

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3503

FISCAL
NOTE

By Delegates C. Pritt, Longanacre, Horst, Coop-
Gonzalez, Keaton, Kirby, Hornby, Phillips, McGeehan
and Hanna

[Introduced February 14, 2023; Referred to the
Committee on Education]

1 A BILL to amend the Code of West Virginia, 1931, as amended by adding thereto a new section,
2 designated §18B-4-11, relating to nondiscrimination at institutions of higher education.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-11. Nondiscrimination.

1 (a) Admissions and employment --

2 (1) For purposes of this section, "diversity statement" means any written or oral statement
3 discussing an applicant's or candidate's:

4 (A) Race, sex, color, ethnicity, gender identity, or sexual orientation;

5 (B) Views on, experience with, or contributions to diversity, equity; inclusion; marginalized
6 groups; anti-racism; social justice; intersectionality; confessing one's race-based privilege; or
7 related concepts;

8 (C) Views on or experience with the race, sex, color, ethnicity, gender identity, or sexual
9 orientation of students and co-workers; or

10 (D) Level of support for any theory or practice supporting differential treatment of any
11 individual or group on the basis of race, sex, color, gender, ethnicity, gender identity, or sexual
12 orientation.

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

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

21 (4) Notwithstanding any other provision of law, no public institution of higher education

22 shall grant preference to any applicant for admission or employment on the basis of race, sex,
23 color, ethnicity, or national origin.

24 (5) For avoidance of doubt, nothing in this law shall be construed to:

25 (A) Prevent an applicant or candidate from providing, on his or her own initiative, any
26 diversity statement;

27 (B) Prevent an institution from requiring or soliciting from applicants and candidates any
28 information regarding:

29 (i) The self-described content or purpose of their academic research or creative works;

30 (ii) Their self-described pedagogical approaches or experience with students; or

31 (iii) Their compliance with any anti-discrimination or civil rights law, any other law, or the
32 State or U.S. Constitution; or

33 (C) Prohibit bona fide qualifications based on sex which are conducive to the normal
34 operation of an institution of higher education.

35 (6) Each public institution of higher education shall annually certify compliance with this
36 section to the Legislative Oversight Commission on Education Accountability.

37 (b) Training --

38 (1) For purposes of this section:

39 (A) "Diversity training" means:

40 (i) Training toward any diversity, equity, and inclusion activity described in part (c) of this
41 section; or

42 (ii) Training from an administrative official or administrative unit of an institution that
43 involves one or more of the following interrelated concepts:

44 (I) The Nation, the State, American or State culture, society in general is based on or
45 significantly influenced by present-day institutional structures or relations of power, privilege,
46 subordination, or oppression that operate on the basis of race, sex, color, gender, ethnicity, gender
47 identity, or sexual orientation, or any intersection of these classes;

48 (II) Such purported conditions should be identified, dismantled, or opposed;

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

51 (iii) Training from an administrative official or administrative unit of an institution to
52 recognize or understand unconscious or implicit bias, cultural appropriation, identity group
53 allyship, microaggressions, micro-invalidating, group marginalization, anti-racism, systemic
54 oppression, structural racism, structural inequity, transphobia, homophobia, heteronormativity,
55 racial or sexual privilege, social justice, intersectionality, neo-pronouns, inclusive language,
56 gender identity, gender theory, or related formulations of these concepts.

57 (B) "Mandatory" means the function of a requirement of any kind imposed on a student,
58 employee, applicant for employment, or student organization, including, but not limited to:

59 (i) Failing to fulfill the requirement would adversely affect an individual's or organization's
60 status, employment, salary, benefits, access to funding or any generally available benefit, access
61 to residential housing or office space, or ability to participate in any program, activity,
62 administrative process, or decision-making body of an institution;

63 (ii) Failing to fulfill the requirement would adversely affect an individual's application or
64 receipt of any scholarship, loan, grant, financial aid, or forgiveness program.

65 (C) "Training" means direct instruction, a seminar, discussion group, workshop, or other
66 instructional program, use of instructional materials, and guest speakers, whether provided in
67 person, online, or by any other means, but does not include:

68 (i) An academic course offered for credit;

69 (ii) A research study; or

70 (iii) Activities of a registered student organization, except for activities funded or supported
71 by the institution as a means of circumventing this section.

