

Senate Bill No. 336

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

[Introduced February 21, 2013; referred to the Committee on
Education; and then to the Committee on the Judiciary.]



A BILL to repeal §55-7-19 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18-2-25a; to amend and reenact §29-12-5a of said code; and to amend and reenact §55-7-15 of said code, all relating to establishing protocols and protections to limit and treat injury to youth athletes and students; making findings with respect to concussions; defining certain terms requiring Secondary School Activities Commission promulgate rules addressing concussions and head injuries; specifying certain minimum provisions of rules; requiring inclusion of volunteer workers and student teachers under the professional and liability coverage provided to county school boards by Board of Risk and Insurance Management; including licensed

1 health care professional within term "volunteer worker" with
2 certain conditions and limiting civil liability; including
3 medical assistance rendered by licensed medical professional
4 without remuneration to youth athlete as equivalent to
5 emergency care at scene of accident or medical emergency for
6 protection from liability for civil damages; and including
7 scheduled practices within term "event".

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

9 That §55-7-19 of the Code of West Virginia, 1931, as amended,
10 be repealed; that said code be amended by adding thereto a new
11 section, designated §18-2-25a; that §29-12-5a of said code be
12 amended and reenacted; and that §55-7-15 of said code be amended
13 and reenacted, all to read as follows:

14 **CHAPTER 18. EDUCATION.**

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

16 **§18-2-25a. Management of concussions and head injuries in**
17 **athletics at West Virginia Secondary School**
18 **Activities Commission member high school or middle**
19 **school.**

20 (a) The Legislature finds:

21 (1) Concussions are one of the most commonly reported injuries
22 in children and adolescents who participate in sports and

1 recreational activities. The centers for disease control and
2 prevention estimates that as many as three million nine hundred
3 thousand sports-related and recreation-related concussions occur in
4 the United States each year;

5 (2) A concussion is caused by a blow or motion to the head or
6 body that causes the brain to move rapidly inside the skull. The
7 risk of catastrophic injuries or death are significant when a
8 concussion or head injury is not properly evaluated and managed;

9 (3) Concussions are a type of brain injury that can range from
10 mild to severe and can disrupt the way the brain normally works;

11 (4) Concussions can occur in any organized or unorganized
12 sport or recreational activity and can result from a fall or from
13 players colliding with each other, the ground or with obstacles;

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

16 (6) Continuing to play or practice with a concussion or
17 symptoms of head injury leaves the interscholastic athlete
18 especially vulnerable to greater injury and even death; and

19 (7) Even with generally recognized return to play and practice
20 standards for concussion and head injury, some affected
21 interscholastic athletes are prematurely returned to play or
22 practice resulting in actual or potential physical injury or death
23 to the athletes in the State of West Virginia.

1 (b) For the purposes of this section, "interscholastic
2 athlete" means any athlete who is participating in interscholastic
3 athletics at a high school or middle school that is a member of the
4 West Virginia Secondary School Activities Commission, and "licensed
5 health care professional" means a health care provider whose
6 licensed scope of practice includes the ability to diagnose and
7 treat an injury or disease.

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

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

19 (1) Guidelines and other pertinent information and forms to
20 inform and educate appropriate school administrators, coaches,
21 interscholastic athletes and their parents or guardians of the
22 nature and risk of concussion and head injury including continuing
23 to play or practice after a concussion or head injury;

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

5 (3) A requirement that each head coach of an interscholastic
6 sport at a high school or middle school that is a member of the
7 West Virginia Secondary School Activities Commission complete a
8 commission-approved concussion and head injury recognition and
9 return-to-play protocol course annually;

10 (4) An interscholastic athlete who is suspected by a licensed
11 health care professional or by his or her head coach or athletic
12 trainer of sustaining a concussion or head injury in a practice or
13 game shall be removed from competition at that time;

14 (5) An interscholastic athlete who has been removed from play
15 or practice may not return to play or practice until the athlete is
16 evaluated by a licensed health care professional trained in the
17 evaluation and management of concussions and receives written
18 clearance to return to play and practice from the licensed health
19 care professional;

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

1 (7) A requirement that all member schools must submit a report
2 to the West Virginia Secondary School Activities Commission within
3 thirty days of an interscholastic athlete suffering or being
4 suspected of suffering a concussion or head injury in a practice or
5 game. The report must state whether an evaluation by a licensed
6 health care professional verified that a concussion or head injury
7 was actually suffered, whether the athlete received written
8 clearance to return to play or practice and, if written clearance
9 was given, the number of days between the incident and the actual
10 return to play or practice. If written clearance to return to play
11 is given after thirty days of the incident, a report update shall
12 be submitted then. The West Virginia Secondary School Activities
13 Commission shall compile and submit the reports to the appropriate
14 state and national organization or agencies to analyze and make
15 determinations on whether the rule required by this section or
16 equipment worn by interscholastic athlete needs to be amended
17 accordingly.

