

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3001

By Delegates C. Pritt, Chiarelli, and Kirby

[Introduced January 24, 2023; Referred to the
Committee on Education then the Judiciary]

1 A BILL to amend and reenact §18A-2-2 of the Code of West Virginia, 1931, as amended, relating
 2 to protecting the West Virginia public school teachers who refuse to use pronouns that are
 3 inconsistent with a student's biological sex.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. SCHOOL PERSONNEL. §18A-2-2.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof; written notice bonus for teachers and professional personnel.

1 (a) Before entering upon their duties, all teachers shall execute a contract with their county
 2 boards, which shall state the salary to be paid and shall be in the form prescribed by the state
 3 superintendent. Each contract shall be signed by the teacher and by the president and secretary of
 4 the county board and shall be filed, together with the certificate of the teacher, by the secretary of
 5 the office of the county board. When necessary to facilitate the employment of employable
 6 professional personnel and prospective and recent graduates of teacher education programs who
 7 have not yet attained certification, the contract may be signed upon the condition that the
 8 certificate is issued to the employee prior to the beginning of the employment term in which the
 9 employee enters upon his or her duties.

10 (b) Each teacher's contract, under this section, shall be designated as a probationary or
 11 continuing contract. A probationary teachers contract shall be for a term of not less than one nor
 12 more than three years, one of which shall be for completion of a beginning teacher internship
 13 pursuant to the provisions of section two-b, article three of this chapter, if applicable. If, after three
 14 years of such employment, the teacher who holds a professional certificate, based on at least a
 15 bachelor's degree, has met the qualifications for a bachelor's degree and the county board enter
 16 into a new contract of employment, it shall be a continuing contract, subject to the following:

17 (1) Any teacher with less than a bachelor's degree who holds a valid certificate and is
 18 employed in a county beyond the three-year probationary period shall be granted continuing

19 contract status upon qualifying for the professional certificate based upon a bachelor's degree, if
20 the teacher becomes reemployed; and

21 (2) A teacher holding continuing contract status with one county shall be granted
22 continuing contract status with any other county upon completion of one year of acceptable
23 employment if the employment is during the next succeeding school year or immediately following
24 an approved leave of absence extending no more than one year.

25 (c) The continuing contract of any teacher shall remain in full force and effect except as
26 modified by mutual consent of the school board and the teacher, unless and until terminated,
27 subject to the following:

28 (1) A continuing contract may not be terminated except:

29 (A) By a majority vote of the full membership of the county board on or before May 1 of the
30 then current year, after written notice, served upon the teacher, return receipt requested, stating
31 cause or causes and an opportunity to be heard at a meeting of the board prior to the board's
32 action on the termination issue; or

33 (B) By written resignation of the teacher on or before May 1 to initiate termination of a
34 continuing contract;

35 (2) The termination shall take effect at the close of the school year in which the contract is
36 terminated;

37 (3) The contract may be terminated at any time by mutual consent of the school board and
38 the teacher;

39 (4) This section does not affect the powers of the school board to suspend or dismiss a
40 principal or teacher pursuant to section eight of this article;

41 (5) A continuing contract for any teacher holding a certificate valid for more than one year
42 and in full force and effect during the school year 1984-1985 shall remain in full force and effect;

43 (6) A continuing contract does not operate to prevent a teacher's dismissal based upon the
44 lack of need for the teacher's services pursuant to the provisions of law relating to the allocation to

45 teachers and pupil-teacher ratios. The written notification of teachers being considered for
46 dismissal for lack of need shall be limited to only those teachers whose consideration for dismissal
47 is based upon known or expected circumstances which will require dismissal for lack of need. An
48 employee who was not provided notice and an opportunity for a hearing pursuant to this
49 subsection may not be included on the list. In case of dismissal for lack of need, a dismissed
50 teacher shall be placed upon a preferred list in the order of their length of service with that board. A
51 teacher may not be employed by the board until each qualified teacher on the preferred list, in
52 order, has been offered the opportunity for reemployment in a position for which he or she is
53 qualified, not including a teacher who has accepted a teaching position elsewhere. The
54 reemployment shall be upon a teacher's preexisting continuing contract and has the same effect
55 as though the contract had been suspended during the time the teacher was not employed.

