

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **House Bill 4438**

By Delegates Bell, G. Howell, Willis, Sheedy, and

Stephens

[Introduced January 16, 2026; referred to the

Committee on Education then the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,  
2 designated §18A-2B-1, §18A-2B-2, §18A-2B-3, and §18A-2B-4, relating to pertaining to  
3 sexual abuse prevention screening, hiring, and dismissal requirements for all school  
4 employees and contractors who work at schools.

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

**ARTICLE 2B. SEXUAL ABUSE PREVENTION SCREENING, HIRING AND DISMISSAL**

**REQUIREMENTS FOR EMPLOYEES AND CONTRACTORS.**

**§18A-2B-1. Sexual abuse prevention hiring requirements.**

1 (a) Before a school or independent contractor may offer employment to an applicant who  
2 would be employed by or work in a school in a position involving direct contact with children, the  
3 school or independent contractor shall require the applicant to provide:

4 (1) A list, including name, address, telephone number and other relevant contact  
5 information of the applicant, including:

6 (A) Current employer;

7 (B) All former employers that were school entities;

8 (C) All former employers if the applicant was employed in positions that involved direct  
9 contact with children.

10 (2) A written authorization that consents to and authorizes disclosure by the applicant's  
11 current and former employers in subparagraph (1) of the information requested under subsection  
12 (3).

13 (3) A written statement of whether the applicant:

14 (A) Has been the subject of:

15 (i) An abuse or sexual misconduct investigation by any employer, State licensing agency,  
16 law enforcement agency, unless the investigation resulted in a finding that the allegations were  
17 false or inconclusive; or

18       (ii) An investigation of abuse under the state's mandated reporting law in which the  
19       allegations of abuse against the applicant were substantiated by the department of children and  
20       families and not subsequently unsubstantiated or overturned on appeal;

21       (B) Has ever been disciplined, discharged, non-renewed, asked to resign from  
22       employment, resigned from or otherwise separated from any employment;

23       (i) While allegations of abuse or sexual misconduct were pending or under investigation,  
24       unless the investigation resulted in a finding that the allegations were false or inconclusive, or  
25       under the state's mandated reporting law, unsubstantiated; or

26       (ii) Due to an adjudication or findings of abuse or sexual misconduct; or

27       (4) Has ever had a license, professional license or certificate suspended, surrendered or  
28       revoked:

29       (A) While allegations of abuse or sexual misconduct were pending or under investigation,  
30       unless the investigation resulted in a finding that the allegations were false or inconclusive, or  
31       under the state's mandated reporting law, unsubstantiated; or

32       (B) Due to adjudicated findings of abuse or sexual misconduct.

33       Material required information shall include all of an applicant's conduct that is known by the  
34       previous employer, regardless of whether the conduct occurred before, on or after the date of the  
35       passage of this law.

36       (b) Before a school or independent contractor may offer employment to an applicant who  
37       would be employed by or work in a school in a position involving contact with children, the school  
38       or independent contractor shall conduct a review of the employment history of the applicant by  
39       contacting those employers listed by the applicant and requesting the following information:

40       (1) The dates of employment of the applicant.

41       (2) A statement as to whether the applicant:

42       (A) Was the subject of:

43       (i) An abuse or sexual misconduct investigation by any employer, State licensing agency,

44 law enforcement agency, unless such investigation resulted in a finding that the allegations were  
45 false or inconclusive; or

46 (ii) An investigation of abuse under the state's mandated reporting law in which the  
47 allegations of abuse against the applicant were substantiated by the department of children and  
48 families and not subsequently unsubstantiated or overturned on appeal.

49 (B) Was disciplined, discharged, non-renewed, asked to resign from employment,  
50 resigned from or otherwise separated from any employment;

51 (i) While allegations of abuse or sexual misconduct were pending or under investigation,  
52 unless the investigation resulted in a finding that the allegations were false or inconclusive or,  
53 under the state's mandated reporting law, unsubstantiated; or

54 (ii) Due to an adjudication or findings of abuse or sexual misconduct; or

55 (C) Has ever had a license, professional license or certificate suspended, surrendered or  
56 revoked while allegations of abuse or sexual misconduct were pending or under investigation, or  
57 due to adjudicated findings of abuse or sexual misconduct.

