

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5656

By Delegate McGeehan

[Introduced February 13, 2024; Referred to the
Committee on Economic Development and Tourism
then Government Organization]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §12-1D-1, §12-1D-2, §12-1D-3, §12-1D-4, and §12-1D-5, all relating to protecting and advancing the substantial public policies of this state; making legislative findings; defining terms; prohibiting both public entities and private entities that receive any form of state funds from contravening certain substantial public policies of this state; enumerating certain substantial public policies; requiring private entities to file an affidavit of noncontravention to be eligible to receive or to be awarded state contracts, grants, or incentives; providing for enforcement by the Attorney General; providing for a private right of action against employers found to be in violation of this article.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1D. ADVANCING SUBSTANTIAL PUBLIC POLICIES.

§12-1D-1. Legislative findings.

1 (a) The Legislature finds that preventing the substantial public policies of this state from
 2 being contravened is a compelling interest of this state.

3 (b) The Legislature finds that public funds should not be expended on or given to any
 4 private entity that contravenes the substantial public policies of this state.

§12-1D-2. Definitions.

1 For purposes of this section:

2 "Diversity, equity, and inclusion program" means a program that requires an employee of a
 3 public entity to participate in or attend a training, orientation, workshop, therapy, or similar activity
 4 that focuses on any of the following:

5 (1) Describing or exposing structures, systems, relations of power, privilege, or
 6 subordination on the basis of race, sex, color, gender, ethnicity, gender identity, or sexual
 7 orientation.

8 (2) Describing methods to identify, dismantle, or oppose structures, systems, relations of
 9 power, privilege, or subordination on the basis of race, sex, color, gender, ethnicity, gender identity,

10 or sexual orientation.

11 (3) Justifying differential treatment or benefits on the basis of sex, color, gender, ethnicity,
12 gender identity, or sexual orientation.

13 (4) Advancing theories of unconscious or implicit bias, cultural appropriation, allyship,
14 transgenderism, microaggressions, microinvalidation, group marginalization, systemic
15 oppression, structural racism or inequity, social justice, intersectionality, neopronouns, inclusive
16 language, heteronormativity, critical race theory, gender identity or theory, privileged status based
17 on race, color, ancestry, ethnicity, national origin, or sex, or any concept substantially related to
18 any of these theories.

19 "Private entity" means any organization, association, corporation, partnership, joint
20 venture, limited partnership, limited liability partnership, limited liability company, or other entity or
21 business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent
22 companies, or affiliates of those entities or business associations, and includes both companies
23 that exist for the purpose of making a profit and companies that do not exist for the purpose of
24 making a profit: *Provided*, That the term does not include a sole proprietorship.

25 "Public entity" means the State of West Virginia, or any political subdivision thereof, and all
26 spending units of state government including those otherwise excluded from applicability under
27 §5A-3-1 of this code.

§12-1D-3. Prohibited contraventions of substantial public policy.

1 (a) No public entity shall contravene any substantial public policy of this state.

2 (b) No private entity that contravenes any substantial public policy of this state shall be
3 eligible to receive any form of state funds or financial assistance.

4 (c) For purposes of this article, a public or private entity contravenes a substantial public
5 policy of this state by:

6 (1) Engaging in a boycott of energy companies, as defined in §12-1C-1(a)(2) of this code;

7 (2) Providing any form of funds, financial aid, or benefits to an employee seeking to obtain

8 an abortion, as defined in §16-2R-2 of this code;

9 (3) Providing any form of funds or financial aid to an employee seeking gender-
10 reassignment surgery;

11 (4) Offering, requiring, hosting, conducting, or allowing any training session, class,
12 program, seminar, speech, presentation, or similar meeting in which the presenter, speaker,
13 lecturer, trainer, supervisor, or any official representative of the public or private entity states that
14 there are more than two genders;

15 (5) Having a policy that permits biological men to enter into any women's restroom in a
16 facility leased or owned by the private entity;

17 (6) Having a policy that permits biological women to enter into any men's restroom in a
18 facility leased or owned by the private entity;

19 (7) Offering, requiring, hosting, conducting, or allowing any diversity, equity, and inclusion
20 training session, class, program, seminar, speech, presentation, or similar meeting;

21 (8) Offering, requiring, hosting, conducting, or allowing any training session, class,
22 program, seminar, speech, presentation, or similar meeting in which a speaker, presenter, trainer,
23 lecturer, or official representative of the public or private entity makes a negative statement about a
24 particular race, ethnicity, color, ancestry, or nationality;

25 (9) Considering race when making employment-related decisions and taking employment-
26 related actions, including, but not limited to, interviewing, hiring, promoting, awarding raises,
27 disciplining, and terminating;

