

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

House Bill 4069

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[Introduced January 8, 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;
4 providing that public school district shall not discriminate against a student’s religious
5 viewpoint or religious expression; providing that students may express their beliefs about
6 religion in homework, artwork and other written assignments without being penalized or
7 rewarded; providing that students in public schools may pray or engage in religious
8 activities or religious expression before, during or after the school day; requiring school
9 districts to adopt and implement a policy substantially similar to the model policy set forth
10 herein; setting forth parameters for student speakers at nongraduation events; setting forth
11 parameters for speakers at graduation ceremonies; providing for disclaimers by school
12 authorities; providing that the act may not require participation in religious activity or violate
13 a person’s constitutional rights; ensuring that public schools may still maintain order and
14 discipline, protect the safety of students, employees, and visitors of the public school, and
15 adopt and enforce policies and procedures; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 33. STUDENT RELIGIOUS LIBERTIES.

§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 As more fully set forth in §18-33-5(b)(4), students may express their beliefs about religion
2 in homework, artwork, and other written and oral assignments free from discrimination and may
3 not be penalized or rewarded on account of the religious content of their work.

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

1 As more fully set forth in §18-33-5(b)(5), students in public schools may pray or engage in
2 religious activities or religious expression before, during and after the school day in the same
3 manner and to the same extent that students may engage in nonreligious activities or expression.

§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 and implement a policy substantially
5 similar to the model policy set forth in subsection (b). The policy must include the establishment
6 of a limited public forum for student speakers at all school events at which a student is to publicly
7 speak. The policy regarding the limited public forum must also require the school district to:

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

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

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

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

17 (b) The local policy adopted by the school district must be substantially similar to the
18 following model policy:

19 (1) Student expression of religious viewpoints. — The school district shall treat a student's
20 voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the
21 same manner the district treats a student's voluntary expression of a secular or other viewpoint
22 on an otherwise permissible subject and may not discriminate against the student based on a
23 religious viewpoint expressed by the student on an otherwise permissible subject.

24 (2) Student speakers at nongraduation events. — The school district hereby creates a
25 limited public forum for student speakers at all school events at which a student is to publicly
26 speak. For each speaker, the district shall set a maximum time limit reasonable and appropriate
27 to the occasion. Student speakers may introduce football games, any other athletic events
28 designated by the district, opening announcements and greetings for the school day, and any
29 additional events designated by the district, which may include, without limitation, assemblies and
30 pep rallies.

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

36 (B) An eligible student shall be notified of the student's eligibility, and a student who wishes
37 to participate as an introducing speaker shall submit the student's name to the student council or
38 other designated body during an announced period of not less than three days. The announced
39 period may be at the beginning of the school year, at the end of the preceding school year so
40 student speakers are in place for the new year, or, if the selection process will be repeated each

41 semester, at the beginning of each semester or at the end of the preceding semester so speakers
42 are in place for the next semester. The names of the volunteering student speakers shall be
43 randomly drawn until all names have been selected, and the names shall be listed in the order
44 drawn. Each selected student will be matched chronologically to the event for which the student
45 will be giving the introduction. Each student may speak for one week at a time for all introductions
46 of events that week, or rotate after each speaking event, or otherwise as determined by the
47 district. The list of student speakers shall be chronologically repeated as needed, in the same
48 order. The district may repeat the selection process each semester rather than once a year.

49 (C) The subject of the student introductions must be related to the purpose of the event
50 and to the purpose of marking the opening of the event, honoring the occasion, the participants,
51 and those in attendance, bringing the audience to order, and focusing the audience on the
52 purpose of the event. The subject must be designated, a student must stay on the subject, and
53 the student may not engage in obscene, vulgar, offensively lewd, or indecent speech. The school
54 district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise
55 permissible subject in the same manner the district treats a student's voluntary expression of a
56 secular or other viewpoint on an otherwise permissible subject and may not discriminate against
57 the student based on a religious viewpoint expressed by the student on an otherwise permissible
58 subject.

