

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Senate Bill 870**

By Senators Rucker, Taylor, Karnes, Roberts,

Maynard, Martin, Smith, and Stuart

[Originating in the Committee on Education; reported

February 26, 2024]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §18-2-9b; to amend said code by adding thereto a new section, designated  
3 §18-5-29; to amend said code by adding thereto a new article, designated §18B-1G-1,  
4 §18B-1G-2, §18B-1G-3, §18B-1G-4, and §18B-1G-5; and to amend said code by adding  
5 thereto two new sections, designated §18B-14-5 and §18B-14-6, all relating to Restoring  
6 Sanity Act; relating to nondiscrimination; prohibiting a school district, a public charter  
7 school, the West Virginia Board of Education, the West Virginia Department of Education,  
8 or any employee of the aforementioned entities from providing instruction in, requiring  
9 instruction in, making part of a course, or requiring a statement or affirmation by any  
10 employee of certain specified concepts; prohibiting a state institution of higher education or  
11 any of its employees from requiring a student or employee to take instruction in, or include  
12 in the curriculum of any required course, or require a statement or affirmation by any  
13 student or employee that certain specified concepts are factual and accurate or must be  
14 held as a belief of the student or employee; defining terms; recognizing that state  
15 institutions of higher education have an obligation to prohibit discrimination and have an  
16 obligation to protect the right to free speech and expression; clarifying what is not  
17 prohibited; establishing public elementary and secondary school complaint and appeal  
18 procedures for alleged violations and complaint reporting procedures; requiring each  
19 campus to report to the Higher Education Policy Commission or the Council for Community  
20 and Technical College Education, a description of any violations; requiring certain  
21 information on the complaints filed and reported violations to be reported to the Legislative  
22 Oversight Commission on Education Accountability; providing that neither county board or  
23 public charter school employees are required to use a student's preferred pronoun when  
24 referring to the student if the preferred pronoun is not consistent with the student's  
25 biological sex, civilly liable for using a pronoun that is consistent with the biological sex of  
26 the student to whom the teacher or employee is referring, or subject to an adverse

27 employment action for not using a student's preferred pronoun if the student's preferred  
28 pronoun is inconsistent with the student's biological sex; providing that neither a county  
29 board or public charter school is civilly liable if a county board or public charter school  
30 employee refers to a student using a pronoun that is inconsistent with the biological sex of  
31 the student to whom the employee is referring; prohibiting state institutions of higher  
32 education from establishing, sustaining, supporting, or staffing a diversity, equity, and  
33 inclusion officer or office; stating what prohibition does not cover or affect; stating what the  
34 diversity, equity, and inclusion office and diversity, equity, and inclusion officer does not  
35 include; requiring a state institution of higher education to file and certify with the Joint  
36 Committee on Education a report of the steps taken by the academic institution of higher  
37 education and its staff, administration, and faculty to comply; prohibiting state institutions  
38 of higher education from expending certain moneys until a report is filed with the Joint  
39 Committee on Education by July 1; requiring reallocation of certain moneys that would  
40 have been expended on prohibited diversity, equity, and inclusion offices and officers to  
41 merit scholarships for lower-income and middle-income students, first generation college  
42 students, or to reduce tuition and mandatory fees for resident students; stating effective  
43 date; declaring the policy of the state that the administrations of state institutions of higher  
44 education, and their administrative units, be officially neutral with regard to certain widely  
45 contested opinions in the state regarding certain issues; defining "diversity training";  
46 prohibiting a diversity statement from ever being required or solicited in certain instances;  
47 prohibiting state institutions of higher education from giving preferential consideration to an  
48 applicant, student, staff member, or faculty member due to certain opinions expressed or  
49 actions taken.

*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            2024.**

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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 morally or intellectually superior to another  
13 race, ethnic group, or biological sex for any inherent or innate reason;

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

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 strongly influenced by the individual's race, ethnicity,  
19 or 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 biological  
22 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:

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

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

34 (3) The right to freedom of speech protected by the First Amendment of the United States  
35 Constitution and the West Virginia Constitution outside the context of employment with any school  
36 district or public charter school.

