

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 336**

4 (By Senators Stollings, Wells, Plymale, Barnes, Beach, Unger,  
5 Palumbo, Kessler (Mr. President) and Jenkins)

6 \_\_\_\_\_  
7 [Originating in the Committee on Education;  
8 reported March 15, 2013.]  
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**Interim  
Bill**

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11  
12 A BILL to repeal §55-7-19 of the Code of West Virginia, 1931, as  
13 amended; to amend said code by adding thereto a new section,  
14 designated §18-2-25a; and to amend and reenact §29-12-5a of  
15 said code, all relating to establishing protocols and  
16 protections to limit and treat injury to youth athletes and  
17 students; making legislative findings with respect to  
18 concussions; defining certain terms; requiring certain rules;  
19 setting forth certain minimum provisions of rules, including  
20 specifying procedure for prior approval; limiting civil  
21 liability in certain circumstances; and making certain  
22 technical changes.

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

24 That §55-7-19 of the Code of West Virginia, 1931, as amended,

1 be repealed; that said code be amended by adding thereto a new  
2 section, designated §18-2-25a; and that §29-12-5a of said code be  
3 amended and reenacted, all to read as follows:

4 **CHAPTER 18. EDUCATION.**

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

6 **§18-2-25a. Management of concussions and head injuries in**  
7 **athletics at West Virginia Secondary School**  
8 **Activities Commission member high school or middle**  
9 **school.**

10 (a) The Legislature makes the following findings:

11 (1) Concussions are one of the most commonly reported injuries  
12 in children and adolescents who participate in sports and  
13 recreational activities. The Centers for Disease Control and  
14 Prevention estimates that as many as three million nine hundred  
15 thousand sports-related and recreation-related concussions occur in  
16 the United States each year;

17 (2) A concussion is caused by a blow or motion to the head or  
18 body that causes the brain to move rapidly inside the skull. The  
19 risk of catastrophic injuries or death is significant when a  
20 concussion or head injury is not properly evaluated and managed;

21 (3) Concussions are a type of brain injury that can range from  
22 mild to severe and can disrupt the way the brain normally  
23 functions;

24 (4) Concussions can occur in any organized or unorganized

1 sport or recreational activity and can result from a fall or from  
2 players colliding with each other or with obstacles;

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

5 (6) The interscholastic athlete who continues to play or  
6 practice with a concussion or symptoms of head injury is especially  
7 vulnerable to greater injury and even death; and

8 (7) Even with generally recognized return-to-play-and-practice  
9 standards for concussion and head injury, some affected  
10 interscholastic athletes are prematurely returned to play or  
11 practice resulting in increased risk of physical injury or death to  
12 the athletes in the State of West Virginia.

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

20 (c) The West Virginia Secondary School Activities Commission  
21 shall promulgate rules pursuant to section twenty-five of this  
22 article that address concussions and head injuries in  
23 interscholastic athletes: *Provided*, That prior to state board  
24 approval and notwithstanding the exemption provided in section

1 three, article one, chapter twenty-nine-a of this code, the state  
2 board shall submit the rule to the Legislative Oversight Commission  
3 on Education Accountability pursuant to section nine, article  
4 three-b, chapter twenty-nine-a of this code.

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

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

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

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

21 (4) A requirement that an interscholastic athlete who is  
22 suspected by a licensed health care professional or by his or her  
23 head coach or athletic trainer of having sustained a concussion or  
24 head injury in a practice or game shall be removed from competition

1 at that time;

2 (5) A requirement that an interscholastic athlete who has been  
3 removed from play or practice may not return to play or practice  
4 until the athlete is evaluated by a licensed health care  
5 professional trained in the evaluation and management of  
6 concussions and receives written clearance to return to play and  
7 practice from 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 report  
13 to the West Virginia Secondary School Activities Commission within  
14 thirty days of an interscholastic athlete suffering or being  
15 suspected of suffering a concussion or head injury in a practice or  
16 game. The report must state whether an evaluation by a licensed  
17 health care professional verified that a concussion or head injury  
18 was actually suffered, whether the athlete received written  
19 clearance to return to play or practice and, if written clearance  
20 was given, the number of days between the incident and the actual  
21 return to play or practice. If written clearance to return to play  
22 is given after thirty days of the incident, a report update shall  
23 be submitted. The West Virginia Secondary School Activities  
24 Commission shall compile and submit the reports to the appropriate

1 state and national organization or agencies to analyze and make  
2 determinations on whether the rule required by this section needs  
3 to be amended or if equipment worn by interscholastic athlete needs  
4 to be changed accordingly.

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

6 **ARTICLE 12. STATE INSURANCE.**

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

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

1 (b) Insurance provided by the Board of Risk and Insurance  
2 Management pursuant to the provisions of subsection (a) of this  
3 section shall cover claims, demands, actions, suits or judgments by  
4 reason of alleged negligence or other acts resulting in bodily  
5 injury or property damage to any person within or without any  
6 school building or correctional institution if, at the time of the  
7 alleged injury, the teacher, supervisor, administrator, service  
8 personnel employee, county superintendent, school board member,  
9 volunteer worker or student teacher, or employee or officer of the  
10 Department of Corrections was acting in the discharge of his or her  
11 duties, within the scope of his or her office, position or  
12 employment, under the direction of the Board of Education or  
13 Commissioner of Corrections or in an official capacity as a county  
14 superintendent or as a school board member or as Commissioner of  
15 Corrections.

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

1 shall be obtained from a company licensed to do business in this  
2 state.

3 (d) The insurance policy provided by the Board of Risk and  
4 Insurance Management pursuant to subsection (a) of this section  
5 shall include comprehensive coverage, personal injury coverage,  
6 malpractice coverage, corporal punishment coverage, legal liability  
7 coverage as well as a provision for the payment of the cost of  
8 attorney's fees in connection with any claim, demand, action, suit  
9 or judgment arising from such alleged negligence or other act  
10 resulting in bodily injury under the conditions specified in this  
11 section.

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

18 (f) For the purposes of this section, "volunteer worker"  
19 includes, but is not limited to, a licensed health care  
20 professional as defined in section twenty-five-a, article two,  
21 chapter eighteen of this code. A licensed health care professional  
22 is not liable for any civil damages as a result of rendering such  
23 services, or as a result of any act or failure to act in providing  
24 or arranging further medical treatment, in accordance with



1 acceptable standards of care, to an extent greater than the  
2 applicable limits of the professional liability insurance provided  
3 by the state Board of Risk and Insurance Management pursuant to  
4 this section and in effect at the time.