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

19 **ARTICLE 12. STATE INSURANCE.**

20 **§29-12-5a. Liability insurance for county boards of education,**
21 **their employees and members, the county**
22 **superintendent of schools, and for employees and**

1 **officers of the state Department of Corrections.**

2 (a) In accordance with the provisions of this article, the
3 state Board of Risk and Insurance Management shall provide
4 appropriate professional or other liability insurance for all
5 county boards of education, teachers, supervisory and
6 administrative staff members, service personnel, county
7 superintendents of schools, ~~and~~ school board members, volunteer
8 workers and student teachers, and for all employees and officers of
9 the state Department of Corrections: *Provided*, That the board of
10 Risk and Insurance Management is not required to provide insurance
11 for every property, activity or responsibility of county boards of
12 education, teachers, supervisory and administrative staff members,
13 service personnel, county superintendents of schools, ~~and~~ school
14 board members, volunteer workers and student teachers, and for all
15 employees and officers of the state Department of Corrections.

16 (b) Insurance provided by the board of Risk and Insurance
17 Management pursuant to the provisions of subsection (a) of this
18 section shall cover claims, demands, actions, suits or judgments by
19 reason of alleged negligence or other acts resulting in bodily
20 injury or property damage to any person within or without any
21 school building or correctional institution if, at the time of the
22 alleged injury, the teacher, supervisor, administrator, service
23 personnel employee, county superintendent, school board member,

1 volunteer worker or student teacher, or employee or officer of the
2 Department of Corrections was acting in the discharge of his or her
3 duties, within the scope of his or her office, position or
4 employment, under the direction of the Board of Education or
5 Commissioner of Corrections or in an official capacity as a county
6 superintendent or as a school board member or as Commissioner of
7 Corrections.

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

19 (d) The insurance policy provided by the Board of Risk and
20 Insurance Management pursuant to subsection (a) of this section
21 shall include comprehensive coverage, personal injury coverage,
22 malpractice coverage, corporal punishment coverage, legal liability
23 coverage as well as a provision for the payment of the cost of

1 attorney's fees in connection with any claim, demand, action, suit
2 or judgment arising from such alleged negligence or other act
3 resulting in bodily injury under the conditions specified in this
4 section.

5 (e) The county superintendent and other school personnel,
6 volunteer worker and student teacher shall be defended by the
7 county board or an insurer in the case of suit, unless the act or
8 omission shall not have been within the course or scope of
9 employment or official responsibility or was motivated by malicious
10 or criminal intent.

11 (f) For the purposes of this section, "volunteer worker"
12 includes, but is not limited to, a licensed health care
13 professional who renders services of a medical nature to students
14 under an agreement with a county board that defines the scope of
15 his or her duties as such and for which no remuneration is demanded
16 or received. A licensed health care professional is not be liable
17 for any civil damages as a result of rendering such services, or as
18 a result of any act or failure to act in providing or arranging
19 further medical treatment, in accordance with acceptable standards
20 of care, to an extent greater than the applicable limits of the
21 professional liability insurance provided by the state Board of
22 Risk and Insurance Management pursuant to this section and in
23 effect at the time. Nothing in this subsection nullifies the

1 immunity from civil liability as granted pursuant to section
2 fifteen, article seven, chapter fifty-five of this code or federal
3 law except to the extent to which the actions are covered within
4 the applicable limits of the professional liability insurance
5 provided by the state Board of Risk and Insurance Management
6 pursuant to this section and in effect at the time.

7 **CHAPTER 55. ACTIONS, SUITS AND ARBITRATION;**

8 **JUDICIAL SALE.**

9 **ARTICLE 7. ACTIONS FOR INJURIES.**

10 **§55-7-15. Aid to victim of accident and victim of crime; immunity**
11 **from civil liability.**

12 No person, including a person licensed to practice medicine or
13 dentistry, who in good faith renders emergency care at the scene of
14 an accident or medical emergency or to a victim at the scene of a
15 crime, without remuneration, ~~shall be~~ is liable for any civil
16 damages as the result of any act or omission in rendering such
17 emergency care.

18 For the purposes of this section, "scene of an accident or
19 medical emergency" also includes a youth athletic event, including
20 a school sponsored or interscholastic athletic event, at which
21 assistance of a medical nature is rendered in an emergency
22 situation by a licensed medical professional, for which no

1 remuneration is demanded or received, to an athlete injured while
2 participating in the event. For the purposes of this section,
3 "athletic event" includes scheduled practices.

NOTE: The purpose of this bill is to establish protocols and protections to help limit injuries to youth athletes and students and improve the treatment of them. In particular, the bill emphasizes the protocols for removal and return to play following concussions in interscholastic sports regulated by the WV Secondary School Activities Commission.

Strike-throughs indicate existing language that would be removed, and underscoring indicates new language that would be added.

§18-2-25a is new; therefore, strike-throughs and underscoring have been omitted.

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Joint Standing Committee on Education.