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HOUSE BILL NO. 2077

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Education
on January 19, 2011)

(Patron Prior to Substitute—Delegate Landes)

A *BILL to amend and reenact §§ 22.1-19.1, 22.1-253.13:3, and 22.1-292.1 of the Code of Virginia, relating to secure mandatory tests.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-19.1, 22.1-253.13:3, and 22.1-292.1 of the Code of Virginia are amended and reenacted as follows:

§ 22.1-19.1. Action for violations related to secure mandatory tests.

A. The Office of the Attorney General, on behalf of the Board of Education, may bring a cause of action in the circuit court having jurisdiction where the person resides or where the act occurred for injunctive relief, civil penalty, or both, against any person who knowingly and willfully commits any of the following acts related to secure mandatory tests required by the Board to be administered to students:

1. Permitting unauthorized access to secure test questions prior to testing;
2. Copying or reproducing all or any portion of any secure test booklet;
3. Divulging the contents of any portion of a secure test;
4. Altering test materials or examinees' responses in any way;
5. Creating or making available answer keys to secure tests;
6. Making a false certification on the test security form established by the Department of Education;

or

7. *Excluding students from testing who are required to be assessed; or*

8. Participating in, directing, aiding or abetting, or assisting in any of the acts prohibited in this section.

For the purpose of this subsection, "secure" means an item, question, or test that has not been made publicly available by the Department of Education.

B. Nothing in this section may be construed to prohibit or restrict the reasonable and necessary actions of the Board of Education, Superintendent of Public Instruction or the Department of Education or their agents or employees engaged in test development or selection, test form construction, standard setting, test scoring, reporting test scores, or any other related activities which, in the judgment of the Superintendent of Public Instruction or Board of Education, are necessary and appropriate.

C. Any person who violates any provisions of this section may be assessed a civil penalty not to exceed \$1,000 for each violation. Furthermore, any person whose administrative or teaching license has been suspended or revoked pursuant to § 22.1-292.1 may be assessed a civil penalty for the same violation under this section and the reasonable costs of any review or investigation of a violation of test security.

All civil penalties paid to the Commonwealth pursuant to this section shall be deposited into the Literary Fund.

§ 22.1-253.13:3. Standard 3. Accreditation, other standards and evaluation.

A. The Board of Education shall promulgate regulations establishing standards for accreditation pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), which shall include, but not be limited to, student outcome measures, requirements and guidelines for instructional programs and for the integration of educational technology into such instructional programs, administrative and instructional staffing levels and positions, including staff positions for supporting educational technology, student services, auxiliary education programs such as library and media services, course and credit requirements for graduation from high school, community relations, and the philosophy, goals, and objectives of public education in Virginia.

The Board shall review annually the accreditation status of all schools in the Commonwealth.

Each local school board shall maintain schools that are fully accredited pursuant to the standards for accreditation as prescribed by the Board of Education. Each local school board shall review the accreditation status of all schools in the local school division annually in public session. Within the time specified by the Board of Education, each school board shall submit corrective action plans for any schools within its school division that have been designated as not meeting the standards as approved by the Board.

When the Board of Education has obtained evidence through the school academic review process that the failure of schools within a division to achieve full accreditation status is related to division level failure to implement the Standards of Quality, the Board may require a division level academic review.

60 After the conduct of such review and within the time specified by the Board of Education, each school
61 board shall submit for approval by the Board a corrective action plan, consistent with criteria established
62 by the Board and setting forth specific actions and a schedule designed to ensure that schools within its
63 school division achieve full accreditation status. Such corrective action plans shall be part of the relevant
64 school division's comprehensive plan pursuant to § 22.1-253.13:6.

65 With such funds as are appropriated or otherwise received for this purpose, the Board shall adopt and
66 implement an academic review process, to be conducted by the Department of Education, to assist
67 schools that are accredited with warning. The Department shall forward a report of each academic
68 review to the relevant local school board, and such school board shall report the results of such
69 academic review and the required annual progress reports in public session. The local school board shall
70 implement any actions identified through the academic review and utilize them for improvement
71 planning.

72 B. The Superintendent of Public Instruction shall develop and the Board of Education shall approve
73 criteria for determining and recognizing educational performance in the Commonwealth's public school
74 divisions and schools. Such criteria, when approved, shall become an integral part of the accreditation
75 process and shall include student outcome measurements. The Superintendent of Public Instruction shall
76 annually identify to the Board those school divisions and schools that exceed or do not meet the
77 approved criteria. Such identification shall include an analysis of the strengths and weaknesses of public
78 education programs in the various school divisions in Virginia and recommendations to the General
79 Assembly for further enhancing student learning uniformly across the Commonwealth. In recognizing
80 educational performance in the school divisions, the Board shall include consideration of special school
81 division accomplishments, such as numbers of dual enrollments and students in Advanced Placement and
82 International Baccalaureate courses, and participation in academic year Governor's Schools.

