

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Senate Bill 537**

BY SENATORS RUCKER, AZINGER, FERNS, KARNES,

MAYNARD, OJEDA, SMITH AND SYPOLT

[Originating in the Committee on Education; reported

on March 24, 2017]

1 A BILL to amend and reenact §16-3-4 of the Code of West Virginia, 1931, as amended; to amend  
2 said code by adding thereto a new section, designated §18B-1-12; and to amend and  
3 reenact §21-1A-3 of said code, all relating to exemptions from mandated immunizations;  
4 and setting forth conditions within each section.

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

1 That §16-3-4 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted; that said code be amended by adding thereto a new section, designated §18B-1-12;  
3 and that §21-1A-3 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER INFECTIOUS DISEASES.**

#### **§16-3-4. Compulsory immunization of school children; information disseminated; offenses; penalties; exemptions.**

1 (a) Whenever a resident birth occurs, the commissioner shall promptly provide parents of  
2 the newborn child with information on immunizations mandated by this state or required for  
3 admission to a public, private and parochial school in this state or a state-regulated child care  
4 center.

5 (b) Except as ~~hereinafter~~ provided for in subsection (j), a child entering school or a state-  
6 regulated child care center in this state must be immunized against chickenpox, hepatitis-b,  
7 measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough.

8 (c) No child or person may be admitted or received in any of the schools of the state or a  
9 state-regulated child care center until he or she has been immunized against chickenpox,  
10 hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough  
11 or produces a certificate from the commissioner granting the child or person an exemption from  
12 the compulsory immunization requirements of this section.

13 (d) Any school or state-regulated child care center personnel having information  
14 concerning any person who attempts to be enrolled in a school or state-regulated child care center  
15 without having been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps,  
16 diphtheria, polio, rubella, tetanus and whooping cough shall report the names of all such persons  
17 to the commissioner.

18 (e) Persons may be provisionally enrolled under minimum criteria established by the  
19 commissioner so that the person's immunization may be completed while missing a minimum  
20 amount of school. No person shall be allowed to enter school without at least one dose of each  
21 required vaccine, except as provided for in subsection (j).

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

25 (g) Health officers and physicians who provide vaccinations must present the person  
26 vaccinated with a certificate free of charge showing that they have been immunized against  
27 chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and  
28 whooping cough, or he or she may give the certificate to any person or child whom he or she  
29 knows to have been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps,  
30 diphtheria, polio, rubella, tetanus and whooping cough.

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

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

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

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

45           ~~(4) The Immunization Officer's decision on a request for an exemption to the compulsory~~  
46 ~~immunization requirements of this section may be appealed to the state Health Officer.~~

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

49           (i) A physician, or advanced practice nurse, who provides any person with a false  
50 certificate of immunization against chickenpox, hepatitis-b, measles, meningitis, mumps,  
51 diphtheria, polio, rubella, tetanus and whooping cough is guilty of a misdemeanor and, upon  
52 conviction, shall be fined not less than \$25 nor more than \$100.

53           (j) A child shall be exempt from compulsory immunizations upon the presentation to the  
54 child's school of any one of the following certifications:

55           (1) A request for an exemption to the compulsory immunization requirements of this  
56 section must be accompanied by the certification of a licensed physician or advanced practice  
57 nurse who has personally examined the patient stating that the physical condition of the child is  
58 such that immunization is contraindicated or there exists a specific precaution to a particular  
59 vaccine; or

60           (2) A request for an exemption to the compulsory immunization requirements of this  
61 section must be accompanied by a notarized certification signed by any parent or legal guardian  
62 of the child that the religious beliefs of the signator are contrary to the compulsory immunizations.

## CHAPTER 18B. HIGHER EDUCATION.

### ARTICLE 1. GOVERNANCE.

#### **§18B-1-12. RIGHTS OF STUDENTS TO EXEMPTIONS FROM COMPULSORY IMMUNIZATIONS.**

1        A student shall be exempt from a college, university, or vocational technical school's  
2 compulsory immunizations upon the presentation to the student's school of any one of the  
3 following certifications:

4        (1) A request for an exemption to the compulsory immunizations of the school must be  
5 accompanied by the certification of a licensed physician or advanced practice nurse who has  
6 personally examined the student stating that the physical condition of the student is such that  
7 immunization is contraindicated or there exists a specific precaution to a particular vaccine; or

8        (2) A request for an exemption to the compulsory immunization requirements of the school  
9 must be accompanied by a notarized certification signed by the student if he or she is 18 years of  
10 age or older or the student's parent or legal guardian stating that the religious beliefs of the  
11 signator are contrary to the compulsory immunizations.

## CHAPTER 21. LABOR.

### ARTICLE 1A. LABOR-MANAGEMENT RELATIONS ACT FOR THE PRIVATE SECTOR.

#### **§21-1A-3. Rights of employees.**

1        (a) Employees shall have the right to self-organization, to form, join or assist labor  
2 organizations, to bargain collectively through representatives of their own choosing, and to  
3 engage in other concerted activities for the purpose of collective bargaining or other mutual aid  
4 or protection, and shall also have the right to refrain from any or all of such activities, including  
5 the right to refrain from paying any dues, fees, assessments or other similar charges however  
6 denominated of any kind or amount to a labor organization or to any third party including, but not

7 limited to, a charity in lieu of a payment to a labor organization.

8 (b) Employees have the right to be exempt from mandated immunizations of his or her  
9 employer upon the presentation to his or her employer of any one of the certifications required by  
10 this section:

11 (1) A certification signed by a licensed physician or advanced practice registered nurse  
12 who has personally examined the employee stating that the physical condition of the employee is  
13 such that immunization is contraindicated or there exists a specific precaution to the mandated  
14 vaccine or vaccines; or

15 (2) A notarized certification by the employee that he or she has religious beliefs contrary  
16 to the mandated immunization. Employers shall not penalize or discriminate against employees  
17 for exercising this exemption right by practices including, but not limited to, withholding bonuses,  
18 pay raises, and promotion.