

SB378 CC #1 3-12

90 Days

Lovell 7908

Senator Trump, from the committee of conference on matters of disagreement between the two houses, as to

**Eng. Senate Bill 378**, Relating to truancy intervention.

Submitted the following report, which was received:

Your committee of conference on the disagreeing votes of the two houses as to the amendments of the House to Engrossed Committee Substitute for Senate Bill 378 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to the amendment of the House, striking out everything after the enacting section, and agree to the same as follows:

**ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

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

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

3 (1) Ascertain the 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; and

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

9 ~~(3)~~ (b) For the purposes of this article, the following definitions shall apply:

10           (A) ~~(1)~~ "Excused absence" ~~shall be defined to include~~ includes:

11           ~~(i)~~(A) Personal illness or injury of the student, or in the family if the illness or injury limits a  
12 student from school attendance. A student shall provide written documentation from a medical  
13 provider stating the illness or injury precludes school attendance when a student's illness or injury  
14 caused that student to be absent for five or more consecutive days of school, or ten days in any  
15 ninety-day period: *Provided*, That excused absences caused by personal illness or injury of the  
16 student verified only by a note from a parent, guardian or custodian are limited to five in any one  
17 semester or ten in a school year. After a student has been absent for personal illness or injury  
18 five times in a semester or ten times in a school year, any further absences shall be unexcused  
19 unless verified by a physician;

20           (B) Personal illness or injury of a member of the student's family who regularly resides  
21 with the student: *Provided*, That any absence lasting longer than two days pursuant to this  
22 paragraph shall not be considered excused unless written documentation is provided by a medical  
23 provider confirming that the student's absence from school is necessary for the ongoing care of  
24 the family member;

25           ~~(ii)~~(C) ~~A Medical~~ medical or dental appointment with written excuse or documentation of  
26 the appointment ~~from physician or dentist~~ a medical or dental provider;

27           ~~(iii)~~(D) ~~A Chronic~~ chronic medical condition or disability that ~~impacts~~ limits attendance,  
28 unless the chronic medical condition or disability can be reasonably accommodated by the school,  
29 and the school has apprised the student and his parent, guardian or custodian of the  
30 accommodation. A student claiming that his or her chronic medical condition or disability limits his  
31 or her attendance at school shall provide a written excuse or documentation from a medical  
32 provider documenting that the chronic medical condition or disability. Upon reaching the requisite  
33 number of absences to constitute a chronic medical condition, the student's parent, guardian or  
34 custodian shall contact the school to ascertain if reasonable accommodation can be made to  
35 allow the student to attend school. For the purposes of this paragraph, a chronic medical condition

36 or disability is a medical condition or disability that causes the student to be absent for five or  
37 more consecutive days or ten days or more in any ninety-day period;

38 ~~(iv)~~(E) Participation in home or hospital instruction due to an illness or injury or other  
39 extraordinary circumstance ~~that warrants~~ home or hospital confinement;

40 ~~(v)~~(F) A ~~Calamity~~ calamity, such as a fire or flood;

41 ~~(vi)~~(G) A ~~Death~~ death in the student's immediate family. As used in this paragraph  
42 "immediate family" means mother, father, aunt, uncle, siblings, grandparents, guardian, custodian  
43 or a family member residing in the child's home. An excused absence under this paragraph is  
44 limited to five days;

45 ~~(vii)~~(H) School-approved or county-approved curricular or extra-curricular activities;

46 ~~(viii)~~(I) A ~~Judicial~~ judicial obligation or court appearance involving the student, if supported  
47 by written documentation from an attorney, probation officer, judge, magistrate or Department of  
48 Health and Human Resources worker;

49 ~~(ix)~~(J) A ~~Military~~ military requirement for students enlisted or enlisting in the military;

50 ~~(x)~~(K) Personal or academic circumstances approved by the principal;

51 (L) Absence due to a religious holiday; and

52 ~~(xi)~~(M) ~~Such~~ Any other situations ~~as may be further~~ determined by the county board:

53 Provided, That handling of absences of students with disabilities shall be in accordance consistent  
54 with the Individuals with Disabilities Education Improvement Act of 2004 and the federal and state  
55 regulations and rules adopted in compliance therewith with the act: *Provided, however, That a*  
56 school principal, with the approval of the county superintendent of schools, may authorize that an  
57 unexcused absence be determined an excused absence based on all of the specific facts and  
58 circumstances, including without limitation, some or all unexcused absences prior to return of a  
59 student who has dropped out of school after the student attained the age for which school  
60 attendance was no longer mandatory.

61 (2) An "Unexcused unexcused absence" shall be is any absence not specifically included

62 in the definition of “excused absence”.

63 ~~(b) In the case of three total unexcused absences of a student during a school year, the~~  
64 ~~attendance director or assistant shall serve written notice to the parent, guardian or custodian of~~  
65 ~~the student that the attendance of the student at school is required and that if the student has five~~  
66 ~~unexcused absences, a conference with the principal or other designated representative will be~~  
67 ~~required.~~

68 (c) In order for the absence to be excused, the student or his or her parent, guardian or  
69 custodian shall supply the written excuses or documentation to the person at the student’s school  
70 designated to receive the excuses or documentation within five days after returning to school from  
71 the absence.

