

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2556

2015 Carryover

(BY DELEGATES COWLES, LANE, SOBONYA,
HOUSEHOLDER, KESSINGER, FAST AND STORCH)

[Introduced January 13, 2016; referred to the
Committee on Health and Human Resources then the
Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

1 That §16-3-4 and §16-3-5 of the Code of West Virginia, 1931, as amended, be amended
 2 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; required vaccinations;
 exemptions; health emergencies; appeals.**

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

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

12 (1) DTaP/DTP/Td/Tdap - shall require four doses;

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

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

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

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

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

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

23 (1) Medical exemption. -- A parent or guardian of a child entering the schools of this state
24 may request a medical exemption from a required vaccination for his or her minor child. If the
25 parent or guardian of the child or ward presents a certificate to the school signed by a physician
26 who is duly registered and licensed to practice medicine in West Virginia or a contiguous state
27 which sets forth the opinion and the basis of the opinion of the physician examining the child or
28 ward that immunization of the child or ward is medically impossible or improper for any or all of

29 the following diseases including chickenpox, hepatitis-b, diphtheria, polio, rubeola, measles,
30 tetanus, whooping cough and any other disease requiring vaccination as established by legislative
31 rule as provided in subsection (b) of this section; or, because of another compelling medical
32 reason immunization of the child or ward for any or all of the following diseases including
33 chickenpox, hepatitis-b, diphtheria, polio, measles, mumps, rubella, tetanus, whooping cough and
34 any other disease requiring vaccination as established by legislative rule pursuant to subsection
35 (b) of this section should not be required for public, private or parochial school attendance, the
36 secretary shall grant the exemption. Additionally, a parent or guardian of a child entering the
37 schools of this state for the first time may request a medical exemption from a required vaccination
38 for his or her minor child, if immunity against chickenpox, hepatitis-b, diphtheria, polio, measles,
39 mumps, rubella, tetanus, whooping cough and any other disease requiring vaccination as
40 established by legislative rule pursuant to subsection (b) of this section can be shown through
41 laboratory testing.

42 (2) Religious exemption. -- A parent or guardian with a strongly held religious belief that
43 his or her minor child or ward should not be subject to a required immunization as provided in this
44 section, may seek an exemption from any or all required vaccinations for his or her minor child
45 entering the schools of this state for the first time. To apply for the exemption the parent or
46 guardian shall execute an affidavit stating their religious tenant against immunizations. The
47 affidavit must then be signed by a physician licensed to practice in West Virginia pursuant to the
48 provisions of article three, chapter thirty of this code or a physician licensed in a contiguous state
49 and on a form set forth in an emergency rule promulgated by the Secretary of the Department of
50 Health and Human Resources pursuant to the provisions of section fifteen, article three, chapter
51 twenty-nine-a of this code. The signature of the physician indicates that the parents have been
52 given information regarding the benefits of vaccination and the risks associated with not

53 vaccinating have been explained to the parent or guardian, face to face, and should include the
54 date this education took place. The affidavit is required to include a list of required
55 immunizations to allow a parent or guardian to request an exemption for his or her child from any
56 or all of the required immunizations. In the affidavit, the parent or guardian shall state that their
57 religious belief is in conflict with the child receiving the immunizations required by this section and
58 shall indicate the specific vaccines for which an exemption is being requested.

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

63 (4) Suspension. -- The Secretary of the Department of Health and Human Resources may
64 temporarily suspend an exemption for a student who is not immunized and exclude the student
65 from attending school during an outbreak or health emergency. The student may not return or
66 be admitted to school until the outbreak or health emergency has been resolved and the Secretary
67 of the Department of Health and Human Resources or his or her designee approves the return or
68 admittance to school.

69 (d) Health care providers who provide vaccinations in this state shall comply with vaccine
70 adverse event reporting requirements as set forth in the National Childhood Vaccine Injury Act of
71 1986, (42 U.S.C. §§300aa-1 to 300aa-34), which mandates that health care providers report
72 health problems following vaccination, including hospitalizations, injuries and deaths, to the
73 federal Vaccine Adverse Event Reporting System (VAERS).

