

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4638**

BY DELEGATES SUMMERS AND SHOTT

[Introduced February 20, 2016; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §18-8-4 of the Code of West Virginia, 1931, as amended, relating  
2 to truancy intervention, and defining excused and unexcused absences.

*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; and

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)~~ (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 such illness or injury  
12 prohibits a student from meaningful attendance at school: *Provided*, That such illness or injury  
13 does not constitute an excused absence if it can be reasonably accommodated by the school:  
14 *Provided, however*, That a student must provide a written excuse stating the illness or injury from  
15 a medical provider when a student's illness or injury caused that the student to be absent for three  
16 or more consecutive days of school, or ten days in any thirty-day period;

17 (B) Personal illness or injury of a member of the student's family who regularly resides  
18 with the student: *Provided*, That such personal illness or injury only qualifies as an excused

19 absence if the family member requires the active assistance of the student during the illness or  
20 injury, and there is no other individual who can assist the family member: *Provided, however,* That  
21 any such absence lasting longer than five days will not be considered excused unless  
22 accompanied by a note from a medical provider confirming that the student's absence from school  
23 is necessary for the ongoing care of the family member.

24 ~~(ii)~~(C) Medical or dental appointment with written excuse from ~~physician or dentist~~ the  
25 medical or dental provider;

26 ~~(iii)~~(D) Chronic medical condition or disability that impacts attendance: *Provided, That if a*  
27 student suffers from a chronic medical condition or disability that can be reasonably  
28 accommodated by the school, it does not constitute an excused absence: *Provided, however,*  
29 That a student claiming that his or her chronic medical condition or disability impacts his or her  
30 attendance at school must provide a written excuse from a medical provider stating that the  
31 chronic medical condition or disability necessitates that the student miss school;

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

34 ~~(v)~~(F) Calamity, such as a fire or flood;

35 ~~(vi)~~(G) Death in the immediate family, to include mother, father, siblings, grandparents,  
36 guardian or caregiver. This excuse is limited to three days per occurrence;

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

38 ~~(viii)~~(I) Judicial obligation or court appearance involving the student, verified by legal  
39 excuse from an attorney, probation officer, judge, magistrate or DHHR worker;

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

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

42 (L) School suspensions resulting in absence; and

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

44 That absences of students with disabilities shall be in accordance with the Individuals with

45 Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in  
46 compliance therewith.

47 (B)(2) "Unexcused absence" shall be any absence not specifically included in the definition  
48 of "excused absence".

49 (c) All excuses must be turned into the school no later than five days after the occurrence.

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

55 ~~(e)~~(d) In the case of five total unexcused absences, the attendance director or assistant  
56 shall serve written notice to the parent, guardian or custodian of the student that within five days  
57 of receipt of the notice the parent, guardian or custodian, accompanied by the student, shall report  
58 in person to the school the student attends for a conference with the principal or other designated  
59 representative of the school in order to discuss and correct the circumstances causing the  
60 unexcused absences of the student, including the adjustment of unexcused absences based upon  
61 such meeting.

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

71 summons or warrant is executed. ~~or until the end of the school term during which the complaint~~  
72 ~~is made, whichever is later.~~

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

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

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

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

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

96 (2) Confer with principals and teachers on the comparison of school census and

97 enrollment for the detection of possible nonenrollees;

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

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

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

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

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

116 (8) Make home visits of students who have excessive unexcused absences, as provided  
117 above, or if requested by the chief administrator, principal or assistant principal; and

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

NOTE: The purpose of this bill is to clarify what constitutes an excused absence, and to ensure that the various excused absences are described with sufficient specificity to enable enforcement of these provisions by the courts.

This bill was recommended for introduction by the Joint Committee on the Judiciary that met during the 2015-2016 Interim session.

This bill was recommended for introduction by the following House members of the Joint Interim Committee on the Judiciary: Delegates Shott, Azinger, Byrd, Deem, Fleischauer, Folk, Foster, Hanshaw, Hicks, Ireland, Kessinger, McCuskey, Moore, Overington, Rowe, Shaffer, Skinner, Sobonya, Summers, Weld, and B. White.

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