

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 498

BY SENATORS RUCKER, AZINGER, SYPOLT, KARNES, AND

MAYNARD

[Originating in the Committee on Education; reported

on February 28, 2022]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §18-2-9b; and to amend said code by adding thereto a new section,
3 designated §18B-14-4, all relating to prohibiting a school district, a public charter school,
4 the West Virginia Board of Education, the West Virginia Department of Education, or any
5 employee of the aforementioned entities from providing instruction in, requiring instruction
6 in, making part of a course, or requiring a statement or affirmation by an employee of
7 certain specified concepts; prohibiting a state institution of higher education or any of its
8 employees from requiring a student or employee to take instruction in, or include in the
9 curriculum of any required course, or require a statement or affirmation by any student or
10 employee that certain specified concepts are factual and accurate or must be held as a
11 belief of the student or employee; defining terms; recognizing that state institutions of
12 higher education prohibit discrimination and have an obligation to protect the right to free
13 speech; limiting prohibitions; establishing public elementary and secondary school
14 complaint and appeal procedures for alleged violations and complaint reporting
15 procedures; requiring each campus to report to the Higher Education Policy Commission
16 or the Council for Community and Technical College Education a description of any
17 violations; and requiring certain information on the complaints filed and reported violations
18 to be reported to the Legislative Oversight Commission on Education Accountability.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-9b. Anti-Racism Act of 2022.

1 (a) As used in this section:
2 (1) "Biological sex" means an individual's physical form as a male or female based solely
3 on the individual's reproductive biology and genetics at birth;

4 (2) "Ethnic group" means a category of population that is set apart and bound together by
5 common ties of race, language, nationality, or culture; and

6 (3) "Race" means any one of the groups that humans are often divided into based on
7 physical traits regarded as common among people of shared ancestry.

8 (b) A school district, a public charter school, the West Virginia Board of Education, the
9 West Virginia Department of Education, or any employee of the aforementioned entities may not
10 provide instruction in, require instruction in, make part of a course, or require a statement or
11 affirmation by any employee of the following concepts:

12 (1) One race, ethnic group, or biological sex is inherently, morally, or intellectually superior
13 to another race, ethnic group, or biological sex;

14 (2) An individual, by virtue of the individual's race, ethnicity, or biological sex, is inherently
15 racist, sexist, or oppressive, whether consciously or unconsciously;

16 (3) An individual should be discriminated against or receive adverse treatment solely or
17 partly because of the individual's race, ethnicity, or biological sex;

18 (4) An individual's moral character is determined by the individual's race, ethnicity, or
19 biological sex;

20 (5) An individual, by virtue of the individual's race, ethnicity, or biological sex, bears
21 responsibility for actions committed by other members of the same race, ethnic group, or
22 biological sex;

23 (6) An individual should feel discomfort, guilt, anguish, or any other form of psychological
24 distress because of the individual's race, ethnicity, or biological sex; and

25 (7) Academic achievement, meritocracy, or traits such as a hard work ethic are racist or
26 sexist or were created by members of a particular race, ethnic group, or biological sex to oppress
27 members of another race, ethnic group, or biological sex.

28 (c) Nothing in subsection (b) of this section prohibits:

(1) The discussion of those concepts in theory as part of an academic course if discussion of alternative theories are also included in the course;

(2) The discussion, examination, and debate that the role that race, ethnicity, or biological sex has impacted historical or current events, including the causes of those current or historical events; and

(3) The right to freedom of speech protected by the First Amendment of the United States Constitution and the West Virginia Constitution.

(d) Any student, parent or guardian of a student, or employee aggrieved by an alleged violation of this section may file a complaint with the school principal. Any complainant upon an adverse ruling or no ruling within 10 business days by the school principal, may file an appeal to the county superintendent. Any complainant upon an adverse ruling or no ruling within 10 business days by the county superintendent may file an appeal to the state superintendent. The state superintendent shall make forms available for students, parents or guardians of a student, and employees to file complaints and appeals pursuant to this subsection. Each school principal shall report the number of complaints filed with him or her the previous school year, the nature of each complaint, and the resolution of each complaint to the county superintendent annually by August 1. The county superintendent shall report the number of complaints filed in his or her county the previous school year, the nature of each complaint, and the resolution of each complaint to the state superintendent annually by September 1. The state superintendent, or his or her designee, annually by October 1, shall report to the Legislative Oversight Commission on Education Accountability the number of complaints filed during the previous school year statewide and by county, the nature of each complaint, and the resolution of each complaint.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 14. MISCELLANEOUS.

