

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1977



ENROLLED

*Committee Substitute for*

HOUSE BILL No. 1252

(By Mr. Wiedbusch & Miss Shuman)



PASSED April 8, 1977

In Effect ninty days from Passage

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**

**H. B. 1252**

(By MR. WIEDEBUSCH and MISS SHUMAN)

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[Passed April 8, 1977; in effect ninety days from passage.]

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AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-eight; and to amend and reenact section thirteen, article five, chapter eighteen of said code, relating to the authority of the state board of education and the county boards of education to regulate the sale of certain foods on public school property; to regulate the installation of vending machines; allowing county boards to establish rules and regulations for hiring of school bus drivers; and criminal offenses and penalties in regard to keeping and posting of records of certain funds.

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

That article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-eight; and that section thirteen, article five, chapter eighteen of said code be amended and reenacted, all to read as follows:

**ARTICLE 2. STATE BOARD OF EDUCATION.**

**§18-2-28. Authority to regulate the sale of certain foods on school property; vending machines therefor; nutritional education required.**

- 1     The state board of education shall have authority to promul-  
2     gate rules and regulations:

3 (1) To generally supervise the sale in public schools of foods  
4 such as fruit juices, dried fruits, milk, peanuts, cheese, soft  
5 drinks, canned soup, candy and confections;

6 (2) To generally supervise the installation in public schools  
7 of vending machines for the dispensing of such foods;

8 (3) To provide generally for the education of students con-  
9 cerning the value of nutritional eating habits; and

10 (4) To generally supervise the policies of the county boards  
11 of education governing sales of such foods.

12 Such rules and regulations shall not prohibit the sale of soft  
13 drinks candy, fruit juices, dried fruits, milk, peanuts, cheese,  
14 canned soup and confections to students in grades ten through  
15 twelve enrolled in three-year senior high schools or to students  
16 in grades nine through twelve enrolled in four-year senior  
17 high schools: *Provided*, That such rules and regulations shall  
18 prohibit a student from purchasing such foods prior to the  
19 close of the lunch period.

20 Such rules and regulations shall not prohibit the sale of soft  
21 drinks, candies, fruit juices, dried fruits, milk, peanuts, cheese,  
22 canned soup or confections in other schools during bona fide  
23 extracurricular activities during which such foods have here-  
24 tofore been lawfully sold.

25 Such rules and regulations shall not deprive the county  
26 boards of education of the immediate control and supervision  
27 of such sales.

#### **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

##### **§18-5-13. Authority of boards generally.**

1 The boards, subject to the provisions of this chapter and  
2 the rules and regulations of the state board, shall have authority:

3 (1) To control and manage all of the schools and school  
4 interests for all school activities and upon all school property,  
5 whether owned or leased by the county, including the legal re-  
6 sponsibility to require that records be kept and posted semian-  
7 nually in a conspicuous place on the premises of the participat-  
8 ing school or schools of all receipts and disbursements of all

9 funds collected or received by any principal, teacher, student or  
 10 other person in connection therewith, any programs, activities  
 11 or other endeavors of any nature operated or carried on by or  
 12 in the name of the school, or any organization or body directly  
 13 connected with the school, to audit such records and to  
 14 conserve such funds, which shall be deemed quasi-public  
 15 moneys, including securing surety bonds by expenditure of  
 16 board moneys. If any principal, teacher, student or other  
 17 person, required to keep the post records under the provisions  
 18 of this section, shall willfully fail to do so, or shall willfully  
 19 post inaccurate records, he shall be guilty of a misdemeanor,  
 20 and, upon conviction thereof, shall be fined not less than  
 21 one hundred dollars nor more than five hundred dollars;

22 (2) To establish schools, from preschool through high  
 23 school, inclusive of vocational schools; and to establish  
 24 schools and programs, or both, for post high school instruction,  
 25 subject to approval of the state board of education;

26 (3) To close any school which is unnecessary and to  
 27 assign the pupils thereof to other schools: *Provided*, That  
 28 such closing shall be officially acted upon and teachers and  
 29 service personnel involved notified on or before the first  
 30 Monday in May, in the same manner as provided in section  
 31 four of this article, except in an emergency, subject to the  
 32 approval of the state superintendent, or under subdivision  
 33 (5) of this section;

34 (4) To consolidate schools;