58 (c) Before a school or independent contractor may offer employment to an applicant who  
59 would be employed by or in a school entity in a position involving direct contact with children, the  
60 school entity or independent contractor shall check the eligibility for employment or certification  
61 status of the applicant to determine whether the applicant holds valid and active certification  
62 appropriate for the position and is otherwise eligible for employment and whether the applicant has  
63 been the subject of professional discipline.

64 (d) An applicant who provides false information or willfully fails to disclose material  
65 required information shall be subject to discipline up to, and including, termination or denial of  
66 employment and may be subject to professional discipline.

67 (e) No later than 20 days after receiving a request for information under subsection (b), an  
68 employer that has or had an employment relationship with the applicant shall disclose the  
69 information requested. The employer shall disclose the information on a standardized form

70 developed by the department of elementary and secondary education.

71       (f)(1) After reviewing the information initially disclosed under subsection (a)(2) and finding  
72       an affirmative response to subsection (a)(2)(A), (B) or (C), or disclosed under section (b) and  
73       finding an affirmative response to subsection (b)(2)(A), (B) or (C), where the prospective  
74       employing school or contractor makes a determination to consider the applicant for employment,  
75       the school or contractor shall request that former employers provide any additional material  
76       information about the matters disclosed. The applicant shall provide written authorization that  
77       consents to and authorizes disclosure by the applicant's current and former employers of said  
78       additional material information.

79       (2) Former employers shall provide the additional information requested no later than 90  
80       days after the prospective employer's request under this paragraph.

81       (3) Information received under this section shall not be deemed a public record under the  
82       state's public record law.

83       (4) A school that receives the information under this subsection shall use the information  
84       solely for the purpose of evaluating an applicant's fitness to be hired or for continued employment.

85       (g) A school or independent contractor may hire an applicant on a provisional basis for no  
86       more than 90 days pending the school entity's or independent contractor's review of information  
87       and records received under this section, provided that all of the following are satisfied:

88       (1) The applicant has provided all of the information and supporting documentation  
89       required;

90       (2) The school administrator has no knowledge of information pertaining to the applicant  
91       that would disqualify the applicant from employment; and

92       (3) The applicant swears or affirms that the applicant is not disqualified from employment.

93       (h) A school or independent contractor may not enter into a collective bargaining  
94       agreement, an employment contract, an agreement for resignation or termination, a severance  
95       agreement or any other contract or agreement or take any action that interferes with the operation

96 of the state's mandated reporting law or appropriate criminal authority. Any provision of an  
97 employment contract or agreement for resignation or termination or a severance agreement that is  
98 executed, amended or entered into after the effective date of this section and that is contrary to this  
99 section shall be void.

100 (i)(1) For substitute employees, the employment history review required by this section  
101 shall be required only prior to the initial hiring of a substitute or placement on the school entity's  
102 approved substitute list and shall remain valid as long as the substitute continues to be employed  
103 by the same school entity or remains on the school entity's approved substitute list.

104 (2) A substitute seeking to be added to another school entity's substitute list shall undergo  
105 a new employment history review. The appearance of a substitute on one school entity's substitute  
106 list does not relieve another school entity from compliance with this section.

107 (3) An employment history review conducted upon initial hiring of a substitute employee by  
108 an independent contractor, intermediate unit or any other entity that furnishes substitute staffing  
109 services to school entities shall satisfy the requirements of this section for all school entities using  
110 the services of that independent contractor, intermediate unit or other entity.

111 (4) An independent contractor, intermediate unit or any other entity furnishing substitute  
112 staffing services to school entities shall comply with the provisions of this Act.

