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**HOUSE BILL NO. 189**

Offered January 13, 2010

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*A BILL to amend and reenact §§ 22.1-271.2, 22.1-271.4, 23-7.5, 32.1-46, 32.1-46.01, and 32.1-126.4 of the Code of Virginia, relating to immunizations; philosophical exemption.*

Patrons—Purkey and Cole

Referred to Committee on Health, Welfare and Institutions

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 22.1-271.2, 22.1-271.4, 23-7.5, 32.1-46, 32.1-46.01, and 32.1-126.4 of the Code of Virginia are amended and reenacted as follows:**

§ 22.1-271.2. Immunization requirements.

A. No student shall be admitted by a school unless at the time of admission the student or his parent submits documentary proof of immunization to the admitting official of the school or unless the student is exempted from immunization pursuant to subsection C or is a homeless child or youth as defined in subdivision 6 of § 22.1-3. If a student does not have documentary proof of immunization, the school shall notify the student or his parent (i) that it has no documentary proof of immunization for the student; (ii) that it may not admit the student without proof unless the student is exempted pursuant to subsection C, including any homeless child or youth as defined in subdivision 6 of § 22.1-3; (iii) that the student may be immunized and receive certification by a licensed physician, registered nurse or an employee of a local health department; and (iv) how to contact the local health department to learn where and when it performs these services. Neither this Commonwealth nor any school or admitting official shall be liable in damages to any person for complying with this section.

Any physician, registered nurse or local health department employee performing immunizations shall provide to any person who has been immunized or to his parent, upon request, documentary proof of immunizations conforming with the requirements of this section.

B. Any student whose immunizations are incomplete may be admitted conditionally if that student provides documentary proof at the time of enrollment of having received at least one dose of the required immunizations accompanied by a schedule for completion of the required doses within 90 days.

The immunization record of each student admitted conditionally shall be reviewed periodically until the required immunizations have been received.

Any student admitted conditionally and who fails to comply with his schedule for completion of the required immunizations shall be excluded from school until his immunizations are resumed.

C. No certificate of immunization shall be required for the admission to school of any student if (i) the student or his parent submits an affidavit to the admitting official stating that the administration of immunizing agents conflicts with the student's religious tenets or practices *or philosophical views*; or (ii) the school has written certification from a licensed physician or a local health department that one or more of the required immunizations may be detrimental to the student's health, indicating the specific nature and probable duration of the medical condition or circumstance that contraindicates immunization.

However, if a student is a homeless child or youth as defined in subdivision 6 of § 22.1-3 and (a) does not have documentary proof of necessary immunizations or has incomplete immunizations and (b) is not exempted from immunization pursuant to clauses (i) or (ii) of this subsection, the school division shall immediately admit such student and shall immediately refer the student to the local school division liaison, as described in the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001, as amended (42 U.S.C. § 11431 et seq.) (the Act), who shall assist in obtaining the documentary proof of, or completing, immunization and other services required by such Act.

D. The admitting official of a school shall exclude from the school any student for whom he does not have documentary proof of immunization or notice of exemption pursuant to subsection C, including notice that such student is a homeless child or youth as defined in subdivision 6 of § 22.1-3.

E. Every school shall record each student's immunizations on the school immunization record. The school immunization record shall be a standardized form provided by the State Department of Health, which shall be a part of the mandatory permanent student record. Such record shall be open to inspection by officials of the State Department of Health and the local health departments.

The school immunization record shall be transferred by the school whenever the school transfers any student's permanent academic or scholastic records.

Within 30 calendar days after the beginning of each school year or entrance of a student, each admitting official shall file a report with the local health department. The report shall be filed on forms

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59 prepared by the State Department of Health and shall state the number of students admitted to school  
60 with documentary proof of immunization, the number of students who have been admitted with a  
61 medical ~~or~~, religious, *or philosophical* exemption and the number of students who have been  
62 conditionally admitted, including those students who are homeless children or youths as defined in  
63 subdivision 6 of § 22.1-3.

64 F. The requirement for Haemophilus Influenzae Type b immunization as provided in § 32.1-46 shall  
65 not apply to any child admitted to any grade level, kindergarten through grade 12.

66 G. The Board of Health shall promulgate rules and regulations for the implementation of this section  
67 in congruence with rules and regulations of the Board of Health promulgated under § 32.1-46 and in  
68 cooperation with the Board of Education.

69 § 22.1-271.4. Health requirements for home-instructed, exempted, and excused children.

