

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2965

BY DELEGATES HAMRICK, HORNBUCKLE, WILLIAMS,

BUTLER, LOVEJOY AND ATKINSON

[Introduced February 11, 2019; Referred
to the Committee on Education.]

1 A BILL to amend and reenact §18-2-25a and §18-2-25b of the Code of West Virginia, 1931, as
2 amended, all relating to providing that schools that do not follow the established protocol
3 on concussions and head injuries in interscholastic athletes are subject to the disciplinary
4 actions by the Secondary Schools Athletics Commission: and providing that schools that
5 do not follow the requirements of their emergency action plans for athletics are subject to
6 the disciplinary actions by the Secondary Schools Athletics Commission.

Be it enacted by the Legislature of West Virginia:

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 injuries in children and
3 adolescents who participate in sports and recreational activities. The Centers for Disease Control
4 and Prevention estimates that as many as 3.9 million sports-related and recreation-related
5 concussions occur in the United States each year;

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

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

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

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

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

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

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

26 (c) The West Virginia Secondary School Activities Commission shall promulgate rules
27 pursuant to §18-2-25 of this code that address concussions and head injuries in interscholastic
28 athletes: *Provided*, That prior to state board approval and notwithstanding the exemption provided
29 in §29A-1-3 of this code, the state board shall submit the rule to the Legislative Oversight
30 Commission on Education Accountability pursuant to §29A-3B-9 of this code.

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

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

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

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

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

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

50 (6) A list of the respective categories of licensed health care professionals who, if properly
51 trained in the evaluation and management of concussions, are authorized to provide written
52 clearance for the interscholastic athlete to return to play; and

53 (7) A requirement that all member schools must submit a report to the West Virginia
54 Secondary School Activities Commission within 30 days of an interscholastic athlete suffering or
55 being suspected of suffering a concussion or head injury in a practice or game. The report must
56 state whether an evaluation by a licensed health care professional verified that a concussion or
57 head injury was actually suffered, whether the athlete received written clearance to return to play
58 or practice and, if written clearance was given, the number of days between the incident and the
59 actual return to play or practice. If written clearance to return to play is given after 30 days of the
60 incident, a report update shall be submitted. The West Virginia Secondary School Activities
61 Commission shall compile and submit the reports to the appropriate state and national
62 organization or agencies to analyze and make determinations on whether the rule required by
63 this section needs to be amended or if equipment worn by interscholastic athlete needs to be
64 changed accordingly.

65 (e) Any member school not complying with the requirements of this section, and rules
66 promulgated thereof, shall be subject to the disciplinary actions ordered by the Secondary
67 Schools Athletics Commission: *Provided*, That the West Virginia Secondary Schools Athletics
68 Commission shall promulgate rules to establish guidelines for noncompliance and related

69 disciplinary actions: *Provided, however,* That prior to state board approval and notwithstanding
70 the exemption provided in §29A-1-3 of this code, the state board shall submit the rule to the
71 Legislative Oversight Commission on Education Accountability pursuant to §29A-3B-9 of this
72 code.

§18-2-25b. Emergency action plans for athletics.

1 (a) No later than August 1, 2017, the West Virginia Secondary Schools Athletics
2 Commission shall promulgate rules to establish guidelines for emergency action plans for athletics
3 designed to respond to athletic injuries that occur on school property during school-sponsored
4 athletic events. The rules shall address, at a minimum:

- 5 (1) Protocols for practices and for games;
6 (2) Directives for personnel or equipment which should be available on sports fields or in
7 school buildings for both girls' and boys' teams; and
8 (3) Training needed for school or volunteer personnel on an as-needed basis.

9 (b) All member schools shall submit an emergency action plan for athletics to the West
10 Virginia Secondary Schools Athletics Commission and their county boards of education by
11 December 31, 2017: *Provided,* That the county boards shall keep the emergency plan of each
12 school in the county on file and, unless otherwise provided for, provide a copy of each school's
13 emergency action plan for athletics to each local emergency response agency that has a role in
14 the plan.

15 (c) Any person licensed by, or certified or registered in, this state to provide health care or
16 professional health care services who renders services of a medical nature to students under this
17 section, who has an agreement with a county board of education that defines the scope of his or
18 her duties as such, and for which no remuneration is demanded or received, is not liable for any
19 civil damages as a result of rendering such services, or as a result of any act or failure to act in
20 providing or arranging further medical treatment.

21 (1) The limitation of liability only applies if the services are provided in accordance with

22 acceptable standards of care and the licensed health care provider is not grossly negligent or
23 does not demonstrate willful misconduct.

24 (2) Any liability is limited to the applicable limits of the professional liability insurance
25 provided by the State Board of Risk and Insurance Management in effect at the time.

26 (3) Nothing in this subsection nullifies the immunity from civil liability as granted pursuant
27 to §55-7-15 of this code or federal law except to the extent to which the actions are covered within
28 the applicable limits of the professional liability insurance provided by the State Board of Risk and
29 Insurance Management pursuant to this section and in effect at the time.

30 (d) Any member school not complying with the requirements of this section, and rules
31 promulgated thereof, shall be subject to the disciplinary actions ordered by the Secondary
32 Schools Athletics Commission: *Provided*, That the West Virginia Secondary Schools Athletics
33 Commission shall promulgate rules to establish guidelines for noncompliance and related
34 disciplinary actions: *Provided, however*, That prior to state board approval and notwithstanding
35 the exemption provided in §29A-1-3 of this code, the state board shall submit the rule to the
36 Legislative Oversight Commission on Education Accountability pursuant to §29A-3B-9 of this
37 code.

NOTE: The purpose of this bill is to permit the Secondary Schools Athletics Commission to discipline schools that do not follow: 1) The requirements of their emergency action plans for athletics; or 2) the required protocol on concussions and head injuries regarding interscholastic athletes.

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