

Senate Bill No. 286

(By Senators Ferns, Trump, D. Hall, Blair, Boley, Gaunch, Leonhardt, Mullins and Karnes)

[Introduced January 23, 2015; referred to the Committee on Health and Human Resources; and
then to the Committee on the Judiciary.]

A BILL to amend and reenact §16-3-4 and §16-3-5 of the Code of West Virginia, 1931, as amended,
all relating generally to mandatory immunizations; setting forth immunization dosage levels;
adding required immunizations; providing medical and religious exemptions from mandatory
immunizations for school children; requiring parents and guardians to assert their beliefs in
affidavit; providing that affidavit be provided before exemption applies; allowing removal
of students who are not immunized from school in times of emergency or epidemic; granting
legislative rule-making authority to the Secretary of the Department of Health and Human
Resources to add or delete diseases for which vaccines are required for school attendance,
to develop necessary forms and to create process for reviewing any verification of affidavits
for completeness; nullifying an interpretive rule and any action taken pursuant to the
interpretive rule; modifying the Immunization Advisory Committee; and establishing a chair
of the committee.

Be it enacted by the Legislature of West Virginia:

That §16-3-4 and §16-3-5 of the Code of West Virginia, 1931, as amended, be amended and

1 reenacted, all to read as follows:

2 **ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER**
3 **INFECTIOUS DISEASES.**

4 **§16-3-4. Compulsory immunization of school children; required vaccinations; exemptions;**
5 **health emergencies; appeals.**

6 (a) When a resident birth occurs, the Secretary of the Department of Health and Human
7 Resources shall promptly provide parents of the newborn child with information on immunizations,
8 including those mandated by this state for admission to a public, private or parochial school in this
9 state.

10 (b) Except as provided in subsection (c) of this section, all children entering school in this
11 state must be age appropriately immunized against chickenpox, hepatitis-b, polio, measles, mumps,
12 rubella, tetanus, whooping cough and any other disease requiring vaccination as established by
13 legislative rule promulgated pursuant to the provisions of article three, chapter twenty-nine-a of this
14 code by the Secretary of the Department of Health and Human Resources. The legislative rule as
15 required by this section shall set forth the dosage of the immunizations as follows:

16 (1) DTaP/DTP/Td/Tdap – shall require four doses;

17 (2) Polio (IPV) - shall require three doses;

18 (3) Measles, Mumps and Rubella (MMR) - shall require two doses the first of which must
19 be done after the child's first birthday;

20 (4) Hepatitis-B - (Recombivax HB or Engerix-Brequire) shall require three injections
21 administered over a six-month period, and;

22 (5) Chickenpox (VAR) - shall require two doses.

1 Provisional enrollment may occur following receipt of one dose of the vaccine and is allowed
2 for a period of up to eight months until the required dosage is completed.

3 (c) *Exemptions.* -- A parent or guardian may apply for an exemption from the provisions of
4 this section as follows:

5 (1) *Medical exemption.* -- A parent or guardian of a child entering the schools of this state
6 may request a medical exemption from a required vaccination for his or her minor child. If the
7 parent or guardian of the child or ward presents a certificate to the school signed by a physician who
8 is duly registered and licensed to practice medicine in West Virginia or a contiguous state which sets
9 forth the opinion and the basis of the opinion of the physician examining the child or ward that
10 immunization of the child or ward is medically impossible or improper for any or all of the following
11 diseases including chickenpox, hepatitis-b, diphtheria, polio, rubeola, measles, tetanus, whooping
12 cough and any other disease requiring vaccination as established by legislative rule as provided in
13 subsection (b) of this section; or, because of another compelling medical reason immunization of the
14 child or ward for any or all of the following diseases including chickenpox, hepatitis-b, diphtheria,
15 polio, measles, mumps, rubella, tetanus, whooping cough and any other disease requiring vaccination
16 as established by legislative rule pursuant to subsection (b) of this section should not be required for
17 public, private or parochial school attendance, the secretary shall grant the exemption. Additionally,
18 a parent or guardian of a child entering the schools of this state for the first time may request a
19 medical exemption from a required vaccination for his or her minor child, if immunity against
20 chickenpox, hepatitis-b, diphtheria, polio, measles, mumps, rubella, tetanus, whooping cough and
21 any other disease requiring vaccination as established by legislative rule pursuant to subsection (b)
22 of this section can be shown through laboratory testing.