37 (d) Any student, parent, or guardian of a student, or employee aggrieved by an alleged  
38 violation of this section may file a complaint with the school principal. Any complainant, upon an  
39 adverse ruling or no ruling within 10 business days by the school principal, may file an appeal to  
40 the county superintendent except that in the case of a student enrolled in or an employee of a  
41 public charter school, the complainant may file an appeal to the authorizer. Any complainant, upon  
42 an adverse ruling or no ruling within 10 business days by the county superintendent or public  
43 charter school authorizer, may file an appeal to the state superintendent. The state superintendent  
44 shall make forms available for students, parents or guardians of a student, and employees to file  
45 complaints and appeals pursuant to this subsection. Each school principal shall report the number  
46 of complaints filed with him or her the previous school year, the nature of each complaint, and the  
47 resolution of each complaint to the county superintendent annually by August 1. The county  
48 superintendent shall report the number of complaints filed in his or her county the previous school  
49 year, the nature of each complaint, and the resolution of each complaint to the state  
50 superintendent annually by September 1. The state superintendent, or his or her designee shall

51 report to the Legislative Oversight Commission on Education Accountability the number of  
52 complaints filed during the previous school year statewide and by county, the nature of each  
53 complaint, and the resolution of each complaint annually by October 1.

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-29. Preferred gender pronouns.**

1 The Legislature finds that:  
2 (a) County board and public charter school employees should never be compelled to affirm  
3 a belief with which they disagree.  
4 (b) For the purposes of this section, the term "biological sex" means an individual's  
5 physical form as a male or female based solely on the individual's reproductive biology and  
6 genetics at birth.  
7 (c) County board and public charter school employees are not:  
8 (1) Required to use a student's preferred pronoun when referring to the student if the  
9 preferred pronoun is not consistent with the student's biological sex;  
10 (2) Civilly liable for using a pronoun that is consistent with the biological sex of the student  
11 to whom the teacher or employee is referring, even if the pronoun is not the student's preferred  
12 pronoun; and  
13 (3) Subject to an adverse employment action for not using a student's preferred pronoun if  
14 the student's preferred pronoun is inconsistent with the student's biological sex.  
15 (d) A county board or public charter school is not civilly liable if a county board or public  
16 charter school employee refers to a student using a pronoun that is consistent with the biological  
17 sex of the student to whom the employee is referring, even if the pronoun is not the student's  
18 preferred pronoun.  
19 (e) No county board or public charter school may establish a policy or take any action that  
20 is contrary to this section.

## CHAPTER 18B. HIGHER EDUCATION.

### ARTICLE 1G. DIVERSITY, EQUITY AND INCLUSION OFFICES AND OFFICERS PROHIBITED.

#### §18B-1G-1. Restrictions.

1           (a) A state institution of higher education shall not establish, sustain, support, or staff a  
2 diversity, equity, and inclusion officer or office.

3           (b) Subsection (a) shall not be construed to cover or affect a state institution of higher  
4 education's support of any of the following:

5           (1) Academic course instruction;

6           (2) Research or creative works by the state institution of higher education's students,  
7 faculty, or other research personnel, and the dissemination of such research or creative works;

8           (3) Activities of registered student organizations;

9           (4) Arrangements for guest speakers and performers with short-term engagements;

10          (5) Mental or physical health services provided by licensed professionals;

11          (6) Services or support provided to individuals with learning, physical or neurological  
12 developmental disabilities;

13          (7) Policies, programming, training, practices, activities, or procedures related to diversity,  
14 equity, and inclusion that are required pursuant to a contract or agreement with a federal  
15 governmental entity;

16          (8) Sex-based educational opportunities such as science, technology, engineering, and  
17 mathematics (STEM) opportunities for women.

18          (9) Policies, programming, training, practices, activities or procedures related to diversity,  
19 equity, and inclusion that are required to meet accreditation standards;

20          (10) Policies, programming, training, practices, activities or procedures related to diversity,  
21 equity, and inclusion that are required to satisfy requirements of athletic associations or  
22 conferences;

23 (11) Compliance with the state institution of higher education's obligations under Title IX of  
24 the federal Education Amendments Act of 1972, 20 U.S.C. §1681, et seq., as amended, the  
25 federal Age Discrimination in Employment Act of 1972, 20 U.S.C. §1681 et seq., as amended, the  
26 federal Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq., as amended, the federal  
27 Civil Rights Act of 1964, Pub. L. No. 88-352, as amended, the West Virginia Human Rights Act,  
28 West Virginia Code §5-11-1, et seq., or any other applicable federal or state law or court order; or

29 (12) Policies or procedures related to determining scholarships or financial aid for  
30 prospective students.

