

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4069

FISCAL
NOTE

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[Introduced January 08, 2020; Referred to the
Committee on Education]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §18-33-1, §18-33-2, §18-33-3, §18-33-4, §18-33-5, §18-33-6, §18-33-7, and
3 §18-33-8, all relating to creating the West Virginia Student Religious Liberties Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 33. SEVERABILITY.

§18-33-1. West Virginia Student Religious Liberties Act.

1 This article shall be known and may be cited as the “West Virginia Student Religious
2 Liberties Act.”

§18-33-2. Student expression.

1 A public school district shall not discriminate against students or parents on the basis of a
2 religious viewpoint or religious expression. A school district shall treat a student’s voluntary
3 expression of a religious viewpoint, if any, on an otherwise permissible subject in the same
4 manner the district treats a student’s voluntary expression of a secular or other viewpoint on an
5 otherwise permissible subject and may not discriminate against the student based on a religious
6 viewpoint expressed by the student on an otherwise permissible subject.

§18-33-3. Religious expression in class assignments.

1 Students may express their beliefs about religion in homework, artwork, and other written
2 and oral assignments free from discrimination based on the religious content of their submissions.
3 Homework and classroom assignments must be judged by ordinary academic standards of
4 substance and relevance and against other legitimate pedagogical concerns identified by the
5 school district. Students may not be penalized or rewarded on account of the religious content of
6 their work. If an assignment requires a student’s viewpoint to be expressed in coursework,
7 artwork, or other written or oral assignments, a public school shall not penalize or reward a student
8 on the basis of religious content or a religious viewpoint. In such an assignment, a student’s
9 academic work that expresses a religious viewpoint shall be evaluated based on ordinary

10 academic standards of substance and relevance to the course curriculum or requirements of the
11 coursework or assignment.

§18-33-4. Freedom to organize religious groups and activities.

1 Students in public schools may pray or engage in religious activities or religious
2 expression before, during and after the school day in the same manner and to the same extent
3 that students may engage in nonreligious activities or expression. Students may organize prayer
4 groups, religious clubs, “see you at the pole” gatherings, or other religious gatherings before,
5 during, and after school to the same extent that students are permitted to organize other
6 noncurricular student activities and groups. Religious groups must be given the same access to
7 school facilities for assembling as is given to other noncurricular groups without discrimination
8 based on the religious content of the students’ expression. If student groups that meet for
9 nonreligious activities are permitted to advertise or announce meetings of the groups, the school
10 district may not discriminate against groups that meet for prayer or other religious speech. A
11 school district may disclaim school sponsorship of noncurricular groups and events in a manner
12 that neither favors nor disfavors groups that meet to engage in prayer or religious speech.
13 Students in public schools may wear clothing, accessories, and jewelry that display religious
14 messages or religious symbols in the same manner and to the same extent that other types of
15 clothing, accessories, and jewelry that display messages or symbols are permitted.

§18-33-5. Limited public forum; school district policy.

1 (a) To ensure that the school district does not discriminate against a student’s publicly
2 stated voluntary expression of a religious viewpoint, if any, and to eliminate any actual or
3 perceived affirmative school sponsorship or attribution to the district of a student’s expression of
4 a religious viewpoint, if any, a school district shall adopt a policy, which must include the
5 establishment of a limited public forum for student speakers at all school events at which a student
6 is to publicly speak. The policy regarding the limited public forum must also require the school
7 district to:

8 (1) Provide the forum in a manner that does not discriminate against a student's voluntary
9 expression of a religious viewpoint, if any, on an otherwise permissible subject;

10 (2) Provide a method, based on neutral criteria, for the selection of student speakers at
11 school events and graduation ceremonies;

12 (3) Ensure that a student speaker does not engage in obscene, vulgar, offensively lewd,
13 or indecent speech; and

14 (4) State, in writing, orally, or both, that the student's speech does not reflect the
15 endorsement, sponsorship, position, or expression of the district.

16 (b) The school district disclaimer required in subdivision (4), subsection (a) of this section
17 must be provided at all graduation ceremonies. The school district must also continue to provide
18 the disclaimer at any other event in which a student speaks publicly for as long as a need exists
19 to dispel confusion over the districts nonsponsorship of the student's speech.

20 (c) Student expression on an otherwise permissible subject may not be excluded from the
21 limited public forum because the subject is expressed from a religious viewpoint.

22 (d) All school districts shall adopt and implement a local policy regarding a limited public
23 forum and voluntary student expression of religious viewpoints. If a school district voluntarily
24 adopts and follows the model policy governing voluntary religious expression in public schools as
25 provided by subsection (e) of this section, the district is in compliance with the provisions of this
26 act covered by the model policy.

