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HOUSE BILL NO. 670

Offered January 13, 2016

Prefiled January 11, 2016

A *BILL to amend and reenact § 22.1-258 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-371.01, relating to truancy; educational neglect; penalty.*

Patron—Peace

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 22.1-258 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-371.01 as follows:

§ 18.2-371.01. Educational neglect; penalty.

A. For purposes of this section:

"Child in need of supervision" means a child who, while subject to compulsory school attendance, is habitually and without justification absent from school and (i) the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs, (ii) the school system from which the child is absent or other appropriate agency has made a reasonable effort to effect the child's regular attendance without success, and (iii) the school system has provided documentation that it has complied with the provisions of § 22.1-258.

"Parent" means any parent, guardian, legal custodian, or other person having control or charge of a child.

B. Any parent who willfully contributes to, encourages, or causes any act, omission, or condition that renders his child a child in need of supervision is guilty of educational neglect, which is punishable as a Class 1 misdemeanor.

C. When a person is charged with a violation of subsection B, the court may defer the proceedings against such person without a finding of guilt and place him on probation upon terms and conditions.

D. For a person to be eligible for a deferral under subsection C, the court shall find that (i) the person has not previously been convicted of any offense under subsection B; (ii) the person has not previously had a proceeding against him for violation of subsection B dismissed as provided in subsection E; (iii) the person pleads guilty to, or enters a plea of not guilty or nolo contendere and the court finds the evidence is sufficient to find the person guilty of, a violation of subsection B; and (iv) the person consents to such deferral.

E. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided by law. Upon fulfillment of the terms and conditions specified in the court order, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings. No charges dismissed pursuant to this section shall be eligible for expungement under § 19.2-392.2.

§ 22.1-258. Appointment of attendance officers; notification when pupil fails to report to school.

Every school board shall have power to appoint one or more attendance officers, who shall be charged with the enforcement of the provisions of this article. Where no attendance officer is appointed by the school board, the division superintendent or his designee shall act as attendance officer.

Whenever any pupil fails to report to school on a regularly scheduled school day and no indication has been received by school personnel that the pupil's parent is aware of and supports the pupil's absence, a reasonable effort to notify by telephone the parent to obtain an explanation for the pupil's absence shall be made by either the school principal or his designee, the attendance officer, other school personnel, or volunteers organized by the school administration for this purpose. Any such volunteers shall not be liable for any civil damages for any acts or omissions resulting from making such reasonable efforts to notify parents and obtain such explanation when such acts or omissions are taken in good faith, unless such acts or omissions were the result of gross negligence or willful misconduct. This subsection shall not be construed to limit, withdraw, or overturn any defense or immunity already existing in statutory or common law or to affect any claim occurring prior to the effective date of this law. School divisions are encouraged to use noninstructional personnel for this notice.

Whenever any pupil fails to report to school for a total of five scheduled school days for the school year and no indication has been received by school personnel that the pupil's parent is aware of and supports the pupil's absence, and a reasonable effort to notify the parent has failed, the school principal

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59 or his designee or the attendance officer shall make a reasonable effort to ensure that direct contact is
60 made with the parent, either in person or through telephone conversation, to obtain an explanation for
61 the pupil's absence and to explain to the parent the consequences of continued nonattendance. The
62 school principal or his designee or the attendance officer, the pupil, and the pupil's parent shall jointly
63 develop a plan to resolve the pupil's nonattendance. Such plan shall include documentation of the
64 reasons for the pupil's nonattendance.

65 If the pupil is absent an additional day after direct contact with the pupil's parent and the attendance
66 officer has received no indication that the pupil's parent is aware of and supports the pupil's absence,
67 either the school principal or his designee or the attendance officer shall schedule a conference within
68 10 school days with the pupil, his parent, and school personnel, which conference may include other
69 community service providers, to resolve issues related to the pupil's nonattendance. The conference shall
70 be held no later than 15 school days after the sixth absence. Upon the next absence by such pupil
71 without indication to the attendance officer that the pupil's parent is aware of and supports the pupil's
72 absence, the school principal or his designee shall notify the attendance officer or the division
73 superintendent or his designee, as the case may be, who shall enforce the provisions of this article by
74 either or both of the following: (i) filing a complaint with the juvenile and domestic relations court
75 alleging the pupil is a child in need of supervision as defined in § 16.1-228 or (ii) instituting
76 proceedings against the parent pursuant to § ~~18.2-374~~ 18.2-371.01 or § 22.1-262. In filing a complaint
77 against the student, the attendance officer shall provide written documentation of the efforts to comply
78 with the provisions of this section. In the event that both parents have been awarded joint physical
79 custody pursuant to § 20-124.2 and the school has received notice of such order, both parents shall be
80 notified at the last known addresses of the parents.

81 Nothing in this section shall be construed to limit in any way the authority of any attendance officer
82 or division superintendent to seek immediate compliance with the compulsory school attendance law as
83 set forth in this article.

84 Attendance officers, other school personnel, or volunteers organized by the school administration for
85 this purpose shall be immune from any civil or criminal liability in connection with the notice to parents
86 of a pupil's absence or failure to give such notice as required by this section.