

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 3293

BY DELEGATES HANNA, BRIDGES, CLARK, ELLINGTON,
HORST, JENNINGS, LONGANACRE, MAZZOCCHI, TULLY,
PHILLIPS AND BURKHAMMER

[Originating in the Committee on Education, reported
on March 16, 2021]

1 A BILL to amend and reenact §18-2-5c and §18-2-25 of the Code of West Virginia, 1931, as
2 amended, all relating to single-sex participation in interscholastic athletic events; providing
3 county school districts must confirm the sex of pupil at time of birth prior to pupil's
4 participation in single-sex interscholastic athletic events under the control, supervision,
5 and regulation of the West Virginia Secondary Schools Activities Commission; providing
6 sex at birth be identified by original birth certificate or by a signed physician's statement;
7 providing that the commission must verify with each county board that each student
8 participating in single-sex interscholastic events is participating according to the student's
9 sex at the time of the student's birth; and clarifying that these requirements do not apply
10 to co-educational secondary school interscholastic athletic events.

Be it enacted by the Legislature of West Virginia:

§18-2-5c. Birth certificate required upon admission to public school; required notice to local law-enforcement agency of missing children; identifying pupil's sex for the purpose of participating in single-sex interscholastic athletic events.

1 (a) No pupil shall be admitted for the first time to any public school in this state unless the
2 person enrolling the pupil presents a copy of the pupil's original birth record certified by the state
3 registrar of vital statistics confirming the pupil's identity, age, and state file number of the original
4 birth record. If a certified copy of the pupil's birth record cannot be obtained, the person so
5 enrolling the pupil shall submit an affidavit explaining the inability to produce a certified copy of
6 the birth record: *Provided*, That if any person submitting such affidavit is in U.S. military service
7 and is in transit due to military orders, a three-week extension shall be granted to such person for
8 providing the birth records.

9 (b) Upon the failure of any person enrolling a pupil to furnish a certified copy of the pupil's
10 birth record in conformance with subsection (a) above, the principal of the school in which the
11 pupil is being enrolled or his or her designee shall immediately notify the local law-enforcement
12 agency. The notice to the local law-enforcement agency shall include copies of the submitted

13 proof of the pupil's identity and age and the affidavit explaining the inability to produce a certified
14 copy of the birth record.

15 (c) Within fourteen days after enrolling a transferred pupil, the principal of the school in
16 which the pupil has been enrolled or his or her designee shall request that the principal or his or
17 her designee of the school in which the pupil was previously enrolled transfer a certified copy of
18 the pupil's birth record.

19 (d) Principals and their designees shall be immune from any civil or criminal liability in
20 connection with any notice to a local law-enforcement agency of a pupil lacking a birth certificate
21 or failure to give such notice as required by this section.

22 (e) For the purposes of participating in single-sex secondary school interscholastic athletic
23 events under the control, supervision, and regulation of the West Virginia Secondary Schools
24 Activities Commission pursuant to §18-2-25 of this code, each county school district shall confirm
25 that the sex of the pupil identified on the pupil's original birth certificate, provided upon his or her
26 admission to public school, is the pupil's sex at the time of birth: *Provided*, That if an original birth
27 certificate was not provided or if the birth certificate provided does not indicate the pupil's sex at
28 the time of birth, a signed physician's statement indicating the pupil's sex based solely on the
29 pupil's unaltered internal and external reproductive anatomy must be submitted prior to a pupil's
30 participation in single-sex secondary school interscholastic athletic events.

**§18-2-25. Authority of county boards to regulate athletic and other extracurricular activities
of secondary schools; delegation of authority to West Virginia Secondary School
Activities Commission; authority of commission; approval of rules by state board;
incorporation; funds; participation by private and parochial schools, ~~and by home-~~
schooled students and by preparatory athletic programs; student participation in
single-sex secondary school interscholastic athletic events.**

1 (a) The county boards of education shall exercise the control, supervision, and regulation
2 of all interscholastic athletic events, and other extracurricular activities of the students in public

3 secondary schools, and of those schools of their respective counties. The county board of
4 education may delegate control, supervision, and regulation of interscholastic athletic events and
5 band activities to the West Virginia Secondary School Activities Commission.

