

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 286

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

[Originating in the Committee on Health and Human Resources;
reported February 13, 2015.]

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 reenacted, all to read as follows:

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

§16-3-4. Compulsory immunization of school children; information disseminated; offenses; penalties.

1 (a) Whenever a resident birth occurs, the ~~state director of~~
2 ~~health~~ commissioner shall promptly provide parents of the
3 newborn child with information on immunizations mandated
4 by this state or required for admission to a public private,
5 parochial school in this state or a state-regulated child care
6 center.

7 **(b)** ~~All children~~ Except as hereinafter provided, a child
8 entering school or a state-regulated child care center ~~for the first~~
9 time in this state ~~shall have been~~ must be immunized against
10 chickenpox, hepatitis-b, measles, meningitis, mumps,
11 diphtheria, polio, ~~rubeola,~~ rubella, tetanus and whooping
12 cough. ~~Any person who cannot give satisfactory proof of~~
13 ~~having been immunized previously or a certificate from a~~
14 ~~reputable physician showing that an immunization for any or all~~
15 ~~diphtheria, polio, rubeola, rubella, tetanus and whooping cough~~
16 ~~is impossible or improper or sufficient reason why any or all~~
17 ~~immunizations should not be done, shall be immunized for~~
18 ~~diphtheria, polio, rubeola, rubella, tetanus and whooping cough~~
19 ~~prior to being admitted in any of the schools in the state.~~

20 **(c)** ~~No child or person shall~~ may be admitted or received
21 in any of the schools of the state or a state-regulated child
22 care center until he or she has been immunized ~~as hereinafter~~
23 ~~provided or produces a certificate from a reputable physician~~
24 ~~showing that an immunization for~~ against chickenpox,
25 hepatitis-b, measles, meningitis, mumps, diphtheria, polio,

26 ~~rubeola, rubella, tetanus and whooping cough has been done~~
27 ~~or is impossible or improper or other sufficient reason why~~
28 ~~such immunizations have not been done~~ or produces a
29 certificate from the commissioner granting the child or
30 person an exemption from the compulsory immunization
31 requirements of this section.

32 (d) Any ~~teacher~~ school or state-regulated child care
33 center personnel having information concerning any person
34 who attempts to ~~enter~~ be enrolled in a school or state-
35 regulated child care center for the first time without having
36 been immunized against chickenpox hepatitis-b, measles,
37 meningitis, mumps, diphtheria, polio, ~~rubeola~~, rubella,
38 tetanus and whooping cough shall report the names of all
39 such persons to the ~~county health officer~~ commissioner. It
40 ~~shall be the duty of the health officer in counties having a~~
41 ~~full-time health officer to see that such persons are~~
42 ~~immunized before entering school: *Provided, That*~~

43 (e) Persons enrolling from schools ~~outside of the state~~
44 may be provisionally enrolled under minimum criteria

45 established by the ~~director of the department of health~~
46 commissioner so that the person's immunization may be
47 completed while missing a minimum amount of school.

48 ~~Provided, however, That~~ No person shall be allowed to enter
49 school without at least one dose of each required vaccine.

50 ~~In counties where there is no full-time health officer or~~
51 ~~district health officer, the county commission or municipal~~
52 ~~council shall appoint competent physicians to do the~~
53 ~~immunizations and fix their compensation.~~

54 (f) County health departments shall furnish the
55 biologicals for this immunization ~~free of charge~~ for children
56 of parents or guardians who attest that they cannot afford or
57 otherwise access vaccines elsewhere.

58 (g) Health officers and physicians who ~~shall do this~~
59 ~~immunization work~~ provide vaccinations ~~shall give to all~~
60 ~~persons and children~~ must present the person vaccinated with
61 a certificate free of charge showing that they have been
62 immunized against chickenpox, hepatitis-b, measles,
63 meningitis, mumps, diphtheria, polio, ~~rubeola~~, rubella,

64 tetanus and whooping cough, or he or she may give the
65 certificate to any person or child whom he or she knows to
66 have been immunized against chickenpox, hepatitis-b,
67 measles, meningitis, mumps, diphtheria, polio, rubella,
68 rubella, tetanus and whooping cough.