35 (5) To close any elementary school whose average daily  
 36 attendance falls below twenty pupils for two months in  
 37 succession, and send the pupils to other schools in the district  
 38 or to schools in adjoining districts. If the teachers in the school  
 39 so closed are not transferred or reassigned to other schools,  
 40 they shall receive one month's salary;

41 (6) (a) To provide at public expense adequate means of  
 42 transportation, including transportation across county lines,  
 43 for all children of school age who live more than two  
 44 miles distance from school by the nearest available road and  
 45 to provide at public expense and according to such regula-  
 46 tions as the board may establish, adequate means of trans-

47 portation for school children participating in board-approved  
48 curricular and extracurricular activities; and to provide in  
49 addition thereto, at public expense, by rules and regulations  
50 and within the available revenues, transportation for those  
51 within two miles distance; and to provide in addition thereto,  
52 at no cost to the board and according to rules and regulations  
53 established by the board, transportation for participants in  
54 projects operated, financed, sponsored or approved by the  
55 commission on aging: *Provided*, That all costs and expenses  
56 incident in any way to transportation for projects connected  
57 with the commission on aging shall be borne by such com-  
58 mission, or the local or county chapter thereof: *Provided*,  
59 *however*, That in all cases the buses or other transportation  
60 facilities owned by the board of education shall be driven  
61 or operated only by drivers regularly employed by the board  
62 of education: *Provided further*, That buses shall be used for  
63 extracurricular activities as herein provided only when the  
64 insurance provided for by this section shall have been effected;

65 (b) To enter into agreements with one another to provide,  
66 on a cooperative basis, adequate means of transportation across  
67 county lines for children of school age subject to the condi-  
68 tions and restrictions of subdivisions (6) and (7) of this  
69 section;

70 (7) To provide at public expense for insurance against  
71 the negligence of the drivers of school buses, trucks or other  
72 vehicles operated by the board; and if the transportation of  
73 pupils be let out to contract, then the contract therefor shall  
74 provide that the contractor shall carry insurance against  
75 negligence in such an amount as the board shall specify;

76 (8) To employ and to provide in-service training for  
77 teacher aides, the training to be in accordance with rules and  
78 regulations of the state board;

79 (9) To establish and conduct a self-supporting dormitory  
80 for the accommodation of the pupils attending a high school  
81 or participating in a post high school program and of persons  
82 employed to teach therein;

83 (10) To employ legal counsel;

84 (11) To provide, at public expense, adequate public liability  
85 insurance, including professional liability insurance for board  
86 employees.

87 No policy or contract of public liability insurance provid-  
88 ing coverage for public liability shall be purchased as provided  
89 herein, unless it shall contain a provision or endorsement  
90 whereby the company issuing such policy waives, or agrees  
91 not to assert as a defense to any claim covered by the terms  
92 of such policy, the defense of governmental immunity. In  
93 any action against the board, its officers, agents or employees,  
94 in which there is in effect liability insurance coverage in an  
95 amount equal to or greater than the amount sued for, the  
96 attorney for such board, the attorney for such insurance  
97 carrier, or any other attorney who may appear on behalf of  
98 the board, its agents, officers or employees shall not set up  
99 the defense of governmental immunity in any such action.

100 (12) To establish rules and regulations not inconsistent  
101 with the provisions of section twenty eight, article two, chapter  
102 eighteen of this code and rules and regulations promulgated  
103 pursuant thereto, governing and supervising the sale on school  
104 property of foods such as fruit juices, dried fruits, milk, pea-  
105 nuts, cheese, soft drinks, canned soup, candy and confections,  
106 the installation of vending machines for the dispensing of  
107 such foods, and the education of students concerning the  
108 value of nutritional eating habits.

109 "Quasi-public funds" as used herein are defined as any  
110 money received by any principal, teacher, student or other  
111 person for the benefit of the school system as a result of  
112 curricular or noncurricular activities.

113 The board of each county shall expend under such regula-  
114 tions as it establishes for each child an amount not to exceed  
115 the proportion of all school funds of the district that each  
116 child would be entitled to receive if all the funds were dis-  
117 tributed equally among all the children of school age in the  
118 district upon a per capita basis.

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

James L. Davis  
Chairman Senate Committee

Laurence C. Christian Jr.  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. Wilson Jr.  
Clerk of the Senate

C. Blankenship  
Clerk of the House of Delegates

H. B. Robinson  
President of the Senate

Donald L. Kopp  
Speaker House of Delegates

The within is disapproved this the 27  
day of April, 1977.

John J. Rhyne  
Governor



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