WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Enrolled

Senate Bill 364

BY SENATORS MANN, KARNES, RUCKER, GAUNCH, AZINGER, SWOPE, TAKUBO, AND CLINE

[Passed March 2, 2018; in effect 90 from passage]
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By Senators Mann, Karnes, Rucker, Gaunch, Azinger, Swope, Takubo, and Cline

[Passed March 2, 2018; in effect 90 from passage]
AN ACT to amend and reenact §18-8-11 of the Code of West Virginia, 1931, as amended, relating to allowing a parent or legal guardian of a homeschooled child to provide a signed statement in lieu of a driver eligibility certificate by the attendance director or chief administrator affirming that the child is being educated in accordance with law, is making satisfactory academic progress, and meets certain conditions to be eligible to obtain a permit or license for operation of a motor vehicle.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-11. School attendance and satisfactory academic progress as conditions of licensing for privilege of operation of motor vehicle.

(a) In accordance with the provisions of §17B-2-3a and §17B-2-5 of this code, the Division of Motor Vehicles shall deny a license or instruction permit for the operation of a motor vehicle to any person under the age of 18 who does not at the time of application present a diploma or other certificate of graduation issued to the person from a secondary high school of this state or any other state or documentation that the person: (1) Is enrolled and making satisfactory progress in a course leading to a general education development certificate (GED) from a state-approved institution or organization or has obtained the certificate; (2) is enrolled and is making satisfactory academic progress in a secondary school of this state or any other state; (3) is excused from the requirement due to circumstances beyond his or her control; or (4) is enrolled in an institution of higher education as a full-time student in this state or any other state.

(b) The attendance director or chief administrator shall, upon request, provide a driver's eligibility certificate on a form approved by the Department of Education to any student at least 15 but less than 18 years of age who is properly enrolled and is making satisfactory academic progress in a school under the jurisdiction of the official for presentation to the Division of Motor Vehicles on application for or reinstatement of an instruction permit or license to operate a motor vehicle; Provided, That a parent or legal guardian of a child who is being educated pursuant to
§18-8-1(c) of this code may provide a signed statement in lieu of a driver eligibility certificate
issued by the attendance director or chief administrator affirming that the child is being educated
in accordance with law, is making satisfactory academic progress, and meets the conditions to
be eligible to obtain any permit or license under this section.

(c) Whenever a student at least 15 but less than 18 years of age, except as provided in
§18-8-11(g) of this code, withdraws from school, the attendance director or chief administrator
shall notify the Division of Motor Vehicles of the student's withdrawal no later than five days from
the date of the withdrawal. Within five days of receipt of the notice, the Division of Motor Vehicles
shall send notice to the student that the student's instruction permit or license to operate a motor
vehicle will be suspended under the provisions of §17B-3-6 of this code on the thirtieth day
following the date the notice was sent unless documentation of compliance with the provisions of
this section is received by the Division of Motor Vehicles before that time. The notice shall also
advise the student that he or she is entitled to a hearing before the county superintendent of
schools or his or her designee or before the appropriate private school official concerning whether
the student's withdrawal from school was due to a circumstance or circumstances beyond the
control of the student. If suspended, the division may not reinstate an instruction permit or license
until the student returns to school and shows satisfactory academic progress or until the student
attains 18 years of age.

(d) Whenever a student at least 15 but less than 18 years of age is enrolled in a secondary
school and fails to maintain satisfactory academic progress, the attendance director or chief
administrator shall follow the procedures set out in §18-8-11(c) of this code to notify the Division
of Motor Vehicles. Within five days of receipt of the notice, the Division of Motor Vehicles shall
send notice to the student that the student's instruction permit or license will be suspended under
the provisions of §17B-3-6 of this code on the thirtieth day following the date the notice was sent
unless documentation of compliance with the provisions of this section is received by the Division
of Motor Vehicles before that time. The notice shall also advise the student that he or she is
entitled to a hearing before the county superintendent of schools or his or her designee or before
the appropriate private school official concerning whether the student’s failure to make
satisfactory academic progress was due to a circumstance or circumstances beyond the control
of the student. Once suspension is ordered, the division may not reinstate an instruction permit
or license until the student shows satisfactory academic progress or until the student attains 18
years of age.

(e) Upon written request of a student, within 10 days of receipt of a notice of suspension
as provided by this section, the Division of Motor Vehicles shall afford the student the opportunity
for an administrative hearing. The scope of the hearing shall be limited to determining if there is
a question of improper identity, incorrect age, or some other clerical error.

(f) For the purposes of this section:

(1) Withdrawal is defined as more than 10 consecutive or 15 total days unexcused
absences during a school year, or suspension pursuant to §18A-5-1a(a) and §18A-5-1a(b) of this
code.

(2) “Satisfactory academic progress” means the attaining and maintaining of grades
sufficient to allow for graduation and course-work in an amount sufficient to allow graduation in
five years or by age 19, whichever is earlier.

(3) “Circumstances outside the control of the student” shall include, but not be limited to,
medical reasons, familial responsibilities and the necessity of supporting oneself or another.

(4) Suspension or expulsion from school or imprisonment in a jail or a West Virginia
correctional facility is not a circumstance beyond the control of the student.

(g) Whenever the withdrawal from school of the student, the student’s failure to enroll in a
course leading to or to obtain a GED or high school diploma, or the student’s failure to make
satisfactory academic progress is due to a circumstance or circumstances beyond the control of
the student, or the withdrawal from school is for the purpose of transfer to another school as
confirmed in writing by the student’s parent or guardian, no notice shall be sent to the Division of
Motor Vehicles to suspend the student's motor vehicle operator's license and if the student is applying for a license, the attendance director or chief administrator shall provide the student with documentation to present to the Division of Motor Vehicles to excuse the student from the provisions of this section. The school district superintendent (or the appropriate school official of any private secondary school) with the assistance of the county attendance director and any other staff or school personnel shall be the sole judge of whether any of the grounds for denial or suspension of a license as provided by this section are due to a circumstance or circumstances beyond the control of the student.

(h) The state board shall promulgate rules necessary for uniform implementation of this section among the counties and as may otherwise be necessary for the implementation of this section. The rule may not include attainment by a student of any certain grade point average as a measure of satisfactory progress toward graduation.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, Senate Committee

Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the ___ day of March, 2018.

Governor
PRESENTED TO THE GOVERNOR