69 (h) The commissioner is authorized to grant, renew,
70 condition, deny, suspend or revoke exemptions to the
71 compulsory immunization requirements of this section, on a
72 statewide basis, upon sufficient medical evidence that
73 immunization is contraindicated or there exists a specific
74 precaution to a particular vaccine.

75 (1) A request for an exemption to the compulsory
76 immunization requirements of this section must be
77 accompanied by the certification of a licensed physician
78 stating that the physical condition of the child is such that
79 immunization is contraindicated or there exists a specific
80 precaution to a particular vaccine.

81 (2) The commissioner is authorized to appoint and
82 employ an Immunization Officer to make determinations on

83 request for an exemption to the compulsory immunization
84 requirements of this section, on a statewide basis, and
85 delegate to the Immunization Officer the authority granted to
86 the commissioner by this subsection.

87 (3) A person appointed and employed as the
88 Immunization Officer must be a physician licensed under the
89 laws of this state to practice medicine.

90 (4) The Immunization Officer's decision on a request for
91 an exemption to the compulsory immunization requirements
92 of this section may be appealed to the State Health Officer.

93 (5) The final determination of the State Health Officer is
94 subject to a right of appeal pursuant to the provisions of
95 article five, chapter twenty-nine a of this code.

96 (i) ~~If any~~ A physician ~~shall give~~ who provides any person
97 with a false certificate of immunization against ~~chickenpox,~~
98 ~~hepatitis-b, measles, meningitis, mumps,~~ diphtheria, polio,
99 ~~rubeola, rubella, tetanus and whooping cough~~ ~~he or she~~ shall
100 ~~be~~ is guilty of a misdemeanor and, upon conviction, shall be
101 fined not less than \$25 nor more than \$100.

102 ~~Any parent or guardian who refuses to permit his or her~~
103 ~~child to be immunized against diphtheria, polio, rubeola,~~
104 ~~rubella, tetanus and whooping cough, who cannot give~~
105 ~~satisfactory proof that the child or person has been~~
106 ~~immunized against diphtheria, polio, rubeola, rubella, tetanus~~
107 ~~and whooping cough previously, or a certificate from a~~
108 ~~reputable physician showing that immunization for any or all~~
109 ~~is impossible or improper, or sufficient reason why any or all~~
110 ~~immunizations should not be done, shall be guilty of a~~
111 ~~misdemeanor and, except as herein otherwise provided, shall,~~
112 ~~upon conviction, be punished by a fine of not less than ten~~
113 ~~nor more than \$50 for each offense.~~

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

1 (a) *Declaration of legislative findings and purpose.* – The
2 Legislature finds and declares that early immunization for
3 preventable diseases represents one of the most cost-effective
4 means of disease prevention. The savings which can be
5 realized from immunization, compared to the cost of health
6 care necessary to treat the illness and lost productivity, are

7 substantial. Immunization of children at an early age serves
8 as a ~~preventative~~ preventive measure both in time and money
9 and is essential to maintain our children's health and
10 well-being. The costs of childhood immunizations should
11 not be allowed to preclude the benefits available from a
12 comprehensive, medically supervised child immunization
13 service. ~~Furthermore, the federal government has established~~
14 ~~goals that require ninety percent of all children to be~~
15 ~~immunized by age two and provided funding to allow~~
16 ~~uninsured children to meet this goal.~~

17 (b) The ~~State Director~~ Commissioner of the Bureau for
18 Public Health shall acquire vaccine for the prevention of
19 polio, measles, meningitis, mumps, rubella, chickenpox,
20 diphtheria, pertussis, tetanus, hepatitis-b, haemophilus
21 influenzae-b and other vaccine ~~preventives of disease~~
22 preventable diseases as ~~may be deemed~~ considered
23 necessary or required by law and shall distribute the same,
24 free of charge, in ~~such quantities as he or she may deem~~
25 considers necessary, to ~~county and municipal health officers~~

26 public and private providers, to be used by them for the
27 benefit of ~~and without expense to the citizens within their~~
28 ~~respective jurisdictions~~, to check contagions and control
29 epidemics.