1 (2) *Religious exemption.* -- A parent or guardian with a strongly held religious belief that his
2 or her minor child or ward should not be subject to a required immunization as provided in this
3 section, may seek an exemption from any or all required vaccinations for his or her minor child
4 entering the schools of this state for the first time. To apply for the exemption the parent or guardian
5 shall execute an affidavit stating their religious tenant against immunizations. The affidavit must
6 then be signed by a physician licensed to practice in West Virginia pursuant to the provisions of
7 article three, chapter thirty of this code or a physician licensed in a contiguous state and on a form
8 set forth in an emergency rule promulgated by the Secretary of the Department of Health and Human
9 Resources pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this
10 code. The signature of the physician indicates that the parents have been given information
11 regarding the benefits of vaccination and the risks associated with not vaccinating have been
12 explained to the parent or guardian, face to face, and should include the date this education took
13 place. The affidavit is required to include a list of required immunizations to allow a parent or
14 guardian to request an exemption for his or her child from any or all of the required immunizations.
15 In the affidavit, the parent or guardian shall state that their religious belief is in conflict with the child
16 receiving the immunizations required by this section and shall indicate the specific vaccines for
17 which an exemption is being requested.

18 (3) *General requirement for exemptions.* -- Documentation shall be submitted to the school
19 where the child will attend. The school shall provide a copy of the required affidavit to the Secretary
20 of the Department of Health and Human Resources within fifteen calendar days of receiving the
21 request for an exemption.

22 (4) *Suspension.* — The Secretary of the Department of Health and Human Resources may

1 temporarily suspend an exemption for a student who is not immunized and exclude the student from
2 attending school during an outbreak or health emergency. The student may not return or be admitted
3 to school until the outbreak or health emergency has been resolved and the Secretary of the
4 Department of Health and Human Resources or his or her designee approves the return or admittance
5 to school.

6 (d) Health care providers who provide vaccinations in this state shall comply with vaccine
7 adverse event reporting requirements as set forth in the National Childhood Vaccine Injury Act of
8 1986, (42 U.S.C. §§300aa-1 to 300aa-34), which mandates that health care providers report health
9 problems following vaccination, including hospitalizations, injuries and deaths, to the federal
10 Vaccine Adverse Event Reporting System (VAERS).

11 (e) The Secretary of the Department of Health and Human Resources shall propose rules for
12 legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this
13 code, to implement the provisions of this section, to develop necessary forms, affidavits and
14 certificates, to add or remove diseases requiring vaccination for school attendance, addressing the
15 issue of school transfers and reporting requirements for each county related to the exemptions.

16 (f) The changes made to this section during the 2015 Regular Session of the Legislature
17 supercede any interpretive rule and any action taken by the Department of Health and Human
18 Resources in the promulgation of an interpretive rule regarding compulsory immunizations. That
19 rule and any action take pursuant to it will be null and void with the submission of any emergency
20 and legislative rule pursuant to the provisions of this section.

21 **§16-3-5. Distribution of free vaccine preventives of disease.**

22 (a) *Declaration of legislative findings and purpose.* -- The Legislature finds and declares that

1 early immunization for preventable diseases represents one of the most cost-effective means of
 2 disease prevention. The savings which can be realized from immunization, compared to the cost of
 3 health care necessary to treat the illness and lost productivity, are substantial. Immunization of
 4 children at an early age serves as a ~~preventative~~ preventive measure both in time and money and is
 5 essential to maintain our children's health and well-being. The costs of childhood immunizations
 6 should not be allowed to preclude the benefits available from a comprehensive, medically supervised
 7 child immunization service. Furthermore, the federal government has established goals that require
 8 ninety percent of all children to be immunized by age two and provided funding to allow uninsured
 9 children to meet this goal.

10 (b) The ~~State Director~~ Commissioner of the Bureau for Public Health shall acquire vaccine
 11 for the prevention of polio, measles, mumps, rubella, chickenpox, diphtheria, pertussis, tetanus,
 12 hepatitis-b, haemophilus influenzae-b and other vaccine ~~preventives of disease~~ preventable diseases
 13 as ~~may be deemed~~ considered necessary or required by law, and shall distribute the same, free of
 14 charge, in ~~such~~ quantities as he or she ~~may deem~~ considers necessary, to ~~county and municipal health~~
 15 ~~officers~~ public and private providers, to be used by them for the benefit of ~~and without expense to~~
 16 ~~the citizens within their respective jurisdictions~~, to check contagions and control epidemics.

