

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 336**

6 (By Senators Stollings, Wells, Plymale, Barnes, Beach, Unger,
7 Palumbo, Kessler (Mr. President) and Jenkins)

8 _____
9 [Originating in the Committee on the Judiciary;
10 reported March 21, 2013.]

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14 A BILL to repeal §55-7-19 of the Code of West Virginia, 1931, as
15 amended; to amend said code by adding thereto a new section,
16 designated §18-2-25a; and to amend and reenact §29-12-5a of
17 said code, all relating to establishing protocols and
18 protections to limit and treat injury to youth athletes and
19 students; making legislative findings with respect to
20 concussions; defining certain terms; requiring certain rules;
21 setting forth certain minimum provisions of rules; requiring
22 Board of Risk and Insurance Management to provide insurance
23 coverage for certain additional individuals; clarifying Board
24 of Risk and Insurance Management shall provide insurance

1 coverage for licensed health care professional; limiting civil
2 liability in certain circumstances; and making certain
3 technical changes.

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

5 That §55-7-19 of the Code of West Virginia, 1931, as amended,
6 be repealed; that said code be amended by adding thereto a new
7 section, designated §18-2-25a; and that §29-12-5a of said code be
8 amended and reenacted, all to read as follows:

9 **CHAPTER 18. EDUCATION.**

10 **ARTICLE 2. STATE BOARD OF EDUCATION.**

11 **§18-2-25a. Management of concussions and head injuries in**
12 **athletics at West Virginia Secondary School**
13 **Activities Commission member high school or middle**
14 **school.**

15 (a) The Legislature makes the following findings:

16 (1) Concussions are one of the most commonly reported injuries
17 in children and adolescents who participate in sports and
18 recreational activities. The Centers for Disease Control and
19 Prevention estimates that as many as 3.9 million sports-related and
20 recreation-related concussions occur in the United States each
21 year;

22 (2) A concussion is caused by a blow or motion to the head or
23 body that causes the brain to move rapidly inside the skull. The
24 risk of catastrophic injuries or death is significant when a

1 concussion or head injury is not properly evaluated and managed;

2 (3) Concussions are a type of brain injury that can range from
3 mild to severe and can disrupt the way the brain normally
4 functions;

5 (4) Concussions can occur in any organized or unorganized
6 sport or recreational activity and can result from a fall or from
7 players colliding with each other or with obstacles;

8 (5) Concussions occur with or without loss of consciousness,
9 but the vast majority occur without loss of consciousness;

10 (6) The interscholastic athlete who continues to play or
11 practice with a concussion or symptoms of head injury is especially
12 vulnerable to greater injury and even death; and

13 (7) Even with generally recognized return-to-play-and-practice
14 standards for concussion and head injury, some affected
15 interscholastic athletes are prematurely returned to play or
16 practice resulting in increased risk of physical injury or death to
17 the athletes in the State of West Virginia.

18 (b) For the purposes of this section, "interscholastic
19 athlete" means any athlete who is participating in interscholastic
20 athletics at a high school or middle school that is a member of the
21 West Virginia Secondary School Activities Commission. "Licensed
22 health care professional" means a health care provider whose
23 licensed scope of practice includes the ability to diagnose and
24 treat an injury or disease.

1 (c) The West Virginia Secondary School Activities Commission
2 shall promulgate rules pursuant to section twenty-five of this
3 article that address concussions and head injuries in
4 interscholastic athletes: *Provided*, That prior to state board
5 approval and notwithstanding the exemption provided in section
6 three, article one, chapter twenty-nine-a of this code, the state
7 board shall submit the rule to the Legislative Oversight Commission
8 on Education Accountability pursuant to section nine, article
9 three-b, chapter twenty-nine-a of this code.

10 (d) The rules required by this section shall include, but are
11 not limited to, the following:

12 (1) Guidelines and other pertinent information to inform and
13 educate appropriate school administrators, coaches, interscholastic
14 athletes and their parents or guardians of the nature and risk of
15 concussion and head injury including the risks of continuing to
16 play or practice after a concussion or head injury;

17 (2) A concussion and head injury information sheet that shall
18 be signed and returned by the interscholastic athlete and the
19 athlete's parent or guardian on an annual basis before the
20 interscholastic athlete begins practice or competition;

21 (3) A requirement that each head coach of an interscholastic
22 sport at a high school or middle school who is a member of the West
23 Virginia Secondary School Activities Commission complete a
24 commission-approved concussion and head injury recognition and

1 return-to-play protocol course annually;

2 (4) A requirement that an interscholastic athlete who is
3 suspected by a licensed health care professional or by his or her
4 head coach or athletic trainer of having sustained a concussion or
5 head injury in a practice or game shall be removed from competition
6 at that time;

7 (5) A requirement that an interscholastic athlete who has been
8 removed from play or practice may not return to play or practice
9 until the athlete is evaluated by a licensed health care
10 professional trained in the evaluation and management of
11 concussions and receives written clearance to return to play and
12 practice from the licensed health care professional;

