

H. B. 2258

(By Delegate Cowles and Kurcaba)

[Introduced January 23, 2015; referred to the

Committee on Health and Human Resources then Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §44-10A-1, §44-10A-2, §44-10A-3, §44-10A-4 and §44-10A-5, all relating to the codification of a Parents' Bill of Rights.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §44-10A-1, §44-10A-2, §44-10A-3, §44-10A-4 and §44-10A-5, all to read as follows:

ARTICLE 10A. PARENTS' BILL OF RIGHTS.

§44-10A-1. Short title.

This article shall be known and may be cited as the "Parents' Bill of Rights".

§44-10A-2. Fundamental rights of parents; definition.

(a) The liberty of parents to direct the upbringing, education, health care and mental health of their children is a fundamental right.

1 (b) This state, a political subdivision of this state or other governmental unit may not infringe
2 on the fundamental rights without demonstrating that a compelling governmental interest as applied
3 to the child involved is of the highest order, is narrowly tailored and is not otherwise served by a less
4 restrictive means.

5 (c) Unless a parents' fundamental rights have been legally waived or legally terminated,
6 parents have inalienable rights that are more comprehensive than those identified in section three of
7 this article. The Parents' Bill of Rights does not prescribe all rights of parents. Unless otherwise
8 required by law, the rights of parents of minor children shall not be limited or denied.

9 (d) As used in this article, "parent" means the natural or adoptive parent or legal guardian of
10 a minor child.

11 **§44-10A-3. Specific parental rights.**

12 All parental rights are reserved to a parent of a minor child without obstruction or
13 interference from this state, a political subdivision of this state, other governmental entity or other
14 institution including, but not limited to, the following rights:

15 (1) The right to direct the education of the minor child;

16 (2) All rights of parents identified in chapter eighteen of this code including the right to
17 access and review all school records relating to the minor child;

18 (3) The right to direct the upbringing of the minor child;

19 (4) The right to direct the moral or religious training of the minor child;

20 (5) The right to make health care decisions for the minor child unless otherwise prohibited
21 by law;

22 (6) The right to access and review all medical records of the minor child unless otherwise

1 prohibited by law or the parent is the subject of an investigation of a crime committed against the
2 minor child and a law-enforcement official requests that the information not be released;

3 (7) The right to consent in writing before a biometric scan of the minor child is made;

4 (8) The right to consent in writing before a record of the minor child's blood or
5 deoxyribonucleic acid (DNA) is created, stored or shared;

6 (9) The right to consent in writing before the state or its political subdivisions make a video
7 or voice recording of the minor child unless the video or voice recording is made during or as a part
8 of a court proceeding, by law-enforcement officers during or as part of a law-enforcement
9 investigation, during or as part of a forensic interview in a criminal or child protective services
10 investigation or to be used solely for any of the following:

11 (A) Safety demonstrations including the maintenance of order and discipline in the common
12 areas of a school or on student transportation vehicles;

13 (B) A purpose related to a legitimate academic or extracurricular activity;

14 (C) A purpose related to regular classroom instruction;

15 (D) Security or surveillance of buildings or grounds; or

16 (E) A photo identification card; and

17 (10) The right to be notified promptly if an employee of this state, a political subdivision of
18 this state, other governmental entity or other institution suspects that a criminal offense has been
19 committed against the minor child by someone other than a parent unless the incident has first been
20 reported to law enforcement and notification of the parent would impede a law enforcement or child
21 protective services investigation.

22 **§44-10A-4. Limitations of article.**

1 (a) This article does not authorize or allow a parent to engage in conduct that is unlawful or
2 to abuse or neglect a child in violation of the laws of this state and does not apply to a parental action
3 or decision that would end life. This article does not prohibit courts, law-enforcement officers or
4 employees of a government agency responsible for child welfare from acting in their official capacity
5 within the reasonable and prudent scope of their authority, and does not prohibit a court from issuing
6 an order that is otherwise permitted by law.

7 (b) This article does not create a new obligation for schools to report misconduct between
8 students at school, such as fighting or aggressive play, that is routinely addressed as a student
9 disciplinary matter by the school.

10 **§44-10A-5. Discipline of state employee for interference.**

11 An attempt to encourage or coerce a minor child to withhold information from the child's
12 parent is grounds for discipline of an employee of this state, a political subdivision of this state or
13 other governmental entity except for law-enforcement personnel.

NOTE: The purpose of this bill is to codify a Parents' Bill of Rights.

This article is new; therefore, it has been completely underscored.