



**Sub. H.B. 463\***

125th General Assembly

(As Reported by S. Health, Human Services and Aging)

**Reps. Combs, Clancy, Hollister, Collier, Flowers, Schneider, Wolpert, Hagan, Hughes, McGregor, Daniels, Walcher, Wilson, Jerse, Carano, Seaver, Harwood, Martin, Beatty, DeBose, S. Smith, Barrett, Allen, C. Evans, Key, Mason, Miller, Otterman, S. Patton, Sferra, D. Stewart, Strahorn, Sykes**

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**BILL SUMMARY**

- Requires, with certain exceptions, that pupils beginning kindergarten during or after the 2006 school year be immunized against chicken pox.
- Requires that the Director of Health, to the extent appropriations made by the General Assembly make this possible, provide the means of immunization against chicken pox to boards of health, legislative authorities of municipal corporations, and boards of township trustees for the purpose of the law governing pupil immunizations.
- Creates an exception applicable to all of the mandated immunizations that permits a pupil's parent or guardian to decline to have the pupil immunized for "reasons of conscience, including religious convictions," thereby replacing the exception permitting a parent to object to immunization for "good cause, including religious convictions."
- Eliminates a provision specifying that the mandated pupil immunization law does not limit or impair the right of a board of education to secure the immunization of pupils under its jurisdiction and prohibits a board of education from adopting rules that are inconsistent with the law governing exemptions from mandatory immunization.

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\* *This analysis was prepared before the report of the Senate Health, Human Services and Aging Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Permits a school to deny admission to a pupil otherwise exempted from the chicken pox immunization requirement during a chicken pox epidemic.
- Requires the board of education or governing body of a school to adopt a policy whereby the academic standing of a pupil who is denied admission during an epidemic may be preserved.
- Permits the Director of Health to approve the methods of pupil immunization, rather than the means of immunization.

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## **CONTENT AND OPERATION**

### **Current immunization requirements**

(R.C. 3313.671 and 3701.13)

Current law requires pupils attending public schools or nonpublic schools that meet state educational standards to be immunized against mumps, poliomyelitis, diphtheria, pertussis, tetanus, rubeola, and rubella. Since the 1999 school year, kindergartners have also been required to be immunized against hepatitis B.

A pupil may not be permitted to remain in school for more than 14 days unless the pupil presents written evidence satisfactory to the person in charge of admission that the pupil has been immunized against the disease or diseases or is in the process of being so immunized. "In the process of being so immunized" means the pupil has been immunized against mumps, rubeola, and rubella, and if not immunized against poliomyelitis, diphtheria, pertussis, tetanus, or hepatitis B, has received at least the first dose of the immunization sequence and presents written evidence to the school principal of each subsequent dose required to obtain immunization at the intervals prescribed by the Ohio Department of Health.

Boards of health, municipal corporations, and townships, on application of a school board, are required to provide immunizations against the diseases for which immunization is required under current law. The immunizations are to be provided without delay and at public expense to pupils who have not been provided with them by their parents or guardians.

The Department has authority to approve means of immunization against the diseases for which pupils are required to be immunized.

### **Exceptions to immunization requirements**

There are several statutory exceptions to the immunization requirement. A pupil who has had natural rubeola or mumps, and presents a signed statement from a parent or physician to that effect, is not required to be immunized against the disease for which there is immunity. A pupil is not required to be immunized if a written statement is presented by the parent or guardian stating an objection to immunization for good cause, including religious convictions. If a physician certifies in writing that an immunization against a particular disease is medically contraindicated, a pupil is not required to be immunized against that disease. Current law provides, however, that the exceptions do not limit or impair the right of a public school district board of education to make and enforce rules to secure immunization of the pupils under its jurisdiction.

### **The bill**

#### **Immunization requirement**

(R.C. 3313.67 and 3313.671)

The bill requires that pupils who begin kindergarten during or after the 2006 school year be immunized against chicken pox. It revises the definition of "in the process of being immunized" to include chicken pox as one of the diseases against which a pupil must have been completely immunized.

