

H. B. 2831

(By Delegates Ferns, Storch, Miley, Eldridge,
Fragale, Moore, Diserio, Ferro, Cowles,
Ellington and Householder)

[Introduced March 5, 2013; referred to the
Committee on Health and Human Resources then the Judiciary.]

A BILL to amend and reenact §16-3-4 and §16-3-5 of the Code of West
Virginia, 1931, as amended, all relating to mandatory
immunizations for school children; providing exemptions;
application of informed consent; and composition and
appointment of the Childhood Immunization Advisory Committee.

Be it enacted by the Legislature of West Virginia:

That §16-3-4 and §16-3-5 of the Code of West Virginia, 1931,
as amended, be amended and reenacted, all to read as follows:

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

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

~~Whenever~~ (a) When a resident birth occurs, the ~~state director~~
~~of health~~ Commissioner of the Bureau for Public Health shall
promptly provide parents of the newborn child with information on

1 immunizations mandated by this state or required for admission to
2 a public school in this state.

3 **(b) Except as provided in this subsection,** all children
4 entering school for the first time in this state ~~shall~~ **must** have
5 been immunized against diphtheria, polio, ~~rubeola,~~ **measles, mumps,**
6 rubella, tetanus and whooping cough. ~~Any person who cannot give~~
7 ~~satisfactory proof of having been immunized previously or a~~
8 ~~certificate from a reputable physician showing that an immunization~~
9 ~~for any or all diphtheria, polio, rubeola, rubella, tetanus and~~
10 ~~whooping cough is impossible or improper or sufficient reason why~~
11 ~~any or all immunizations should not be done, shall be immunized for~~
12 ~~diphtheria, polio, rubeola, rubella, tetanus and whooping cough~~
13 ~~prior to being admitted in any of the schools in the state. No~~
14 ~~child or person shall be admitted or received in any of the schools~~
15 ~~of the state until he or she has been immunized as hereinafter~~
16 ~~provided or produces a certificate from a reputable physician~~
17 ~~showing that an immunization for diphtheria, polio, rubeola,~~
18 ~~rubella, tetanus and whooping cough has been done or is impossible~~
19 ~~or improper or other sufficient reason why such immunizations have~~
20 ~~not been done.~~ **A child may be exempt from the requirements of this**
21 **section as follows:**

22 **(1) Medical exemption.** -- A parent or guardian of a child
23 **entering a school in this state for the first time may request a**
24 **medical exemption from a required vaccination. The request must be**

1 accompanied with a certificate signed by a physician who is duly
2 registered and licensed to practice medicine in West Virginia or
3 contiguous states that sets forth the basis of his or her medical
4 opinion that immunization against diphtheria, polio, measles, mumps
5 tetanus or whooping cough is medically impossible or improper,
6 whether this exemption is permanent or temporary and to which
7 vaccinations the child is to be exempt. Alternately, immunity
8 against measles, mumps, rubella, polio, diphtheria or tetanus may
9 be shown through laboratory testing results in lieu of vaccination.

10 (2) General requirements for exemption. -- Within fifteen
11 business days of submission of all required documents to the local
12 health officer in the county where the child is to attend school,
13 a confirmation of receipt by the local health officer shall be
14 submitted to the Bureau for Public Health, to the school which the
15 child is to attend and the parent.

16 (3) The Commissioner of the Bureau for Public Health may
17 temporarily suspend an exemption permitted by this subsection
18 during a health emergency. The exempted student may return to
19 school when the health emergency has been resolved or abated as
20 verified by the Commissioner of the Bureau for Public Health.

