

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 519

By Senators Grady, Rucker, Tarr, Trump, Woodrum,
Deeds, and Roberts

[Introduced January 30, 2023; referred
to the Committee on Education; and then to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §18A-8-1, §18A-8-2, §18A-8-3, §18A-8-4, §18A-8-5, §18A-8-6, §18A-8-7, and
 3 §18A-8-8, all relating to the creation of the School Personnel Whistle-Blower Law;
 4 providing for a short title; providing for definitions; clarifying that discriminatory and
 5 retaliatory actions against whistle-blowers prohibited; providing for promotion, and setting
 6 forth the increased compensation protected; defining a civil action by whistle-blower for
 7 violation; providing for a limitation on actions; setting forth a burden of proof; providing for a
 8 defense; setting forth a grievance action available; providing that other rights and actions
 9 are not limited; providing redress for a whistle-blower; setting forth a civil penalty; clarifying
 10 a termination from public service; setting forth limitations on scope of construction;
 11 clarifying protections related to political activity and membership in organization of
 12 employee; and setting forth notice to employees of protection of whistle-blowers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. SCHOOL PERSONNEL WHISTLE-BLOWER LAW.

§18A-8-1. Short title.

1 This article shall be known, and may be cited, as the "School Personnel Whistle-Blower
 2 Law."

§18A-8-2. Definitions.

1 The following words and phrases when used in this article have the meanings given to
 2 them in this section unless the context clearly indicates otherwise:

3 (a) "Appropriate authority" means a federal, state, county, or municipal government body,
 4 agency, or organization having jurisdiction over criminal law enforcement, regulatory violations,
 5 professional conduct or ethics, or waste; or a member, officer, agent, representative or supervisory
 6 employee of the body, agency, or organization. The term includes, but is not limited to, the state
 7 board, the state superintendent, the West Virginia Department of Education, the office of the
 8 Attorney General, the office of the State Auditor, the Legislature, the commission on special

9 investigations, the Legislative Oversight Commission on Education Accountability and other
10 committees of the Legislature having the power and duty to investigate criminal law enforcement,
11 regulatory violations, professional conduct or ethics, or waste.

12 (b) "Employee" means a person who performs a full or part-time service for wages, salary,
13 or other renumeration under a contract of hire, written or oral, express or implied, for a county
14 board, multi-county career technical education center, public charter school, or the West Virginia
15 Schools for the Deaf and the Blind.

16 (c) "Employer" means a county board, multi-county career technical education center,
17 public charter school, the West Virginia Schools for the Deaf and the Blind, a person supervising
18 one or more county board, multi-county career technical education center, public charter school, or
19 West Virginia Schools for the Deaf and Blind employees, including the employee in question, a
20 superior of that supervisor, or an agent of a county board, multi-county career technical education
21 center, public charter school, or the West Virginia Schools for the Deaf and the Blind.

22 (d) "Good faith report" means a report of conduct defined in this article as wrongdoing or
23 waste which is made without malice or consideration of personal benefit and which the person
24 making the report has reasonable cause to believe is true.

25 (e) "Waste" means an employer or employee's conduct or omissions which result
26 insubstantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from
27 federal, state, or county sources.

28 (f) "Whistle-blower" means a person who witnesses or has evidence of wrongdoing or
29 waste while employed with a county board, multi-county career technical education center, public
30 charter school, or the West Virginia Schools for the Deaf and the Blind and who makes a good faith
31 report of, or testifies to, the wrongdoing or waste, verbally or in writing, to one of the employee's
32 superiors, to an agent of the employer or to an appropriate authority.

33 (g) "Wrongdoing" means a violation which is not of a merely technical or minimal nature of
34 a federal or state statute, rule, or regulation, of a political subdivision ordinance, rule, or regulation,

35 or of a code of conduct or ethics designed to protect the interest of the public or the employer.

§18A-8-3. Discriminatory and retaliatory actions against whistle-blowers prohibited; promotion, increased compensation protected.

1 (a) No employer may discharge, threaten, harass, or discriminate, or retaliate against an
2 employee by changing the employee's compensation, terms, conditions, location, or privileges of
3 employment because the employee, acting on his or her own volition, or a person acting on behalf
4 of or under the direction of the employee, makes a good faith report, or is about to report, verbally
5 or in writing, to the employer or appropriate authority, an instance of wrongdoing or waste.

6 (b) No employer may discharge, threaten, harass, or discriminate, or retaliate against an
7 employee by changing the employee's compensation, terms, conditions, location, or privileges of
8 employment because the employee is requested or subpoenaed by an appropriate authority to
9 participate in an investigation, hearing, or inquiry held by an appropriate authority or in a court
10 action.

11 (c) No employer may deny a whistle-blower because of his or her status or actions as a
12 whistle-blower, a promotion or other increase in compensation that the whistle-blower otherwise
13 would have received.

§18A-8-4. Civil action by whistle-blower for violation; limitation on actions; burden of proof; defense; grievance action available; other rights and actions not limited.

1 (a) A person who alleges that he or she is a victim of a violation of this article may bring a
2 civil action in a court of competent jurisdiction for appropriate injunctive relief or damages, or both,
3 within two years after the occurrence of the alleged violation.

4 (b) An employee alleging a violation of this article must show by a preponderance of the
5 evidence that, prior to the alleged reprisal, the employee, or a person acting on behalf of or under
6 the direction of the employee, had reported or was about to report in good faith, verbally or in
7 writing, an instance of wrongdoing or waste to the employer or an appropriate authority.

