

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 535

BY SENATORS BLAIR (MR. PRESIDENT) AND BALDWIN

(BY REQUEST OF THE EXECUTIVE)

[Originating in the Committee on the Judiciary;

reported on February 17, 2022]

1 A BILL to amend and reenact §18A-3-6 of the Code of West Virginia, 1931, as amended, relating
2 to revocation of school personnel certification; authorizing the state superintendent to
3 automatically suspend certificates held by a teacher or other certificate holder upon charge
4 or indictment for certain offenses or filing of a petition alleging child abuse; providing for
5 reinstatement of automatically suspended certificate in certain circumstances; extending
6 automatic revocation provisions to certain certificate holders; clarifying that certain
7 revocation provisions are triggered by guilty plea or conviction; providing for automatic
8 revocation of a certificate upon adjudication by a court of competent jurisdiction that a
9 teacher or certificate holder has committed abuse of a child; and providing for
10 reinstatement of automatically revoked certificate when adjudication of abuse of a child is
11 overturned by the Supreme Court of Appeals of West Virginia.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL
DEVELOPMENT.**

**§18A-3-6. Grounds for revocation or suspension of certificates; other authorized actions
by state superintendent; required reporting by county superintendents; and
recalling certificates for correction.**

1 (a) The state superintendent may, after 10 days' notice and upon proper evidence, revoke
2 or suspend the certificates of any teacher for any of the following causes: Intemperance;
3 untruthfulness; cruelty; immorality; the conviction of a felony or a guilty plea or a plea of no contest
4 to a felony charge; the conviction, guilty plea, or plea of no contest to any charge involving sexual
5 misconduct with a minor or a student; or for using fraudulent, unapproved, or insufficient credit to
6 obtain the certificates: *Provided*, That in order for any conduct of a teacher involving
7 intemperance; cruelty; immorality; or using fraudulent, unapproved, or insufficient credit to obtain
8 the certificates to constitute grounds for the revocation of the certificates of the teacher, there

9 must be a rational nexus between the conduct of the teacher and the performance of his or her
10 job. The state superintendent shall also have the authority to limit certificates, issue letters of
11 admonishment, or enter into consent agreements requiring specific training in order for a teacher
12 to maintain a certificate. The state superintendent may designate the West Virginia Commission
13 for Professional Teaching Standards or members thereof to conduct hearings on revocations or
14 certificate denials and make recommendations for action by the state superintendent. The state
15 superintendent may issue subpoenas and subpoenas duces tecum to obtain testimony and
16 documents to aid in the investigation of allegations against any person subject to licensure by the
17 state superintendent.

18 (b) A The state superintendent may automatically suspend the certificate held by a
19 teacher, as defined by §18-1-1(g) of this code, or any individual holding a certificate granted
20 pursuant to §18A-3-2a of this code, in any of the following circumstances:

21 (1) The teacher or certificate holder is charged or indicted for an offense under §61-8D-3
22 or §61-8D-5 of this code or comparable statute in any other state;

23 (2) The teacher or certificate holder is charged or indicted with any criminal offense that
24 requires the teacher to register as a sex offender;

25 (3) The teacher or certificate holder is charged or indicted with any criminal offense which
26 has as an element delivery or distribution of a controlled substance;

27 (4) The teacher or certificate holder is charged or indicted for any offense under the
28 provisions of §61-2-1 of this code or under any law of the United States or any other state for an
29 offense which has the same elements as those offenses described in §61-2-1 of this code; or

30 (5) A petition has been filed pursuant to §49-4-601 of this code alleging that the teacher
31 or certificate holder has committed abuse of a child.

32 (c) If any such charge or indictment resulting in suspension pursuant to subsection (b) of
33 this section is dismissed by the court in which it is pending, if the teacher or certificate holder is
34 acquitted of such charge, or if a petition filed pursuant to §49-4-601 and resulting in suspension

35 pursuant to subsection (b) of this section is dismissed by the court in which it is pending, the
36 teacher's or certificate holder's certification shall be reinstated unless otherwise prohibited by law.