28 (10) Requiring an employee to engage in a diversity, equity, and inclusion program;

29 (11) Establishing, supporting, sustaining, or employing an office or individual whose duties
30 include coordinating, creating, developing, designing, implementing, organizing, planning, or
31 promoting diversity, equity, and inclusion programs;

32 (12) Advancing or adopting any policy or procedure designed to influence the composition
33 of its workforce on the basis of race, sex, ancestry, color, or national origin, except as required by

34 federal law;

35 (13) Advancing or adopting any policy or procedure designed or implemented on the basis
36 of race, sex, ancestry, color, or national origin, except as required by federal law;

37 (14) Promoting or adopting any theory of unconscious or implicit bias, cultural
38 appropriation, allyship, transgenderism, microaggressions, microinvalidation, group
39 marginalization, systemic oppression, structural racism or inequity, social justice, intersectionality,
40 neopronouns, inclusive language, heteronormativity, gender identity or theory, privileged status
41 based on race, color, ancestry, ethnicity, national origin, or sex, or any related theory as the official,
42 approved, or otherwise favored position of the public or private entity;

43 (15) Taking any adverse action against an employee on account of the employee's
44 political, social, or religious beliefs; or

45 (16) Requiring any employee to use any website, portal, or system that promotes any
46 theory of unconscious or implicit bias, cultural appropriation, allyship, transgenderism,
47 microaggressions, microinvalidation, group marginalization, systemic oppression, structural
48 racism or inequity, social justice, intersectionality, neopronouns, inclusive language,
49 heteronormativity, gender identity or theory, privileged status based on race, color, ancestry,
50 ethnicity, national origin, or sex, or any related theory as the official, approved, or otherwise
51 favored position of the public or private entity.

52 (d) This section does not preclude a public entity from:

53 (1) Offering training on sexual harassment.

54 (2) Operating an office staffed by, or employing, licensed attorneys and legal support staff
55 whose sole purpose is ensuring compliance with federal law or an applicable court order.

56 (e) For purposes of this article, the actions in §12-1D-4(c) of this code only contravene
57 substantial public policy when they occur within the borders of this state or directly affect the
58 residents of this state or employees working in this state.

59 (f) No entity may be considered to have contravened a substantial public policy of this state

60 based on actions that were necessary to comply with federal law.

§12-1D-4. Required affidavit of noncontravention.

1 (a) As a condition for the award of any contract, grant, or incentive by the State of West
2 Virginia or any political subdivision, agency, instrumentality, or spending unit thereof, a private
3 entity shall:

4 (1) File affidavits, executed by each of its directors under penalty of perjury, that the private
5 entity will not contravene a substantial public policy of this state, as provided in §12-1D-3 of this
6 code; and

7 (2) Execute a contract with the state, wherein the private entity promises to repay the state
8 any and all funds received from the state by the private entity during each fiscal year in which it is
9 found to have contravened a substantial public policy of this state.

§12-1D-5. Enforcement.

1 (a) The Attorney General may bring an action to enforce the requirements of this article in
2 any court of competent jurisdiction, including, but not limited to, in the circuit court of any county of
3 this state wherein the violation is alleged to have occurred.

4 (b)(1) Any resident of this state may petition the Attorney General to bring an enforcement
5 action against a specific public or private entity. A valid petition shall include a description of the
6 alleged violator and a description of the action or policy constituting the alleged violation.

7 (2) The Attorney General shall also designate an anonymous process for an employee to
8 report violations of this article by his or her employer.

9 (c)(1) Upon determining that a public entity has violated this article, the Attorney General
10 shall file a writ of mandamus in a court of competent jurisdiction to enforce the provisions of this
11 article: *Provided*, That no such action may be taken until the Attorney General has notified the
12 public entity of the noncompliance and has determined that compliance cannot be secured by
13 voluntary means.

14 (2) Upon determining that this article has been violated by a private entity that has received

15 state funds or financial assistance and that has filed the affidavit required by §12-1D-4 of this code,

16 the Attorney General shall:

17 (A) File a civil action for breach of contract against the private entity in a court of competent

18 jurisdiction; and

19 (B) Provide all information relevant to a potential perjury charge to the prosecutor of the

20 county wherein the violations are alleged to have occurred.

21 (d) An employee that has been required to participate in any training, orientation, meeting,

22 program, lecture, seminar, or other function that violates any provision of this article may bring a

23 civil action against his or her private employer.

NOTE: The purpose of this bill is to advance the substantial public policies of this state by prohibiting public entities from contravening the same and by requiring private entities who wish to receive state funds to file an affidavit averring that they will not contravene the substantial public policies of this state.

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