The bill also applies the current exceptions to the immunization requirements to chicken pox, except that it amends the exception pertaining to religious objections. The bill provides that a pupil is not required to be immunized against any of the specified diseases if the pupil presents a written statement of the parent or guardian in which the parent or guardian *declines* to have the pupil immunized *for reasons of conscience, including religious convictions*.

The bill permits a school to deny admission to a pupil otherwise exempted from the chicken pox immunization requirement if the Director of the Ohio Department of Health notifies the school's principal or chief administrative officer that a chicken pox epidemic exists in the school's population. When the Director notifies the principal or officer that the epidemic no longer exists, the school must readmit the pupil. The bill further requires the board of education or governing body of each school subject to the bill to adopt a policy whereby the academic standing of a pupil who is denied admission during a chicken pox epidemic may be preserved.

The bill adds a pupil's guardian to the persons (currently a parent or physician) who may sign a statement that the pupil has had natural rubeola or

natural mumps to excuse the pupil from the requirement to be immunized against rubeola or mumps. The bill also provides such an exception to the chicken pox requirement.

In addition, the bill removes the provision in current law providing that the right of a public school district board of education is not limited or impaired with respect to making and enforcing rules to secure immunizations against the various diseases and prohibits a board of education from adopting rules that are inconsistent with the law governing exemptions from mandatory immunization (see **COMMENT**).

### **Department of Health**

(R.C. 3701.13 and 3701.134)

Whereas current law authorizes the Department of Health to approve *means* of immunization against mumps, poliomyelitis, rubeola, diphtheria, rubella, pertussis, tetanus, and hepatitis B for the purpose of carrying out the law requiring pupil immunizations, the bill provides that the Department may approve *methods* of immunization against the diseases specified in the law requiring pupil immunizations.<sup>1</sup>

The bill does not add chicken pox to the diseases a board of health, legislative authority of a municipal corporation, or board of township trustees is required, on application of a board of education or proper school authority, to provide the means of immunization against. The bill provides, however, that the Director of Health must, to the extent appropriations made by the General Assembly make this possible, provide the means of immunization against chicken pox to boards of health, legislative authorities of municipal corporations, and boards of township trustees for the purpose of the law governing pupil immunizations.

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## **COMMENT**

Existing law provides that a school district board of education has authority to make and enforce rules to secure the immunization of the pupils attending or eligible to attend the district's schools. Prior to enactment of the current statute, the Ohio Supreme Court upheld the authority of school boards to make and enforce such rules. (*State, ex rel. Milhoof v. Board of Education* (1907), 76 Ohio

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<sup>1</sup> Because the bill adds chicken pox to the diseases specified in the pupil immunization law, chicken pox becomes one of the diseases the Department has authority to approve the methods of immunization against.

St. 297; *State ex rel. Dunham v. Board of Ed. of City School Dist. of Cincinnati* (1951), 154 Ohio St. 469.)

The Miami County Court of Appeals later considered this authority in light of the current statute, which requires immunization but permits exceptions. It held that the provision stating that the statute does not limit or impair a board's right to make and enforce rules to secure immunization reaffirms the authority of school boards to require immunization of all pupils. (*State ex rel. Mack v. Board of Ed. of Covington* (Miami 1963), 1 Ohio App. 2d 143.) Since the bill eliminates the provision of current law authorizing a school board to make and enforce rules to secure immunization of the pupils attending or eligible to attend the district's schools and expressly prohibits a board of education from adopting a rule that is inconsistent with the law governing exemptions, to mandatory immunization, a court interpreting the law after the enactment of this bill would likely hold that these prior decisions are no longer applicable.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-15-04	p. 1760
Reported, H. Health	05-26-04	p. 2001
Passed House (70-28)	05-26-04	pp. 2109-2110
Reported, S. Health, Human Services, and Aging	---	---

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