

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 710

BY SENATORS TARR, RUCKER, SYPOLT, KARNES, AND

ROBERTS

[Introduced February 21, 2022; referred
to the Committee on Finance]

1 A BILL to amend and reenact §16-3-4b of the Code of West Virginia, 1931, as amended, relating
2 to exemptions from COVID-19 immunization; requiring any hospital licensed in this state
3 to reimburse the state in certain circumstances; precluding the use of West Virginia
4 National Guard members as labor replacement without reimbursement in certain
5 circumstances; allowing the adjutant general to set reimbursement rate; allowing the State
6 Auditor to certify the rate; and clarifying that a hospital is a covered employer.

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.**

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

6 (1) A certification presented to the covered employer, signed by a physician licensed
7 pursuant to ~~the provisions of~~ §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code or an advanced
8 practice registered nurse licensed pursuant to ~~the provisions of~~ §30-7-1 *et seq.* of this code who
9 has conducted an in person examination of the employee or prospective employee, stating that
10 the physical condition of the current or prospective employee is such that a COVID-19
11 immunization is contraindicated, there exists a specific precaution to the mandated vaccine, or
12 the current or prospective employee has developed COVID-19 antibodies from being exposed to
13 the COVID-19 virus or suffered from and has recovered from the COVID-19 virus; or

14 (2) A notarized certification executed by the employee or prospective employee that is

15 presented to the covered employer by the current or prospective employee that he or she has
16 religious beliefs that prevent the current or prospective employee from taking the COVID-19
17 immunization.

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

22 (c) Any hospital licensed in this state pursuant to the provisions of §16-5B-1 et seq. of this
23 code that has required any full or part time employee of the hospital to take leave for refusing to
24 take a COVID-19 immunization and who utilizes the services of the West Virginia National Guard
25 to support the hospitals as labor replacement for the lack of employees shall reimburse the state
26 for any state or federal funds expended by the state to pay for the cost of those services. The
27 amount of the reimbursement shall be determined by the Adjutant General as defined in §15A-
28 1A-1 et seq. of this code and certified by the State Auditor. A hospital shall be considered a
29 covered employee pursuant to the provisions of subdivision (d)(1)(B) of this section.

30 ~~(d)~~ (d) As used in this section, the following terms shall have the following meaning:

31 "Covered employer" ~~shall mean~~ means:

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

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

39 ~~(2)~~ "COVID-19" ~~shall mean~~ means the same as that term is defined in §55-19-3 of this
40 code;

41 ~~(3)~~ "Immunization" ~~shall mean~~ means any federally authorized immunization for COVID-
42 19, whether fully approved or approved under an emergency use authorization.

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

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

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

NOTE: The purpose of this bill is to require any hospital licensed in this state to reimburse the state when the hospital has required employees to take leave for refusing to take COVID-19 immunization and the West Virginia National Guard members are used for labor replacement.

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