

Recommended by
Joint Standing Education
2/10/13 - Mohr (3335)
2013 concussion & head injury 2

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SB/HB. -

(By --)

[Introduced ; referred to the
Committee on .]

A BILL to repeal section §55-7-19 of the Code of West Virginia, 1931, as amended; to further amend said code by adding thereto a new section, designated §18-2-25a; to amend and reenact §29-12-5a of said code; and to amend and reenact §55-7-15 of said code, all relating to establishing protocols and protections to limit and treat injury to youth athletes and students; making findings with respect to concussions; defining certain terms and requiring Secondary School Activities Commission rule addressing concussions and head injuries; specifying certain minimum provisions of rule; requiring inclusion of volunteer workers and student teachers under the professional and liability coverage provided to county school boards by Board Of Risk and Insurance Management; including licensed health care professional within term "volunteer worker" with certain conditions and limiting civil liability; including medical assistance rendered by licensed medical professional without remuneration to youth athlete as equivalent to emergency

1 care at scene of accident or medical emergency for
2 protection from liability for civil damages; and including
3 scheduled practices within term "event."

4 *Be it enacted by the Legislature of West Virginia:*

5 That section §55-7-19 of the Code of West Virginia, 1931, as
6 amended, be repealed; that said code be further amended by adding
7 thereto a new section, designated §18-2-25a; that §29-12-5a of
8 said code be amended and reenacted; and that §55-7-15 of said
9 code be amended and reenacted, all to read as follows:

10 **CHAPTER 18. EDUCATION.**

11 **ARTICLE 2. STATE BOARD OF EDUCATION.**

12 **§18-2-25a. Management of concussions and head injuries in**
13 **athletics at West Virginia Secondary School**
14 **Activities Commission member high school or middle**
15 **school.**

16 (a) The Legislature finds:

17 (1) Concussions are one of the most commonly reported
18 injuries in children and adolescents who participate in sports
19 and recreational activities. The centers for disease control and
20 prevention estimates that as many as three million nine hundred
21 thousand sports-related and recreation-related concussions occur
22 in the United States each year;

23 (2) A concussion is caused by a blow or motion to the head
24 or body that causes the brain to move rapidly inside the skull.
25 The risk of catastrophic injuries or death are significant when
26 a concussion or head injury is not properly evaluated and

1 managed;

2 (3) Concussions are a type of brain injury that can range
3 from mild to severe and can disrupt the way the brain normally
4 works;

5 (4) Concussions can occur in any organized or unorganized
6 sport or recreational activity and can result from a fall or from
7 players colliding with each other, the ground or with obstacles;

8 (5) Concussions occur with or without loss of consciousness,
9 but the vast majority occur without loss of consciousness;

10 (6) Continuing to play or practice with a concussion or
11 symptoms of head injury leaves the interscholastic athlete
12 especially vulnerable to greater injury and even death; and

13 (7) Even with generally recognized return to play and
14 practice standards for concussion and head injury, some affected
15 interscholastic athletes are prematurely returned to play or
16 practice resulting in actual or potential physical injury or
17 death to the athletes in the State of West Virginia.

18 (b) For the purposes of this section, "interscholastic
19 athlete" means any athlete who is participating in
20 interscholastic athletics at a high school or middle school that
21 is a member of the West Virginia Secondary School Activities
22 Commission, and "licensed health care professional" means a
23 health care provider whose licensed scope of practice includes
24 the ability to diagnose and treat an injury or disease.

25 (c) The West Virginia Secondary School Activities Commission
26 shall promulgate rules pursuant to section twenty-five of this

1 article that address concussions and head injuries in
2 interscholastic athletes: Provided, That prior to state board
3 approval and notwithstanding the exemption provided in section
4 three, article one, chapter twenty-nine-a of this code, the state
5 board shall submit the rule to the Legislative Oversight
6 Commission on Education Accountability pursuant to section nine,
7 article three-b, chapter twenty-nine-a of this code.