37 (d) The state superintendent shall automatically revoke the certificate held by a teacher,
38 as defined by West Virginia Code §18-1-1(g) of this code, or any individual holding a certificate
39 granted pursuant to §18A-3-2a of this code, in any of the following circumstances:

40 (1) The teacher or certificate holder pleads guilty to or is convicted under §61-8D-3 or §61-
41 8D-5 of this code or comparable statute in any other state;

42 (2) The teacher or certificate holder pleads guilty to or is convicted of any criminal offense
43 that requires the teacher to register as a sex offender;

44 (3) The teacher or certificate holder pleads guilty to or is convicted of or any criminal
45 offense which has as an element delivery or distribution of a controlled substance; or

46 (4) The teacher or certificate holder pleads guilty to or is convicted under the provisions
47 of §61-2-1 of this code or has been so convicted under any law of the United States or any other
48 state for an offense which has the same elements as those offenses described in §61-2-1 of this
49 code, shall have his or her certificate or license automatically revoked. Should the; or

50 (5) A court of competent jurisdiction has adjudicated the teacher or certificate holder as
51 having committed abuse of a child under §49-4-601 of this code.

52 (e) If any conviction resulting in automatic revocation pursuant to subsection (d) of this
53 section be is overturned by any court of this state or the United States, or if such adjudication of
54 abuse of a child pursuant to §49-4-601 of this code and resulting in automatic revocation pursuant
55 to subsection (d) of this section is overturned by the Supreme Court of Appeals of West Virginia,
56 the teacher's or certificate holder's certification shall be reinstated unless otherwise prohibited by
57 law.

58 ~~(e)~~ (f) A teacher, as defined by §18-1-1(g) of this code, and including any individual
59 holding a license certificate granted pursuant to §18A-3-2a of this code, shall maintain a
60 professional relationship with all students at all times, both in and out of the classroom. Following

61 a hearing as provided in subsection (a) of this section, any teacher found to have committed any
62 act of sexual abuse of a student or minor, or to have engaged in inappropriate sexual conduct
63 with a student or minor; committed an act of cruelty to children or an act of child endangerment
64 or solicited, encouraged, engaged in or consummated an inappropriate relationship with any
65 student, minor, or individual; exploited a student by engaging in any of the aforementioned illegal
66 or inappropriate conduct which then escalated into a relationship with the exploited student within
67 12 months of that student's graduation; or engaged in grooming a student or minor shall have his
68 or her ~~license~~ certificate revoked for a period of time not less than five years. For the purposes of
69 this subsection, "grooming a student or minor" means befriending and establishing an emotional
70 connection with a student or minor, which may include the family of the student or minor, to lower
71 the student's or minor's inhibitions with the objective of committing sexual abuse, child trafficking,
72 child prostitution, the production of child pornography, or any other offense for which a ~~license~~
73 certificate shall be revoked under this subsection.

74 ~~(d)~~ (g) Any county superintendent, public school principal, or public charter school
75 administrator who knows of any acts on the part of any teacher for which a certificate may be
76 revoked or for which other action may be taken in accordance with this section shall report this,
77 together with all the facts and evidence, to the state superintendent for such action as in the state
78 superintendent's judgment may be proper.

79 ~~(e)~~ (h) If a certificate has been granted through an error, oversight, or misinformation, the
80 state superintendent may recall the certificate and make such corrections as will conform to the
81 requirements of law and the state board.

82 ~~(f)~~ (i) The state superintendent shall maintain a public database of individuals who have
83 had adverse action taken against their teaching certificate by the state superintendent. Individuals
84 whose certificate has been revoked by the state superintendent are not eligible to be employed
85 by a county board unless the individual's certificate is subsequently reinstated by the state
86 superintendent.

87 ~~(g)~~ (j) This section applies to all public school teachers whether employed by a county
88 board or the governing board of a public charter school.

89 ~~(h)~~ (k) The state superintendent shall periodically ensure that county boards are acting in
90 compliance with this section.

91 ~~(i)~~ (l) The state board may propose legislative rules pursuant to §29A-3B-1 *et seq.* of this
92 code that are necessary to implement the provisions of this section.