

1 **H. B. 2998**

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3 (By Delegates J. Miller, Cowles and Householder)
4 [Introduced February 3, 2011; referred to the
5 Committee on Health and Human Resources then the
6 Judiciary.]

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10 A BILL to amend and reenact §16-3-4 of the Code of West Virginia,
11 1931, as amended, relating to providing medical and nonmedical
12 exemptions from mandatory immunizations for school children;
13 requiring parental or guardian affidavit of conscientious or
14 religious belief; requiring parents and guardians to assert
15 their beliefs in an affidavit and to present an affidavit
16 affirming that they have completed an educational course
17 regarding the risks and benefits of immunizations; providing
18 that the affidavit be provided before the exemption may apply;
19 providing rule-making authority to the Commissioner of the
20 Bureau for Public Health; and providing that the Legislature
21 has the sole authority to add or delete required vaccinations
22 or exemptions for school attendance.

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

24 That §16-3-4 of the Code of West Virginia, 1931, as amended,
25 -be amended and reenacted to read as follows:

26 **ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER**

1 **INFECTIOUS DISEASES.**2 **§16-3-4. Compulsory immunization of school children; information**
3 **disseminated; offenses; penalties.**

4 ~~Whenever a resident birth occurs, the state director of health~~
5 ~~shall promptly provide parents of the newborn child with~~
6 ~~information on immunizations mandated by this state or required for~~
7 ~~admission to a public school in this state.~~

8 ~~All children entering school for the first time in this state~~
9 ~~shall have been immunized against diphtheria, polio, rubeola,~~
10 ~~rubella, tetanus and whooping cough. Any person who cannot give~~
11 ~~satisfactory proof of having been immunized previously or a~~
12 ~~certificate from a reputable physician showing that an immunization~~
13 ~~for any or all diphtheria, polio, rubeola, rubella, tetanus and~~
14 ~~whooping cough is impossible or improper or sufficient reason why~~
15 ~~any or all immunizations should not be done, shall be immunized for~~
16 ~~diphtheria, polio, rubeola, rubella, tetanus and whooping cough~~
17 ~~prior to being admitted in any of the schools in the state. No~~
18 ~~child or person shall be admitted or received in any of the schools~~
19 ~~of the state until he or she has been immunized as hereinafter~~
20 ~~provided or produces a certificate from a reputable physician~~
21 ~~showing that an immunization for diphtheria, polio, rubeola,~~
22 ~~rubella, tetanus and whooping cough has been done or is impossible~~
23 ~~or improper or other sufficient reason why such immunizations have~~
24 ~~not been done. Any teacher having information concerning any~~
25 ~~person who attempts to enter school for the first time without~~
26 ~~having been immunized against diphtheria, polio, rubeola, rubella,~~

~~1 tetanus and whooping cough shall report the names of all such
2 persons to the county health officer. It shall be the duty of the
3 health officer in counties having a full-time health officer to see
4 that such persons are immunized before entering school: *Provided,*
5 That persons enrolling from schools outside of the state may be
6 provisionally enrolled under minimum criteria established by the
7 director of the department of health so that the person's
8 immunization may be completed while missing a minimum amount of
9 school: *Provided, however,* That no person shall be allowed to
10 enter school without at least one dose of each required vaccine.~~

~~11 — In counties where there is no full-time health officer or
12 district health officer, the county commission or municipal council
13 shall appoint competent physicians to do the immunizations and fix
14 their compensation. County health departments shall furnish the
15 biologicals for this immunization free of charge.~~

~~16 Health officers and physicians who shall do this immunization
17 work shall give to all persons and children a certificate free of
18 charge showing that they have been immunized against diphtheria,
19 polio, rubeola, rubella, tetanus and whooping cough, or he or she
20 may give the certificate to any person or child whom he or she
21 knows to have been immunized against diphtheria, polio, rubeola,
22 rubella, tetanus and whooping cough. If any physician shall give
23 any person a false certificate of immunization against diphtheria,
24 polio, rubeola, rubella, tetanus and whooping cough, he or she
25 shall be guilty of a misdemeanor, and, upon conviction, shall be
26 fined not less than twenty-five nor more than one hundred dollars.~~

1 ~~Any parent or guardian who refuses to permit his or her child~~
2 ~~to be immunized against diphtheria, polio, rubeola, rubella,~~
3 ~~tetanus and whooping cough, who cannot give satisfactory proof that~~
4 ~~the child or person has been immunized against diphtheria, polio,~~
5 ~~rubeola, rubella, tetanus and whooping cough previously, or a~~
6 ~~certificate from a reputable physician showing that immunization~~
7 ~~for any or all is impossible or improper, or sufficient reason why~~
8 ~~any or all immunizations should not be done, shall be guilty of a~~
9 ~~misdemeanor and, except as herein otherwise provided, shall, upon~~
10 ~~conviction, be punished by a fine of not less than ten nor more~~
11 ~~than fifty dollars for each offense.~~

12 (a) When a resident birth occurs, the Commissioner of the
13 Bureau for Public Health shall promptly provide parents of the
14 newborn child with information on immunizations, including those
15 mandated by this state for admission to a school in this state.

