

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4012

BY DELEGATES HORST, J. JEFFRIES, STEELE, CONLEY, CROUSE,
MAYNOR, G. WARD, WORRELL, FOSTER, DEAN, AND NESTOR

[Passed March 12, 2022; in effect from passage.]

1 AN ACT to amend and reenact §16-3-4b of the Code of West Virginia, 1931, as amended; to
2 amend said code by adding thereto a new section, designated §16-3-4c, all relating to
3 COVID-19 vaccination, generally prohibiting the showing of proof of a COVID-19
4 vaccination as a condition for entering upon the premises of any state or local
5 governmental official, entity, department, or agency, or as a condition for entering upon
6 the premises of a hospital or enrolling in a state institution of higher education, unless such
7 proof is required by federal law or regulation; clarifying that a covered employer does not
8 include any Medicare or Medicaid-certified facilities which are subject to federal
9 regulations; clarifying that employees of otherwise covered employers who are required
10 to work in Medicare or Medicaid-certified facilities are not subject to the prohibition;
11 exempting from proof of vaccination prohibition students whose academic program
12 requires vaccination against COVID-19; defining terms; and providing that sincerely held
13 religious beliefs are an exemption to immunization.

Be it enacted by the Legislature of West Virginia:

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

**§16-3-4b. Required exemptions to compulsory immunization against COVID-19 as a
condition of employment; effective date.**

1 (a) A covered employer, as defined in this section, that requires as a condition of continued
2 employment or as a condition of hiring an individual for employment, that such person receive a
3 COVID-19 immunization or present documentation of immunization from COVID-19, shall exempt
4 current or prospective employees from such immunization requirements upon the presentation of
5 one of the following certifications:

6 (1) A certification presented to the covered employer, signed by a licensed physician or a
7 licensed advanced practice registered nurse who has conducted an in-person examination of the

8 employee or prospective employee, stating that the physical condition of the current or
9 prospective employee is such that a COVID-19 immunization is contraindicated; there exists a
10 specific precaution to the mandated vaccine; or the current or prospective employee has
11 developed COVID-19 antibodies from being exposed to the COVID-19 virus, or suffered from and
12 has recovered from the COVID-19 virus; or

13 (2) A notarized certification executed by the employee or prospective employee that is
14 presented to the covered employer by the current or prospective employee that he or she has
15 sincerely held religious beliefs that prevent the current or prospective employee from taking the
16 COVID-19 immunization.

17 (b) A covered employer may not be permitted to penalize or discriminate against current
18 or prospective employees for exercising exemption rights provided in this section by practices
19 including, but not limited to, benefits decisions, hiring, firing, or withholding bonuses, pay raises,
20 or promotions.

21 (c) As used in this section, the following terms shall have the following meaning:

22 "Covered employer" means:

23 (1) The State of West Virginia, including any department, division, agency, bureau, board,
24 commission, office, or authority thereof, or any political subdivision of the State of West Virginia
25 including, but not limited to, any county, municipality, or school district;

26 (2) A business entity, including without limitation any individual, firm, partnership, joint
27 venture, association, corporation, company, estate, trust, business trust, receiver, syndicate, club,
28 society, or other group or combination acting as a unit, engaged in any business activity in this
29 state, including for-profit or not-for-profit activity, that has employees;

30 (3) "Covered employer" does not include any Medicare or Medicaid-certified facilities
31 which are subject to enforceable federal regulations contrary to the requirements of this section;

32 (4) "COVID-19" means the same as that term is defined in §55-19-3 of this code; or

33 (5) "Immunization" means any federally authorized immunization for COVID-19, whether
34 fully approved or approved under an emergency use authorization.

35 (d) The provisions of this section are inapplicable to employees of covered employers who
36 are required to work in Medicare or Medicaid-certified facilities which are subject to enforceable
37 federal regulations contrary to the requirements of this section.

38 (e) Any person or entity harmed by a violation of this section may seek injunctive relief in
39 a court of competent jurisdiction.

40 (f) The provisions of this section shall become effective immediately.

41 (g) Pursuant to §2-2-10 of this code, if any provision of this section or the application
42 thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality
43 or invalidity shall not affect other provisions or applications of the section, and to this end the
44 provisions of this section are declared to be severable.

§16-3-4c. Prohibiting proof of COVID-19 vaccination.

1 (a) As used in this section:

2 (1) "COVID-19" has the same definition as provided in §55-19-3 of this code;

3 (2) "Hospital" has the same definition as provided in §16-5B-1 of this code;

4 (3) "Immunization" has the same definition as provided in §55-19-3 of this code;

5 (4) "Proof of vaccination" means physical documentation or digital storage of protected
6 health information related to an individual's immunization or vaccination against COVID-19; and

7 (5) "State institution of higher education" has the same meaning as provided in §18B-1-2
8 of this code.

9 (b) A state or local governmental official, entity, department, or agency may not require
10 proof of vaccination as a condition of entering the premises of a state or local government entity,
11 or utilizing services provided by a state or local government entity: *Provided*, That if any federal
12 law or regulation requires proof of vaccination as a condition of entering the premises, the
13 provisions of this subsection shall not apply: *Provided, however*, That this prohibition does not

14 apply to any local government-owned facility that is leased to a private entity where the local
15 governmental unit primarily serves as a property owner receiving rental payments.

16 (c) A hospital may not require proof of vaccination as a condition of entering the premises:
17 *Provided*, That if any federal law or regulation requires proof of vaccination as a condition of
18 entering the premises, the provisions of this subsection shall not apply.

19 (d) A state institution of higher education may not require proof of vaccination as a
20 condition of enrollment or for entering the premises: *Provided*, That if any federal law or regulation
21 requires proof of vaccination as a condition of entering the premises, or if the academic
22 requirements of a particular program cannot be met without vaccination and proof thereof, the
23 provisions of this subsection shall not apply.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2022.

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Governor