72 (d) For purposes of this section, a student’s illness, injury or chronic medical condition is  
73 reasonably accommodated if the school provides necessary and appropriate adjustments to  
74 school practices which allow the student’s attendance while ensuring the student’s health and  
75 safety and that of his or her fellow students.

76 ~~(e)~~(e) In the case that five days have passed from the end of an absence totaling, or  
77 bringing the student to three unexcused absences during a school year, the attendance director  
78 or assistant shall serve written notice to the parent, guardian, or custodian of the student that the  
79 attendance of the student at the school is required, and that if the student has five unexcused  
80 absences, a conference with the principal or other designated representative will be required:  
81 Provided, That if the unexcused absences total five, or more days the school may disregard this  
82 subsection and serve notice of the meeting as provided in subsection (f).

83 ~~(e)~~ (f) In the case of five total unexcused absences, the attendance director or assistant  
84 shall serve written notice to the parent, guardian or custodian of the student that within five days  
85 of receipt of the notice the parent, guardian or custodian, accompanied by the student, shall report  
86 in person to the school the student attends for a conference with the principal or other designated  
87 representative of the school in order to discuss and correct the circumstances causing the

88 unexcused absences of the student, including the adjustment of unexcused absences based upon  
89 ~~such~~ the meeting.

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

101 ~~(e)~~(h) The magistrate court clerk, or the clerk of the circuit court performing the duties of  
102 the magistrate court as authorized in section eight, article one, chapter fifty of this code, shall  
103 assign the case to a magistrate within ten days of execution of the summons or warrant. The  
104 hearing shall be held within twenty days of the assignment to the magistrate, subject to lawful  
105 continuance. The magistrate shall provide to the accused at least ten days' advance notice of the  
106 date, time and place of the hearing.

107 ~~(f)~~(i) When any doubt exists as to the age of a student absent from school, the attendance  
108 director and ~~assistants have authority to~~ assistant directors may require a properly attested birth  
109 certificate or an affidavit from the parent, guardian or custodian of the student, stating the age of  
110 the student. In the performance of his or her duties, the county attendance director and ~~assistants~~  
111 ~~have authority to~~ assistant directors may take without warrant any student absent from school in  
112 violation of the provisions of this article and ~~to~~ place the student in the school in which he or she  
113 is or should be enrolled.

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

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

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

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

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

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

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

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

144 (7) Assist in ~~such any other ways way~~ as directed by the county superintendent ~~may direct~~  
145 for improving school attendance;

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

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

**~~§18-8-8. Child suspended for failure to comply with requirements and regulations treated  
as unlawfully absent.~~**

**§18-8-8. Effect of school suspension on enforcement of the provisions of this article.**

1 ~~If a child be suspended from school because of improper conduct or refusal of such child~~  
2 ~~to comply with the requirements of the school, the school shall immediately notify the county~~  
3 ~~superintendent of such suspension, and specify the time or conditions of such suspension.~~  
4 ~~Further admission of the child to school may be refused until such requirements and regulations~~  
5 ~~be complied with. Any such child shall be treated by the school as being unlawfully absent from~~  
6 ~~the school during the time he or she refuses to comply with such requirements and regulations,~~  
7 ~~and any person having legal or actual control of such child shall be liable to prosecution under~~  
8 ~~the provisions of this article for the absence of such child from school: *Provided*, That the county~~  
9 ~~board of education does not exclude or expel the suspended child from school.~~

10 (a) When a child is absent from school due to a suspension, absences are unexcused for  
11 purposes of this article if the suspension is based on an intentional act of the student.

12 (b) Days a student is absent from school due to a suspension from school for an intentional  
13 act of the student are not attributable to the student's parent, guardian or custodian for purposes

14 of enforcement of this article, unless the parent, guardian or custodian encouraged, condoned or  
15 aided or abetted the conduct causing the suspension.

And,

That both houses recede from their respective positions as to the title of the bill and agree to the same as follows:

**Eng. Com. Sub. for Senate Bill 378 – Senate Bill 378--** A BILL to amend and reenact §18-8-4 and §18-8-8 of the Code of West Virginia, 1931, as amended, all relating generally to truancy intervention; expanding definition of excused absence; exempting absences for chronic medical condition or disability which may be reasonably accommodated by the school; requiring parent to request reasonable accommodation; defining “chronic medical condition or disability”; requiring written excuses or documentation from a medical provider in certain cases; limiting number of days which may be excused absences; defining “immediate family”; requiring verification of absence for judicial obligation or court appearance; allowing principal to authorize excused absences for other reason or for longer periods of time with the approval of the county superintendent; removing notice requirement after three days absence; requiring written excuses or documentation to be submitted within certain time frame; defining the term “reasonable accommodation”; requiring written notice in the case that five days have passed from absence totaling or bringing a student to three unexcused absences and providing that such notice can be disregarded in favor of other written notice if unexcused absences total five or more days; modifying the effect of student suspensions to reflect that absences due to suspension are unexcused; modifying the effect of student suspensions on enforcement of the provisions of compulsory attendance enforcement.

Respectfully submitted,

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Daryl Cowles,

*Chair.*

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Charles S. Trump IV,

*Chair.*

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Mark Zatezalo,

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Bob Ashley,

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Andrew Byrd,

*Conferees on the part of the House  
of Delegates.*

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Bob Williams,

*Conferees on the part of the Senate.*