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

65 (E) Certain students who have attained special positions of honor in the school have
66 traditionally addressed school audiences from time to time as a tangential component of their

67 achieved positions of honor, such as the captains of various sports teams, student council officers,
68 class officers, homecoming kings and queens, prom kings and queens, and the like, and have
69 attained their positions based on neutral criteria. Nothing in this policy eliminates the continuation
70 of the practice of having these students, irrespective of grade level, address school audiences in
71 the normal course of their respective positions. The school district shall create a limited public
72 forum for the speakers and shall treat a student's voluntary expression of a religious viewpoint, if
73 any, on an otherwise permissible subject in the same manner the district treats a student's
74 voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may
75 not discriminate against the student based on a religious viewpoint expressed by the student on
76 an otherwise permissible subject.

77 (3) *Student speakers at graduation ceremonies.* — The school district hereby creates a
78 limited public forum consisting of an opportunity for a student to speak to begin graduation
79 ceremonies and another student to speak to end graduation ceremonies. For each speaker, the
80 district shall set a maximum time limit reasonable and appropriate to the occasion.

81 (A) The forum shall be limited in the manner provided by this article. Only students who
82 are graduating and who hold one of the following neutral criteria positions of honor shall be eligible
83 to use the limited public forum: student council officers, class officers of the graduating class, the
84 top three academically ranked graduates, or a shorter or longer list of student leaders as the
85 school district may designate. A student who will otherwise have a speaking role in the graduation
86 ceremonies is ineligible to give the opening and closing remarks. The names of the eligible
87 volunteering students will be randomly drawn. The first name drawn will give the opening and the
88 second name drawn will give the closing. The topic of the opening and closing remarks must be
89 related to the purpose of the graduation ceremony and to the purpose of marking the opening and
90 closing of the event, honoring the occasion, the participants, and those in attendance, bringing
91 the audience to order, and focusing the audience on the purpose of the event. In addition to the
92 students giving the opening and closing remarks, certain other students who have attained special

93 positions of honor based on neutral criteria, including, without limitation, the valedictorian, will
94 have speaking roles at graduation ceremonies. For each speaker, the school district shall set a
95 maximum time limit reasonable and appropriate to the occasion and to the position held by the
96 speaker. For this purpose, the district creates a limited public forum for these students to deliver
97 the addresses. The subject of the addresses must be related to the purpose of the graduation
98 ceremony, marking and honoring the occasion, honoring the participants and those in attendance,
99 and the student's perspective on purpose, achievement, life, school, graduation, and looking
100 forward to the future.

101 (B) The subject must be designated for each student speaker, the student must stay on
102 the subject, and the student may not engage in obscene, vulgar, offensively lewd, or indecent
103 speech. The school district shall treat a student's voluntary expression of a religious viewpoint, if
104 any, on an otherwise permissible subject in the same manner the district treats a student's
105 voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may
106 not discriminate against the student based on a religious viewpoint expressed by the student on
107 an otherwise permissible subject.

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

116 (4) Religious expression in class assignments. — Students may express the students'
117 beliefs about religion in homework, artwork, and other written and oral assignments free from
118 discrimination based on the religious content of the students' submission. Homework and

119 classroom work shall be judged by ordinary academic standards of substance and relevance and
120 against other legitimate pedagogical concerns identified by the school. Students may not be
121 penalized or rewarded on account of religious content. If a teacher’s assignment involves writing
122 a poem, the work of a student who submits a poem in the form of a prayer (for example, a psalm)
123 should be judged on the basis of academic standards, including literary quality, and not penalized
124 or rewarded on account of its religious content.

125 (5) Freedom to organize and advertise religious groups and activities.— Students may
126 organize prayer groups, religious clubs, “see you at the pole” gatherings, and other religious
127 gatherings before, during, and after school to the same extent that students are permitted to
128 organize other noncurricular student activities and groups. Religious groups must be given the
129 same access to school facilities for assembling as is given to other noncurricular groups, without
130 discrimination based on the religious content of the group’s expression. If student groups that
131 meet for nonreligious activities are permitted to advertise or announce the groups meetings, for
132 example, by advertising in a student newspaper, putting up posters, making announcements on
133 a student activities bulletin board or public address system, religious groups must also be
134 permitted to advertise or announce group meetings.

135 (A) Students in public schools may wear clothing, accessories, and jewelry that display
136 religious messages or religious symbols in the same manner and to the same extent that other
137 types of clothing, accessories, and jewelry that display messages or symbols are permitted.

138 (B) School authorities may disclaim sponsorship of noncurricular groups and events,
139 provided they administer the disclaimer in a manner that does not favor or disfavor groups that
140 meet to engage in prayer or 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.