

WEST VIRGINIA LEGISLATURE
2019 FIRST EXTRAORDINARY SESSION

Introduced

House Bill 202

BY DELEGATE HANSHAW (MR. SPEAKER)

[BY REQUEST]

[Introduced June 17, 2019; Referred
to the Select Committee on Education Reform D]

1 A BILL to amend and reenact §18-2-7a of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §18-2-9 of this code, all relating to required physical education for
 3 school children; adding legislative findings; requiring nutrient and structured exercise
 4 education; requiring state board to contract with service providers to supply childhood
 5 obesity prevention program; requiring reporting on program results; and providing criminal
 6 penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

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

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

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

13 (1) ~~Elementary school grades~~ Kindergarten to and including grade five. Not less than 30
 14 minutes of physical education, including physical exercise and age appropriate physical activities,
 15 for not less than three days a week.

16 (2) ~~Middle school grades~~ Grade six to and including grade eight. Not less than one full
 17 period of physical education, including physical exercise and age appropriate physical activities,

18 each school day of one semester of the school year.

19 (3) ~~High school grades~~ Grade nine to and including grade 12.

20 Not less than one full course credit of physical education, including physical exercise and
21 age appropriate physical activities, which shall be required for graduation and the opportunity to
22 enroll in an elective lifetime physical education course.

23 ~~(c) Enrollment in physical education classes and activities required by the provisions of~~
24 ~~this section shall not exceed, and shall be consistent with, state guidelines for enrollment in all~~
25 ~~other subjects and classes: *Provided*, That schools which do not currently have the number of~~
26 ~~certified physical education teachers, do not currently have the required physical setting or would~~
27 ~~have to significantly alter academic offerings to meet the physical education requirements may~~
28 ~~develop alternate programs that will enable current staff, physical settings and offerings to be~~
29 ~~used to meet the physical education requirements established herein. These alternate programs~~
30 ~~shall be submitted to the state Department of Education and the Healthy Lifestyle Council for~~
31 ~~approval. Those schools needing to develop alternate programs shall not be required to~~
32 ~~implement this program until the school year commencing two thousand six.~~

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

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

47 ~~(1) The data shall be collected using the appropriate methodology for assessing the body~~
48 ~~mass index from student height and weight data;~~

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

50 ~~(3) The data shall be collected and reported in a manner that protects student~~
51 ~~confidentiality;~~

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

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

57 (c) Whereas, It is in the best interests of the people of the State of West Virginia that its
58 people be healthy;

59 (d) Whereas, Physical education, exercise and knowledge of factors contributing to
60 childhood obesity, is a vital component in promoting health among the people of the State of West
61 Virginia;

62 (e) Whereas, A correlation exists between a student's physical activity and school
63 attendance;

64 (f) Whereas, Sedentary lifestyles and childhood obesity are correlated to the onset of
65 diabetes and other progressive illnesses that cost the people of the State of West Virginia in
66 excess of \$10 billion per year; in 2010 there were over 191,000 cases of diabetes and it is
67 projected that the citizens of West Virginia will have in excess of 282,164 cases of diabetes.

68 (g) Whereas, The American Diabetes Association released new research on March 22,
69 2018 estimating the total costs of diagnosed diabetes, in the United States, rose to \$327 billion in

70 2017 from \$245 billion in 2012, when the cost was last examined;

71 (h) Whereas, In 2010 the State of West Virginia expended in excess of \$18 Billion in the
72 treatment of Diabetes;

73 (i) Whereas, The Surgeon General of the United States articulated on June 16, 2017 that
74 obesity increases likelihood of diseases such as type II diabetes, cardiovascular diseases, sleep
75 apnea, asthma and bone/joint problems. In that same communication, the Surgeon General, Rear
76 Admiral Sylvia Trent-Adams articulated the importance of prevention and education on childhood
77 obesity;

78 (j) Whereas, Data available to the Department of Health and Human Services reveals that
79 of children ages 10 to 17, 31.3 percent were reported obese in 2012. This data has tripled since
80 the 1970s;

81 (k) Whereas, The obesity rate of West Virginia children between ages 10 and 17 is 20.3%,
82 the second highest rate, state wide, in the United States of America.

83 (l) Whereas, The national childhood obesity rate is 18.5%. The rate varies among different
84 age groups and rises as children get older: 13.9% of 2- to 5-year-olds, 18.4% of 6- to 11-year-
85 olds and 20.6% of 12- to 19-year-olds have obesity. There also are striking racial and ethnic
86 disparities, 25.8% of Latino children and 22% of Black children have obesity;

87 (m) Whereas, Childhood obesity can and should be addressed in the State of West
88 Virginia.

89 (n) Whereas, Prevention of childhood obesity, yields benefits ranging from reduced cases
90 of high blood pressure, diabetes, hypertension, heart disease, asthma, depression and cancer.