§18B-14-4. Anti-Racism Act of 2022.

(a) As used in this section:

2 (1) “Biological sex” means an individual’s physical form as a male or female based solely
3 on the individual’s reproductive biology and genetics at birth;

4 (2) “Ethnic group” means a category of population that is set apart and bound together by
5 common ties of race, language, nationality, or culture; and

6 (3) “Race” means any one of the groups that humans are often divided into based on
7 physical traits regarded as common among people of shared ancestry.

8 (b) State institutions of higher education in this state prohibit, among other things,
9 discrimination on the basis of race, ethnicity, and biological sex in the administration of their
10 education programs, activities, or with respect to admission or employment.

11 (c) State institutions of higher education have an obligation to protect the right to free
12 speech and expression protected by the First Amendment of the United States Constitution, the
13 West Virginia Constitution and the provisions of article 20 of this chapter. As part of that
14 commitment, state institutions of higher education must be committed to the principle that debate
15 or deliberation may not be suppressed because the ideas put forth are thought by some or even
16 by most members of the university community to be offensive, unwise, immoral, or misguided and
17 that it is for the individual members of the university community, not for the university as an
18 institution, to make those judgements for themselves.

19 (d) Except as provided in subsection (e) of this section, a state institution of higher
20 education or any employee of a state institution of higher education may not require a student or
21 employee to take instruction in, or include in the curriculum of any required course, or require a
22 statement or affirmation by any student or employee that the following concepts are factual and
23 accurate or must be held as a belief of the student or employee:

24 (1) One race, ethnic group, or biological sex is inherently, morally, or intellectually superior
25 to another race, ethnic group, or biological sex;

26 (2) An individual, by virtue of the individual’s race, ethnicity, or biological sex, is inherently
27 racist, sexist, or oppressive, whether consciously or unconsciously;

28 (3) An individual should be discriminated against or receive adverse treatment solely or
29 partly because of the individual's race, ethnicity, or biological sex;

30 (4) An individual's moral character is determined by the individual's race, ethnicity, or
31 biological sex;

32 (5) An individual, by virtue of the individual's race, ethnicity, or biological sex, bears
33 responsibility for actions committed by other members of the same race, ethnic group, or
34 biological sex;

35 (6) An individual has an obligation to feel discomfort, guilt, anguish, or any other form of
36 psychological distress because of the individual's race, ethnicity, or biological sex; and

37 (7) Academic achievement, meritocracy, or traits such as a hard work ethic are racist or
38 sexist or were created by members of a particular race, ethnic group, or biological sex to oppress
39 members of another race, ethnic group, or biological sex.

40 (e) Nothing in subsection (d) of this section prohibits:

41 (1) The discussion of those concepts in theory as part of an academic course if discussion
42 of alternative theories are also included in the course;

43 (2) The discussion, examination, and debate that the role that race, ethnicity, or biological
44 sex has impacted historical or current events, including the causes of those current or historical
45 events; and

46 (3) The right to freedom of speech protected by the First Amendment of the United States
47 Constitution, the West Virginia Constitution, and the provisions of article 20 of this chapter.

48 (f) Each campus shall report to the Higher Education Policy Commission or the Council
49 for Community and Technical College Education, as applicable, a description of any violations of
50 this section. The description shall include the nature of each incident, as well as what disciplinary
51 action, if any, was taken against members of the campus community determined to be responsible
52 for those specific incidents of violation and shall be reported without revealing personally
53 identifiable information annually, by August 1. The commission and council shall then report to

- 54 the Legislative Oversight Commission on Education Accountability any violations reported to them
55 pursuant to this subsection.