17 (c) The ~~county and municipal health officers shall have~~ Commissioner of the Bureau for
 18 Public Health through the immunization program, has the responsibility to properly store and
 19 distribute, free of charge, vaccines to public and private ~~medical or osteopathic physicians within~~
 20 ~~their jurisdictions~~ providers to be ~~utilized~~ used to check contagions and control epidemics:
 21 *Provided*, That the public and private ~~medical or osteopathic physicians shall~~ providers may not
 22 make a charge for the vaccine itself when administering it to a patient. The ~~county and municipal~~

1 ~~health officers shall provide a receipt to the State Director of Health for~~ Commissioner of the Bureau
2 for Public Health through the immunization program shall keep an accurate record of any vaccine
3 delivered as herein provided in this section.

4 (d) ~~The Director of the Division Health~~ Secretary of the Department of Health and Human
5 Resources is charged with establishing ~~a childhood~~ an Immunization Advisory Committee, whose
6 members do not have conflicts of interest with vaccine manufacturers, or who could financially gain
7 directly or indirectly from vaccine mandates. The advisory committee is to plan for universal access,
8 make recommendations on the distribution of vaccines acquired pursuant to this section, advise the
9 secretary on the changing needs and opportunities for immunization from known diseases for all
10 persons across their life span and ~~tracking of~~ track immunization compliance in accordance with
11 federal and state laws. ~~The childhood~~ Members of the Immunization Advisory Committee shall be
12 designated and appointed by the Secretary of the Department of the Health and Human Resources
13 no later than ~~the first day of July, one thousand nine hundred ninety-four and~~ July 1, 2015. The
14 Advisory Committee shall be comprised of representatives from the following groups: Public health
15 nursing, public health officers, primary health care providers, pediatricians, family practice
16 physicians, health care administrators, ~~state Medicaid program~~ the Commissioner of the Bureau for
17 Medical Services, or his or her designee, the health insurance industry, the Director of the Public
18 Employees Insurance Agency, or his or her designee, the self-insured industry and a minimum of
19 three consumers. The state epidemiologist ~~shall serve~~ serves as an advisor to the committee. The
20 Commissioner of the Bureau for Public Health, or his or her designee, serves as the Chair of the
21 Advisory Committee. Members of the advisory committee ~~shall serve~~ two-year four-year terms.

22 (e) All health insurance policies and prepaid care policies issued in this state which provide

1 coverage for the children of the insured shall provide coverage for child immunization services to
2 include the cost of the vaccine, if incurred by the health care provider, and all costs of administration
3 from birth through age sixteen years. These services ~~shall be~~ are exempt from any deductible,
4 per-visit charge and/or copayment provisions which may be in force in these policies or contracts.
5 This section does not exempt other health care services provided at the time of immunization from
6 any deductible ~~and/~~ or copayment provisions.

7 (f) Attending physicians, midwives, nurse practitioners, hospitals, birthing centers, clinics
8 and other appropriate health care providers shall provide parents of newborns and preschool age
9 children with information on the following immunizations: Diphtheria, polio, mumps, measles,
10 rubella, tetanus, hepatitis-b, hemophilus influenzae-b, chickenpox and whooping cough and other
11 diseases requiring vaccination as established by legislative rule pursuant to the provision of
12 subsection (b) of section four of this article. This information should include the availability of free
13 immunization services for children.

NOTE: The purpose of this bill is to provide medical and religious exemptions from mandatory immunizations for school children. The bill would require parents and guardians to assert their religious beliefs in an affidavit. Parents or guardians seeking an exemption for a child would be required to present an affidavit to be provided to the Department of Health and Human Resources, before the exemption could apply. Further, the bill would remove students who are not immunized from school in times of emergency or epidemics. The bill provides that the Secretary of Health and Human Resources may by legislative rule add or delete diseases for which vaccines are required for school attendance and reconstitutes the Immunization Advisory Committee.

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

§16-3-4 has been completely rewritten, therefore, strike-throughs and underscoring have been omitted.