WEST virginia legislature

2022 regular session

ENROLLED

Committee Substitute

for

House Bill 4012

By Delegates Horst, J. Jeffries, Steele, Conley, Crouse, Maynor, G. Ward, Worrell, Foster, Dean, and Nestor

[Passed March 12, 2022; in effect from passage.]

AN ACT to amend and reenact §16-3-4b of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §16-3-4c, all relating to COVID-19 vaccination, generally prohibiting the showing of proof of a COVID-19 vaccination as a condition for entering upon the premises of any state or local governmental official, entity, department, or agency, or as a condition for entering upon the premises of a hospital or enrolling in a state institution of higher education, unless such proof is required by federal law or regulation; clarifying that a covered employer does not include any Medicare or Medicaid-certified facilities which are subject to federal regulations; clarifying that employees of otherwise covered employers who are required to work in Medicare or Medicaid-certified facilities are not subject to the prohibition; exempting from proof of vaccination prohibition students whose academic program requires vaccination against COVID-19; defining terms; and providing that sincerely held religious beliefs are an exemption to immunization.

Be it enacted by the Legislature of West Virginia:

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

**§16-3-4b. Required exemptions to compulsory immunization against COVID-19 as a condition of employment; effective date.**

(a) A covered employer, as defined in this section, that requires as a condition of continued employment or as a condition of hiring an individual for employment, that such person receive a COVID-19 immunization or present documentation of immunization from COVID-19, shall exempt current or prospective employees from such immunization requirements upon the presentation of one of the following certifications:

(1) A certification presented to the covered employer, signed by a licensed physician or a licensed advanced practice registered nurse who has conducted an in-person examination of the employee or prospective employee, stating that the physical condition of the current or prospective employee is such that a COVID-19 immunization is contraindicated; there exists a specific precaution to the mandated vaccine; or the current or prospective employee has developed COVID-19 antibodies from being exposed to the COVID-19 virus, or suffered from and has recovered from the COVID-19 virus; or

(2) A notarized certification executed by the employee or prospective employee that is presented to the covered employer by the current or prospective employee that he or she has sincerely held religious beliefs that prevent the current or prospective employee from taking the COVID-19 immunization.

(b) A covered employer may not be permitted to penalize or discriminate against current or prospective employees for exercising exemption rights provided in this section by practices including, but not limited to, benefits decisions, hiring, firing, or withholding bonuses, pay raises, or promotions.

(c) As used in this section, the following terms shall have the following meaning:

 “Covered employer” means:

(1) The State of West Virginia, including any department, division, agency, bureau, board, commission, office, or authority thereof, or any political subdivision of the State of West Virginia including, but not limited to, any county, municipality, or school district;

(2) A business entity, including without limitation any individual, firm, partnership, joint venture, association, corporation, company, estate, trust, business trust, receiver, syndicate, club, society, or other group or combination acting as a unit, engaged in any business activity in this state, including for-profit or not-for-profit activity, that has employees;

(3) “Covered employer” does not include any Medicare or Medicaid-certified facilities which are subject to enforceable federal regulations contrary to the requirements of this section;

(4) “COVID-19” means the same as that term is defined in §55-19-3 of this code; or

(5) “Immunization” means any federally authorized immunization for COVID-19, whether fully approved or approved under an emergency use authorization.

(d) The provisions of this section are inapplicable to employees of covered employers who are required to work in Medicare or Medicaid-certified facilities which are subject to enforceable federal regulations contrary to the requirements of this section.

(e) Any person or entity harmed by a violation of this section may seek injunctive relief in a court of competent jurisdiction.

(f) The provisions of this section shall become effective immediately.

(g) Pursuant to §2-2-10 of this code, if any provision of this section or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the section, and to this end the provisions of this section are declared to be severable.

§16-3-4c. Prohibiting proof of COVID-19 vaccination.

(a) As used in this section:

(1) “COVID-19” has the same definition as provided in §55-19-3 of this code;

(2) “Hospital” has the same definition as provided in §16-5B-1 of this code;

(3) “Immunization” has the same definition as provided in §55-19-3 of this code;

(4) “Proof of vaccination” means physical documentation or digital storage of protected health information related to an individual’s immunization or vaccination against COVID-19; and

(5) “State institution of higher education” has the same meaning as provided in §18B-1-2 of this code.

(b) A state or local governmental official, entity, department, or agency may not require proof of vaccination as a condition of entering the premises of a state or local government entity, or utilizing services provided by a state or local government entity: *Provided,* That if any federal law or regulation requires proof of vaccination as a condition of entering the premises, the provisions of this subsection shall not apply: *Provided, however*, That this prohibition does not apply to any local government-owned facility that is leased to a private entity where the local governmental unit primarily serves as a property owner receiving rental payments.

(c) A hospital may not require proof of vaccination as a condition of entering the premises: *Provided,* That if any federal law or regulation requires proof of vaccination as a condition of entering the premises, the provisions of this subsection shall not apply.

(d) A state institution of higher education may not require proof of vaccination as a condition of enrollment or for entering the premises: *Provided,* That if any federal law or regulation requires proof of vaccination as a condition of entering the premises, or if the academic requirements of a particular program cannot be met without vaccination and proof thereof, the provisions of this subsection shall not apply.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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 *Chairman, House Committee*

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 *Chairman, Senate Committee*

Originating in the House.

In effect from passage.

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 *Clerk of the House of Delegates*

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 *Clerk of the Senate*

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 *Speaker of the House of Delegates*

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 *President of the Senate*

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day of ..........................................................................................................., 2022.

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 *Governor*