70 In addition to compliance with the requirements of subsection B, C, or H of § 22.1-254 or  
71 § 22.1-254.1, any parent, guardian or other person having control or charge of a child being home  
72 instructed, exempted or excused from school attendance shall comply with the immunization  
73 requirements provided in § 32.1-46 in the same manner and to the same extent as if the child has been  
74 enrolled in and is attending school.

75 Upon request by the division superintendent, the parent shall submit to such division superintendent  
76 documentary proof of immunization in compliance with § 32.1-46.

77 No proof of immunization shall be required of any child upon submission of (i) an affidavit to the  
78 division superintendent stating that the administration of immunizing agents conflicts with the parent's or  
79 guardian's religious tenets or practices *or philosophical views*, or (ii) a written certification from a  
80 licensed physician that one or more of the required immunizations may be detrimental to the child's  
81 health, indicating the specific nature of the medical condition or circumstance that contraindicates  
82 immunization.

83 § 23-7.5. Health histories required; immunizations.

84 A. No full-time student shall be enrolled for the first time in any four-year, public institution of  
85 higher education in this Commonwealth unless he has furnished, before the beginning of the second  
86 semester or quarter of enrollment, a health history consistent with guidelines adopted by each  
87 institution's board of visitors, pursuant to the requirements of this section. Any student who fails to  
88 furnish the history will not be eligible for registration for the second semester or quarter. Any student  
89 who objects on religious *or philosophical* grounds shall be exempt from the health history requirement  
90 set forth in this section.

91 B. The health history shall include documented evidence, provided by a licensed health professional  
92 or health facility, of the diseases for which the student has been immunized, the numbers of doses  
93 given, the dates when administered and any further immunizations indicated. Prior to enrollment, all  
94 students shall be immunized by vaccine against diphtheria, tetanus, poliomyelitis, measles (rubeola),  
95 German measles (rubella), and mumps according to the guidelines of the American College Health  
96 Association.

97 C. In addition to the immunization requirements set forth in subsection B, all incoming full-time  
98 students, prior to enrollment in any public four-year institution of higher education, shall be vaccinated  
99 against (i) meningococcal disease and (ii) hepatitis B.

100 However, if the institution of higher education provides the student or, if the student is a minor, the  
101 student's parent or other legal representative, detailed information on the risks associated with  
102 meningococcal disease and hepatitis B and on the availability and effectiveness of any vaccine, the  
103 student or, if the student is a minor, the student's parent or other legal representative may sign a written  
104 waiver stating that he has received and reviewed the information on meningococcal disease and hepatitis  
105 B and the availability and effectiveness of any vaccine and has chosen not to be or not to have the  
106 student vaccinated.

107 D. Any student shall be exempt from the immunization requirements set forth in this section who (i)  
108 objects on the grounds that administration of immunizing agents conflicts with his religious tenets or  
109 practices *or philosophical views*, unless an emergency or epidemic of disease has been declared by the  
110 Board of Health, or (ii) presents a statement from a licensed physician which states that his physical  
111 condition is such that administration of one or more of the required immunizing agents would be  
112 detrimental to his health.

113 E. The Board and Commissioner of Health shall cooperate with any board of visitors seeking  
114 assistance in the implementation of this section.

115 F. Further, the State Council of Higher Education shall, in cooperation with the Board and  
116 Commissioner of Health, encourage private colleges and universities to develop a procedure for  
117 providing information about the risks associated with meningococcal disease and hepatitis B and the  
118 availability and effectiveness of any vaccine against meningococcal disease and hepatitis B.

119 § 32.1-46. Immunization of patients against certain diseases.

120 A. The parent, guardian or person standing in loco parentis of each child within this Commonwealth

shall cause such child to be immunized in accordance with the Immunization Schedule developed and published by the Centers for Disease Control and Prevention (CDC), Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP). The required immunizations for attendance at a public or private elementary, middle or secondary school, child care center, nursery school, family day care home or developmental center shall be those set forth in the State Board of Health Regulations for the Immunization of School Children. The Board's regulations shall at a minimum require:

1. A minimum of three properly spaced doses of hepatitis B vaccine (HepB).

2. A minimum of three or more properly spaced doses of diphtheria toxoid. One dose shall be administered on or after the fourth birthday. A booster dose shall be administered prior to entering the sixth grade if at least five years have passed since the last dose of diphtheria toxoid.

3. A minimum of three or more properly spaced doses of tetanus toxoid. One dose shall be administered on or after the fourth birthday. A booster dose of Tdap vaccine shall be administered prior to entering the sixth grade if at least five years have passed since the last dose of tetanus toxoid.

4. A minimum of three or more properly spaced doses of acellular pertussis vaccine. One dose shall be administered on or after the fourth birthday. A booster dose shall be administered prior to entry into the sixth grade if at least five years have passed since the last dose of pertussis vaccine.