113 (j)(1) For employees of independent contractors, the employment history review required  
114 by this section shall be performed either at the time of the initial hiring of the employee or prior to  
115 the assignment of an existing employee to perform work for a school entity in a position involving  
116 direct contact with children. The review shall remain valid as long as the employee remains  
117 employed by that same independent contractor even though assigned to perform work for other  
118 school entities.

119 (2) An independent contractor shall maintain records documenting employment history  
120 reviews for all employees as required by this section and, upon request, shall provide a school  
121 entity for which an employee is assigned to perform work access to the records pertaining to that

122 employee.

123 (3) Prior to assigning an employee to perform work for a school in a position involving direct  
124 contact with children, the independent contractor shall inform the school of any instance known to  
125 the independent contractor in which the employee:

126 (A) Was the subject of any abuse or sexual misconduct investigation by any employer,  
127 State licensing agency, law enforcement authority or child protective services agency, unless such  
128 investigation resulted in a finding that allegations are false;

129 (B) Has ever been disciplined, discharged, non-renewed, removed from a substitute list,  
130 asked to resign from employment, resigned from or otherwise separated from any employment  
131 while allegations of abuse or sexual misconduct as described in subparagraph (i) were pending or  
132 under investigation, or due to an adjudication or findings of abuse or sexual misconduct; or

133 (C) Has ever had a license, professional license or certificate suspended, surrendered or  
134 revoked while allegations of abuse or sexual misconduct were pending or under investigation, or  
135 due to an adjudication or findings of abuse or sexual misconduct.

136 (4) The independent contractor may not assign the employee to perform work for the  
137 school in a position involving direct contact with children where the school objects to the  
138 assignment after being informed of an instance of abuse or sexual misconduct.

139 (5) An applicant who has once undergone the employment history review required and  
140 seeks to transfer to or provide services to another school in the same district, diocese or religious  
141 judicatory or established and supervised by the same organization shall not be required to obtain  
142 additional reports before making such transfer.

143 (k)(1) An employer, school, school administrator or independent contractor who in good  
144 faith provides information or records including personnel records about a current or former  
145 employee's job performance and professional conduct to a prospective school employer or to the  
146 department of elementary and secondary education shall be immune from criminal and civil  
147 liability for the disclosure or any consequences of the disclosure, unless the information or records

148 were provided with the knowledge that they were false or misleading. Such immunity shall be in  
149 addition to and not in limitation of any other immunity provided by law or any absolute or  
150 conditional privileges applicable to such disclosures by virtue of the circumstances or the  
151 applicant's consent thereto.

152 (2) Except where the laws of other states prevent the release of the information or records  
153 requested, or disclosure is restricted by the terms of a contract entered into prior to the effective  
154 date of this section, the willful failure of a former employer, school entity, school administrator or  
155 independent contractor to respond or provide the information and records as requested may result  
156 in civil penalties, and professional discipline where appropriate.

157 (3) Notwithstanding any provision of law to the contrary, an employer, school, school  
158 administrator, independent contractor or applicant shall report and disclose in accordance with this  
159 section all relevant information, records and documentation that may otherwise be confidential  
160 under the state's confidentiality laws.

161 (4) A school or independent contractor may not hire an applicant who does not provide the  
162 information required under subsection (a)(2) for a position involving contact with children.

163 (I) Nothing in this section shall be construed:

164 (1) To prevent a prospective employer from conducting further investigations of  
165 prospective employees or from requiring applicants to provide additional background information  
166 or authorizations beyond what is required under this section, nor to prevent a former employer  
167 from disclosing more information than what is required under this section.

168 (2) To relieve a school, school administrator or independent contractor of its legal  
169 responsibility to report suspected incidents of abuse in accordance with the provisions of the  
170 state's mandated reporting law or misconduct by a licensed educator in accordance with the  
171 reporting requirements of the department of education.

172 (3) To relieve a school, school administrator or independent contractor of its legal  
173 responsibility to report suspected incidents of professional misconduct in accordance with the

174 state's mandated reporting law or misconduct by a licensed educator in accordance with the  
175 reporting requirements of the department of education.