27 (e) In this section, model policy governing voluntary religious expression in public schools
28 means a local policy adopted by the school district that is substantially similar to the following:

29 (l) *Student expression of religious viewpoints.* -- The school district shall treat a student's
30 voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the
31 same manner the district treats a student's voluntary expression of a secular or other viewpoint
32 on an otherwise permissible subject and may not discriminate against the student based on a
33 religious viewpoint expressed by the student on an otherwise permissible subject.

34 (2) Student speakers at nongraduation events. -- The school district hereby creates a
35 limited public forum for student speakers at all school events at which a student is to publicly
36 speak. For each speaker, the district shall set a maximum time limit reasonable and appropriate
37 to the occasion. Student speakers shall introduce football games, any other athletic events
38 designated by the district, opening announcements and greetings for the school day, and any
39 additional events designated by the district, which may include, without limitation, assemblies and
40 pep rallies.

41 (A) The forum shall be limited in the manner provided by this article. Only those students
42 in the highest two grade levels of the school and who hold one of the following positions of honor
43 based on neutral criteria are eligible to use the limited public forum: Student council officers, class
44 officers of the highest grade level in the school, captains of the football team, and other students
45 holding positions of honor as the school district may designate.

46 (B) An eligible student shall be notified of the student's eligibility, and a student who wishes
47 to participate as an introducing speaker shall submit the student's name to the student council or
48 other designated body during an announced period of not less than three days. The announced
49 period may be at the beginning of the school year, at the end of the preceding school year so
50 student speakers are in place for the new year, or, if the selection process will be repeated each
51 semester, at the beginning of each semester or at the end of the preceding semester so speakers
52 are in place for the next semester. The names of the volunteering student speakers shall be
53 randomly drawn until all names have been selected, and the names shall be listed in the order
54 drawn. Each selected student will be matched chronologically to the event for which the student
55 will be giving the introduction. Each student may speak for one week at a time for all introductions
56 of events that week, or rotate after each speaking event, or otherwise as determined by the
57 district. The list of student speakers shall be chronologically repeated as needed, in the same
58 order. The district may repeat the selection process each semester rather than once a year.

59 (C) The subject of the student introductions must be related to the purpose of the event

60 and to the purpose of marking the opening of the event, honoring the occasion, the participants,
61 and those in attendance, bringing the audience to order, and focusing the audience on the
62 purpose of the event. The subject must be designated, a student must stay on the subject, and
63 the student may not engage in obscene, vulgar, offensively lewd, or indecent speech. The school
64 district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise
65 permissible subject in the same manner the district treats a student's voluntary expression of a
66 secular or other viewpoint on an otherwise permissible subject and may not discriminate against
67 the student based on a religious viewpoint expressed by the student on an otherwise permissible
68 subject.

69 (D) For as long as there is a need to dispel confusion over the nonsponsorship of the
70 student's speech at each event in which a student will deliver an introduction, a disclaimer shall
71 be stated in written or oral form, or both, such as, The student giving the introduction for this event
72 is a volunteering student selected on neutral criteria to introduce the event. The content of the
73 introduction is the private expression of the student and does not reflect the endorsement,
74 sponsorship, position, or expression of the school district.

75 (E) Certain students who have attained special positions of honor in the school have
76 traditionally addressed school audiences from time to time as a tangential component of their
77 achieved positions of honor, such as the captains of various sports teams, student council officers,
78 class officers, homecoming kings and queens, prom kings and queens, and the like, and have
79 attained their positions based on neutral criteria. Nothing in this policy eliminates the continuation
80 of the practice of having these students, irrespective of grade level, address school audiences in
81 the normal course of their respective positions. The school district shall create a limited public
82 forum for the speakers and shall treat a student's voluntary expression of a religious viewpoint, if
83 any, on an otherwise permissible subject in the same manner the district treats a student's
84 voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may
85 not discriminate against the student based on a religious viewpoint expressed by the student on

86 an otherwise permissible subject.

87 (3) Student speakers at graduation ceremonies. -- The school district hereby creates a
88 limited public forum consisting of an opportunity for a student to speak to begin graduation
89 ceremonies and another student to speak to end graduation ceremonies. For each speaker, the
90 district shall set a maximum time limit reasonable and appropriate to the occasion.