72 (2) A public institution of higher education must not make diversity training mandatory.

73 (3) This section shall not be construed to:

74 (A) Limit the academic freedom or free expression of any individual faculty member to
75 conduct or direct instruction within his or her own course or laboratory, to engage in research,
76 engage in any other traditional academic activity of a faculty member, advise a student
77 organization, or to act in a personal capacity with his or her own resources; or

78 (B) Prohibit any program or training, scripted or approved by licensed attorneys, that is
79 required to comply with any civil rights or other law or any court order: *Provided*, That the institution
80 makes all training materials publicly available on its website.

81 (c) Offices of diversity, equity, and inclusion --

82 (1) For purposes of this section:

83 (A) "Diversity, equity, and inclusion activity" means any effort to:

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

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

90 (iii) Promote as the official position of the institution or component thereof, or of the
91 administration, or develop or engage in training, programming, or activities promoting, a widely
92 contested opinion in contravention of the neutral educational policy of this state as described in
93 paragraph (2) of this section.

94 (B) "Diversity, equity, and inclusion office" --

95 (i) Means any division, office, center, or other unit of an institution of higher education or
96 component thereof which is responsible for creating, developing, designing, implementing,
97 organizing, planning, or promoting policies, programming, training, practices, activities, and
98 procedures relating to diversity, equity, and inclusion activities;

99 (ii) Includes, but is not limited to:

100 (I) The Diversity, Equity, and Inclusion Council and the Office of Multicultural Affairs at
101 Concord University;

102 (II) The Office of Multicultural Affairs at Glenville State University;

103 (III) The President's Commission on Diversity, Equity, and Inclusion and the Office of
104 Equity Programs at Marshall University;

105 (IV) The Office for Diversity and Equity and the Diversity and Equity Committee at
106 Shepherd University;

107 (V) The Diversity Committee at West Liberty University; and

108 (VI) The Division of Diversity, Equity and Inclusion at West Virginia University;

109 (iii) Does not mean:

110 (I) An office staffed exclusively by licensed attorneys (except for paralegal and secretarial
111 support) and certified by the attorney general of the state as operating with the sole and exclusive
112 mission of ensuring legal compliance with the institution's obligations under Title IX of the
113 Education Amendments of 1972, as amended, the Americans with Disabilities Act, as amended,
114 the Age Discrimination in Employment Act, as amended, Title VI of the Civil Rights Act of 1964,
115 applicable court order, or other applicable state and federal law;

116 (II) An academic department as traditionally understood, that is, a unit of the institution
117 generally run by teaching and research faculty;

118 (III) A registered student organization as traditionally understood, that is, an organization
119 run by students that is generally independent of the institution's management; or

120 (IV) An office solely engaged in new student recruitment.

121 (C) "Diversity, equity, and inclusion officer" --

122 (i) Means an individual who is a full-time or part-time employee of an institution of higher
123 education or component thereof, or an independent contractor of such an institution of higher
124 education, whose duties for the institution include coordinating, creating, developing, designing,
125 implementing, organizing, planning, or promoting policies, programming, training, practices,

126 activities, or procedures relating to diversity, equity, and inclusion activities;

127 (ii) Includes, but is not limited to:

128 (I) The Chief Diversity Officers at, for example, Glenville State University and Marshall
129 University;

130 (II) The Associate Vice President for Diversity, Equity, and Inclusivity at Shepherd
131 University;

132 (III) The Special Assistant to the President for DEI and Strategic Initiatives at West Liberty
133 University; and

134 (IV) The Vice President for Diversity, Equity and Inclusion; Director of Diversity Initiatives
135 and Community Engagement; and Special Events Coordinator for the Division of Diversity, Equity,
136 and Inclusion at West Virginia University;

137 (iii) Does not mean:

138 (I) Any full-time or part-time employee who is a licensed attorney and whose sole job duties
139 related to diversity, equity, and inclusion are to ensure compliance with the institution's obligations
140 under Title IX of the Education Amendments of 1972, as amended, the Americans with Disabilities
141 Act, as amended, the Age Discrimination in Employment Act, as amended, Title VI of the Civil
142 Rights Act of 1964, applicable court order, or other applicable state and federal law;

143 (II) Any faculty member while engaged in teaching, research, the production of creative
144 works, the dissemination of their research and creative works, other traditional academic duties, or
145 advising a registered student organization; or

146 (III) A guest speaker or performer with a short-term engagement.