91 (o) Whereas, The health, safety, and welfare of the people of West Virginia is served by
92 introducing programs to address physical and health education, childhood obesity prevention,
93 and a means to obtain proposals from the people and the organizations that serve the people of
94 the State of West Virginia;

95 (p) Whereas, The rise in obesity and related weight problems accompanied by the

96 resulting incidence of chronic disease has created a health care crisis that burdens the health
 97 care infrastructure of the state. The Legislature also finds that the State of West Virginia must
 98 take an informed, sensitive approach to communicate and educate the citizens of the state about
 99 health issues related to obesity and inappropriate weight gain.

100 (g) Whereas, The Legislature further finds that the state must take action to assist West
 101 Virginia citizens in engaging in healthful eating and regular physical exercise.

102 (r) The Legislature further finds that the state must invest in educational and exercise
 103 programs that improve citizen’s understanding of inappropriate weight gain and obesity. These
 104 efforts are needed to coordinate the state’s interest in improving the health of its citizens and in
 105 reducing the cost of health care. Therefore, it is the purpose of this article to create a mandate to
 106 the department of education to invest in commercially available programs designed to aid in the
 107 prevention of childhood obesity, and remedy childhood obesity and related weight problems and
 108 to ensure that all citizens are being educated on this serious health risk that is affecting the state.

§18-2-9. Required courses of instruction; violation and penalty.

1 (a) In all public, private, parochial and denominational schools located within this state
 2 there shall be given prior to the completion of the eighth grade at least one year of instruction in
 3 the history of the state of West Virginia. The schools shall require regular courses of instruction
 4 by the completion of the 12th grade in the history of the United States, in civics, in the constitution
 5 of the United States, and in the government of the State of West Virginia for the purpose of
 6 teaching, fostering and perpetuating the ideals, principles and spirit of political and economic
 7 democracy in America and increasing the knowledge of the organization and machinery of the
 8 government of the United States and of the state of West Virginia. The state board shall, with the
 9 advice of the State Superintendent, prescribe the courses of study covering these subjects for the
 10 public schools. It shall be the duty of the officials or boards having authority over the respective
 11 private, parochial and denominational schools to prescribe courses of study for the schools under
 12 their control and supervision similar to those required for the public schools. To further such study,

13 every high school student eligible by age for voter registration shall be afforded the opportunity to
14 register to vote pursuant to §3-2-22 of this code.

15 (b) The state board shall cause to be taught in all of the public schools of this state the
16 subject of health education, including instruction in any of the grades six through 12 as considered
17 appropriate by the county board, on: (1) the prevention, transmission and spread of acquired
18 immune deficiency syndrome and other sexually transmitted diseases; (2) substance abuse,
19 including the nature of alcoholic drinks and narcotics, tobacco products, and other potentially
20 harmful drugs, with special instruction as to their effect upon the human system and upon society
21 in general; and (3) the importance of healthy eating and physical activity to maintaining healthy
22 weight. ~~and (4) education concerning cardiopulmonary resuscitation and first aid, including~~
23 ~~instruction in the care for conscious choking, and recognition of symptoms of drug or alcohol~~
24 ~~overdose~~

25 The course curriculum requirements and materials for the instruction shall be adopted by
26 the state board by rule, in consultation with the Department of Health and Human Resources. The
27 state board shall prescribe a standardized health education assessment to be administered within
28 health education classes to measure student health knowledge and program effectiveness.

29 (c) An opportunity shall be afforded to the parent, or guardian of a child subject to
30 instruction in the prevention, transmission and spread of acquired immune deficiency syndrome,
31 and other sexually transmitted diseases to examine the course curriculum requirements and
32 materials to be used in the instruction. The parent or guardian may exempt the child from
33 participation in the instruction by giving notice to that effect in writing to the school principal.

34 ~~(d) After July 1, 2015, the required instruction in cardiopulmonary resuscitation in~~
35 ~~subsection (b) of this section shall include at least thirty minutes of instruction for each student~~
36 ~~prior to graduation on the proper administration of cardiopulmonary resuscitation (CPR) and the~~
37 ~~psychomotor skills necessary to perform cardiopulmonary resuscitation. The term "psychomotor~~
38 ~~skills" means the use of hands-on practicing to support cognitive learning. Cognitive-only training~~

