

H. B. 2866

(By Delegates Guthrie, L. Phillips, Moore, Longstreth, Pethel,
Ferro, Campbell, Perdue and Moye)

[Introduced February 20, 2015; referred to the
Committee on Education.]

**FISCAL
NOTE**

A BILL to amend and reenact §18-2-7a of the Code of West Virginia, 1931, as amended, relating to establishing legislative findings, providing physical education and physical activity requirements for physical education classes in schools, establishing procedures for collecting body mass index data of students, allowing for the contracting for collecting body mass index of students, permitting or requiring parents and guardians of students to obtain body mass index data from a provider selected by the parent or guardian and to submit the results to the appropriate authority, requiring the board to provide to parents information about the body mass index screening program, requiring the board, in certain circumstances, to provide to parents and guardians a list of providers and information about screening services available in the community to the parents and guardians who cannot afford a private provider, requiring that students not be subjected to body mass screening when the parents or guardians do not wish for their children to be subjected to the same, requiring that prior written consent be obtained before any student is subjected to body mass screening, requiring that parents be advised of risks associated with body mass index screening and that parents

1 or guardians be provided with information about appropriately addressing the risks, requiring
2 that the confidentiality of each student be maintained and that each student's privacy is
3 protected by ensuring that each student is screened alone and not in the presence of other
4 students or staff.

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

6 That §18-2-7a of the Code of West Virginia, 1931, as amended, be amended and reenacted
7 to read as follows:

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

9 **§18-2-7a. Legislative findings; required physical education; program in physical fitness.**

10 (a) The Legislature hereby finds that obesity is a problem of epidemic proportions in this
11 state. There is increasing evidence that all segments of the population, beginning with children, are
12 becoming more sedentary, more overweight and more likely to develop health risks and diseases
13 including Type II Diabetes, high blood cholesterol and high blood pressure. The Legislature further
14 finds that the promotion of physical activity during the school day for school children is a crucial
15 step in combating this growing epidemic and in changing the attitudes and behavior of the residents
16 of this state toward health promoting physical activity.

17 (b) As a result of these findings, the State Department of Education shall establish the
18 requirement that each child enrolled in the public schools of this state actively participates in
19 physical education classes during the school year to the level of his or her ability as follows:

20 (1) *Elementary school grades.* -- Not less than thirty minutes of physical education, including
21 physical exercise and age-appropriate physical activities, for not less than three days a week.

22 (2) *Middle school grades.* -- Not less than one full period of physical education, including

1 physical exercise and age-appropriate physical activities, each school day of one semester of the
2 school year.

3 (3) *High school grades.* -- Not less than one full course credit of physical education,
4 including physical exercise and age-appropriate physical activities, which shall be required for
5 graduation and the opportunity to enroll in an elective lifetime physical education course.

6 (c) Enrollment in physical education classes and activities required by the provisions of this
7 section shall not exceed, and shall be consistent with, state guidelines for enrollment in all other
8 subjects and classes: *Provided,* That schools which do not currently have the number of certified
9 physical education teachers, do not currently have the required physical setting or would have to
10 significantly alter academic offerings to meet the physical education requirements may develop
11 alternate programs that will enable current staff, physical settings and offerings to be used to meet
12 the physical education requirements established herein. These alternate programs shall be submitted
13 to the state Department of Education and the Healthy Lifestyle Council for approval. Those schools
14 needing to develop alternate programs shall not be required to implement this program until the
15 school year commencing 2006.

16 (d) The state board shall prescribe a program within the existing health and physical
17 education program which incorporates fitness testing, reporting, recognition, fitness events and
18 incentive programs which requires the participation in grades four through eight and the required
19 high school course. The program shall be selected from nationally accepted fitness testing programs
20 designed for school-aged children that test cardiovascular fitness, muscular strength and endurance,
21 flexibility and body composition: *Provided,* That nothing in this subsection shall be construed to
22 prohibit the use of programs designed under the auspices of the President's Council on Physical

1 Fitness and Sports. The program shall include modified tests for exceptional students. Each school
2 in the state shall participate in National Physical Fitness and Sports Month in May of each year and
3 shall make every effort to involve the community it serves in the related events.