147 (2) The Legislature finds and declares that:

148 (A) Diversity, equity, and inclusion offices and officers often engage in differential attention
149 to, treatment of, or provision of special benefits to individuals on the basis of race, color, or
150 ethnicity, or of sex, thereby violating civil rights laws and putting their institutions at risk of losing
151 federal funding; and

152 (B) It is the policy of the state that the administrations of public institutions of higher
153 education, and their administrative units, be officially neutral with regard to widely contested
154 opinions in the state regarding unconscious or implicit bias, cultural appropriation, identity group
155 allyship, transgender ideology, microaggressions, group marginalization, anti-racism, systemic
156 oppression, social justice, intersectionality, neo-pronouns, heteronormativity, gender theory, racial
157 or sexual privilege, critical race theory, and any related formulation of these concepts.

158 (3) Public institutions of higher education, the council, the commission, and the governing
159 boards of the exempted schools may not expend any appropriated funds or otherwise expend any
160 funds derived from bequests, charges, deposits, donations, endowments, fees, grants, gifts,
161 income, receipts, tuition, or any other source to:

162 (A) Engage in diversity, equity, and inclusion activities;

163 (B) Establish, sustain, support, or staff a diversity, equity, and inclusion office; or

164 (C) Contract, employ, engage, or hire an individual to serve as a diversity, equity, and
165 inclusion officer.

166 (4) Neither the council nor the commission may expend any funds for diversity, equity, and
167 inclusion activities at the council, the commission, or any institution of higher education.

168 (5) Any funds that otherwise would have been expended on diversity, equity, and inclusion
169 activities, offices, or officers in Fiscal Year 2023 may be reallocated, at the discretion of the
170 council, commission, or governing board of an institution of higher education, to merit scholarships
171 or to reduce tuition for in-state students entering a public institution of higher education in the state
172 in the fall term of 2023.

173 (6) For the avoidance of doubt, nothing in this section shall be construed to cover or affect
174 an institution of higher education's funding of:

175 (A) Research, producing creative works, teaching, other traditional academic activities of
176 faculty members and students;

177 (B) Student organizations, or advising of student organizations;

178 (C) Arrangements for guest speakers and performers with short-term engagements,
179 unless the engagement's primary purpose is for diversity, equity, and inclusion and the
180 engagement is mandatory for faculty, staff, or students; or

181 (D) Mental or physical health services provided by licensed professionals.

182 (7) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based
183 on sex which are reasonably necessary for the normal operation of an institution of higher
184 education.

185 (8) None of the funds appropriated for Fiscal Year 2024 may be expended by an institution
186 of higher education until its governing board has filed a report with the Legislative Oversight
187 Commission on Education Accountability which certifies compliance with this section and further
188 discloses:

189 (A) The steps taken to comply with this section;

190 (B) The full number and job titles of the individuals whom the institution deems necessary
191 to comply with civil rights laws and any applicable court orders;

192 (C) *Provided*, That an institution does not violate this section if it takes up to 365 days to
193 bring its Title IX office into compliance with this section.

194 (d) Violations --

195 (1) Any person may notify the Attorney General of an alleged violation of any provision of
196 section (a), (b), or (c).

197 (2) The Attorney General may file suit for a writ of mandamus compelling an institution of
198 higher education to comply with any provision of section (a), (b), or (c).

199 (3) Any enrolled student, faculty member, staff member, student organization, alumnus, or
200 prospective student or employee of a public institution of higher education may bring a civil action
201 for injunctive relief against that institution for a violation of any provision of section (a), (b), or (c).

202 (4) Notwithstanding any other law, a civil action brought under this section may be brought
203 in:

204 (A) The county in which all or a substantial part of the events or omissions giving rise to the
205 claim occurred;

206 (B) The county of residence in this state for any one of the natural person defendants at the
207 time the cause of action accrued;

208 (C) The county of the principal office in this state of any one of the defendants that is not a
209 natural person; or

210 (D) The county of residence for the claimant if the claimant is a natural person residing in
211 this state.

NOTE: The purpose of this bill is to prevent discrimination at institutions of higher education at West Virginia post-secondary institutions.

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