

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 776

FISCAL
NOTE

BY SENATORS RUCKER AND CLINE

[Introduced February 13, 2020; referred
to the Committee on Education; and then to the
Committee on the Judiciary]

1 A BILL to repeal §18-8-7 and §18-8-11 of the Code of West Virginia, 1931, as amended; to repeal
 2 §49-4-711 of said code; and to amend and reenact §18-8-1a, §18-8-2, §18-8-3, §18-8-4,
 3 §18-8-5, and §18-8-6a of said code, all relating to creating the Assisting Collaborating
 4 Communities to Enhance Learning, Education, and to Reduce Absenteeism and
 5 Tardiness in Education Act; finding that best practices and research show that court-based
 6 interventions for truancy have not been effective and that community and school-based
 7 programs that are incremental and focus on resolving truancy's root causes work best to
 8 improve school attendance; and implementing community and school-based programs to
 9 improve school attendance.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1a. Commencement and termination of compulsory school attendance; public school entrance requirements; exceptions.

1 (a) Notwithstanding the provisions of §18-8-1 of this code, compulsory school attendance
 2 begins with the school year in which the sixth birthday is reached prior to September 1 of such
 3 year or upon enrolling in a publicly supported kindergarten program and, subject to subdivision
 4 (3) of this subsection, continues to the 16th birthday or for as long as the student continues to be
 5 enrolled in a school system after the 16th birthday.

6 (1) A child may be removed from such kindergarten program when the ~~principal, teacher~~
 7 ~~and parent or guardian concur~~ determines that the best interest of the child would not be served
 8 thereby. ~~by requiring further attendance: Provided, That the principal shall make the final~~
 9 ~~determination with regard to compulsory school attendance in a publicly supported kindergarten~~
 10 ~~program.~~

11 ~~(2) The compulsory school attendance provision of this article shall be enforced against a~~

12 ~~person eighteen years of age or older for as long as the person continues to be enrolled in a~~
13 ~~school system and may not be enforced against the parent, guardian or custodian of the person~~

14 ~~(3)~~ (2) Notwithstanding the provisions of §18-8-1 of this code, compulsory school
15 attendance begins with the school year in which the sixth birthday is reached prior to September
16 1 of such year or upon enrolling in a publicly supported kindergarten program and continues to
17 the seventeenth birthday or for as long as the student continues to be enrolled in a school system
18 after the seventeenth birthday: *Provided*, That beginning in the school year 2019-2020,
19 compulsory school attendance begins with the school year in which the sixth birthday is reached
20 prior to July 1 of such year or upon enrolling in a publicly supported kindergarten program.

21 (b) Attendance at a state-approved or Montessori kindergarten, as provided in §18-5-18
22 of this code, is deemed school attendance for purposes of this section. Prior to entrance into the
23 first grade in accordance with §18-2-5 of this code, each child must have either:

24 (1) Successfully completed such publicly or privately supported, state-approved
25 kindergarten program or Montessori kindergarten program; or

26 (2) Successfully completed an entrance test of basic readiness skills approved by the
27 county in which the school is located. The test may be administered in lieu of kindergarten
28 attendance only under extraordinary circumstances to be determined by the county board.

29 (c) Notwithstanding the provisions of this section, §18-2-5, and §18-5-18 of this code, a
30 county board may provide for advanced entrance or placement under policies adopted by said
31 board for any child who has demonstrated sufficient mental and physical competency for such
32 entrance or placement.

33 (d) This section does not prevent a student from another state from enrolling in the same
34 grade in a public school in West Virginia as the student was enrolled at the school from which the
35 student transferred.

