

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

### **Introduced**

## **House Bill 4806**

By Delegates Foggin, Rohrbach, Heckert, Kump,  
Chiarelli, Hornby, Coop-Gonzalez, Sheedy, Ward,  
Kimble, and Longanacre

[Introduced January 16, 2024; Referred  
to the Committee on Education then the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §18-18-1 and §18-18-2; all relating to prohibiting public school students' use of  
 3 multiple occupancy restrooms or changing areas within schools for the gender that the  
 4 students were not assigned to them at birth; defining terms associated with this code,  
 5 establishing penalties for violating this article and granting rule-making authority to the  
 6 State Board of Education.

*Be it enacted by the Legislature of West Virginia:*

**CHAPTER 18. EDUCATION.**

**ARTICLE 18. PUBLIC SCHOOL RESTROOMS, DESIGNATION BASED ON SEX.**

**§18-18-1. Definitions.**

1 As used in this section:

2 (a) "Multiple occupancy restroom or changing area" means an area in a public school  
 3 district or open-enrollment public charter school building that is designed or designated to be used  
 4 by one or more individuals at the same time and in which one or more individuals may be in various  
 5 stages of undress in the presence of other individuals.

6 (b) "Multiple occupancy restroom or changing area" includes without limitation the  
 7 following:

8 (1) A restroom;

9 (2) A locker room;

10 (3) A changing room; and

11 (4) A shower room; and

12 (c) "Sex" means the physical condition of being male or female based on genetics and  
 13 physiology.

**§18-18-2. School requirements for multiple occupancy restroom or changing area.**

14 (a) A public school district or open-enrollment public charter school may rely upon a public

15 school student's sex as identified on his or her original birth certificate issued at or near the time of  
16 his or her birth.

17 (b) To ensure privacy and safety, each public school district and open-enrollment public  
18 charter school that serves students in prekindergarten through grade twelve (preK-12) in this state  
19 shall:

20 (1) Require each multiple occupancy restroom or changing area to be designated as  
21 follows:

22 (A) For the exclusive use by the male sex; or

23 (B) For the exclusive use by the female sex; and

24 (2) Provide a reasonable accommodation to an individual who is unwilling or unable to use  
25 a multiple occupancy restroom or changing area designated for the individual's sex.

26 (C) A reasonable accommodation under this section may include, without limitation,  
27 access to a single-occupancy restroom or changing area.

28 (D) A reasonable accommodation shall not include access to a restroom or changing area that is  
29 designated for use by members of the opposite sex to an individual while members of the opposite  
30 sex of the individual are present or may be present in the restroom or changing area.

31 (c) This section does not apply to an individual who enters a multiple occupancy restroom  
32 or changing area designated for use by the opposite sex when he or she enters for at least one of  
33 the following circumstances:

34 (1) For custodial, maintenance, or inspection purposes;

35 (2) To render emergency medical assistance; or

36 (3) To address an ongoing emergency, including, without limitation, a physical altercation.

37 (d) Nothing in this section shall be construed to prohibit a public school district or open-  
38 enrollment public charter school from adopting a policy that is necessary to accommodate  
39 individuals protected under the Americans with Disabilities Act of 1990, or young children who are  
40 in need of physical assistance when using a restroom or changing facility that is located in a public

41 school district or open-enrollment public charter school.

42 (e) An allegation of noncompliance with this section shall be referred to the State Board of  
43 Education by filing a formal complaint.

44 (1) Upon the board finding noncompliance with this section, the following individuals, as  
45 applicable, shall be subject to a minimum fine of up to \$500, and may receive additional sanctions  
46 as determined by the board:

47 (A) The superintendent of a county board of education where the noncompliance occurred,  
48 if the superintendent is found specifically to be noncompliant with this section;

49 (B) The principal or vice principal of a public school where the noncompliance occurred, if  
50 the principal or vice principal is found specifically to be noncompliant with this section; or

51 (C) A teacher or supervisor of a classroom or school sponsored activity, if the teacher or  
52 supervisor is found specifically to be noncompliant with this section.

53 (f) A parent, legal guardian, or person standing in loco parentis of a public school student  
54 shall have a cause of action against a county school board or an open-enrollment public charter  
55 school if:

56 (1) His or her public school student:

57 (A) Encounters a member of the opposite sex in a public school or open-enrollment public  
58 charter school multiple occupancy restroom or changing area that is designated for the public  
59 school student's sex if the member of the opposite sex received permission from the public school  
60 board or open-enrollment public charter school superintendent or the public school or open-  
61 enrollment public charter school building principal or vice principal to use the multiple occupancy  
62 restroom or changing area; or

63 (B) Is required by a public school district or open enrollment public charter school  
64 superintendent or the public school or open enrollment public charter school building principal to  
65 share sleeping quarters with a member of the opposite sex who is not an immediate family  
66 member of the public school student; or

- 67            (2) The public school or county board of education or open-enrollment public charter
- 68 school is found to be noncompliant under subsection (e) of this section.
- 69            (g) The State Board of Education shall promulgate rules to implement this section.

NOTE: The purpose of this bill is to assign the use of bathrooms and multi-person common changing rooms by gender and to prohibit the usage of a designated room under this section by a person of the opposite sex, with exceptions for family members, rendering medical or other assistance; and to establish penalties for violations.

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