6 (b) The West Virginia Secondary School Activities Commission is composed of the
7 principals, or their representatives, of those secondary schools whose county boards of education
8 have certified in writing to the State Superintendent of Schools that they have elected to delegate
9 the control, supervision, and regulation of their interscholastic athletic events and band activities
10 of the students in the public secondary schools in their respective counties to the commission.
11 The West Virginia Secondary School Activities Commission may exercise the control, supervision,
12 and regulation of interscholastic athletic events and band activities of secondary schools,
13 delegated to it pursuant to this section. The rules of the West Virginia Secondary School Activities
14 Commission shall contain a provision for a proper review procedure and review board and be
15 promulgated in accordance with the provisions of chapter 29A of this code, but shall, in all
16 instances, be subject to the prior approval of the state board. The West Virginia Secondary School
17 Activities Commission, may, with the consent of the State Board of Education, incorporate under
18 the name of West Virginia Secondary School Activities Commission, Inc., as a nonprofit, nonstock
19 corporation under the provisions of chapter 31 of this code. County boards of education may
20 expend moneys for and pay dues to the West Virginia Secondary School Activities Commission,
21 and all moneys paid to the commission, as well as moneys derived from any contest or other
22 event sponsored by the commission, are quasi-public funds as defined in §18-5-1 *et seq.* of this
23 code, and the funds of the commission are subject to an annual audit by the State Tax
24 Commissioner.

25 (c) The West Virginia Secondary School Activities Commission shall promulgate
26 reasonable rules providing for the control, supervision, and regulation of the interscholastic
27 athletic events and other extracurricular activities of private and parochial secondary schools as
28 elect to delegate to the commission control, supervision, and regulation, upon the same terms

29 and conditions, subject to the same rules and requirements and upon the payment of the same
30 fees and charges as those provided for public secondary schools. Any such private or parochial
31 secondary school shall receive any monetary or other benefits in the same manner and in the
32 same proportion as any public secondary school.

33 (d) Notwithstanding any other provision of this section, or the commission's rules, the
34 commission shall consider eligible for participation in interscholastic athletic events and other
35 extracurricular activities of secondary schools a student who is receiving home instruction
36 pursuant to §18-8-1(c) of this code and who:

37 (1) Has demonstrated satisfactory evidence of academic progress for one year in
38 compliance with the provisions of that subsection: *Provided*, That the student's average test
39 results are within or above the fourth stanine in all subject areas;

40 (2) Is enrolled in at least one virtual instructional course per semester, consistent with the
41 applicable virtual instruction policy of the county board in which the home-schooled student lives
42 and the State Board;

43 (3) Has not reached the age of 19 by August 1 of the current school year;

44 (4) Is an amateur who receives no compensation but participates solely for the
45 educational, physical, mental and social benefits of the activity;

46 (5) Agrees to comply with all disciplinary rules of the West Virginia Secondary School
47 Activities Commission and the county board in which the home-schooled student lives; and

48 (6) Agrees to obey all rules of the West Virginia Secondary School Activities Commission
49 governing awards, all-star games, parental consents, physical examinations, and vaccinations
50 applicable to all high school athletes.

51 Eligibility is limited to participation in interscholastic athletic events and other
52 extracurricular activities at the public secondary school serving the attendance zone in which the
53 student lives: *Provided*, That home-schooled students who leave a member school during the
54 school year are subject to the same transfer protocols that apply to member-to-member transfers.

55 Reasonable fees may be charged to the student to cover the costs of participation in
56 interscholastic athletic events and other extracurricular activities.

57 (e) The West Virginia Secondary School Activities Commission shall recognize
58 preparatory athletic programs, whose participants attend a secondary school in West Virginia for
59 academic instruction, as nonparticipating members of the commission solely for the purpose of
60 competing on the national level: *Provided*, That the preparatory athletic program shall pay the
61 same fees as member schools. Such recognition does not entitle the preparatory athletic program
62 to compete against a member school during the regular season or in any commission state
63 championship events. The commission may promulgate an emergency rule pursuant to
64 subsection (b) of this section, if necessary, to carry out the intent of this subsection.

65 (f) Prior to a student's participation in single-sex secondary school interscholastic athletic
66 events, the West Virginia Secondary School Activities Commission must verify with each county
67 board that each student participating in single-sex interscholastic events is participating according
68 to the student's sex at the time of the student's birth pursuant to §18-2-5c(e).

69 This subsection does not prohibit students from participating in co-educational secondary
70 school interscholastic athletic events. Students may participate in co-educational secondary
71 school interscholastic athletic events without having to comply with the requirements of this
72 subsection.