36 (e) The amendments to this article made during the 2020 legislative session shall be
37 known as the Assisting Collaborating Communities to Enhance Learning, Education and to

38 Reduce Absenteeism and Tardiness in Education (ACCELERATE) Act.**§18-8-2. Offenses; penalties; cost of prosecution; jurisdiction.**

1 (a) ~~Any A person who after receiving due notice, shall fail~~ shall be prosecuted for failing to
2 cause a child or children under 18 years of age in that person's legal or actual charge to attend
3 school in violation of this article or without just cause, shall be as provided in this section unless
4 and until all of the following have occurred:

5 (1) The parents or guardian of a child who has been absent or tardy three or more times
6 has been provided notice of such attendance problems and invited to attend a meeting with a
7 school-based team as provided for in board policy pursuant to 18-8-3(e) of this code;

8 (2) The parents or guardian of a child who has been absent or tardy six or more times has
9 been provided notice of such attendance problems and invited to attend a meeting with a school-
10 based team as provided for in board policy pursuant to 18-8-3(e) of this code;

11 (3) The parents or guardian of a child who has been absent or tardy ten or more times has
12 been provided notice of such attendance problems and invited to attend a meeting with a school-
13 based team as provided for in board policy pursuant to 18-8-3(e) of this code;

14 (4) The parents or guardian of a child who has been absent or tardy 15 or more times has
15 been provided notice of such attendance problems and invited to attend a meeting with a school-
16 based team as provided for in board policy pursuant to §18-8-3(e) of this code; and

17 (5) An absentee/tardiness prevention plan shall be created and monitored for at least 30
18 days in accordance with board policy pursuant to §18-8-3(e) of this code.

19 A person who has had notice of the opportunity to participate in the meetings required
20 under subsection (a) of this section but has failed to abide by the written agreements entered into
21 in accordance with this article may be found guilty of a misdemeanor and, shall, may upon
22 conviction of a first offense, be fined not less more than \$50. ~~nor more than \$100 together with~~
23 the costs of prosecution, or required to accompany the child to school and remain through the
24 school day for so long as the magistrate or judge may determine is appropriate. The magistrate

25 or judge, upon conviction and pronouncing sentence, may delay the sentence for a period of 60
26 school days provided the child is in attendance every day during said 60-day period. Following
27 the 60-day period, if said child was present at school for every school day, the delayed sentence
28 may be suspended and not enacted. Upon conviction of a second or subsequent offense, a fine
29 may be imposed of not less than \$50 nor more than \$100 together with the costs of prosecution.
30 ~~and the person may be required to accompany the child to school and remain throughout the~~
31 ~~school day until such time as the magistrate or judge may determine is appropriate or confined in~~
32 ~~jail not less than five nor more than twenty days.~~ Every day a child is out of school contrary to this
33 article shall constitute a separate offense. Magistrates shall have concurrent jurisdiction with
34 circuit courts for the trial of offenses arising under this section.

35 ~~(b) Any person eighteen years of age or older who is enrolled in school who, after receiving~~
36 ~~due notice, fails to attend school in violation of this article or without just cause, shall be guilty of~~
37 ~~a misdemeanor and, shall, upon conviction of a first offense, be fined not less than \$50 nor more~~
38 ~~than \$100 together with the costs of prosecution and required to attend school and remain~~
39 ~~throughout the school day. The magistrate or judge, upon conviction and pronouncing sentence,~~
40 ~~may delay the imposition of a fine for a period of sixty school days provided the person is in~~
41 ~~attendance every day during said sixty-day period. Following the sixty-day period, if said student~~
42 ~~was present at school everyday, the delayed sentence may be suspended and not enacted. Upon~~
43 ~~conviction of a second offense, a fine may be imposed of not less than \$50 nor more than \$100~~
44 ~~together with the costs of prosecution and the person may be required to go to school and remain~~
45 ~~throughout the school day until such time as the person graduates or withdraws from school or~~
46 ~~confined in jail not less than five nor more than twenty days. Every day a student is out of school~~
47 ~~contrary to this article shall constitute a separate offense. Magistrates shall have concurrent~~
48 ~~jurisdiction with circuit courts for the trial of offenses arising under this section.~~

