

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **Senate Bill 535**

By Senators Chapman, Rucker, Taylor, Azinger,  
Deeds, Karnes, Martin, Maynard, Phillips, Smith,  
Swope, Tarr, and Stuart

[Introduced February 01, 2023; referred  
to the Committee on Health and Human Resources ]

1 A BILL to amend and reenact §16-3-4 of the Code of West Virginia, 1931, as amended, relating to  
2 creating religious and philosophical exemptions for school attendance vaccines.

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

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

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

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

5 (b) Except as hereinafter provided, a child entering school or a state-regulated child care  
6 center in this state must be immunized against chickenpox, hepatitis-b, measles, meningitis,  
7 mumps, diphtheria, polio, rubella, tetanus and whooping cough, unless the child is exempted from  
8 immunization pursuant to this section.

9 (c) No child or person may be admitted or received in any of the schools of the state or a  
10 state-regulated child care center until he or she has been immunized against chickenpox,  
11 hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough  
12 ~~or produces a certificate from the commissioner granting the child or person~~ unless the child  
13 obtains an exemption from the compulsory immunization requirements of this section.

14 ~~(d) Any school or state-regulated child care center personnel having information~~  
15 ~~concerning any person who attempts to be enrolled in a school or state-regulated child care center~~  
16 ~~without having been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps,~~  
17 ~~diphtheria, polio, rubella, tetanus and whooping cough shall report the names of all such persons~~  
18 ~~to the commissioner.~~

19 ~~(e) Persons may be provisionally enrolled under minimum criteria established by the~~  
20 ~~commissioner so that the person's immunization may be completed while missing a minimum~~  
21 ~~amount of school. No person shall be allowed to enter school without at least one dose of each~~  
22 ~~required vaccine~~

23 ~~(f)~~ (d) County health departments shall furnish the biologicals for this immunization for  
24 children of parents or guardians who attest that they cannot afford or otherwise access vaccines  
25 elsewhere.

26 ~~(g)~~ (e) Health officers and physicians who provide vaccinations must present the person  
27 vaccinated with a certificate free of charge showing that they have been immunized against  
28 chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and  
29 whooping cough, or he or she may give the certificate to any person or child whom he or she  
30 knows to have been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps,  
31 diphtheria, polio, rubella, tetanus and whooping cough.

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

36 (1) A request for an exemption to the compulsory immunization requirements of this  
37 section must be accompanied by: ~~the certification of a licensed physician stating that the physical~~  
38 ~~condition of the child is such that immunization is contraindicated or there exists a specific~~  
39 ~~precaution to a particular vaccine~~

40 (A) The certification of a licensed physician stating that the physical condition of the child is  
41 such that immunization is contraindicated or there exists a specific precaution to a particular  
42 vaccine; or

43 (B) Notwithstanding any other provisions in this code, any child whose parents present a  
44 letter stating that a child cannot be vaccinated for religious or philosophical reasons shall be

45 granted an exemption.

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

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

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

54 ~~(5) The final determination of the State Health Officer is subject to a right of appeal~~  
55 ~~pursuant to the provisions of §29A-5-1 et sec. of this code.~~

56 ~~(i) A physician who provides any person with a false certificate of immunization against~~  
57 ~~chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and~~  
58 ~~whooping cough is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$25~~  
59 ~~nor more than \$100~~

60 ~~(f) No school, childcare facility, or agent may question, penalize, or discriminate against~~  
61 ~~any person exercising exemption rights provided in this section.~~

62 ~~(g) Any person harmed by a violation of this section may seek injunctive relief in a court of~~  
63 ~~competent jurisdiction.~~

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

68 ~~(i) The provisions of this section shall become effective immediately.~~

NOTE: The purpose of this bill is to add additional exemptions to the compulsory childhood

immunization of school children. The public has a right to be free from communicable diseases, but a parent or guardian has the right to raise a child according to his or her religious and philosophical beliefs. This bill will bring West Virginia in line with 44 other states in the United States that permit a religious, philosophical, or religious and philosophical exemptions to mandatory childhood vaccines. A child should never be denied his or her Constitutionally guaranteed fundamental right to an education.

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