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.

(a) Whenever a resident birth occurs, the state director of health commissioner shall promptly provide parents of the newborn child with information on immunizations mandated by this state or required for admission to a public private, parochial school in this state or a state-regulated child care center.
(b) All children Except as hereinafter provided, a child entering school or a state-regulated child care center for the first time in this state shall have been must be immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubeola; rubella, tetanus and whooping cough. Any person who cannot give satisfactory proof of having been immunized previously or a certificate from a reputable physician showing that an immunization for any or all diphtheria, polio, rubeola, rubella, tetanus and whooping cough is impossible or improper or sufficient reason why any or all immunizations should not be done, shall be immunized for diphtheria, polio, rubeola, rubella, tetanus and whooping cough prior to being admitted in any of the schools in the state:

(c) No child or person shall may be admitted or received in any of the schools of the state or a state-regulated child care center until he or she has been immunized as hereinafter provided or produces a certificate from a reputable physician showing that an immunization for against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio,
rubella, tetanus and whooping cough has been done or is impossible or improper or other sufficient reason why such immunizations have not been done or produces a certificate from the commissioner granting the child or person an exemption from the compulsory immunization requirements of this section.

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

(e) Persons enrolling from schools outside of the state may be provisionally enrolled under minimum criteria
established by the director of the department of health
commissioner so that the person’s immunization may be
completed while missing a minimum amount of school.

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

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

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

(g) Health officers and physicians who shall do this
immunization work provide vaccinations shall give to all
persons and children must present the person vaccinated with
a certificate free of charge showing that they have been
immunized against chickenpox, hepatitis-b, measles,
meningitis, mumps, diphtheria, polio, rubella, rubella,
tetanus and whooping cough, or he or she may give the
certificate to any person or child whom he or she knows to
have been immunized against chickenpox, hepatitis-b,
measles, meningitis, mumps, diphtheria, polio, rubella,
rubella, tetanus and whooping cough.

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

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

(2) The commissioner is authorized to appoint and
employ an Immunization Officer to make determinations on
request for an exemption to the compulsory immunization requirements of this section, on a statewide basis, and delegate to the Immunization Officer the authority granted to the commissioner by this subsection.

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

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

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

(i) A physician who provides any person with a false certificate of immunization against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough is guilty of a misdemeanor and, upon conviction, shall be fined not less than $25 nor more than $100.
Any parent or guardian who refuses to permit his or her child to be immunized against diphtheria, polio, rubeola, rubella, tetanus and whooping cough, who cannot give satisfactory proof that the child or person has been immunized against diphtheria, polio, rubeola, rubella, tetanus and whooping cough previously, or a certificate from a reputable physician showing that immunization for any or all is impossible or improper, or sufficient reason why any or all immunizations should not be done, shall be guilty of a misdemeanor and, except as herein otherwise provided, shall, upon conviction, be punished by a fine of not less than ten nor more than $50 for each offense.

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

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

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

(c) The county and municipal health officers shall have
Commissioner of the Bureau for Public Health, through the
immunization program, has the responsibility to properly
store and distribute, ensure the distribution, free of charge,
of federally supplied vaccines to public and private medical
or osteopathic physicians within their jurisdictions providers
to be utilized used to check contagions and control
epidemics: Provided, That the public and private medical or
osteopathic physicians shall providers may not make a
charge for the vaccine itself when administering it to a
patient. The county and municipal health officers shall
provide a receipt to the State Director of Health for
Commissioner of the Bureau for Public Health, through the
immunization program, shall keep an accurate record of any
vaccine delivered as herein provided in this section.
(d) The Director of the Division Health commissioner is charged with establishing an Immunization Advisory Committee. The advisory committee is to plan for universal access, make recommendations on the distribution of vaccines acquired pursuant to this section, advise the secretary on the changing needs and opportunities for immunization from known diseases for all persons across their life span and tracking of track immunization compliance in accordance with federal and state laws. The childhood Members of the Immunization Advisory Committee shall be designated and appointed by the Secretary of the Department of the Health and Human Resources commissioner no later than the first day of July, one thousand nine hundred ninety-four and July 1, 2015. The Advisory Committee shall be comprised of representatives from the following groups: Public health nursing, public health officers, primary health care providers, pediatricians, family practice physicians, health care administrators, pharmacists, state Medicaid program the Commissioner of the Bureau for Medical
Services, or his or her designee, the health insurance industry, the Director of the Public Employees Insurance Agency, or his or her designee, the self-insured industry and a minimum of three consumers. The state epidemiologist shall serve as an advisor to the committee. The commissioner, or his or her designee, serves as the chair of the Advisory Committee. Members of the advisory committee shall serve two-year terms.

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

(f) All health insurance policies and prepaid care policies issued in this state which provide coverage for the children of the insured shall provide coverage for child immunization services to include the cost of the vaccine, if incurred by the health care provider, and all costs of
administration from birth through age sixteen eighteen years. These services shall be exempt from any deductible, per-visit charge and/or copayment provisions which may be in force in these policies or contracts. This section does not exempt other health care services provided at the time of immunization from any deductible and/or copayment provisions.

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