

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2866

FISCAL
NOTE

2015 Carryover

(BY DELEGATES GUTHRIE, MOORE, LONGSTRETH,
FERRO AND CAMPBELL)

[Introduced January 13, 2016; referred to the
Committee on Education.]

1 A BILL to amend and reenact §18-2-7a of the Code of West Virginia, 1931, as amended, relating
 2 to establishing legislative findings, providing physical education and physical activity
 3 requirements for physical education classes in schools, establishing procedures for
 4 collecting body mass index data of students, allowing for the contracting for collecting
 5 body mass index of students, permitting or requiring parents and guardians of students to
 6 obtain body mass index data from a provider selected by the parent or guardian and to
 7 submit the results to the appropriate authority, requiring the board to provide to parents
 8 information about the body mass index screening program, requiring the board, in certain
 9 circumstances, to provide to parents and guardians a list of providers and information
 10 about screening services available in the community to the parents and guardians who
 11 cannot afford a private provider, requiring that students not be subjected to body mass
 12 screening when the parents or guardians do not wish for their children to be subjected to
 13 the same, requiring that prior written consent be obtained before any student is subjected
 14 to body mass screening, requiring that parents be advised of risks associated with body
 15 mass index screening and that parents or guardians be provided with information about
 16 appropriately addressing the risks, requiring that the confidentiality of each student be
 17 maintained and that each student’s privacy is protected by ensuring that each student is
 18 screened alone and not in the presence of other students or staff.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STATE BOARD OF EDUCATION.

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

1 (a) The Legislature hereby finds that obesity is a problem of epidemic proportions in this

2 state. There is increasing evidence that all segments of the population, beginning with children,
3 are becoming more sedentary, more overweight and more likely to develop health risks and
4 diseases including Type II Diabetes, high blood cholesterol and high blood pressure. The
5 Legislature further finds that the promotion of physical activity during the school day for school
6 children is a crucial step in combating this growing epidemic and in changing the attitudes and
7 behavior of the residents of this state toward health promoting physical activity.

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

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

14 (2) *Middle school grades.* -- Not less than one full period of physical education, including
15 physical exercise and age-appropriate physical activities, each school day of one semester of the
16 school year.

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

20 (c) Enrollment in physical education classes and activities required by the provisions of
21 this section shall not exceed, and shall be consistent with, state guidelines for enrollment in all
22 other subjects and classes: *Provided,* That schools which do not currently have the number of
23 certified physical education teachers, do not currently have the required physical setting or would
24 have to significantly alter academic offerings to meet the physical education requirements may
25 develop alternate programs that will enable current staff, physical settings and offerings to be

26 used to meet the physical education requirements established herein. These alternate programs
27 shall be submitted to the state Department of Education and the Healthy Lifestyle Council for
28 approval. Those schools needing to develop alternate programs shall not be required to
29 implement this program until the school year commencing 2006.

30 (d) The state board shall prescribe a program within the existing health and physical
31 education program which incorporates fitness testing, reporting, recognition, fitness events and
32 incentive programs which requires the participation in grades four through eight and the required
33 high school course. The program shall be selected from nationally accepted fitness testing
34 programs designed for school-aged children that test cardiovascular fitness, muscular strength
35 and endurance, flexibility and body composition: *Provided*, That nothing in this subsection shall
36 be construed to prohibit the use of programs designed under the auspices of the President's
37 Council on Physical Fitness and Sports. The program shall include modified tests for exceptional
38 students. Each school in the state shall participate in National Physical Fitness and Sports
39 Month in May of each year and shall make every effort to involve the community it serves in the
40 related events.

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

44 (1) The data shall be collected using the appropriate methodology for assessing the body
45 mass index from student height and weight data: *Provided*, That the state board or county
46 boards may provide any screenings for body mass index, contract with another entity for provision
47 of the screenings, or request the parent or guardian of each student subject to the screening to
48 obtain the screening from a provider selected by the parent or guardian and to submit the results
49 to the state board, county board or school designated for collection of body mass index data. If

50 the state board, county board or school provides the screenings or contracts with another entity
51 for provision of the screenings, the board or school shall protect the student and his or her privacy
52 by insuring that the screening is conducted alone and not in the presence of other students or
53 staff. All screenings for body mass index shall be conducted by qualified persons who have been
54 trained in the proper methodology and use of equipment meeting medically acceptable standards.

55 (2) Each school year, each county board or school required to conduct screening for
56 body mass index of students shall provide the parent or guardian of each student subject to
57 possible screening for body mass index with information about the screening program. If the state
58 board, county board or school requests parents and guardians to obtain a screening from a
59 provider of their choosing, such state board, county board or school shall provide the parents or
60 guardians with a list of providers and information about screening services available in the
61 community to the parents and guardians who cannot afford a private provider.

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

70 (4) The state board, county board or school shall notify the parent or guardian of each
71 student to be screened for body mass index under this section of any health risks, including the
72 potential for triggering eating disorders, associated with the student's results and shall provide the
73 parent or guardian with information about appropriately addressing the risks. For this purpose,

74 the Department of Education in consultation with the West Virginia University Disordered Eating
75 Center of Charleston, West Virginia Department of Health and Human Resources, Healthy
76 Lifestyles Coalition and any other persons or entities public or private which in the judgment of
77 the state board may be helpful in fulfilling the requirement of this section, shall develop a list of
78 documents, pamphlets, or other resources that shall be distributed to parents and guardians
79 under this section.

80 ~~(2)~~(5) The data shall be collected on a scientifically drawn sample of students;

81 ~~(3)~~(6) The data shall be collected and reported in a manner that protects student
82 confidentiality. The state board, county board or school shall maintain the confidentiality of each
83 student's individual screening results at all times. The state board, county board or school shall
84 at all times protect student privacy by ensuring that each student is screened alone and not in the
85 presence of other students or staff. No board or school may report a student's individual
86 screening results to any person other than the student's parent or guardian.

87 ~~(4)~~(7) The data shall be reported to the Department of Education; and

88 ~~(5)~~(8) All body mass index data shall be reported in aggregate to the Governor, the State
89 Board of Education, the Healthy Lifestyles Coalition and the Legislative Oversight Commission
90 on Health and Human Resources Accountability for use as an indicator of progress toward
91 promoting healthy lifestyles among school-aged children.

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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.