

# WEST VIRGINIA LEGISLATURE

## 2017 REGULAR SESSION

Introduced

### House Bill 2702

FISCAL  
NOTE

BY DELEGATES WESTFALL, COOPER, AMBLER, WAGNER,

MOYE, ATKINSON, MARCUM AND HIGGINBOTHAM

[Introduced February 24, 2017; Referred  
to the Committee on Education.]

1 A BILL to amend and reenact §18-8-4 of the Code of West Virginia, 1931, as amended, relating  
2 to truancy intervention; restricting excused absences for personal illness, when involving  
3 “family members” of a student, as is currently prescribed in current code, to parents’ or  
4 guardians’ illnesses; providing that the parent or guardian must provide a statement from  
5 a medical, osteopathic or chiropractic physician, or physician’s assistant, confirming the  
6 existence of the illness or injury that is the purported basis for a student’s excused  
7 absence; requiring submission of documentation of absences within five days after the  
8 occurrence; providing an application for home schooling may be denied by the county  
9 superintendent of schools if the student for whom the request is made has ten or more  
10 unexcused absences during the school year at the time the application is made; and  
11 providing parents denied an application for home schooling may reapply during the next  
12 grading period following the denial.

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

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

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

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

11 (i) Personal illness or injury of the student or ~~in the family~~ his or her parent or guardian:

12 Provided, That the parent or guardian must provide a statement from a medical, osteopathic or  
13 chiropractic physician, or physician's assistant, confirming the existence of the parent's or  
14 guardian's illness or injury;

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

16 (iii) Chronic medical condition or disability that impacts attendance;

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

19 (v) Calamity, such as a fire or flood;

20 (vi) Death in the family;

21 (vii) School-approved or county-approved curricular or extra-curricular activities;

22 (viii) Judicial obligation or court appearance involving the student;

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

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

25 (xi) Such other situations as may be further determined by the county board: *Provided,*

26 That absences of students with disabilities shall be in accordance with the Individuals with  
27 Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in  
28 compliance therewith.

29 (B) "Unexcused absence" ~~shall be~~ means any absence not specifically included in the  
30 definition of "excused absence".

31 ~~In the case of three total unexcused absences of a student during a school year, the~~  
32 ~~attendance director or assistant shall serve written notice to the parent, guardian or custodian of~~  
33 ~~the student that the attendance of the student at school is required and that if the student has five~~  
34 ~~unexcused absences, a conference with the principal or other designated representative will be~~

35 ~~required~~ All documentation relating to absences shall be provided to the school no later than five  
36 days after the occurrence.

37 (c) In the case of five total unexcused absences, the attendance director or assistant shall  
38 serve written notice to the parent, guardian or custodian of the student that within five days of  
39 receipt of the notice the parent, guardian or custodian, accompanied by the student, shall report  
40 in person to the school the student attends for a conference with the principal or other designated  
41 representative of the school in order to discuss and correct the circumstances causing the  
42 unexcused absences of the student, including the adjustment of unexcused absences based ~~upon~~  
43 ~~such~~ on the meeting.

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

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

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

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

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

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

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

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

82 (4) Prepare a report for submission by the county superintendent to the State  
83 Superintendent of Schools on school attendance, at such times and in such detail as may be  
84 required. The state board shall ~~promulgate a legislative rule~~ propose rules for legislative approval  
85 pursuant to article three-b, chapter twenty-nine-a of this code that ~~sets~~ set forth student absences  
86 that are excluded for accountability purposes. The absences that are excluded by ~~the rule~~ shall

87 include, but are not limited to, excused student absences, students not in attendance due to  
88 disciplinary measures and absent students for whom the attendance director has pursued judicial  
89 remedies to compel attendance to the extent of his or her authority. The attendance director shall  
90 file with the county superintendent and county board at the close of each month a report showing  
91 activities of the school attendance office and the status of attendance in the county at the time;

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

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

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

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

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

102 (i) Notwithstanding any provision of law to the contrary, in the event a parent or guardian  
103 applies for home schooling for a student who has ten or more unexcused absences during the  
104 school year, the county superintendent may deny the request for home schooling: *Provided, That*  
105 if a parent or guardian's application for home schooling is denied pursuant to this subsection, the  
106 parent or guardian may reapply during the next grading period following the denial.

NOTE: The purpose of this bill is to: (1) Provide that excused absences for personal illness, when involving "family members" of a student, as currently prescribed in current code, are restricted to parents' or guardians' illnesses; (2) provide that the parent or guardian must provide a statement from a medical, osteopathic or chiropractic physician or physician's assistant confirming the existence of the illness or injury when a student misses school due to a parent or guardian's illness or injury; (3) provide that documentation of absences shall be provided to the school no later than five days after the occurrence; (4) provide that an application for home schooling may be denied by the county superintendent of schools if the student for whom the request is made has ten or more unexcused absences during the school year at the time the application is made; and (5) provide that parents denied an

application for home schooling may reapply during the next grading period following the denial.

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