4 (e) The state board shall promulgate a rule in accordance with the provisions article three-b,
5 chapter twenty-nine-a of this code that includes at least the following provisions to provide for the
6 collection, reporting and use of body mass index data in the public schools:

7 (1) The data shall be collected using the appropriate methodology for assessing the body mass
8 index from student height and weight data: Provided, That the state board or county boards may
9 provide any screenings for body mass index, contract with another entity for provision of the
10 screenings, or request the parent or guardian of each student subject to the screening to obtain the
11 screening from a provider selected by the parent or guardian and to submit the results to the state
12 board, county board or school designated for collection of body mass index data. If the state board,
13 county board or school provides the screenings or contracts with another entity for provision of the
14 screenings, the board or school shall protect the student and his or her privacy by insuring that the
15 screening is conducted alone and not in the presence of other students or staff. All screenings for
16 body mass index shall be conducted by qualified persons who have been trained in the proper
17 methodology and use of equipment meeting medically acceptable standards.

18 (2) Each school year, each county board or school required to conduct screening for body
19 mass index of students shall provide the parent or guardian of each student subject to possible
20 screening for body mass index with information about the screening program. If the state board,
21 county board or school requests parents and guardians to obtain a screening from a provider of their
22 choosing, such state board, county board or school shall provide the parents or guardians with a list

1 of providers and information about screening services available in the community to the parents and
2 guardians who cannot afford a private provider.

3 (3) If the parent or guardian of a student subject to possible screening signs and submits to
4 the state board, county board or school a written statement indicating that the parent or guardian does
5 not wish to have the student undergo the screening for body mass index, the state board, county
6 board or school may not require the student to be screened: *Provided*, That before any student is
7 screened for body mass index the state board, county board or school must obtain prior written
8 consent of the parent or guardian of the student. The consent shall be sought and obtained not more
9 than fourteen days prior to the date on which the body mass screening is scheduled to be performed.

10 (4) The state board, county board or school shall notify the parent or guardian of each student
11 to be screened for body mass index under this section of any health risks, including the potential for
12 triggering eating disorders, associated with the student's results and shall provide the parent or
13 guardian with information about appropriately addressing the risks. For this purpose, the
14 Department of Education in consultation with the West Virginia University Disordered Eating Center
15 of Charleston, West Virginia Department of Health and Human Resources, Healthy Lifestyles
16 Coalition and any other persons or entities public or private which in the judgment of the state board
17 may be helpful in fulfilling the requirement of this section, shall develop a list of documents,
18 pamphlets, or other resources that shall be distributed to parents and guardians under this section.

19 ~~(2)~~(5) The data shall be collected on a scientifically drawn sample of students;

20 ~~(3)~~(6) The data shall be collected and reported in a manner that protects student
21 confidentiality. The state board, county board or school shall maintain the confidentiality of each
22 student's individual screening results at all times. The state board, county board or school shall at all

1 times protect student privacy by ensuring that each student is screened alone and not in the presence
2 of other students or staff. No board or school may report a student's individual screening results to
3 any person other than the student's parent or guardian.

4 ~~(4)~~(7) The data shall be reported to the Department of Education; and

5 ~~(5)~~(8) All body mass index data shall be reported in aggregate to the Governor, the State
6 Board of Education, the Healthy Lifestyles Coalition and the Legislative Oversight Commission on
7 Health and Human Resources Accountability for use as an indicator of progress toward promoting
8 healthy lifestyles among school-aged children.

NOTE: The purpose of this bill is to establish procedures for body mass index (BMI) screening in schools in West Virginia. The bill requires that schools educate parents and guardians of the screening program and risks of conducting the same and how the risks may be addressed. Also the bill would require that schools obtain the prior written consent of parents and guardians of students before conducting BMI screenings.

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