31 **§18B-1G-2. Exceptions.**

32 (a) "Diversity, equity, and inclusion office" does not include any of the following:

33 (1) An office or position operating with the sole and exclusive mission of ensuring legal  
34 compliance under Title IX of the federal Education Amendments Act of 1972, 20 U.S.C. §1681, et  
35 seq., as amended, the federal Age Discrimination in Employment Act of 1972, 20 U.S.C. §1681 et  
36 seq., as amended, the federal Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq.,  
37 as amended, the federal Civil Rights Act of 1964, Pub. L. No. 88-352, as amended, the West  
38 Virginia Human Rights Act, West Virginia Code §5-11-1, et seq., or any other applicable federal or  
39 state law or court order;

40 (2) An academic department within a state institution of higher education that exists  
41 primarily for the purpose of offering courses for degree credit and that does not establish a policy  
42 or procedures to which other departments of the public institutions of higher education are subject;

43 (3) An office or position solely engaged in student recruitment;

44 (4) A registered student organization;

45 (5) An office or position engaged in providing services or support to individuals with  
46 learning, physical or neurological developmental disabilities;

47 (6) An office or position that a state institution of higher education is required to maintain  
48 pursuant to a contract or agreement with a federal governmental entity;



49 (7) An office or position that a state institution of higher education is required to maintain to  
50 meet academic accreditation standards;

51 (8) An office or position that a state institution of higher education is required to satisfy  
52 requirements set forth by athletic associations or conferences; or

53 (9) A unit which may provide resources to certain individuals as long as the resources are  
54 equally available to all employees or students regardless of race, color, or ethnicity.

55 (b) "Diversity, equity, and inclusion officer" does not include any of the following:

56 (1) Any employee whose sole job duties related to diversity, equity, and inclusion are to  
57 ensure compliance with the state institution of higher education's obligations under Title IX of the  
58 federal Education Amendments Act of 1972, 20 U.S.C. §1681, et seq., as amended, the federal  
59 Age Discrimination in Employment Act of 1972, 20 U.S.C. §1681 et seq., as amended, the federal  
60 Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq., as amended, the federal Civil  
61 Rights Act of 1964, Pub. L. No. 88-352, as amended, the West Virginia Human Rights Act, West  
62 Virginia Code §5-11-1, et seq., or any other applicable federal or state law or court order;

63 (2) Any faculty member while engaged in teaching, research, or the production of creative  
64 works, the dissemination of the faculty member's research or creative works, or advising a  
65 registered student organization;

66 (3) A guest speaker or performer with a short-term engagement;

67 (4) Any employee that a state institution of higher education is required to employ pursuant  
68 to a contract or agreement with a federal governmental entity;

69 (5) Any employee that a state institution of higher education is required to employ to meet  
70 academic accreditation standards; or

71 (6) Any employee that a state institution of higher education is required to employ to satisfy  
72 requirements of athletic associations or conferences.

73 **§18B-1G-3. Reporting.**

74 (a) A state institution of higher education shall file and certify with the Joint Committee on

75 Education a report of the steps taken by the academic institution of higher education and its staff,  
76 administration, and faculty to comply with this article.

77 (b) The state institution of higher education shall publish the report described in subsection  
78 (a) on the institution of higher education's webpage.

79 (c) The state institution of higher education shall file the report by July 1, 2025, and on July  
80 1 of each year thereafter, as described in subsection (a) or the state institution of higher education  
81 shall not be permitted to expend any moneys appropriated by the Legislature for the next fiscal  
82 year.

83 **§18B-1G-4. Spending.**

84 A state institution of higher education shall reallocate any and all unexpended moneys  
85 appropriated by the Legislature in fiscal year 2024-2025 that would have been expended on  
86 prohibited diversity, equity, and inclusion offices and officers on or after the effective date of this  
87 Act to merit scholarships for lower-income and middle-income students, first generation college  
88 students, or to reduce tuition and mandatory fees for resident students.

**§18B-1G-5. Effective date.**

This act shall be effective from the date of passage.