5. Two or three primary doses of *Haemophilus influenzae* type b (Hib) vaccine, depending on the manufacturer, for children up to 60 months of age.

6. Two properly spaced doses of live attenuated measles (rubeola) vaccine. The first dose shall be administered at age 12 months or older.

7. One dose of live attenuated rubella vaccine shall be administered at age 12 months or older.

8. One dose of live attenuated mumps vaccine shall be administered at age 12 months or older.

9. All susceptible children born on and after January 1, 1997, shall be required to have one dose of varicella vaccine on or after 12 months.

10. Three or more properly spaced doses of oral polio vaccine (OPV) or inactivated polio vaccine (IPV). One dose shall be administered on or after the fourth birthday. A fourth dose shall be required if the three dose primary series consisted of a combination of OPV and IPV.

11. Two to four doses, dependent on age at first dose, of properly spaced pneumococcal 7-valent conjugate (PVC) vaccine for children less than two years of age.

12. Three doses of properly spaced human papillomavirus (HPV) vaccine for females. The first dose shall be administered before the child enters the sixth grade.

The parent, guardian or person standing in loco parentis may have such child immunized by a physician or registered nurse or may present the child to the appropriate local health department, which shall administer the vaccines required by the State Board of Health Regulations for the Immunization of School Children without charge.

B. A physician, registered nurse or local health department administering a vaccine required by this section shall provide to the person who presents the child for immunizations a certificate that shall state the diseases for which the child has been immunized, the numbers of doses given, the dates when administered and any further immunizations indicated.

C. The vaccines required by this section shall meet the standards prescribed in, and be administered in accordance with, regulations of the Board.

D. The provisions of this section shall not apply if:

1. The parent or guardian of the child objects thereto on the grounds that the administration of immunizing agents conflicts with his religious tenets or practices *or philosophical views*, unless an emergency or epidemic of disease has been declared by the Board;

2. The parent or guardian presents a statement from a physician licensed to practice medicine in Virginia, or a licensed nurse practitioner, that states that the physical condition of the child is such that the administration of one or more of the required immunizing agents would be detrimental to the health of the child; or

3. Because the human papillomavirus is not communicable in a school setting, a parent or guardian, at the parent's or guardian's sole discretion, may elect for the parent's or guardian's child not to receive the human papillomavirus vaccine, after having reviewed materials describing the link between the human papillomavirus and cervical cancer approved for such use by the Board.

E. For the purpose of protecting the public health by ensuring that each child receives age-appropriate immunizations, any physician, physician assistant, nurse practitioner, licensed institutional health care provider, local or district health department, the Virginia Immunization Information System, and the Department of Health may share immunization and patient locator information without parental authorization, including, but not limited to, the month, day, and year of each administered immunization; the patient's name, address, telephone number, birth date, and social security number; and the parents' names. The immunization information; the patient's name, address,

182 telephone number, birth date, and social security number; and the parents' names shall be confidential  
183 and shall only be shared for the purposes set out in this subsection.

184 F. The State Board of Health shall review this section annually and make recommendations for  
185 revision by September 1 to the Governor, the General Assembly, and the Joint Commission on Health  
186 Care.

187 § 32.1-46.01. Virginia Immunization Information System.

188 A. The Board of Health shall establish the Virginia Immunization Information System (VIIS), a  
189 statewide immunization registry that consolidates patient immunization histories from birth to death into  
190 a complete, accurate, and definitive record that may be made available to participating health care  
191 providers throughout Virginia, to the extent funds are appropriated by the General Assembly or  
192 otherwise made available. The purposes of VIIS shall be to (i) protect the public health of all citizens of  
193 the Commonwealth, (ii) prevent under- and over-immunization of children, (iii) ensure up-to-date  
194 recommendations for immunization scheduling to health care providers and the Board, (iv) generate  
195 parental reminder and recall notices and manufacturer recalls, (v) develop immunization coverage  
196 reports, (vi) identify areas of under-immunized population, and (vii) provide, in the event of a public  
197 health emergency, a mechanism for tracking the distribution and administration of immunizations,  
198 immune globulins, or other preventive medications or emergency treatments.