8 (d) The rules required by this section shall include, but
9 are not limited to, the following:

10 (1) Guidelines and other pertinent information and forms to
11 inform and educate appropriate school administrators, coaches,
12 interscholastic athletes and their parents or guardians of the
13 nature and risk of concussion and head injury including
14 continuing to play or practice after a concussion or head injury;

15 (2) A concussion and head injury information sheet that
16 shall be signed and returned by the interscholastic athlete and
17 the athlete's parent or guardian on an annual basis before the
18 interscholastic athlete begins practice or competition;

19 (3) A requirement that each head coach of an interscholastic
20 sport at a high school or middle school that is a member of the
21 West Virginia Secondary School Activities Commission complete a
22 Commission approved concussion and head injury recognition and
23 return-to-play protocol course annually;

24 (4) An interscholastic athlete who is suspected by a
25 licensed health care professional or by his or her head coach or
26 athletic trainer of sustaining a concussion or head injury in a

1 practice or game shall be removed from competition at that time;

2 (5) An interscholastic athlete who has been removed from
3 play or practice may not return to play or practice until the
4 athlete is evaluated by a licensed health care professional
5 trained in the evaluation and management of concussions and
6 receives written clearance to return to play and practice from
7 the licensed health care professional;

8 (6) A list of the respective categories of licensed health
9 care professionals who, if properly trained in the evaluation and
10 management of concussions, are authorized to provide written
11 clearance for the interscholastic athlete to return to play; and

12 (7) A requirement that all member schools must submit a
13 report to the West Virginia Secondary School Activities
14 Commission within thirty days of an interscholastic athlete
15 suffering or being suspected of suffering a concussion or head
16 injury in a practice or game. The report must state whether an
17 evaluation by a licensed health care professional verified that
18 a concussion or head injury was actually suffered, whether the
19 athlete received written clearance to return to play or practice
20 and, if written clearance was given, the number of days between
21 the incident and the actual return to play or practice. If
22 written clearance to return to play is given after thirty days of
23 the incident, a report update shall be submitted then. The West
24 Virginia Secondary School Activities Commission shall compile and
25 submit the reports to the appropriate state and national
26 organization or agencies to analyze and make determinations on

1 whether the rule required by this section or equipment worn by
2 interscholastic athlete needs to be amended accordingly.

3 **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

4 **ARTICLE 12. STATE INSURANCE.**

5 **§29-12-5a. Liability insurance for county boards of education,**
6 **their employees and members, the county**
7 **superintendent of schools, and for employees and**
8 **officers of the state Department of Corrections.**

9 (a) In accordance with the provisions of this article, the
10 state Board of Risk and Insurance Management shall provide
11 appropriate professional or other liability insurance for all
12 county boards of education, teachers, supervisory and
13 administrative staff members, service personnel, county
14 superintendents of schools, and school board members, volunteer
15 workers and student teachers, and for all employees and officers
16 of the state Department of Corrections: *Provided,* That the board
17 of Risk and Insurance Management is not required to provide
18 insurance for every property, activity or responsibility of
19 county boards of education, teachers, supervisory and
20 administrative staff members, service personnel, county
21 superintendents of schools, and school board members, volunteer
22 workers and student teachers, and for all employees and officers
23 of the state Department of Corrections.

24 (b) Insurance provided by the board of Risk and Insurance
25 Management pursuant to the provisions of subsection (a) of this
26 section shall cover claims, demands, actions, suits or judgments

1 by reason of alleged negligence or other acts resulting in bodily
2 injury or property damage to any person within or without any
3 school building or correctional institution if, at the time of
4 the alleged injury, the teacher, supervisor, administrator,
5 service personnel employee, county superintendent, school board
6 member, volunteer worker or student teacher, or employee or
7 officer of the Department of Corrections was acting in the
8 discharge of his or her duties, within the scope of his or her
9 office, position or employment, under the direction of the board
10 of Education or Commissioner of Corrections or in an official
11 capacity as a county superintendent or as a school board member
12 or as Commissioner of Corrections.