91 (A) The forum shall be limited in the manner provided by this article. Only students who
92 are graduating and who hold one of the following neutral criteria positions of honor shall be eligible
93 to use the limited public forum: student council officers, class officers of the graduating class, the
94 top three academically ranked graduates, or a shorter or longer list of student leaders as the
95 school district may designate. A student who will otherwise have a speaking role in the graduation
96 ceremonies is ineligible to give the opening and closing remarks. The names of the eligible
97 volunteering students will be randomly drawn. The first name drawn will give the opening and the
98 second name drawn will give the closing. The topic of the opening and closing remarks must be
99 related to the purpose of the graduation ceremony and to the purpose of marking the opening and
100 closing of the event, honoring the occasion, the participants, and those in attendance, bringing
101 the audience to order, and focusing the audience on the purpose of the event. In addition to the
102 students giving the opening and closing remarks, certain other students who have attained special
103 positions of honor based on neutral criteria, including, without limitation, the valedictorian, will
104 have speaking roles at graduation ceremonies. For each speaker, the school district shall set a
105 maximum time limit reasonable and appropriate to the occasion and to the position held by the
106 speaker. For this purpose, the district creates a limited public forum for these students to deliver
107 the addresses. The subject of the addresses must be related to the purpose of the graduation
108 ceremony, marking and honoring the occasion, honoring the participants and those in attendance,
109 and the student's perspective on purpose, achievement, life, school, graduation, and looking
110 forward to the future.

111 (B) The subject must be designated for each student speaker, the student must stay on

112 the subject, and the student may not engage in obscene, vulgar, offensively lewd, or indecent
113 speech. The school district shall treat a student's voluntary expression of a religious viewpoint, if
114 any, on an otherwise permissible subject in the same manner the district treats a student's
115 voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may
116 not discriminate against the student based on a religious viewpoint expressed by the student on
117 an otherwise permissible subject.

118 (C) A written disclaimer shall be printed in the graduation program that states, "The
119 students who will be speaking at the graduation ceremony were selected based on neutral criteria
120 to deliver messages of the students' own choices. The content of each student speakers message
121 is the private expression of the individual student and does not reflect any position or expression
122 of the school district or the board of trustees, or the districts administration, or employees of the
123 district, or the views of any other graduate. The contents of these messages were prepared by
124 the student volunteers, and the district refrained from any interaction with student speakers
125 regarding the student speakers viewpoints on permissible subjects."

126 (4) Religious expression in class assignments. -- Students may express the students'
127 beliefs about religion in homework, artwork, and other written and oral assignments free from
128 discrimination based on the religious content of the students' submission. Homework and
129 classroom work shall be judged by ordinary academic standards of substance and relevance and
130 against other legitimate pedagogical concerns identified by the school. Students may not be
131 penalized or rewarded on account of religious content. If a teacher's assignment involves writing
132 a poem, the work of a student who submits a poem in the form of a prayer (for example, a psalm)
133 should be judged on the basis of academic standards, including literary quality, and not penalized
134 or rewarded on account of its religious content.

135 (5) Freedom to organize religious groups and activities.-- Students may organize prayer
136 groups, religious clubs, "see you at the pole" gatherings, and other religious gatherings before,
137 during, and after school to the same extent that students are permitted to organize other

138 noncurricular student activities and groups. Religious groups must be given the same access to
139 school facilities for assembling as is given to other noncurricular groups, without discrimination
140 based on the religious content of the groups expression. If student groups that meet for
141 nonreligious activities are permitted to advertise or announce the groups meetings, for example,
142 by advertising in a student newspaper, putting up posters, making announcements on a student
143 activities bulletin board or public address system, or handing out leaflets, school authorities may
144 not discriminate against groups that meet for prayer or other religious speech. School authorities
145 may disclaim sponsorship of noncurricular groups and events, provided they administer the
146 disclaimer in a manner that does not favor or disfavor groups that meet to engage in prayer or
147 other religious speech.

§18-33-6. Certain acts restricted.

1 This act may not be construed to authorize this state or any of its political subdivisions to
2 do either of the following:

- 3 (1) Require any person to participate in prayer or in any other religious activity.
4 (2) Violate the constitutional rights of any person.

§18-33-7. Certain authority may not be limited.

1 This act shall not be construed to limit the authority of any public school to do any of the
2 following:

- 3 (1) Maintain order and discipline on the campus of the public school in a content and
4 viewpoint neutral manner.
5 (2) Protect the safety of students, employees, and visitors of the public school.
6 (3) Adopt and enforce policies and procedures regarding student speech at school
7 provided that the policies and procedures do not violate the rights of students as guaranteed by
8 the United States and West Virginia constitutions and laws.

§18-33-8. First school year affected.

1 This act shall be in force beginning with the 2020-2021 school year.

NOTE: The purpose of this bill is to create the West Virginia Student Religious Liberties 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.