16 (c) A student of a public school or state institution of higher education shall not be subject
17 to adverse disciplinary action by the school or institution for declining to:

18 (1) Identify his or her pronouns; and

19 (2) Address a person using a name other than the person's legal name, or a derivative
20 thereof, or by a pronoun or title that is inconsistent with the person's sex.

§18-34-3. Private cause of action and penalties provided.

1 (a) Any person who is harmed by a public school or state institution of higher education
2 violating this Act shall have a private cause of action for injunctive relief, monetary damages,
3 reasonable attorney's fees and costs, and any other appropriate relief.

4 (b) All civil actions brought pursuant to this section must be initiated within two years after
5 the violation occurred.

NOTE: The purpose of this bill is to prohibit adverse disciplinary or employment action in public schools for employees and students who refuse to give their pronouns or who refuse to call a person by a name or title that is inconsistent with that person's sex, provides definitions, and provides for a right to private cause of action for violations of this act.

Strike-throughs indicate language that would be stricken from a heading or the present law

and underscoring indicates new language that would be added.