49 ~~(c) Upon conviction of a third offense, any person eighteen years of age or older who is~~
50 ~~enrolled in school shall be withdrawn from school during the remainder of that school year.~~

51 ~~Enrollment of that person in school during the next school year or years thereafter shall be~~
 52 ~~conditional upon all absences being excused as defined in law, state board policy and county~~
 53 ~~board of education policy. More than one unexcused absence of such a student shall be grounds~~
 54 ~~for the director of attendance to authorize the school to withdraw the person for the remainder of~~
 55 ~~the school year. Magistrates shall have concurrent jurisdiction with circuit courts for the trial of~~
 56 ~~offenses arising under this section~~

57 (d) (b) Jurisdiction to enforce compulsory school attendance laws lies in the county in
 58 which a student resides and in the county where the school at which the student is enrolled is
 59 located. When the county of residence and enrollment are different, an action to enforce
 60 compulsory school attendance may be brought in either county and the magistrates and circuit
 61 courts of either county have concurrent jurisdiction for the trial of offenses arising under this
 62 section.

**§18-8-3. Employment of county director of school attendance and assistants;
 qualifications; salary and traveling expenses; removal.**

1 (a) The county board of education of every county, no later than August 1 of each year,
 2 shall employ the equivalent of a full-time county director of school attendance if such county has
 3 a net enrollment of more than 4,000 pupils, at least a half-time director of school attendance if
 4 such county has a net enrollment equal to or less than 4,000 pupils and such assistant attendance
 5 directors as deemed necessary. All persons to be employed as attendance directors shall have
 6 the written recommendation of the county superintendent.

7 (b) The county board of education may establish special and professional qualifications
 8 for attendance directors and assistants as are deemed expedient and proper and are consistent
 9 with regulations of the State Board of Education relating thereto: *Provided*, That if the position of
 10 attendance director has been posted, the county may employ a person who holds full attendance
 11 certification or a person who holds a professional administrative certificate.

12 (c) The attendance director or assistant director shall be paid a monthly salary as fixed by
13 the county board. The attendance director or assistant director shall prepare attendance reports
14 and such other reports as the county superintendent may request.

15 (d) The county board of education shall reimburse the attendance directors or assistant
16 directors for their necessary traveling expenses upon presentation of a monthly, itemized, sworn
17 statement approved by the county superintendent.

18 (e) The county board of education shall create a policy that uses evidence-based practices
19 to address pupil absences and that is in accordance with this section. The policy shall create and
20 fund school and community-based programs that are designed to avoid court involvement for
21 school absence. The policy shall emphasize and require that court action not be initiated unless
22 the required meetings have been noticed and the root causes of the individual students' absences
23 are identified. Prior to initiating court action school districts are required to make every effort to
24 ameliorate with in-school and community-based resources the underlying causes of the student's
25 absences. The policy shall require every effort to meet with students and parents as often as
26 necessary when attendance issues are identified in order to address the root causes of chronic
27 absence. Policies shall encourage community involvement including mentoring, apprenticeship,
28 flexible employment schedules, counselling, and peer-based efforts to encourage regular school
29 attendance. Every policy shall require notice and parent meetings for every three absences up to
30 15 unexcused absences. Policies may not seek court intervention except as a last resort after all
31 other measures have been attempted in good faith and with demonstrable support by the school
32 to deliver on measures designed to support a student's attendance.

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

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

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

6 (2) Take such steps as are, in their discretion, best calculated to encourage the attendance
7 of students and to impart upon the parents and guardians the importance of attendance and ~~the~~
8 ~~seriousness of failing to do so~~ execute the required attendance policy as required under 18-8-3(e)
9 of this code;

10 (3) For the purposes of this article, the following definitions apply:

11 (A) "Excused absence" includes:

12 (i) Personal illness or injury of the student;

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

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

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

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

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

21 (vii) Death in the family;

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

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

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

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

26 (xii) Such other situations as may be further determined by the county board: *Provided*,
27 That absences of students with disabilities shall be in accordance with the Individuals with

28 Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in
29 compliance therewith; and

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

32 (4) All documentation relating to absences shall be provided to the school no later than
33 three instructional days after the first day the student returns to school. When a person is
34 prosecuted under this section the attendance director shall refer the matter to the county
35 prosecutor.