13 (c) Insurance coverage provided by the board of Risk and
14 Insurance Management pursuant to subsection (a) of this section
15 shall be in an amount to be determined by the state Board of Risk
16 and Insurance Management, but in no event less than \$1 million
17 for each occurrence. In addition, each county board of education
18 shall purchase, through the board of Risk and Insurance
19 Management, excess coverage of at least \$5 million for each
20 occurrence. The cost of this excess coverage will be paid by the
21 respective county boards of education. Any insurance purchased
22 under this section shall be obtained from a company licensed to
23 do business in this state.

24 (d) The insurance policy provided by the board of Risk and
25 Insurance Management pursuant to subsection (a) of this section
26 shall include comprehensive coverage, personal injury coverage,

1 malpractice coverage, corporal punishment coverage, legal
2 liability coverage as well as a provision for the payment of the
3 cost of attorney's fees in connection with any claim, demand,
4 action, suit or judgment arising from such alleged negligence or
5 other act resulting in bodily injury under the conditions
6 specified in this section.

7 (e) The county superintendent and other school personnel,
8 volunteer worker and student teacher shall be defended by the
9 county board or an insurer in the case of suit, unless the act or
10 omission shall not have been within the course or scope of
11 employment or official responsibility or was motivated by
12 malicious or criminal intent.

13 (f) For the purposes of this section, "volunteer worker"
14 includes, but is not limited to, a licensed health care
15 professional who renders services of a medical nature to students
16 under an agreement with a county board that defines the scope of
17 his or her duties as such and for which no remuneration is
18 demande d or received. Such a licensed health care professional
19 shall not be liable for any civil damages as a result of
20 rendering such services, or as a result of any act or failure to
21 act in providing or arranging further medical treatment, in
22 accordance with acceptable standards of care, to an extent
23 greater than the applicable limits of the professional liability
24 insurance provided by the state Board of Risk and Insurance
25 Management pursuant to this section and in effect at the time.
26 Nothing in this subsection nullifies the immunity from civil

1 liability as granted pursuant to section fifteen, article seven,
2 chapter fifty-five of this code or federal law except to the
3 extent to which the actions are covered within the applicable
4 limits of the professional liability insurance provided by the
5 state Board of Risk and Insurance Management pursuant to this
6 section and in effect at the time.

7 **CHAPTER 55. ACTIONS, SUITS AND ARBITRATION;**

8 **JUDICIAL SALE.**

9 **ARTICLE 7. ACTIONS FOR INJURIES.**

10 **§55-7-15. Aid to victim of accident and victim of crime;**
11 **immunity from civil liability.**

12 No person, including a person licensed to practice medicine
13 or dentistry, who in good faith renders emergency care at the
14 scene of an accident or medical emergency or to a victim at the
15 scene of a crime, without remuneration, shall be liable for any
16 civil damages as the result of any act or omission in rendering
17 such emergency care.

18 For the purposes of this section, "scene of an accident or
19 medical emergency" also includes a youth athletic event,
20 including a school sponsored or interscholastic athletic event,
21 at which assistance of a medical nature is rendered in an
22 emergency situation by a licensed medical professional, for which
23 no remuneration is demanded or received, to an athlete injured
24 while participating in the event. For the purposes of this
25 section, "athletic event" includes scheduled practices.

Note: The purpose of this bill is to establish protocols and

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protections to help limit injuries to youth athletes and students and improve the treatment of them. In particular, the bill emphasizes the protocols for removal and return to play following concussions in interscholastic sports regulated by the WV Secondary School Activities Commission.

Strike-throughs indicate existing language that would be removed, and underscoring indicates new language that would be added.

§18-2-25a is a new section.