

1 ENROLLED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 286**

5 (Senators Ferns, Trump, D. Hall, Blair, Boley, Gaunch,
6 Leonhardt, Mullins and Karnes, *original sponsors*)

7 _____
8 [Passed March 18, 2015; in effect ninety days from passage.]
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11
12 AN ACT to amend and reenact §16-3-4 and §16-3-5 of the Code of West Virginia, 1931, as
13 amended, all relating generally to mandatory immunizations; adding required immunizations;
14 requiring immunizations in public, private and parochial schools; requiring immunizations
15 in state-regulated day care centers; providing medical exemptions from mandatory
16 immunizations for children; allowing for provisional enrollment; requiring parents and
17 guardians to provide a certificate from the Commissioner of the Bureau for Public Health;
18 providing that certificate be provided before exemption applies; requiring that a request for
19 a medical exemption must be accompanied with a certificate from a licensed physician
20 indicating immunization is medically contraindicated; providing that county health
21 departments shall provide immunizations when families attest they cannot afford them;
22 allowing Commissioner of the Bureau for Public Health to grant, renew, condition, deny,
23 suspend or revoke exemptions when not medically indicated; allowing for appointment by
24 Commissioner of the Bureau for Public Health of an immunization officer who must be a
25 physician; allowing for immunization officer to make determinations regarding exemptions;
26 providing for an appeal procedure for determinations by the immunization officer or the state
27 health officer; modifying Immunization Advisory Committee; establishing a chair of the

1 committee; and setting forth ethical limitations for committee members.

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

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

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

7 **§16-3-4. Compulsory immunization of school children; information disseminated; offenses;**
8 **penalties.**

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

12 (b) Except as hereinafter provided, a child entering school or a state-regulated child care
13 center in this state must be immunized against chickenpox, hepatitis-b, measles, meningitis, mumps,
14 diphtheria, polio, rubella, tetanus and whooping cough.

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

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

25 (e) Persons may be provisionally enrolled under minimum criteria established by the
26 commissioner so that the person's immunization may be completed while missing a minimum
27 amount of school. No person shall be allowed to enter school without at least one dose of each
28 required vaccine.

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

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

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

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

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

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

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

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

27 (i) A physician who provides any person with a false certificate of immunization against
28 chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and

1 whooping cough is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$25
2 nor more than \$100.

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

4 (a) *Declaration of legislative findings and purpose.* -- The Legislature finds and declares that
5 early immunization for preventable diseases represents one of the most cost-effective means of
6 disease prevention. The savings which can be realized from immunization, compared to the cost of
7 health care necessary to treat the illness and lost productivity, are substantial. Immunization of
8 children at an early age serves as a preventive measure both in time and money and is essential to
9 maintain our children's health and well-being. The costs of childhood immunizations should not be
10 allowed to preclude the benefits available from a comprehensive, medically supervised child
11 immunization service.

12 (b) The Commissioner of the Bureau for Public Health shall acquire vaccine for the
13 prevention of polio, measles, meningitis, mumps, rubella, chickenpox, diphtheria, pertussis, tetanus,
14 hepatitis-b, haemophilus influenzae-b and other vaccine preventable diseases as considered necessary
15 or required by law and shall distribute the same, free of charge, in quantities he or she considers
16 necessary, to public and private providers, to be used by them for the benefit of citizens to check
17 contagions and control epidemics.

18 (c) The Commissioner of the Bureau for Public Health, through the immunization program,
19 has the responsibility to ensure the distribution, free of charge, of federally supplied vaccines to
20 public and private providers to be used to check contagions and control epidemics: *Provided*, That
21 the public and private providers may not make a charge for the vaccine itself when administering it
22 to a patient. The Commissioner of the Bureau for Public Health, through the immunization program,
23 shall keep an accurate record of any vaccine delivered as provided in this section.

24 (d) The commissioner is charged with establishing an Immunization Advisory Committee.
25 The advisory committee is to make recommendations on the distribution of vaccines acquired
26 pursuant to this section, advise the secretary on the changing needs and opportunities for
27 immunization from known diseases for all persons across their life span and track immunization

1 compliance in accordance with federal and state laws. Members of the Immunization Advisory
2 Committee shall be designated and appointed by the commissioner no later than July 1, 2015. The
3 advisory committee shall be comprised of representatives from the following groups: Public health
4 nursing, public health officers, primary health care providers, pediatricians, family practice
5 physicians, health care administrators, pharmacists, the Commissioner of the Bureau for Medical
6 Services, or his or her designee, the health insurance industry, the Director of the Public Employees
7 Insurance Agency, or his or her designee, the self-insured industry and a minimum of three
8 consumers. The state epidemiologist serves as an advisor to the committee. The commissioner, or
9 his or her designee, serves as the chair of the advisory committee. Members of the advisory
10 committee serve four-year terms.

11 (e) An advisory committee member may not participate in a matter involving specific parties
12 that will have a direct and predicable effect on their financial interest. An effect will not be direct
13 in instances where the chain of causation is attenuated or is contingent upon the occurrence of events
14 that are speculative.

15 (f) All health insurance policies and prepaid care policies issued in this state which provide
16 coverage for the children of the insured shall provide coverage for child immunization services to
17 include the cost of the vaccine, if incurred by the health care provider, and all costs of administration
18 from birth through age eighteen years. These services are exempt from any deductible, per-visit
19 charge and/or copayment provisions which may be in force in these policies or contracts. This
20 section does not exempt other health care services provided at the time of immunization from any
21 deductible or copayment provisions.

22 (g) Attending physicians, midwives, nurse practitioners, hospitals, birthing centers, clinics
23 and other appropriate health care providers shall provide parents of newborns and preschool age
24 children with information on the following immunizations: Diphtheria, polio, mumps, meningitis,
25 measles, rubella, tetanus, hepatitis-b, haemophilus influenzae-b, chickenpox and whooping cough.
26 This information should include the availability of free immunization services for children.