21 (c) ~~Any teacher,~~ A teacher, school nurse or other school
22 employee having information concerning ~~any~~ a person who attempts to
23 enter school for the first time without having been immunized
24 against diphtheria, polio, ~~rubeola,~~ measles, mumps, rubella,

1 tetanus and whooping cough shall report the names of all such
 2 persons to the county health officer. It ~~shall be~~ is the duty of
 3 the health officer in counties having a full-time health officer to
 4 see that such persons are immunized before entering school.
 5 ~~Provided, That~~ Persons enrolling from schools outside of the state
 6 may be provisionally enrolled under minimum criteria established by
 7 the ~~Director of the Department of Health~~ Commissioner of the Bureau
 8 for Public Health so that the person's immunization may be
 9 completed while missing a minimum amount of school: *Provided,*
 10 That no person ~~shall be~~ is allowed to enter school without at least
 11 one dose of each required vaccine.

12 In counties where there is no full-time health officer or
 13 district health officer, the county commission or municipal council
 14 shall appoint competent physicians to do the immunizations and fix
 15 their compensation. County health departments shall furnish the
 16 biologicals for this immunization free of charge.

17 (d) Health officers and physicians who ~~shall do this~~ perform
 18 the immunization work shall give to all persons and children a
 19 certificate free of charge showing that they have been immunized
 20 against diphtheria, polio, ~~rubeola,~~ measles, mumps, rubella,
 21 tetanus and whooping cough or he or she may give the certificate to
 22 ~~any~~ a person or child whom he or she knows to have been immunized
 23 against diphtheria, polio, ~~rubeola,~~ measles, mumps, rubella,
 24 tetanus and whooping cough. If ~~any physician shall give any~~ a

1 physician provides a person a false certificate of immunization
2 against diphtheria, polio, ~~rubeola~~, measles, mumps, rubella,
3 tetanus and whooping cough, he or she shall be guilty of a
4 misdemeanor and, upon conviction, shall be fined not less than \$25
5 nor more than \$100.

6 ~~Any parent or guardian who refuses to permit his or her child~~
7 ~~to be immunized against diphtheria, polio, rubeola, rubella,~~
8 ~~tetanus and whooping cough, who cannot give satisfactory proof that~~
9 ~~the child or person has been immunized against diphtheria, polio,~~
10 ~~rubeola, rubella, tetanus and whooping cough previously, or a~~
11 ~~certificate from a reputable physician showing that immunization~~
12 ~~for any or all is impossible or improper, or sufficient reason why~~
13 ~~any or all immunizations should not be done, shall be guilty of a~~
14 ~~misdemeanor and, except as herein otherwise provided, shall, upon~~
15 ~~conviction, be punished by a fine of not less than ten nor more~~
16 ~~than \$50 for each offense.~~

17 (e) Health care providers who perform vaccinations in the
18 State of West Virginia shall obey vaccine adverse event reporting
19 requirements under the National Childhood Vaccine Injury Act of
20 1986, which mandate that health care providers report serious
21 health problems following vaccination including hospitalizations,
22 injuries and deaths, to the federal Vaccine Adverse Event Reporting
23 System (VAERS).

24 (f) The Commissioner of the Bureau for Public Health shall

1 propose rules for legislative approval in accordance with the
2 provisions of article three, chapter twenty-nine-a of this code, to
3 implement the provisions of this section, addressing the issue of
4 school transfers, reporting requirements for each county related to
5 the exemptions and the membership of the immunization advisory
6 committee as provided in section five of this article: *Provided,*
7 That any additions or deletions of required vaccinations or
8 exemptions is the sole authority of the Legislature.

9 **§16-3-5. Distribution of free vaccine preventives of disease.**

10 (a) Declaration of legislative findings and purpose. -- The
11 Legislature finds and declares that early immunization for
12 preventable diseases represents one of the most cost-effective
13 means of disease prevention. The savings which can be realized
14 from immunization, compared to the cost of health care necessary to
15 treat the illness and lost productivity, are substantial.
16 Immunization of children at an early age serves as a preventative
17 measure both in time and money and is essential to maintain our
18 children's health and well-being. The costs of childhood
19 immunizations should not be allowed to preclude the benefits
20 available from a comprehensive, medically supervised child
21 immunization service. Furthermore, the federal government has
22 established goals that require ninety percent of all children to be
23 immunized by age two and provided funding to allow uninsured
24 children to meet this goal. The Legislature further finds that the

1 right to informed consent for a medical procedure which carries the
2 risk of injury or death, no matter how slight, is a human right.

