

COMMITTEE SUBSTITUTE

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FOR

## **Senate Bill No. 336**

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

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[Originating in the Committee on the Judiciary;  
reported March 21, 2013.]

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A BILL to repeal §55-7-19 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18-2-25a; and to amend and reenact §29-12-5a of said code, all relating to establishing protocols and protections to limit and treat injury to youth athletes and students; making legislative findings with respect to concussions; defining certain terms; requiring certain rules; setting forth certain minimum provisions of rules; requiring Board of Risk and

Insurance Management to provide insurance coverage for certain additional individuals; clarifying Board of Risk and Insurance Management shall provide insurance coverage for licensed health care professional; limiting civil liability in certain circumstances; and making certain technical changes.

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

That §55-7-19 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §18-2-25a; and that §29-12-5a of said code be amended and reenacted, all to read as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

**CHAPTER 18. EDUCATION.**

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

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

- 1 (a) The Legislature makes the following findings:
- 2 (1) Concussions are one of the most commonly reported
- 3 injuries in children and adolescents who participate in sports

4 and recreational activities. The Centers for Disease Control  
5 and Prevention estimates that as many as 3.9 million  
6 sports-related and recreation-related concussions occur in the  
7 United States each year;

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

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

16 (4) Concussions can occur in any organized or  
17 unorganized sport or recreational activity and can result from  
18 a fall or from players colliding with each other or with  
19 obstacles;

20 (5) Concussions occur with or without loss of  
21 consciousness, but the vast majority occur without loss of  
22 consciousness;

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

26 (7) Even with generally recognized return-to-play-and-  
27 practice standards for concussion and head injury, some  
28 affected interscholastic athletes are prematurely returned to  
29 play or practice resulting in increased risk of physical injury  
30 or death to the athletes in the State of West Virginia.

31 (b) For the purposes of this section, “interscholastic  
32 athlete” means any athlete who is participating in  
33 interscholastic athletics at a high school or middle school that  
34 is a member of the West Virginia Secondary School  
35 Activities Commission. “Licensed health care professional”  
36 means a health care provider whose licensed scope of  
37 practice includes the ability to diagnose and treat an injury or  
38 disease.

39 (c) The West Virginia Secondary School Activities  
40 Commission shall promulgate rules pursuant to section  
41 twenty-five of this article that address concussions and head

42 injuries in interscholastic athletes: *Provided*, That prior to  
43 state board approval and notwithstanding the exemption  
44 provided in section three, article one, chapter twenty-nine-a  
45 of this code, the state board shall submit the rule to the  
46 Legislative Oversight Commission on Education  
47 Accountability pursuant to section nine, article three-b,  
48 chapter twenty-nine-a of this code.

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

51 (1) Guidelines and other pertinent information to inform  
52 and educate appropriate school administrators, coaches,  
53 interscholastic athletes and their parents or guardians of the  
54 nature and risk of concussion and head injury including the  
55 risks of continuing to play or practice after a concussion or  
56 head injury;

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

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

67 (4) A requirement that an interscholastic athlete who is  
68 suspected by a licensed health care professional or by his or  
69 her head coach or athletic trainer of having sustained a  
70 concussion or head injury in a practice or game shall be  
71 removed from competition at that time;

72 (5) A requirement that an interscholastic athlete who has  
73 been removed from play or practice may not return to play or  
74 practice until the athlete is evaluated by a licensed health care  
75 professional trained in the evaluation and management of  
76 concussions and receives written clearance to return to play  
77 and practice from the licensed health care professional;

78 (6) A list of the respective categories of licensed health  
79 care professionals who, if properly trained in the evaluation

80 and management of concussions, are authorized to provide  
81 written clearance for the interscholastic athlete to return to  
82 play; and

83 (7) A requirement that all member schools must submit  
84 a report to the West Virginia Secondary School Activities  
85 Commission within thirty days of an interscholastic athlete  
86 suffering or being suspected of suffering a concussion or  
87 head injury in a practice or game. The report must state  
88 whether an evaluation by a licensed health care professional  
89 verified that a concussion or head injury was actually  
90 suffered, whether the athlete received written clearance to  
91 return to play or practice and, if written clearance was given,  
92 the number of days between the incident and the actual return  
93 to play or practice. If written clearance to return to play is  
94 given after thirty days of the incident, a report update shall be  
95 submitted. The West Virginia Secondary School Activities  
96 Commission shall compile and submit the reports to the  
97 appropriate state and national organization or agencies to  
98 analyze and make determinations on whether the rule

99 required by this section needs to be amended or if equipment  
100 worn by interscholastic athlete needs to be changed  
101 accordingly.