56 (d) In the assignment of position or duties of a teacher under a continuing contract, the
57 board may provide for released time of a teacher for any special professional or governmental
58 assignment without jeopardizing the contractual rights of the teacher or any other rights, privileges
59 or benefits under the provisions of this chapter. Released time shall be provided for any
60 professional educator while serving as a member of the Legislature during any duly constituted
61 session of that body and its interim and statutory committees and commissions without
62 jeopardizing his or her contractual rights or any other rights, privileges, benefits or accrual of
63 experience for placement on the state minimum salary schedule in the following school year under
64 the provisions of this chapter, board policy and law.

65 (e) A teacher is disqualified to teach in any public school in the state for the duration of the
66 next ensuing school year, if that teacher:

67 (1) Fails to fulfill his or her contract with the board, unless prevented from doing so by
68 personal illness or other just cause or unless released from his or her contract by the board, or

69 (2) Violates any lawful provision of his or her contract: *Provided*, That the marriage of a
70 teacher is not considered a failure to fulfill, or violation of, the contract.

71 The State Department of Education or board may hold all papers and credentials of the
72 teacher on file for a period of one year for the violation and shall report such disqualification status
73 in the National Association of State Directors of Teacher Education and Certification (NASDTEC)
74 database system.

75 (f) Any classroom teacher, as defined in section one, article one of this chapter, who
76 desires to resign employment with a county board or request a leave of absence, the resignation
77 or leave of absence to become effective on or before July 15 of the same year and after completion
78 of the employment term, may do so at any time during the school year by written notification of the
79 resignation or leave of absence and any notification received by a county board shall automatically
80 extend the teacher's public employee insurance coverage until August 31 of the same year.

81 (g) (1) A classroom teacher who gives written notice to the county board on or before
82 March 1 of the school year of his or her retirement from employment with the board at the
83 conclusion of the school year shall be paid \$500 from the early notification of retirement line item
84 established for the Department of Education for this purpose, subject to appropriation by the
85 Legislature. If the appropriations to the Department of Education for this purpose are insufficient to
86 compensate all applicable teachers, the Department of Education shall request a supplemental
87 appropriation in an amount sufficient to compensate all such teachers. Additionally, if funds are still
88 insufficient to compensate all applicable teachers, the priority of payment is for teachers who give
89 written notice the earliest. This payment may not be counted as part of the final average salary for
90 the purpose of calculating retirement.

91 (2) The position of a classroom teacher providing written notice of retirement pursuant to
92 this subsection may be considered vacant and the county board may immediately post the position
93 as an opening to be filled at the conclusion of the school year. If a teacher has been hired to fill the
94 position of a retiring classroom teacher prior to the start of the next school year, the retiring
95 classroom teacher is disqualified from continuing his or her employment in that position. However,
96 the retiring classroom teacher may be permitted to continue his or her employment in that position

97 and forfeit the early retirement notification payment if, after giving notice of retirement in
98 accordance with this subsection, he or she becomes subject to a significant unforeseen financial
99 hardship, including a hardship caused by the death or illness of an immediate family member or
100 loss of employment of a spouse. Other significant unforeseen financial hardships shall be
101 determined by the county superintendent on a case-by-case basis. This subsection does not
102 prohibit a county school board from eliminating the position of a retiring classroom teacher.

103 (h) No classroom teacher employed in a public school in this state shall be required to use
104 a student's preferred pronoun when referring to the student if the preferred pronoun is not
105 consistent with the student's biological sex.

106 (1) A classroom teacher employed in a public school in this state is not civilly liable for
107 using a pronoun that is consistent with the biological sex of the student to whom the teacher or
108 employee is referring, even if the pronoun is not the student's preferred pronoun; and

109 (2) A classroom teacher employed in a public school in this state shall not be subject to
110 adverse employment action for not using a student's preferred pronoun that is inconsistent with
111 the student's biological sex.

NOTE: The purpose of this bill is to protect West Virginia public school teachers who refuse to use pronouns that are inconsistent with a student's biological sex.

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