74 (e) The Secretary of the Department of Health and Human Resources shall propose rules
75 for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of
76 this code, to implement the provisions of this section, to develop necessary forms, affidavits and

77 certificates, to add or remove diseases requiring vaccination for school attendance, addressing
 78 the issue of school transfers and reporting requirements for each county related to the
 79 exemptions.

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

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

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

11 (b) The ~~State Director~~ Commissioner of the Bureau for Public Health shall acquire vaccine
 12 for the prevention of polio, measles, mumps, rubella, chickenpox, diphtheria, pertussis, tetanus,
 13 hepatitis-b, haemophilus influenzae-b and other vaccine ~~preventives of disease~~ preventable
 14 diseases as ~~may be deemed~~ considered necessary or required by law, and shall distribute the
 15 same, free of charge, in ~~such~~ quantities as he or she ~~may deem~~ considers necessary, to ~~county~~

16 ~~and municipal health officers~~ public and private providers, to be used by them for the benefit of
17 ~~and without expense to the citizens within their respective jurisdictions~~, to check contagions and
18 control epidemics.

19 (c) ~~The county and municipal health officers shall have~~ Commissioner of the Bureau for
20 Public Health through the immunization program, has the responsibility to properly store and
21 distribute, free of charge, vaccines to public and private medical or osteopathic physicians within
22 ~~their jurisdictions~~ providers to be ~~utilized~~ used to check contagions and control epidemics:
23 *Provided*, That the public and private medical or osteopathic physicians shall providers may not
24 make a charge for the vaccine itself when administering it to a patient. ~~The county and municipal~~
25 ~~health officers shall provide a receipt to the State Director of Health for~~ Commissioner of the
26 Bureau for Public Health through the immunization program shall keep an accurate record of any
27 vaccine delivered as ~~herein~~ provided in this section.

28 (d) ~~The Director of the Division Health~~ Secretary of the Department of Health and Human
29 Resources is charged with establishing ~~a childhood~~ an Immunization Advisory Committee, whose
30 members do not have conflicts of interest with vaccine manufacturers, or who could financially
31 gain directly or indirectly from vaccine mandates. The advisory committee is to plan for universal
32 access, make recommendations on the distribution of vaccines acquired pursuant to this section,
33 advise the secretary on the changing needs and opportunities for immunization from known
34 diseases for all persons across their life span and ~~tracking of~~ track immunization compliance in
35 accordance with federal and state laws. ~~The childhood~~ Members of the Immunization Advisory
36 Committee shall be designated and appointed by the Secretary of the Department of the Health
37 and Human Resources no later than ~~the first day of July, one thousand nine hundred ninety-four~~
38 ~~and July 1, 2015~~. The Advisory Committee shall be comprised of representatives from the
39 following groups: Public health nursing, public health officers, primary health care providers,

40 pediatricians, family practice physicians, health care administrators, ~~state Medicaid program the~~
41 Commissioner of the Bureau for Medical Services, or his or her designee, the health insurance
42 industry, the Director of the Public Employees Insurance Agency, or his or her designee, the
43 self-insured industry and a minimum of three consumers. The state epidemiologist ~~shall serve~~
44 serves as an advisor to the committee. The Commissioner of the Bureau for Public Health, or
45 his or her designee, serves as the Chair of the Advisory Committee. Members of the advisory
46 committee ~~shall serve two-year~~ four-year terms.

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

54 (f) Attending physicians, midwives, nurse practitioners, hospitals, birthing centers, clinics
55 and other appropriate health care providers shall provide parents of newborns and preschool age
56 children with information on the following immunizations: Diphtheria, polio, mumps, measles,
57 rubella, tetanus, hepatitis-b, hemophilus influenzae-b, chickenpox and whooping cough and other
58 diseases requiring vaccination as established by legislative rule pursuant to the provision of
59 subsection (b) of section four of this article. This information should include the availability of
60 free 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, it has been completely underscored.