199 B. The Board of Health shall promulgate regulations to implement the VIIS that shall address:

200 1. Registration of voluntary participants, including, but not limited to, a list of those health care  
201 entities that are authorized to participate and any forms and agreements necessary for compliance with  
202 the regulations concerning patient privacy promulgated by the federal Department of Health and Human  
203 Services;

204 2. Procedures for confirming, continuing, and terminating participation and disciplining any  
205 participant for unauthorized use or disclosure of any VIIS data;

206 3. Procedures, timelines, and formats for reporting of immunizations by participants;

207 4. Procedures to provide for a secure system of data entry that may include encrypted online data  
208 entry or secure delivery of data files;

209 5. Procedures for incorporating the data reported on children's immunizations pursuant to subsection  
210 E of § 32.1-46;

211 6. The patient identifying data to be reported, including, but not limited to, the patient's name, date  
212 of birth, gender, telephone number, home address, birth place, and mother's maiden name;

213 7. The patient immunization information to be reported, including, but not necessarily limited to, the  
214 type of immunization administered (specified by current procedural terminology (CPT) code or Health  
215 Level 7 (HL7) code); date of administration; identity of administering person; lot number; and if present,  
216 any contraindications, or religious, *philosophical*, or medical exemptions;

217 8. Mechanisms for entering into data-sharing agreements with other state and regional immunization  
218 registries for the exchange, on a periodic nonemergency basis and in the event of a public health  
219 emergency, of patient immunization information, after receiving, in writing, satisfactory assurances for  
220 the preservation of confidentiality, a clear description of the data requested, specific details on the  
221 intended use of the data, and the identities of the persons with whom the data will be shared;

222 9. Procedures for the use of vital statistics data, including, but not necessarily limited to, the linking  
223 of birth certificates and death certificates;

224 10. Procedures for requesting immunization records that are in compliance with the requirements for  
225 disclosing health records set forth in § 32.1-127.1:03; such procedures shall address the approved uses  
226 for the requested data, to whom the data may be disclosed, and information on the provisions for  
227 disclosure of health records pursuant to § 32.1-127.1:03;

228 11. Procedures for releasing aggregate data, from which personal identifying data has been removed  
229 or redacted, to qualified persons for purposes of research, statistical analysis, and reporting; and

230 12. Procedures for the Commissioner of Health to access and release, as necessary, the data  
231 contained in VIIS in the event of an epidemic or an outbreak of any vaccine-preventable disease or the  
232 potential epidemic or epidemic of any disease of public health importance, public health significance, or  
233 public health threat for which a treatment or vaccine exists.

234 The Board's regulations shall also include any necessary definitions for the operation of VIIS;  
235 however, "health care entity," "health care plan," and "health care provider" shall be as defined in  
236 subsection B of § 32.1-127.1:03.

237 C. The establishment and implementation of VIIS is hereby declared to be a necessary public health  
238 activity to ensure the integrity of the health care system in Virginia and to prevent serious harm and  
239 serious threats to the health and safety of individuals and the public. Pursuant to the regulations  
240 concerning patient privacy promulgated by the federal Department of Health and Human Services,  
241 covered entities may disclose protected health information to the secure system established for VIIS  
242 without obtaining consent or authorization for such disclosure. Such protected health information shall  
243 be used exclusively for the purposes established in this section.

244 D. The Board and Commissioner of Health, any employees of the health department, any voluntary  
245 participant, and any person authorized to report or disclose immunization data hereunder shall be  
246 immune from civil liability in connection therewith unless such person acted with gross negligence or  
247 malicious intent.

248 E. This section shall not diminish the responsibility of any physician or other person to maintain  
249 accurate patient immunization data or the responsibility of any parent, guardian, or person standing in  
250 loco parentis to cause a child to be immunized in accordance with the provisions of § 32.1-46. Further,  
251 this section shall not be construed to require the immunization of any person who objects thereto on the  
252 grounds that the administration of immunizing agents conflicts with his religious tenets or practices *or*  
253 *philosophical views*, or any person for whom administration of immunizing agents would be detrimental  
254 to his health.

255 § 32.1-126.4. Hospital standing orders or protocols for certain vaccinations.

256 A. A hospital may provide or arrange for the administration under a standing order or protocol  
257 approved by a member or committee of the hospital's medical staff of (i) influenza vaccinations and (ii)  
258 pneumococcal vaccinations, thus waiving the requirement for specific written physician orders for  
259 influenza and pneumococcal immunizations. However, no such standing order or protocol shall  
260 supersede a physician's authority to issue specific written orders relating to immunizations.

261 B. Any standing order or protocol authorized by this section shall require that the vaccinations be  
262 administered in accordance with the most recent recommendations of the Advisory Committee on  
263 Immunization Practices of the Centers for Disease Control and Prevention after (i) ascertaining that the  
264 vaccination is not medically contraindicated for the patient, (ii) determining the patient's wishes and any  
265 religious *or philosophical* objections, and (iii) obtaining informed consent from the patient or his legal  
266 representative.

267 C. Vaccinations administered under a standing order or protocol shall be documented in the patient's  
268 health record.