~~39 does not qualify as “psychomotor skills”. The CPR instruction must be based on an instructional
40 program established by the American Heart Association or the American Red Cross or another
41 program which is nationally recognized and uses the most current national evidence-based
42 Emergency Cardiovascular Care guidelines and incorporates psychomotor skills development
43 into the instruction. A licensed teacher is not required to be a certified trainer of cardiopulmonary
44 resuscitation to facilitate, provide or oversee such instruction. The instruction may be given by
45 community members, such as emergency medical technicians, paramedics, police officers,
46 firefighters, licensed nurses and representatives of the American Heart Association or the
47 American Red Cross. These community members are encouraged to provide necessary training
48 and instructional resources such as cardiopulmonary resuscitation kits and other material at no
49 cost to the schools. The requirements of this subsection are minimum requirements. A local
50 school district may offer CPR instruction for longer periods of time and may enhance the
51 curriculum and training components, including, but not limited to, incorporating into the instruction
52 the use of an automated external defibrillator (AED): *Provided*, That any instruction that results in
53 a certification being earned must be taught by an authorized CPR/AED instructor.~~

~~54 (e) The full week of classes during the week within which September 11 falls shall be
55 recognized as “Celebrate Freedom Week.” The purpose of Celebrate Freedom Week is to
56 educate students about the sacrifices made for freedom in the founding of this country and the
57 values on which this country was founded.~~

~~58 Celebrate Freedom Week must include appropriate instruction in each social studies class
59 which:~~

~~60 (1) Includes an in-depth study of the intent, meaning and importance of the Declaration of
61 Independence and the Constitution of the United States with an emphasis on the Bill of Rights;~~

~~62 (2) Uses the historical, political and social environments surrounding each document at
63 the time of its initial passage or ratification; and~~

~~64 (3) Includes the study of historical documents to firmly establish the historical background~~

65 leading to the establishment of the provisions of the Constitution and Bill of Rights by the founding
66 fathers for the purposes of safeguarding our Constitutional republic.

67 ~~The requirements of this subsection are applicable to all public, private, parochial and~~
68 ~~denominational schools located within this state. Nothing in this subsection creates a standard~~
69 ~~or requirement subject to state accountability measures.~~

70 ~~(f) Beginning the 2018-2019 school year, students in the public schools shall be~~
71 ~~administered a test the same as or substantially similar to the civics portion of the naturalization~~
72 ~~test used by the United States Citizenship and Immigration Services between their ninth and~~
73 ~~twelfth grade years as an indicator of student achievement in the area of civics education. The~~
74 ~~test results may be reported in the aggregate to the county board for evaluation by the board's~~
75 ~~curriculum director and reported to the board members. Nothing in this subsection creates a~~
76 ~~standard or requirement subject to state accountability measures~~

77 (c) The state board shall cause to be taught in all of the public schools of this state the
78 subject of nutrient and structured exercise education, including instruction in grades three through
79 six, on the importance of expanding knowledge of nutrients and structured exercise to preventing
80 childhood obesity and its secondary diseases (diabetes, heart disease, hypertension, asthma,
81 certain cancers, low-self-esteem and depression). The course curriculum requirements and
82 materials for the instruction shall be adopted by the state board by rule to include nutrient
83 education and structured exercise education coupled with various forms of technology to improve
84 teachers and students heart health and reduce the health care cost expense to the West Virginia
85 Department of Health and Human Resources, and other health-related costs. The state board
86 shall, in accordance with this act, issue requests for proposals as required by this act.

87 (d) The state board shall implement evidence-based nutrient and structured exercise
88 education to children in grades 3 through 6 to empower youth with accurate nutrient and exercise
89 knowledge to develop the habits needed to prevent the development of childhood obesity and its
90 secondary diseases (diabetes, heart disease, hypertension, asthma, low self-esteem) which

91 includes the following:

92 (1) Provide nutrient and structured exercise education to all 3rd through 6th grade
93 teachers (classroom, physical and health educators) and students coupled with various forms of
94 technology to improve teachers and students heart health;

95 (2) Schools that are operated by a school district, a charter school, a tribal school or any
96 other school funded, in whole or in part, with public funds shall obtain evidence-based nutrient
97 education and structured exercise education to prevent the development of childhood obesity and
98 its secondary diseases.

99 (3) The state board will provide all 3rd through 6th grade teachers and students with
100 complete access to turn key, evidence-based nutrient and structured exercise education (book,
101 DVD, CD, online or another form of technology) to all 3rd through 6th grade teachers and students
102 to implement in-the-classroom, during school, before school, after school and/or at home with the
103 family.

104 (e) Each school shall demonstrate a commitment to supporting the program(s) required
105 by this act by ensuring the following:

106 (1) Allowing student pre/post-testing to measure health gains in the areas of: a) nutrition
107 knowledge, b) strength endurance (push-ups/sit-ups) and, c) heart health measurement (blood
108 pressure and resting heart rate) to track heart health;

109 (2) Allow time during the school day for the classroom, physical and/or health education
110 teaching personnel to provide students with up to 30 minutes of structured exercise per WVBE
111 Policy 2520 Physical Activity requirement for Kindergarten through 5th grades;

112 (3) Allow time during the school day for the classroom, physical and/or health education
113 teaching personnel to provide students nutrient education per WVBE wellness content standards
114 and objectives regarding nutrition for the 3rd through 4th grades and health education content
115 standards and objectives regarding nutrition for the 5th grade;

116 (4) Allow time during the school day for the classroom, physical and/or health education

117 teaching personnel to provide both students and the teacher with time to fill out a daily journal to
118 track any of the following: food, nutrient (water, carbohydrates, protein, fat, minerals & vitamins),
119 exercise, and physical activity.