30 (c) ~~The county and municipal health officers shall have~~
31 Commissioner of the Bureau for Public Health, through the
32 immunization program, has the responsibility to ~~properly~~
33 ~~store and distribute, ensure the distribution,~~ free of charge,
34 of federally supplied vaccines to public and private medical
35 ~~or osteopathic physicians within their jurisdictions~~ providers
36 to be ~~utilized~~ used to check contagions and control
37 epidemics: *Provided*, That the public and private medical or
38 ~~osteopathic physicians shall~~ providers may not make a
39 charge for the vaccine itself when administering it to a
40 patient. ~~The county and municipal health officers shall~~
41 ~~provide a receipt to the State Director of Health for~~
42 Commissioner of the Bureau for Public Health, through the
43 immunization program, shall keep an accurate record of any
44 vaccine delivered as ~~herein~~ provided in this section.

45 (d) ~~The Director of the Division Health~~ commissioner is
46 charged with establishing ~~a childhood~~ an Immunization
47 Advisory Committee. The advisory committee is to plan for
48 ~~universal access~~, make recommendations on the distribution
49 of vaccines acquired pursuant to this section, advise the
50 secretary on the changing needs and opportunities for
51 immunization from known diseases for all persons across
52 their life span and tracking of track immunization compliance
53 in accordance with federal and state laws. ~~The childhood~~
54 Members of the Immunization Advisory Committee shall be
55 designated and appointed by the ~~Secretary of the Department~~
56 ~~of the Health and Human Resources~~ commissioner no later
57 than ~~the first day of July, one thousand nine hundred~~
58 ~~ninety-four and~~ July 1, 2015. The Advisory Committee shall
59 be comprised of representatives from the following groups:
60 Public health nursing, public health officers, primary health
61 care providers, pediatricians, family practice physicians,
62 health care administrators, pharmacists, ~~state Medicaid~~
63 ~~program~~ the Commissioner of the Bureau for Medical

64 Services, or his or her designee, the health insurance
65 industry, the Director of the Public Employees Insurance
66 Agency, or his or her designee, the self-insured industry and
67 a minimum of three consumers. The state epidemiologist
68 ~~shall serve~~ serves as an advisor to the committee. The
69 commissioner, or his or her designee, serves as the chair of
70 the Advisory Committee. Members of the advisory
71 committee ~~shall serve two-year~~ four-year terms.

72 (e) An advisory committee member may not participate
73 in a matter involving specific parties that will have a direct
74 and predicable effect on their financial interest. An effect
75 will not be direct in instances where the chain of causation is
76 attenuated or is contingent upon the occurrence of events that
77 are speculative.

78 ~~(e)~~ (f) All health insurance policies and prepaid care
79 policies issued in this state which provide coverage for the
80 children of the insured shall provide coverage for child
81 immunization services to include the cost of the vaccine, if
82 incurred by the health care provider, and all costs of

83 administration from birth through age ~~sixteen~~ eighteen years.
84 These services ~~shall be~~ are exempt from any deductible,
85 per-visit charge and/or copayment provisions which may be
86 in force in these policies or contracts. This section does not
87 exempt other health care services provided at the time of
88 immunization from any deductible ~~and/~~ or copayment
89 provisions.

90 (f) (g) Attending physicians, midwives, nurse
91 practitioners, hospitals, birthing centers, clinics and other
92 appropriate health care providers shall provide parents of
93 newborns and preschool age children with information on the
94 following immunizations: Diphtheria, polio, mumps,
95 meningitis, measles, rubella, tetanus, hepatitis-b,
96 haemophilus influenzae-b, chickenpox and whooping cough.
97 This information should include the availability of free
98 immunization services for children.