16 (b) All children entering school in this state must be age
17 appropriately immunized against diphtheria, polio, rubeola,
18 rubella, tetanus and whooping cough. Any person who cannot give
19 satisfactory proof of having been immunized previously or who does
20 not have a current certificate of exemption shall be immunized for
21 diphtheria, polio, rubeola, rubella, tetanus and whooping cough
22 prior to being admitted to the schools of this state. Satisfactory
23 proof of immunization shall be provided to the school in the form
24 of the certificate of immunization. The certificate of
25 immunization shall be developed by the Commissioner of the Bureau
26 for Public Health's immunization program. Beginning July 1, 2011,

1 the certificate of immunization shall be made available to health
2 care providers and school systems to document the immunization
3 records of school children. A parent or guardian may be exempt as
4 follows:

5 (1) *Medical exemption.* -- A parent or guardian of a child
6 entering the schools of this state for the first time may request
7 a medical exemption from a required vaccination for his or her
8 minor child if the parent or guardian of the child or ward presents
9 a certificate signed by a physician who is duly registered and
10 licensed to practice medicine in the United States which sets forth
11 the opinion and the basis of the opinion of the physician examining
12 the child or ward that immunization of the child or ward is
13 medically impossible or improper for any or all of the following
14 diseases including diphtheria, polio, rubeola, rubella, tetanus,
15 whooping cough, or, because of another compelling medical reason
16 immunization of the child or ward for any or all of the following
17 diseases including diphtheria, polio, rubeola, rubella, tetanus,
18 whooping cough and any other disease requiring vaccination as
19 established by rule by the Commissioner of the Bureau for Public
20 Health should not be required for public school attendance; and

21 (2) *Nonmedical exemption.* -- A parent or guardian with a
22 strongly held conscientious or religious belief that his or her
23 minor child or ward should not be subject to a required
24 immunization as provided in this section, may seek an exemption
25 from any or all required vaccinations for his or her minor child
26 entering the schools of this state for the first time as follows:

1 (A) The parent or guardian signs a statement on a form
2 provided by the Commissioner of the Bureau for Public Health which
3 includes a list of required immunizations to allow a parent or
4 guardian to request an exemption for his or her child from any or
5 all of the required immunizations. In the statement, the parent or
6 guardian shall state the conscientious or religious belief and
7 shall indicate the specific vaccines for which an exemption is
8 being requested;

9 (B) The parent or guardian reads written materials prepared by
10 the Commissioner of the Bureau for Public Health, not to exceed
11 thirty pages, explaining the nature of the risks of the failure to
12 vaccinate a child and the benefits of each vaccine for which a
13 child shall be exempt. After reading the written materials, the
14 parent or guardian shall, by his or her signature on the materials,
15 indicate he or she has read and understood the materials.

16 (C) General requirement for exemptions. -- A parent or
17 guardian shall provide a copy of the physicians certificate or
18 parent statement of religious or conscientious beliefs to a public
19 health officer, designated for that purpose by the Commissioner of
20 the Bureau for Public Health. If the physician's certificate or
21 parental statement is proper, he or she shall forthwith transmit a
22 copy to the principal of the school in which the child is enrolled
23 or seeks enrollment. If he or she refuses to transmit a copy to
24 the principal because the certificate or statement is not proper,
25 he or she shall provide the parent or guardian with a written
26 statement specifying the deficiencies, and provide the parents an

1 opportunity to resubmit the certificate or statement. If he or she
2 rejects the certificate or statement again, the parents may seek
3 review through the Commissioner of the Bureau for Public Health.

4 (3) The Commissioner of the Bureau for Public Health or his or
5 her designated public health officer may temporarily suspend an
6 exemption for a student who is not immunized and exclude the
7 student from attending school during an outbreak or health
8 emergency. The student may not return or be admitted to school
9 until the outbreak or health emergency has been resolved and the
10 Commissioner of the Bureau for Public Health or his or her designee
11 approves the return or admittance to school. When a public health
12 emergency has been declared relating to a communicable disease,
13 citizens identified as being infected with the declared disease may
14 be subjected to humane quarantine using the least restrictive means
15 possible, in order to prevent the spreading of disease.
16 Additionally, quarantine and isolation must be by the least
17 restrictive means necessary to prevent the spread of a communicable
18 disease to others and may include, but is not limited to,
19 confinement to private homes. No child or person may be admitted
20 or received in any of the schools of the state, except as otherwise
21 provided in this section, until he or she has been immunized.

22 Any teacher, school nurse or other school official having
23 information concerning any person who attempts to enter school
24 without having been immunized against diphtheria, polio, rubeola,
25 rubella, tetanus and whooping cough shall report the name of the
26 person to the Commissioner of the Bureau for Public Health. The

1 Commissioner of the Bureau for Public Health shall report the name
2 of the person to the designated public health officer. It is the
3 duty of the Commissioner of the Bureau for Public Health or his or
4 her designated public health officer to see that persons are
5 immunized before entering school or are exempt.

6 (c) Health officers and health care providers providing
7 immunizations shall give to all persons and children a certificate
8 free of charge showing that they have been immunized against
9 diphtheria, polio, rubeola, rubella, tetanus and whooping cough.
10 Health officers and health care providers may give the certificate
11 to any person or child whom he or she knows to have been immunized
12 against diphtheria, polio, rubeola, rubella, tetanus and whooping
13 cough.

14 (d) The Commissioner of the Bureau for Public Health shall
15 propose rules for legislative approval in accordance with the
16 provisions of article three, chapter twenty-nine-a of this code, to
17 implement the provisions of this section, addressing the issue of
18 school transfers, reporting requirements for each county related to
19 the exemptions and the membership of the immunization advisory
20 committee as provided in section five of this article: *Provided,*
21 That any additions or deletions of required vaccinations or
22 exemptions shall be the sole authority of the Legislature.

NOTE: The purpose of this bill is to provide medical and nonmedical exemptions from mandatory immunizations for school children; require parental or guardian affidavit of conscientious or religious belief; require parents and guardians to assert their beliefs in an affidavit and to present an affidavit affirming that

they have completed an educational course regarding the risks and benefits of immunizations; provide that the affidavit be provided before the exemption may apply; provide rule-making authority to the Commissioner of the Bureau for Public Health; and provide that the Legislature has the sole authority to add or delete required vaccinations or exemptions for school attendance.

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