36 ~~(b) In the case of three total unexcused absences of a student during a school year, the~~
37 ~~attendance director, assistant, or principal shall make meaningful contact with the parent,~~
38 ~~guardian, or custodian of the student to ascertain the reasons for the unexcused absences and~~
39 ~~what measures the school may employ to assist the student in attending and not incurring any~~
40 ~~additional unexcused absences.~~

41 ~~(c) In the case of five total unexcused absences, the attendance director or assistant or~~
42 ~~principal shall again make meaningful contact with the parent, guardian, or custodian of the~~
43 ~~student to ascertain the reasons for the unexcused absences and what measures the school may~~
44 ~~employ to assist the student in attending school and not incurring any additional unexcused~~
45 ~~absences.~~

46 ~~(d) In the case of 10 total unexcused absences of a student during a school year, the~~
47 ~~attendance director or assistant may make a complaint against the parent, guardian or custodian~~
48 ~~before a magistrate of the county. If it appears from the complaint that there is probable cause to~~
49 ~~believe that an offense has been committed and that the accused has committed it, a summons~~
50 ~~or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the~~
51 ~~summons or to arrest persons charged with offenses against the state. More than one parent,~~
52 ~~guardian or custodian may be charged in a complaint. Initial service of a summons or warrant~~
53 ~~issued pursuant to the provisions of this section shall be attempted within ten calendar days of~~

54 ~~receipt of the summons or warrant and subsequent attempts at service shall continue until the~~
55 ~~summons or warrant is executed or until the end of the school term during which the complaint is~~
56 ~~made, whichever is later~~

57 ~~(e)~~ (b) The magistrate court clerk, or the clerk of the circuit court performing the duties of
58 the magistrate court as authorized in §50-1-8 of this code, shall assign the case to a magistrate
59 within 10 days of execution of the summons or warrant. The hearing shall be held within 20 days
60 of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide
61 to the accused at least 10 days' advance notice of the date, time, and place of the hearing.

62 ~~(f) When any doubt exists as to the age of a student absent from school, the attendance~~
63 ~~director and assistants have authority to require a properly attested birth certificate or an affidavit~~
64 ~~from the parent, guardian or custodian of the student, stating age of the student. In the~~
65 ~~performance of his or her duties, the county attendance director and assistants have authority to~~
66 ~~take without warrant any student absent from school in violation of the provisions of this article~~
67 ~~and to place the student in the school in which he or she is or should be enrolled~~

68 ~~(g)~~ (c) The county attendance director and assistants shall devote such time as is required
69 by §18-8-3 of this code to the duties of attendance director in accordance with this section during
70 the instructional term and at such other times as the duties of an attendance director are required.
71 ~~All attendance directors and assistants hired for more than 200 days may be assigned other duties~~
72 ~~determined by the superintendent during the period in excess of 200 days~~ The county attendance
73 director is responsible under direction of the county superintendent for efficiently administering
74 school attendance in the county.

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

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

79 (2) Confer with principals and teachers on the comparison of school census and
80 enrollment for the detection of possible nonenrollees;

81 (3) Cooperate with existing state and federal agencies charged with enforcing child labor
82 laws;

83 (4) Prepare a report for submission by the county superintendent to the State
84 Superintendent of Schools on school attendance, at such times and in such detail as may be
85 required. The state board shall promulgate a legislative rule pursuant to §29A-3B-1 *et seq.* of this
86 code that set forth student absences that are excluded for accountability purposes. The absences
87 that are excluded by rule shall include, but are not limited to, excused student absences, students
88 not in attendance due to disciplinary measures, and absent students for whom the attendance
89 director has pursued judicial remedies to compel attendance to the extent of his or her authority.
90 The attendance director shall file with the county superintendent and county board at the close of
91 each month a report showing activities of the school attendance office and the status of
92 attendance in the county at the time;

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

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

97 (7) Assist in such other ways as the county superintendent or board policy may direct for
98 improving school attendance;

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

102 (9) Serve as the liaison for homeless children and youth.

