

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 286**

4 (By Senators Ferns, Trump, D. Hall, Blair, Boley, Gaunch, Leonhardt, Mullins and Karnes)

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6 [Originating in the Committee on Health and Human Resources;
7 reported February 13, 2015.]
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11 A BILL to amend and reenact §16-3-4 and §16-3-5 of the Code of West Virginia, 1931, as amended,
12 all relating generally to mandatory immunizations; setting forth immunization dosage levels;
13 adding required immunizations; providing medical and religious exemptions from mandatory
14 immunizations for school children; requiring parents and guardians to assert their beliefs in
15 affidavit; providing that affidavit be provided before exemption applies; allowing removal
16 of students who are not immunized from school in times of emergency or epidemic; granting
17 legislative rule-making authority to the Secretary of the Department of Health and Human
18 Resources to add or delete diseases for which vaccines are required for school attendance,
19 to develop necessary forms and to create process for reviewing any verification of affidavits
20 for completeness; nullifying an interpretive rule and any action taken pursuant to the
21 interpretive rule; modifying the Immunization Advisory Committee; and establishing a chair
22 of the committee.

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

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

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

1 **§16-3-4. Compulsory immunization of school children; information disseminated; offenses;**
2 **penalties.**

3 (a) Whenever a resident birth occurs, the ~~state director of health~~ commissioner shall promptly
4 provide parents of the newborn child with information on immunizations mandated by this state or
5 required for admission to a public private, parochial school in this state or a state-regulated child care
6 center.

7 (b) ~~All children~~ Except as hereinafter provided, a child entering school or a state-regulated
8 child care center for the first time in this state ~~shall have been~~ must be immunized against
9 chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubeola, rubella, tetanus and
10 whooping cough. ~~Any person who cannot give satisfactory proof of having been immunized~~
11 ~~previously or a certificate from a reputable physician showing that an immunization for any or all~~
12 ~~diphtheria, polio, rubeola, rubella, tetanus and whooping cough is impossible or improper or~~
13 ~~sufficient reason why any or all immunizations should not be done, shall be immunized for~~
14 ~~diphtheria, polio, rubeola, rubella, tetanus and whooping cough prior to being admitted in any of the~~
15 ~~schools in the state.~~

16 (c) No child or person ~~shall~~ may be admitted or received in any of the schools of the state or
17 a state-regulated child care center until he or she has been immunized ~~as hereinafter provided or~~
18 ~~produces a certificate from a reputable physician showing that an immunization for~~ against
19 chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubeola, rubella, tetanus and
20 whooping cough ~~has been done or is impossible or improper or other sufficient reason why such~~
21 ~~immunizations have not been done~~ or produces a certificate from the commissioner granting the
22 child or person an exemption from the compulsory immunization requirements of this section.

23 (d) Any ~~teacher~~ school or state-regulated child care center personnel having information
24 concerning any person who attempts to ~~enter~~ be enrolled in a school or state regulated child care
25 center for the first time without having been immunized against chickenpox hepatitis-b, measles,
26 meningitis, mumps, diphtheria, polio, rubeola, rubella, tetanus and whooping cough shall report the
27 names of all such persons to the ~~county health officer~~ commissioner. ~~It shall be the duty of the~~
28 ~~health officer in counties having a full-time health officer to see that such persons are immunized~~

1 ~~before entering school: *Provided, That*~~

2 (e) Persons enrolling from schools ~~outside of the state~~ may be provisionally enrolled under
3 minimum criteria established by the ~~director of the department of health~~ commissioner so that the
4 person's immunization may be completed while missing a minimum amount of school. *Provided,*
5 ~~however, That~~ No person shall be allowed to enter school without at least one dose of each required
6 vaccine.

7 ~~In counties where there is no full-time health officer or district health officer, the county~~
8 ~~commission or municipal council shall appoint competent physicians to do the immunizations and~~
9 ~~fix their compensation.~~

10 (f) County health departments shall furnish the biologicals for this immunization ~~free of~~
11 ~~charge for children of parents or guardians who attest that they cannot afford or otherwise access~~
12 vaccines elsewhere.