3 (b) The ~~state director of health~~ Commissioner of the Bureau
4 for Public Health shall acquire vaccine for the prevention of
5 polio, measles, mumps, rubella, diphtheria, pertussis, tetanus,
6 hepatitis-b, haemophilus influenzae-b and other vaccine preventives
7 of disease as ~~may be deemed~~ necessary or required by law and ~~shall~~
8 distribute the same, free of charge, in ~~such~~ quantities as he or
9 she ~~may deem~~ deems necessary, to county and municipal health
10 officers, to be used ~~by them~~ for the benefit of, and without
11 expense to, the citizens within their respective jurisdictions, to
12 check contagions and control epidemics.

13 (c) The county and municipal health officers ~~shall~~ have the
14 responsibility to properly store and distribute, free of charge,
15 vaccines to private medical or osteopathic physicians within their
16 jurisdictions to be utilized to check contagions and control
17 epidemics. ~~Provided, That~~ The private medical or osteopathic
18 physicians ~~shall~~ may not make a charge for the vaccine itself when
19 administering it to a patient. The county and municipal health
20 officers shall provide a receipt to the ~~state director of health~~
21 Commissioner of the Bureau for Public Health for any vaccine
22 delivered as herein provided.

23 (d) The ~~director of the division of health~~ Commissioner of the
24 Bureau for Public Health is charged with establishing a childhood

1 immunization advisory committee that is fairly balanced in terms of
2 the points of view of its members and whose members do not have
3 conflicts of interest with the vaccine manufacturer or who could
4 financially gain directly or indirectly from vaccine mandates. The
5 Childhood Immunization Advisory Committee is to plan for universal
6 access, make recommendations on the distribution of vaccines
7 acquired pursuant to this section and ~~tracking of~~ track
8 immunization compliance in accordance with federal and state laws.
9 The Childhood Immunization Advisory Committee shall be appointed by
10 the Secretary of the Department of Health and Human Resources no
11 later than July 1, ~~1994,~~ 2013 and ~~shall~~ be comprised of
12 representatives from the following groups: Public health nursing,
13 public health officers, primary health care providers,
14 pediatricians, family practice physicians, health care
15 administrators, state Medicaid program, the health insurance
16 industry, the Public Employees Insurance Agency, the self-insured
17 industry and consumers. A minimum of three consumers should be
18 appointed by the State Director for the National Vaccine
19 Information Center in addition to the consumers appointed by the
20 Secretary of the Department of Health and Human Resources. The
21 state epidemiologist shall serve as an advisor to the committee.
22 Members of the advisory committee shall serve two-year terms.

23 (e) All health insurance policies and prepaid care policies
24 issued in this state which provide coverage for the children of the

1 insured shall provide coverage for child immunization services to
2 include the cost of the vaccine, if incurred by the health care
3 provider, and all costs of administration from birth through age
4 sixteen years. These services ~~shall be~~ are exempt from any
5 deductible, per-visit charge and/or copayment provisions which may
6 be in force in these policies or contracts. This section does not
7 exempt other health care services provided at the time of
8 immunization from any deductible and/or copayment provisions.

9 (f) Attending physicians, midwives, nurse practitioners,
10 hospitals, birthing centers, clinics and other appropriate health
11 care providers shall provide parents of newborns and preschool age
12 children with information on the following immunizations:
13 Diphtheria, polio, mumps, measles, rubella, tetanus, hepatitis-b,
14 haemophilus influenzae-b and whooping cough. This information
15 should include the availability of free immunization services for
16 children.

NOTE: The purpose of this bill is to provide exemptions for
immunizations of public school age children; to make express that
informed consent applies to mandatory vaccinations; to establish
specific criteria for composition of the Childhood Immunization
Advisory Committee and a deadline date for appointment to the
committee.

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