Committee Substitute
for
House Bill 2702

By Delegates Westfall, Cooper, Ambler, Wagner, Moye, Atkinson, Marcum and Higginbotham

[Passed April 8, 2017; in effect July 1, 2017.]
WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

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for

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BY DELEGATES WESTFALL, COOPER, AMBLER, WAGNER, MOYE, ATKINSON, MARCUM AND HIGGINBOTHAM

[Passed April 8, 2017; in effect July 1, 2017.]
AN ACT to amend and reenact §18-8-4 of the Code of West Virginia, 1931, as amended, relating to documentation of unexcused absences from compulsory school attendance; limiting the excused absences for personal illness or injury in the family to those of student’s parent, guardian or custodian; requiring all documentation related to absences be provided to school no later than three days of occurrence; authorizing schools to have discretion whether to give notice in the case of three unexcused absences; giving schools the discretion whether to give said notice by written or other means to a parent after three absences; giving discretion for attendance director or assistant to make a complaint against parent after ten total unexcused absences; and clarifying responsibility of administrative head or other chief administrator of school for meeting; and making other technical clarifications.

Be it enacted by the Legislature of West Virginia:

That §18-8-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

(a) The county attendance director and the assistants shall diligently promote regular school attendance. The director and assistants shall:

(1) Ascertain reasons for unexcused absences from school of students of compulsory school age and students who remain enrolled beyond the compulsory school age as defined under section one-a of this article;

(2) Take such steps as are, in their discretion, best calculated to encourage the attendance of students and to impart upon the parents and guardians the importance of attendance and the seriousness of failing to do so;

(3) For the purposes of this article, the following definitions apply:
(A) "Excused absence" includes:

(i) Personal illness or injury of the student;

(ii) Personal illness or injury of the student’s parent, guardian, custodian, or family member: Provided, That the excuse must provide a reasonable explanation for why the student’s absence was necessary and caused by the illness or injury in the family;

(iii) Medical or dental appointment with written excuse from physician or dentist;

(iv) Chronic medical condition or disability that impacts attendance;

(v) Participation in home or hospital instruction due to an illness or injury or other extraordinary circumstance that warrants home or hospital confinement;

(vi) Calamity, such as a fire or flood;

(vii) Death in the family;

(viii) School-approved or county-approved curricular or extra-curricular activities;

(ix) Judicial obligation or court appearance involving the student;

(x) Military requirement for students enlisted or enlisting in the military;

(xi) Personal or academic circumstances approved by the principal; and

(xii) Such other situations as may be further determined by the county board: Provided, That absences of students with disabilities shall be in accordance with the Individuals with Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in compliance therewith; and

(B) "Unexcused absence" means any absence not specifically included in the definition of "excused absence"; and

(4) All documentation relating to absences shall be provided to the school no later than three instructional days after the first day the student returns to school.

(b) In the case of three total unexcused absences of a student during a school year, the attendance director or assistant may serve notice by written or other means to the parent, guardian, or custodian of the student that the attendance of the student at school is required and
that if the student has five unexcused absences, a conference with the principal, administrative
head or other chief administrator will be required.

(c) In the case of five total unexcused absences, the attendance director or assistant shall
serve written notice to the parent, guardian or custodian of the student that within five days of
receipt of the notice the parent, guardian or custodian, accompanied by the student, shall report
in person to the school the student attends for a conference with the principal, administrative head
or other chief administrator of the school in order to discuss and correct the circumstances causing
the unexcused absences of the student, including the adjustment of unexcused absences based
on the meeting.

(d) In the case of ten total unexcused absences of a student during a school year, the
attendance director or assistant may make a complaint against the parent, guardian or custodian
before a magistrate of the county. If it appears from the complaint that there is probable cause to
believe that an offense has been committed and that the accused has committed it, a summons
or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the
summons or to arrest persons charged with offenses against the state. More than one parent,
guardian or custodian may be charged in a complaint. Initial service of a summons or warrant
issued pursuant to the provisions of this section shall be attempted within ten calendar days of
receipt of the summons or warrant and subsequent attempts at service shall continue until the
summons or warrant is executed or until the end of the school term during which the complaint is
made, whichever is later.

(e) The magistrate court clerk, or the clerk of the circuit court performing the duties of the
magistrate court as authorized in section eight, article one, chapter fifty of this code, shall assign
the case to a magistrate within ten days of execution of the summons or warrant. The hearing
shall be held within twenty days of the assignment to the magistrate, subject to lawful continuance.
The magistrate shall provide to the accused at least ten days' advance notice of the date, time
and place of the hearing.
(f) When any doubt exists as to the age of a student absent from school, the attendance director and assistants have authority to require a properly attested birth certificate or an affidavit from the parent, guardian or custodian of the student, stating age of the student. In the performance of his or her duties, the county attendance director and assistants have authority to take without warrant any student absent from school in violation of the provisions of this article and to place the student in the school in which he or she is or should be enrolled.

(g) The county attendance director and assistants shall devote such time as is required by section three of this article to the duties of attendance director in accordance with this section during the instructional term and at such other times as the duties of an attendance director are required. All attendance directors and assistants hired for more than two hundred days may be assigned other duties determined by the superintendent during the period in excess of two hundred days. The county attendance director is responsible under direction of the county superintendent for efficiently administering school attendance in the county.

(h) In addition to those duties directly relating to the administration of attendance, the county attendance director and assistant directors also shall perform the following duties:

1. Assist in directing the taking of the school census to see that it is taken at the time and in the manner provided by law;

2. Confer with principals and teachers on the comparison of school census and enrollment for the detection of possible nonenrollees;

3. Cooperate with existing state and federal agencies charged with enforcing child labor laws;

4. Prepare a report for submission by the county superintendent to the State Superintendent of Schools on school attendance, at such times and in such detail as may be required. The state board shall promulgate a legislative rule pursuant to article three-b, chapter twenty-nine-a of this code that set forth student absences that are excluded for accountability purposes. The absences that are excluded by rule shall include, but are not limited to, excused
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student absences, students not in attendance due to disciplinary measures and absent students
for whom the attendance director has pursued judicial remedies to compel attendance to the
extent of his or her authority. The attendance director shall file with the county superintendent and
county board at the close of each month a report showing activities of the school attendance office
and the status of attendance in the county at the time;

(5) Promote attendance in the county by compiling data for schools and by furnishing
suggestions and recommendations for publication through school bulletins and the press, or in
such manner as the county superintendent may direct;

(6) Participate in school teachers’ conferences with parents and students;

(7) Assist in such other ways as the county superintendent may direct for improving school
attendance;

(8) Make home visits of students who have excessive unexcused absences, as provided
in subsection (a) of this section, or if requested by the chief administrator, principal or assistant
principal; and

(9) Serve as the liaison for homeless children and youth.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures of Committee Chair and Member]

Chairman, House Committee

Member, Senate Committee

Originating in the House.

In effect July 1, 2017.

[Signatures of Clerk of the House, Clerk of the Senate, and Speaker of the House]

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

[Signature of President of the Senate]

President of the Senate

The within is approved this the 25th day of April, 2017.

[Signature of Governor]