§18-8-5. Duties of principal, administrative head, or other chief administrator.

1 It shall be the duty of the principal, administrative head, or other chief administrator of

2 each school, whether public or private, to make prompt reports to the county attendance director,
 3 or proper assistant, of all cases of unexcused absences arising within the school which require
 4 the services of an attendance worker. Such reports shall be on the form prescribed for such
 5 purpose ~~by telephone, or in person,~~ and shall include essential information about the child and
 6 the name and residence of any parent, guardian, or custodian of a child.

7 It shall also be the duty of each principal, administrative head, or other chief administrator
 8 of each public school to ascertain and report promptly the name of any parent, guardian, or
 9 custodian of any child of compulsory school age as defined in this article who was or should be
 10 enrolled in the school reporting and who has not enrolled in any school that year. By way of
 11 ascertaining the status of school attendance, each principal, administrative head, or other chief
 12 administrator shall compare the school census with the school enrollment at the opening of the
 13 school term and each month thereafter, or as directed by the county superintendent of schools,
 14 and report the same to the county attendance director: *Provided,* That any child who was or should
 15 be enrolled in a particular school, but who is at the time enrolled in another school shall be
 16 considered as attending the school in which enrolled and shall be included only in the report of
 17 attendance from the school in which the child is enrolled at the time.

18 ~~If the principal, administrative head or other chief administrator of a school determines that~~
 19 ~~an enrolled pupil has accumulated unexcused absences from attendance at such school for five~~
 20 ~~instructional days during any one half of the instructional term, the principal, administrative head~~
 21 ~~or other chief administrator shall contact any parent, guardian or custodian of the pupil and shall~~
 22 ~~hold a meeting with any person so contacted, and the pupil, and any other person that the~~
 23 ~~administrator deems a relevant participant in such meeting~~

**§18-8-6a. Incentive for county board participation in circuit court juvenile probation
 truancy programs.**

1 A county board that enters into a truancy program agreement with the circuit court of the
 2 county that (1) ~~provides for the referral of truant juveniles for supervision by~~ includes the court's

3 ~~probation office pursuant to §49-4-711 of this code and (2) requires the county board to pay for~~
 4 ~~the costs of the probation officer or officers assigned to supervise truant juveniles~~ as part of a
 5 community based absentee reduction program shall be reimbursed for one half of the costs of the
 6 probation officer or officers, subject to appropriation of the Legislature for this purpose to the West
 7 Virginia Department of Education. For any year in which the funds appropriated are insufficient to
 8 cover the reimbursement costs, the county’s costs shall be reimbursed pro rata.

§18-8-7. Aiding or abetting violations of compulsory attendance; penalty.

1 [Repealed.]

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

1 [Repealed.]

CHAPTER 49. CHILD WELFARE.

ARTICLE 4. COURT ACTIONS.

**§49-4-711. Adjudication for alleged status offenders and delinquents; mandatory initial
disposition of status offenders.**

1 [Repealed]

NOTE: The purpose of this bill is to create the Assisting Collaborating Communities to Enhance Learning, Education and to Reduce Absenteeism and Tardiness in Education (ACCELERATE) Act. The bill finds that best practices and research show that court-based interventions for truancy have not been effective and that community and school-based programs that are incremental and focus on resolving truancy’s root causes work best to improve school attendance. The bill implements community and school-based programs to improve school attendance.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.