13 (6) A list of the respective categories of licensed health
14 care professionals who, if properly trained in the evaluation and
15 management of concussions, are authorized to provide written
16 clearance for the interscholastic athlete to return to play; and

17 (7) A requirement that all member schools must submit a report
18 to the West Virginia Secondary School Activities Commission within
19 thirty days of an interscholastic athlete suffering or being
20 suspected of suffering a concussion or head injury in a practice or
21 game. The report must state whether an evaluation by a licensed
22 health care professional verified that a concussion or head injury
23 was actually suffered, whether the athlete received written
24 clearance to return to play or practice and, if written clearance

1 was given, the number of days between the incident and the actual
2 return to play or practice. If written clearance to return to play
3 is given after thirty days of the incident, a report update shall
4 be submitted. The West Virginia Secondary School Activities
5 Commission shall compile and submit the reports to the appropriate
6 state and national organization or agencies to analyze and make
7 determinations on whether the rule required by this section needs
8 to be amended or if equipment worn by interscholastic athlete needs
9 to be changed accordingly.

10 **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

11 **ARTICLE 12. STATE INSURANCE.**

12 **§29-12-5a. Liability insurance for county boards of education,**
13 **their employees and members, the county**
14 **superintendent of schools and for employees and**
15 **officers of the State Department of Corrections.**

16 (a) In accordance with the provisions of this article, the
17 State Board of Risk and Insurance Management shall provide
18 appropriate professional or other liability insurance for all
19 county boards of education, teachers, supervisory and
20 administrative staff members, service personnel, county
21 superintendents of schools, ~~and~~ school board members, volunteer
22 workers and student teachers, and for all employees and officers of
23 the State Department of Corrections: *Provided,* That the Board of
24 Risk and Insurance Management is not required to provide insurance

1 for every property, activity or responsibility of county boards of
2 education, teachers, supervisory and administrative staff members,
3 service personnel, county superintendents of schools, ~~and~~ school
4 board members, volunteer workers and student teachers, and for all
5 employees and officers of the State Department of Corrections:
6 Provided, however, That the Board of Risk and Insurance Management
7 shall provide insurance for a licensed health care professional as
8 defined in section twenty-five-a, article two, chapter eighteen of
9 this code.

10 (b) Insurance provided by the Board of Risk and Insurance
11 Management pursuant to the provisions of subsection (a) of this
12 section shall cover claims, demands, actions, suits or judgments by
13 reason of alleged negligence or other acts resulting in bodily
14 injury or property damage to any person within or without any
15 school building or correctional institution if, at the time of the
16 alleged injury, the teacher, supervisor, administrator, service
17 personnel employee, county superintendent, school board member,
18 volunteer worker or student teacher, or employee or officer of the
19 Department of Corrections, was acting in the discharge of his or
20 her duties, within the scope of his or her office, position or
21 employment, under the direction of the Board of Education or
22 Commissioner of Corrections or in an official capacity as a county
23 superintendent or as a school board member or as Commissioner of
24 Corrections.

1 (c) Insurance coverage provided by the Board of Risk and
2 Insurance Management pursuant to subsection (a) of this section
3 shall be in an amount to be determined by the State Board of Risk
4 and Insurance Management, but in no event less than \$1 million for
5 each occurrence. In addition, each county board of education shall
6 purchase, through the Board of Risk and Insurance Management,
7 excess coverage of at least \$5 million for each occurrence. The
8 cost of this excess coverage will be paid by the respective county
9 boards of education. Any insurance purchased under this section
10 shall be obtained from a company licensed to do business in this
11 state.

12 (d) The insurance policy provided by the Board of Risk and
13 Insurance Management pursuant to subsection (a) of this section
14 shall include comprehensive coverage, personal injury coverage,
15 malpractice coverage, corporal punishment coverage, legal liability
16 coverage as well as a provision for the payment of the cost of
17 attorney's fees in connection with any claim, demand, action, suit
18 or judgment arising from such alleged negligence or other act
19 resulting in bodily injury under the conditions specified in this
20 section.

21 (e) The county superintendent and other school personnel,
22 volunteer worker and student teacher shall be defended by the
23 county board or an insurer in the case of suit, unless the act or
24 omission shall not have been within the course or scope of

1 employment or official responsibility or was motivated by malicious
2 or criminal intent.

3 (f) For the purposes of this section, "volunteer worker"
4 includes, but is not limited to, a licensed health care
5 professional as defined in section twenty-five-a, article two,
6 chapter eighteen of this code. A licensed health care professional
7 is not liable for any civil damages as a result of rendering
8 diagnostic or treatment services for an injury or disease, or as a
9 result of any act or failure to act in providing or arranging
10 further medical treatment, in accordance with acceptable standards
11 of care, to an extent greater than the applicable limits of the
12 professional liability insurance provided by the State Board of
13 Risk and Insurance Management pursuant to this section and in
14 effect at the time.