83 The Superintendent of Public Instruction shall assist local school boards in the implementation of
84 action plans for increasing educational performance in those school divisions and schools that are
85 identified as not meeting the approved criteria. The Superintendent of Public Instruction shall monitor
86 the implementation of and report to the Board of Education on the effectiveness of the corrective actions
87 taken to improve the educational performance in such school divisions and schools.

88 C. With such funds as are available for this purpose, the Board of Education shall prescribe
89 assessment methods to determine the level of achievement of the Standards of Learning objectives by all
90 students. Such assessments shall evaluate knowledge, application of knowledge, critical thinking, and
91 skills related to the Standards of Learning being assessed. The Board shall (i) in consultation with the
92 chairpersons of the eight regional superintendents' study groups, establish a timetable for administering
93 the Standards of Learning assessments to ensure genuine end-of-course and end-of-grade testing and (ii)
94 with the assistance of independent testing experts, conduct a regular analysis and validation process for
95 these assessments.

96 In prescribing such Standards of Learning assessments, the Board shall provide local school boards
97 the option of administering tests for United States History to 1877, United States History: 1877 to the
98 Present, and Civics and Economics. The last administration of the cumulative grade eight history test
99 will be during the 2007-2008 academic school year. Beginning with the 2008-2009 academic year, all
100 school divisions shall administer the United States History to 1877, United States History: 1877 to the
101 Present, and Civics and Economics tests. The Board shall also provide the option of industry
102 certification and state licensure examinations as a student-selected verified credit.

103 The Board of Education shall make publicly available such assessments in a timely manner and as
104 soon as practicable following the administration of such tests, so long as the release of such assessments
105 does not compromise test security or deplete the bank of assessment questions necessary to construct
106 subsequent tests, or limit the ability to test students on demand and provide immediate results in the
107 web-based assessment system.

108 The Board shall include in the student outcome measures that are required by the Standards for
109 Accreditation end-of-course or end-of-grade tests for various grade levels and classes, as determined by
110 the Board, in accordance with the Standards of Learning. These Standards of Learning assessments shall
111 include, but need not be limited to, end-of-course or end-of-grade tests for English, mathematics,
112 science, and history and social science.

113 In addition, to assess the educational progress of students, the Board of Education shall (i) develop
114 appropriate assessments, which may include criterion-referenced tests and alternative assessment
115 instruments that may be used by classroom teachers; (ii) select appropriate industry certification and
116 state licensure examinations and (iii) prescribe and provide measures, which may include nationally
117 normed tests to be used to identify students who score in the bottom quartile at selected grade levels.
118 An annual justification that includes evidence that the student meets the participation criteria defined by
119 the Virginia Department of Education shall be provided for each student considered for the Virginia
120 Grade Level Alternative. Each Individual Education Program team shall review such justification and
121 make the final determination as to whether or not the Virginia Grade Level Alternative is appropriate for

the student. The superintendent and the school board chairman shall certify to the Board of Education, as a part of certifying compliance with the Standards of Quality, that there is a justification in the Individual Education Program for every student who takes the Virginia Grade Level Alternative. Compliance with this requirement shall be monitored as a part of the special education monitoring process conducted by the Department of Education. The Board shall report to the Governor and General Assembly in its annual reports pursuant to § 22.1-18 any school division that is not in compliance with this requirement.

The Standard of Learning requirements, including all related assessments, shall be waived for any student awarded a scholarship under the Brown v. Board of Education Scholarship Program, pursuant to § 30-231.2, who is enrolled in a preparation program for the General Education Development (GED) certificate or in an adult basic education program to obtain the high school diploma.

The Board of Education may adopt special provisions related to the administration and use of any SOL test or tests in a content area as applied to accreditation ratings for any period during which the SOL content or assessments in that area are being revised and phased in. Prior to statewide administration of such tests, the Board of Education shall provide notice to local school boards regarding such special provisions.

D. The Board of Education may pursue all available civil remedies pursuant to § 22.1-19.1 or administrative action pursuant to § 22.1-292.1 for breaches in test security and unauthorized alteration of test materials or test results.

The Board may initiate or cause to be initiated a review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests, *including the exclusion of students from testing who are required to be assessed*, by local school board employees responsible for the distribution or administration of the tests.

Records and other information furnished to or prepared by the Board during the conduct of a review or investigation may be withheld pursuant to subdivision 12 of § 2.2-3705.3. However, this section shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board. Any local school board or division superintendent receiving such records or other information shall, upon taking personnel action against a relevant employee, place copies of such records or information relating to the specific employee in such person's personnel file.