8 (c) It shall be a defense to an action under this section if the defendant proves by a

9 preponderance of the evidence that the action complained of occurred for separate and legitimate
10 reasons, which are not merely pretexts.

11 (d) Any employee covered by the civil service system who has suffered a retaliatory action
12 as a result of being a whistle-blower may pursue a grievance under the West Virginia Public
13 Employees Grievance Procedure set forth in §6C-2-1 et seq. of this code.

14 (e) Nothing in this article shall impair or limit any other right or legal action of an employee.

§18A-8-5. Redress for whistle-blower.

1 A court, in rendering a judgment for the complainant in an action brought under this article,
2 shall order, as the court considers appropriate, reinstatement of the employee, the payment of
3 back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any
4 combination of these remedies. A court may also award the complainant all or a portion of the
5 costs of litigation, including reasonable attorney fees and witness fees, if the court determines that
6 the award is appropriate.

§18A-8-6. Civil penalty; termination from public service.

1 (a) A person who, as an employer or under color of an employer's authority, violates this
2 article is personally liable for a civil fine of not more than \$5,000. A civil fine which is collected
3 under this section shall be paid to the State Treasurer for deposit into the General Fund.

4 (b) In addition to subsection (a) of this section, and notwithstanding any provision in this
5 code to the contrary, if the court specifically finds that the person, while a member of or in the
6 employment of a county board, while in the employment of a multi-county career technical
7 education center, while a member of a multi-county career technical education center
8 administrative council, while in the employment of a public charter school, while a member of a
9 public charter school governing board, while in the employment of the West Virginia Schools for
10 the Deaf and the Blind, or while a member of the state board acting under its authority to control,
11 supervise, and manage the West Virginia Schools for the Deaf and the Blind committed a violation
12 of section three of this article with the intent to discourage the disclosure of information, such

13 finding: (1) in the case of a county board member, county superintendent, or multi-county career
 14 technical education center director, shall be deemed a finding of official misconduct, and may be
 15 relied upon as admissible evidence in any subsequent proceeding or petition to remove the person
 16 from public office pursuant to §6-6-7 of this code or §18-4-3 of this code, as applicable; (2) in the
 17 case of a supervising employee other than a public charter school employee or an employee
 18 superior of that supervisor, shall be deemed a finding of cruelty and may be relied upon by the
 19 county board, multi-county career technical education center administrative council, or state
 20 board, as applicable, as a basis to discipline the person, including, but not limited to, termination
 21 from employment pursuant to §18A-2-8 of this code or §18-17-8 of this code, as applicable: (3) in
 22 the case of a supervising public charter school employee or an employee superior of that
 23 supervisor, may be a basis to discipline the person, including, but not limited to, termination from
 24 employment: (4) in the case of a public charter school governing board member, may be relied on
 25 by the authorizer as a basis for removal from the governing board: (5) in the case of the Associate
 26 State Superintendent or designated representative of the Division of Technical Education and
 27 Governor's Economic Initiatives member of the multi-county career technical education center
 28 administrative council, may be a basis to discipline the person, including, but not limited to,
 29 termination from employment: and (6) in the case of a state board member when acting under the
 30 state board's authority to control, supervise, and manage the West Virginia Schools for the Deaf
 31 and the Blind, shall be deemed a finding of official misconduct and may be relied upon as
 32 admissible evidence in any subsequent proceeding to remove the person from public office
 33 pursuant to §18-2-1 of this code: *Provided*, That nothing shall be construed as requiring a civil
 34 action, civil penalty or a court finding under this section as a condition or prerequisite for
 35 disciplinary action to be imposed against the person.

§18A-8-7. Limitations on scope of construction; protections related to political activity and
membership in organization of employee.

1 (a) The provisions of this article shall not be construed to require an employer to

2 compensate an employee for participation in an investigation, hearing, or inquiry held by an
 3 appropriate authority or impair the rights of any employee to be a member of an organization of
 4 employees or to refrain from being a member of an organization of employees.

5 (b) Except when on duty or acting in an official capacity, and except where otherwise
 6 prohibited by state or federal law, no employee may be prohibited from engaging in political activity
 7 or be denied the right to refrain from engaging in political activity.

§18A-8-8. Notice to employees of protection of whistle-blowers.

1 Each county board, multi-county career technical education center, public charter school,
 2 and the West Virginia Schools for the Deaf and the Blind shall post notices and use other
 3 appropriate means to notify employees and keep them informed of protections and obligations set
 4 forth in the provisions of this article.

NOTE: The purpose of this bill is to all provide for the creation of the School Personnel Whistle-Blower Law. The bill provides for a short title. The bill provides for definitions. The bill provides that discriminatory and retaliatory actions against whistle-blowers prohibited. The bill provides for promotion and sets forth the increased compensation protected. The bill provides a civil action by whistle-blower for violation. The bill provides for a limitation on actions. The bill sets forth a burden of proof. The bill provides for a defense. The bill sets forth a grievance action available. The bill provides that other rights and actions are not limited. The bill provides redress for a whistle-blower. The bill sets forth a civil penalty. The bill provides for a termination from public service. The bill sets forth limitations on scope of construction. The bill provides protections related to political activity and membership in organization of employee. Finally, the bill sets forth notice to employees of protection of whistle-blowers.

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