13 (g) Health officers and physicians who ~~shall do this immunization work~~ provide vaccinations
14 ~~shall give to all persons and children~~ must present the person vaccinated with a certificate free of
15 charge showing that they have been immunized against chickenpox, hepatitis-b, measles, meningitis,
16 mumps, diphtheria, polio, rubeola, rubella, tetanus and whooping cough, or he or she may give the
17 certificate to any person or child whom he or she knows to have been immunized against
18 chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubeola, rubella, tetanus and
19 whooping cough.

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

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

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

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

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

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

11 (i) If any A physician shall give who provides any person with a false certificate of
12 immunization against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio,
13 rubeola, rubella, tetanus and whooping cough he or she shall be is guilty of a misdemeanor and, upon
14 conviction, shall be fined not less than \$25 nor more than \$100.

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

22 **§16-3-5. Distribution of free vaccine preventives of disease.**

23 (a) *Declaration of legislative findings and purpose.* -- The Legislature finds and declares that
24 early immunization for preventable diseases represents one of the most cost-effective means of
25 disease prevention. The savings which can be realized from immunization, compared to the cost of
26 health care necessary to treat the illness and lost productivity, are substantial. Immunization of
27 children at an early age serves as a ~~preventative~~ preventive measure both in time and money and is
28 essential to maintain our children's health and well-being. The costs of childhood immunizations

1 should not be allowed to preclude the benefits available from a comprehensive, medically supervised
2 child immunization service. Furthermore, the federal government has established goals that require
3 ninety percent of all children to be immunized by age two and provided funding to allow uninsured
4 children to meet this goal.

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

13 (c) The ~~county and municipal health officers shall have~~ Commissioner of the Bureau for
14 Public Health, through the immunization program, has the responsibility to ~~properly store and~~
15 ~~distribute, ensure the distribution, free of charge, of federally supplied vaccines to public and private~~
16 ~~medical or osteopathic physicians within their jurisdictions~~ providers to be ~~utilized~~ used to check
17 contagions and control epidemics: *Provided*, That the public and private medical or osteopathic
18 ~~physicians shall~~ providers may not make a charge for the vaccine itself when administering it to a
19 patient. The ~~county and municipal health officers shall provide a receipt to the State Director of~~
20 ~~Health for~~ Commissioner of the Bureau for Public Health, through the immunization program, shall
21 keep an accurate record of any vaccine delivered as herein provided in this section.

22 (d) The ~~Director of the Division Health~~ commissioner is charged with establishing a
23 ~~childhood~~ an Immunization Advisory Committee. The advisory committee is to plan for universal
24 access, make recommendations on the distribution of vaccines acquired pursuant to this section,
25 advise the secretary on the changing needs and opportunities for immunization from known diseases
26 for all persons across their life span and ~~tracking of~~ track immunization compliance in accordance
27 with federal and state laws. ~~The childhood~~ Members of the Immunization Advisory Committee shall

1 be designated and appointed by the Secretary of the Department of the Health and Human Resources
2 commissioner no later than the first day of July, one thousand nine hundred ninety-four and July 1,
3 2015. The Advisory Committee shall be comprised of representatives from the following groups:
4 Public health nursing, public health officers, primary health care providers, pediatricians, family
5 practice physicians, health care administrators, pharmacists, ~~state Medicaid program~~ the
6 Commissioner of the Bureau for Medical Services, or his or her designee, the health insurance
7 industry, the Director of the Public Employees Insurance Agency, or his or her designee, the
8 self-insured industry and a minimum of three consumers. The state epidemiologist ~~shall serve~~ serves
9 as an advisor to the committee. The commissioner, or his or her designee, serves as the chair of the
10 Advisory Committee. Members of the advisory committee ~~shall serve two-year~~ 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 ~~(e)~~ (f) All health insurance policies and prepaid care policies issued in this state which
16 provide coverage for the children of the insured shall provide coverage for child immunization
17 services to include the cost of the vaccine, if incurred by the health care provider, and all costs of
18 administration from birth through age ~~sixteen~~ eighteen years. These services ~~shall be~~ are exempt
19 from any deductible, per-visit charge and/or copayment provisions which may be in force in these
20 policies or contracts. This section does not exempt other health care services provided at the time
21 of immunization from any deductible ~~and/~~ or copayment provisions.

22 ~~(f)~~ (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, hemophilus influenzae-b, chickenpox and whooping cough.
26 This information should include the availability of free immunization services for children.