Notwithstanding any other provision of state law, no test or examination authorized by this section, including the Standards of Learning assessments, shall be released or required to be released as minimum competency tests, if, in the judgment of the Board, such release would breach the security of such test or examination or deplete the bank of questions necessary to construct future secure tests.

E. With such funds as may be appropriated, the Board of Education may provide, through an agreement with vendors having the technical capacity and expertise to provide computerized tests and assessments, and test construction, analysis, and security, for (i) web-based computerized tests and assessments for the evaluation of student progress during and after remediation and (ii) the development of a remediation item bank directly related to the Standards of Learning.

F. To assess the educational progress of students as individuals and as groups, each local school board shall require the use of Standards of Learning assessments and other relevant data, such as industry certification and state licensure examinations, to evaluate student progress and to determine educational performance. Each local school shall require the administration of appropriate assessments to all students for grade levels and courses identified by the Board of Education, which may include criterion-referenced tests, teacher-made tests and alternative assessment instruments and shall include the Standards of Learning Assessments and the National Assessment of Educational Progress state-by-state assessment. Each school board shall analyze and report annually, in compliance with any criteria that may be established by the Board of Education, the results from the Stanford Achievement Test Series, Ninth Edition (Stanford Nine) assessment, if administered, industry certification examinations, and the Standards of Learning Assessments to the public.

The Board of Education shall not require administration of the Stanford Achievement Test Series, Ninth Edition (Stanford Nine) assessment, except as may be selected to facilitate compliance with the requirements for home instruction pursuant to § 22.1-254.1.

The Board shall include requirements for the reporting of the Standards of Learning assessment scores and averages for each year as part of the Board's requirements relating to the School Performance Report Card. Such scores shall be disaggregated for each school by student subgroups on the Virginia assessment program as appropriate and shall be reported to the public within three months of their receipt. These reports (i) shall be posted on the portion of the Department of Education's website

183 relating to the School Performance Report Card, in a format and in a manner that allows year-to-year
184 comparisons, and (ii) may include the National Assessment of Educational Progress state-by-state
185 assessment.

186 G. Each local school division superintendent shall regularly review the division's submission of data
187 and reports required by state and federal law and regulations to ensure that all information is accurate
188 and submitted in a timely fashion. The Superintendent of Public Instruction shall provide a list of the
189 required reports and data to division superintendents annually. The status of compliance with this
190 requirement shall be included in the Board of Education's annual report to the Governor and the General
191 Assembly as required by § 22.1-18.

192 § 22.1-292.1. Violations related to secure mandatory tests.

193 A. The Board of Education may suspend or revoke the administrative or teaching license it has
194 issued to any person who *knowingly and willfully* commits any of the following acts ~~knowingly and~~
195 ~~willfully with the intent to compromise~~ *related to* secure mandatory tests administered to students as
196 required by this title or by the Board of Education:

- 197 1. Giving unauthorized access to secure test questions;
- 198 2. Copying or reproducing all or any portion of any secure test booklet;
- 199 3. Divulging the contents of any portion of a secure test;
- 200 4. Coaching or assisting examinees during testing or altering test materials or examinees' responses in
201 any way;
- 202 5. Making available any answer keys;
- 203 6. Failing to follow test security procedures established by the Department of Education;
- 204 7. Providing a false certification on any test security form required by the Department of Education;
- 205 8. Retaining a copy of secure test questions; ~~and~~
- 206 9. *Excluding students from testing who are required to be assessed; and*
- 207 10. Participating in, directing, aiding, assisting in, or encouraging any of the acts prohibited by this
208 section.

209 For the purposes of this section, "secure test" means an item, question, or test that has not been
210 made publicly available by the Department of Education.

211 Nothing in this section shall be construed to prohibit educational personnel from providing input to
212 administrators or other authorized personnel, including school board members and members of the
213 General Assembly, except when done in a manner that violates test integrity or security regarding the
214 accuracy, clarity, or propriety of test items or test administration procedures.

215 B. Nothing in this section shall be construed to prohibit or restrict the reasonable and necessary
216 actions of the Board of Education, the Superintendent of Public Instruction, or the Department of
217 Education in test development or selection, test form construction, standard setting, test scoring and
218 reporting, or any other related activities which, in the judgment of the Superintendent of Public
219 Instruction or the Board of Education, are necessary and appropriate.

220 C. Any suspension or revocation imposed for the acts enumerated in this section shall be rendered
221 pursuant to Board regulations promulgated pursuant to the Administrative Process Act (§ 2.2-4000 et
222 seq.) and § 22.1-298.1, governing the licensure of teachers.