

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 426

BY SENATOR KARNES

[Introduced February 23, 2021; referred
to the Committee on Health and Human Resources;
and then to the Committee on the Judiciary]

1 A BILL to amend and reenact §16-3-10 of the Code of West Virginia, 1931, as amended, relating
 2 to clarifying the rights of a parent or legal guardian in declining specific required medication
 3 administered to a child at birth; permitting parents or legal guardians of newborn children
 4 to refuse certain medication that has been mandated for newborns; requiring that parents
 5 and legal guardians be made aware of the dangers of not receiving the otherwise required
 6 medication; providing for notation in medical records; providing for limitation of liability;
 7 prohibiting a refusal by the parents or legal guardian from being admissible in certain legal
 8 actions or investigations of those parents or legal guardians; and prohibiting discipline or
 9 penalties to certain health care professionals when a parent or legal guardian has refused
 10 or declined the otherwise mandated medication.

Be it enacted by the Legislature of West Virginia:

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

**§16-3-10. Inflammation of eyes of newborn -- Use of an appropriate medication as
 prophylactic.**

1 (a) It shall be unlawful for any physician, nurse-midwife or midwife, practicing midwifery,
 2 or other health care professional to neglect or otherwise fail to instill or have instilled, immediately
 3 upon its birth, in the eyes of the newborn ~~babe~~ child, the contents of a single-use tube of an
 4 ophthalmic ointment containing one percent tetracycline or one half of one percent erythromycin
 5 or the equivalent dosage of such medications or other appropriate medication approved by the
 6 director for prevention of inflammation of the eyes of the newborn child.

7 (b) Every physician, nurse-midwife or midwife or other health care professional shall, in
 8 making a report of a birth, state the name of the appropriate medication which was instilled into
 9 the eyes of said infant.

10 (c) The ~~director~~ commissioner shall establish a list of appropriate medications for

11 prevention of inflammation of the eyes of the newborn child. The list shall be kept current and
12 distributed to appropriate health care facilities and such other sources as the ~~director~~
13 commissioner may determine to be necessary.

1 (d) The parent or legal guardian of a newborn child may decline or refuse to have the
2 required medication set forth in subsection (a) of this section administered to the newborn child.
3 If a parent or legal guardian so refuses, the physician, nurse-midwife, or midwife, practicing
4 midwifery, or any other health care professional shall inform the parent or legal guardian of the
5 dangers associated with not administering these medications. When a parent or legal guardian
6 declines or refuses to allow administration of the medication as set forth in subsection (a) of this
7 section, the declination or refusal shall:

8 (1) Not be admissible in any investigation by Child Protective Services;

9 (2) Not be admissible in any action brought in abuse or neglect pursuant to the provisions
10 of Chapter 49 of this code; and

11 (3) Not be a basis for any investigation or action brought pursuant to the provisions of
12 Chapter 49 of this code.

13 (e) The physician, nurse-midwife, or midwife, practicing midwifery, or any other health care
14 professional shall make a notation in the medical record of the newborn child of his or her
15 discussion with the parent or legal guardian regarding potential dangers of the newborn child not
16 receiving the medication and the parent or legal guardian's decision not to have the medication
17 set forth in this section administered to the newborn child.

18 (f) No physician, nurse-midwife, or midwife, practicing midwifery, or any other health care
19 professional shall be:

20 (1) Subject to any medical malpractice claim or liability based upon the decision of the
21 parent or legal guardian not to administer the medication set forth in this section;

22 (2) Disciplined by a licensing board based upon the decision of the parent or legal guardian
23 not to administer the medication set forth in this section; or

- 24 (3) Subject to the penalties set forth in §16-3-13 of this code based upon the decision of
25 the parent or legal guardian not to administer the medication set forth in this section.

NOTE: The purpose of this bill is to permit parents or legal guardians of newborn children to refuse certain medication that has been mandated for newborns. The bill requires that parents and legal guardians be made aware of the dangers of not receiving the otherwise required medication. The bill provides for notation in medical records. The bill provides for limitation of liability. The bill prohibits a refusal by the parents or legal guardian from being admissible in certain legal actions or investigations of the parents and legal guardians. The bill prohibits discipline or penalties to certain health care professionals when a parent or legal guardian has refused or declined the otherwise mandated medication.

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