**ARTICLE** **14.** **MISCELLANEOUS.**  
**§18B-14-5. Anti-Racism Act of 2024.**

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) State institutions of higher education in this state have an obligation to prohibit, among

9 other things, discrimination on the basis of race, ethnicity, and biological sex in the administration  
10 of their 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 §18B-20-1, et seq. As part of that commitment,  
14 state institutions of higher education must be committed to the principle that debate or deliberation  
15 may not be suppressed because the ideas put forth are thought by some or even by most  
16 members of the university community to be offensive, unwise, immoral, or misguided and that it is  
17 for the individual members of the university community, not for the university as an institution, to  
18 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 morally, or intellectually superior to another  
25 race, ethnic group, or biological sex for any inherent or innate reason;

26 (2) An individual, by virtue of the individual's race, ethnicity, or biological sex, is racist,  
27 sexist, or oppressive, whether consciously or unconsciously for any inherent or innate reason;

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 strongly influenced by the individual's race, ethnicity,  
31 or 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 biological  
34 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 is also included in the course;

43 (2) The discussion, examination, and debate that race, ethnicity, or biological sex has  
44 impacted historical or current events, including the causes of those current or historical events;  
45 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 §18B-20-1, et seq. outside of the context of  
48 employment with any state institution of higher education.

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

**§18B-14-6. Nondiscrimination.**

1 (a) It is the policy of the state that the administrations of state institutions of higher  
2 education, and their administrative units, be officially neutral with regard to widely contested  
3 opinions in the state regarding unconscious or implicit bias, cultural appropriation, identity group

4 allyship, transgender ideology, micro aggressions, group marginalization, ant-racism, systemic  
5 oppression, social justice, intersectionality, neo-pronouns, heteronormativity, gender theory, racial  
6 or sexual privilege, critical race theory, and any related formulation of these concepts.

7 (b) "Diversity training" means:

8 (1) Training toward any diversity, equity, and inclusion activity which is any effort to:

9 (A) Manipulate or otherwise influence the composition of the faculty or student body with  
10 reference to race, sex, color, or ethnicity, apart from ensuring colorblind and sex-neutral  
11 admissions and hiring in accordance with state and federal anti-discrimination laws;

12 (B) Engage in, or promote or promulgate policies for, differential attention to, treatment of,  
13 or provision of special benefits to, individuals or groups on the basis of race, color, or ethnicity, or of  
14 sex except where permitted by law; or

15 (C) Promote as the official position of the institution or component thereof, or of the  
16 administration, or develop or engage in training, programming, or activities promoting, a widely  
17 contested opinion in contravention of the neutral educational policy of this state as described in  
18 subsection (a) of this section; or

19 (2) Training from an administrative official or administrative unit of an institution that  
20 involves one or more of the following interrelated concepts:

21 (A) The nation, the state, American or state culture, society in general is based on or  
22 significantly influence by present-day institutional structures or relations of power, privilege,  
23 subordination, or oppression that operate on the basis of race, sex, color, gender, ethnicity, gender  
24 identity, or sexual orientation, or any intersection of these classes;

25 (B) Differential treatment or special benefits should be conferred on the basis of race sex,  
26 color, gender, ethnicity, gender identity, or sexual orientation; or

27 (C) Training from an administrative official or administrative unit of an institution to  
28 recognize or understand unconscious or implicit bias, cultural appropriation, identity group  
29 allyship, microaggressions, micro-invalidation, group marginalization, anti-racism, systemic

30 oppression, structural racism, structural inequity, transphobia, homophobia, heteronormativity,  
31 racial or sexual privilege, social justice, intersectionality, neo-pronouns, inclusive language,  
32 gender identity, gender theory, or related formulation of these concepts.

33 (c) No diversity statement shall ever be required or solicited as part of an admissions  
34 process, employment application process, hiring process, contract renewal process, or promotion  
35 process; or as a condition of participation in any administrative or decision-making function of any  
36 public institution of higher education.

37 (d) No public institution of higher education shall give preferential consideration to an  
38 applicant, student, staff member, or faculty member due to any opinion expressed or action taken  
39 in support of another individual or a group of individuals on the basis of race, sex, color, ethnicity,  
40 gender identity, or sexual orientation.