176 (4) To prohibit the right of the exclusive representative of the employee to challenge the  
177 validity of an employee's termination or discipline under a collective bargaining agreement or any  
178 relevant statute.

179 (m)(1) The office of the attorney general shall have jurisdiction to determine willful  
180 violations of this section and may, following a hearing, assess a civil penalty not to exceed  
181 \$10,000. School entities shall be barred from contracting with an independent contractor who is  
182 found to have willfully violated the provisions of this section. Willful violations of the provisions of  
183 this section shall be reported to the relevant licensing authority.

184 (2) The department of education shall develop the forms for applicants and employers  
185 required under subsections (a)(1), (2) and (3), and (b)(1) and (2) as well as any other forms  
186 necessary to carry out the provisions of this section.

187 (3) Notwithstanding any other provision of law to the contrary, the department of education  
188 shall report all willful violations of the provisions of this article to the National Association of State  
189 Directors of Teacher Education and Certification Clearinghouse or any national databases serving  
190 the same purpose, all information required for participation in such a clearinghouse.

#### **§18A-2B-2. Prohibitions from assisting employees engaged in sexual misconduct.**

1 (a) Any individual who is a school employee, contractor, or agent, or any state educational  
2 agency or local educational agency, shall be prohibited from assisting a school employee,  
3 contractor, or agent in obtaining a new job in another educational agency or school, apart from the  
4 routine transmission of administrative and personnel files, if the individual or agency knows, or has  
5 probable cause to believe, that such school employee, contractor, or agent engaged in sexual  
6 misconduct regarding a minor or student in violation of the law.

7 (b) Exception - The requirements of subsection (a) shall not apply if the information giving  
8 rise to probable cause:

9        (1) Has been properly reported to a law enforcement agency with jurisdiction over the

10      alleged misconduct; and has been properly reported to any other authorities as required by

11      Federal, State, or local law, including title IX of the Education Amendments of 1972 (20 U.S.C.

12      1681 et seq.), and the regulations implementing such title under part 106 of title 34, Code of

13      Federal Regulations, or any succeeding regulations; and

14        (2) The matter has been officially closed or the prosecutor or police with jurisdiction over

15      the alleged misconduct has investigated the allegations and notified school officials that there is

16      insufficient information to establish probable cause that the school employee, contractor, or agent

17      engaged in sexual misconduct regarding a minor or student in violation of the law;

18        (3) The school employee, contractor, or agent has been charged with, and acquitted or

19      otherwise exonerated of the alleged misconduct; or

20        (4) The case or investigation remains open and there have been no charges filed against,

21      or indictment of, the school employee, contractor, or agent within four years of the date on which

22      the information was reported to a law enforcement agency.

**§18A-2B-3.**

**Employer**

**liability.**

1        No employer shall be liable for injury, loss of property, personal injury or death caused by

2      an act or omission of a public employee while acting in the scope of the public employee's

3      employment and arising out of the implementation of this chapter. This chapter shall not be

4      construed as creating or imposing a specific duty of care.

**§18A-2B-4.**

**Rulemaking.**

1        The State Board of Education may promulgate regulations for implementation and

2      enforcement of this chapter. Upon release of the proposed regulations, the board shall file a copy

3      of the regulations with the clerks of the house of representatives and the senate, who shall forward

4      the regulations to the joint committee on education. Within 30 days of the filing, the committee may

5      hold a public hearing and issue a report on the regulations and file the report with the board. The

6      board, pursuant to applicable law, may adopt final regulations making revisions to the proposed

- 7    regulations as it deems appropriate after consideration of the report and shall file a copy of the final
- 8    regulations with the chairpersons of the joint committee on education and, not earlier than 30 days
- 9    after the filing, the board shall file the final regulations with the state secretary.

NOTE: The purpose of this bill is to establish sexual abuse prevention screening, hiring, and dismissal requirements for all school employees and contractors who work at schools.

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