120 (5) Allowing aggregated, anonymized, privacy-protected data by grade for the school to
121 be published for the public and to provide such data to the department of education and its service
122 providers. Data collected pursuant to this program shall be aggregated and always protect the
123 privacy and confidentiality of individual students. Individually identifiable student data may not be
124 provided by schools or solicited or stored in the state or service provider databases and shall be
125 exempt Under the West Virginia Freedom of Information Act, §29-B-1-1 et seq. of this code.

126 (f) The state board shall issue a request for proposals to contract with qualified service
127 providers to provide childhood obesity prevention programs and or products consisting of nutrient
128 education, structured exercise, use of technology and associated licenses, for teachers and
129 students in grades 3 through 6 throughout the state. The state board shall consider all providers
130 of programs/ products that meet the following criteria:

131 (1) The provider has operated for 10 or more years, in schools serving primarily
132 underserved, low-income, students;

133 (2) The provider has at least 10 years of empirical research data, demonstrating
134 improvement in students' strength endurance, (push-ups & sit-ups) heart health measurements
135 (blood pressure & resting heart rate) and nutrient knowledge;

136 (3) The provider has performed at least one study, in school, using a control group,
137 demonstrating improvement in students' strength endurance, (push-ups and sit-ups) heart health
138 measurements (blood pressure & resting heart rate), and nutrient knowledge.

139 (g) On or before November 15 of each year, the state board shall select at least one or
140 more qualified service providers to implement the childhood obesity prevention programs set forth
141 in this section.

142 (h) Any qualified service provider shall provide a report to each teacher, school, and state

143 board sufficient information to monitor and evaluate the progress made by any such program
144 awarded under this act. The service providers must also include optional school opt-in, opt-out in
145 accordance with privacy, confidentiality, parental consent, the HIPAA, the IRB and school district
146 and other relevant laws and rules:

147 1) Known or appropriate estimated aggregated and anonymized health and medical
148 outcomes associated with the implemented program compared to students at comparable non-
149 participating schools; and

150 2) Descriptions of the higher improvement schools and the possible reasons for those
151 improvements.

152 (i) Program Accountability.

153 The judicious use of the resources of the State of West Virginia is of paramount importance
154 to the people of the State of West Virginia, such that any funds expended pursuant to this act
155 mandate accountability as follows:

156 1) Any program implemented under this act shall be overseen by the state board in
157 consultation with the West Virginia Department of Health and Human Resources.

158 2) Program(s) shall be evaluated from the data collected from the program(s) in the areas
159 of a) Nutrition knowledge, b) strength endurance (push-ups / sit-ups) and, c) heart health
160 measurement (blood pressure and resting heart rate) to track heart health; and d) student
161 attendance (provided by each school);

162 3) On or before September 1 of each year, each qualified service provider selected
163 pursuant to this section shall comprehensively report findings to the state board, which shall make
164 such reports available to the general public. All data contained in these reports shall be
165 aggregated and protect the privacy and confidentiality of individual students. Individually
166 identifiable student data shall not be provided by school or solicited or stored in the state or service
167 provider or evaluator databases. These reports shall include the following information:

168 4) For reports submitted by qualified service providers selected pursuant to this section

169 shall include(a) Aggregated student pre/post-testing in the areas of: 1) Nutrition knowledge, 2)
170 strength endurance, (push-ups / sit-ups), 3) Heart Health measurement (blood pressure and
171 resting heart rate) to track heart health, and 4) attendance.

172 (j) On or before November 30 of each year, the department of education shall submit to
173 the Governor, the President of the Senate, and the Speaker of the House of Representatives a
174 report that summarizes the results of the program to date, including a recommendation to expand
175 the program to additional grade levels. The department shall provide a copy of this report to the
176 Secretary of State.

177 (k) Becomes effective on the general effective date.

178 (l) Any person violating the provisions of this section shall be guilty of a misdemeanor,
179 and, upon conviction thereof, shall be fined not exceeding \$10 for each violation, and each week
180 during which there is a violation shall constitute a separate offense. If the person so convicted
181 occupies a position in connection with the public schools, that person shall automatically be
182 removed from that position and shall be ineligible for reappointment to that or a similar position
183 for the period of one year.

NOTE: The purpose of this bill is to provide that students be provided education and training in the areas of nutrient and structured exercise education.

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