## **CHAPTER 29. MISCELLANEOUS**

### **BOARDS AND OFFICERS.**

#### **ARTICLE 12. STATE INSURANCE.**

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

1 (a) In accordance with the provisions of this article, the  
2 State Board of Risk and Insurance Management shall provide  
3 appropriate professional or other liability insurance for all  
4 county boards of education, teachers, supervisory and  
5 administrative staff members, service personnel, county  
6 superintendents of schools, ~~and~~ school board members,  
7 volunteer workers and student teachers, and for all employees  
8 and officers of the State Department of Corrections:  
9 *Provided*, That the Board of Risk and Insurance Management



10 is not required to provide insurance for every property,  
11 activity or responsibility of county boards of education,  
12 teachers, supervisory and administrative staff members,  
13 service personnel, county superintendents of schools, ~~and~~  
14 school board members, volunteer workers and student  
15 teachers, and for all employees and officers of the State  
16 Department of Corrections: *Provided, however, That the*  
17 Board of Risk and Insurance Management shall provide  
18 insurance for a licensed health care professional as defined in  
19 section twenty-five-a, article two, chapter eighteen of this  
20 code.

21 (b) Insurance provided by the Board of Risk and  
22 Insurance Management pursuant to the provisions of  
23 subsection (a) of this section shall cover claims, demands,  
24 actions, suits or judgments by reason of alleged negligence or  
25 other acts resulting in bodily injury or property damage to  
26 any person within or without any school building or  
27 correctional institution if, at the time of the alleged injury, the  
28 teacher, supervisor, administrator, service personnel

29 employee, county superintendent, school board member,  
30 volunteer worker or student teacher, or employee or officer  
31 of the Department of Corrections, was acting in the discharge  
32 of his or her duties, within the scope of his or her office,  
33 position or employment, under the direction of the Board of  
34 Education or Commissioner of Corrections or in an official  
35 capacity as a county superintendent or as a school board  
36 member or as Commissioner of Corrections.

37 (c) Insurance coverage provided by the Board of Risk and  
38 Insurance Management pursuant to subsection (a) of this  
39 section shall be in an amount to be determined by the State  
40 Board of Risk and Insurance Management, but in no event less  
41 than \$1 million for each occurrence. In addition, each county  
42 board of education shall purchase, through the Board of Risk  
43 and Insurance Management, excess coverage of at least \$5  
44 million for each occurrence. The cost of this excess coverage  
45 will be paid by the respective county boards of education. Any  
46 insurance purchased under this section shall be obtained from  
47 a company licensed to do business in this state.

48 (d) The insurance policy provided by the Board of Risk  
49 and Insurance Management pursuant to subsection (a) of this  
50 section shall include comprehensive coverage, personal  
51 injury coverage, malpractice coverage, corporal punishment  
52 coverage, legal liability coverage as well as a provision for  
53 the payment of the cost of attorney's fees in connection with  
54 any claim, demand, action, suit or judgment arising from  
55 such alleged negligence or other act resulting in bodily injury  
56 under the conditions specified in this section.

57 (e) The county superintendent and other school  
58 personnel, volunteer worker and student teacher shall be  
59 defended by the county board or an insurer in the case of suit,  
60 unless the act or omission shall not have been within the  
61 course or scope of employment or official responsibility or  
62 was motivated by malicious or criminal intent.

63 (f) For the purposes of this section, "volunteer worker"  
64 includes, but is not limited to, a licensed health care  
65 professional as defined in section twenty-five-a, article two,  
66 chapter eighteen of this code. A licensed health care

67 professional is not liable for any civil damages as a result of  
68 rendering diagnostic or treatment services for an injury or  
69 disease, or as a result of any act or failure to act in providing  
70 or arranging further medical treatment, in accordance with  
71 acceptable standards of care, to an extent greater than the  
72 applicable limits of the professional liability insurance  
73 provided by the State Board of Risk and Insurance  
74 Management pursuant to this section and in effect at the time.