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SENATE BILL NO. 961

Offered January 19, 2018

A BILL to amend and reenact §§ 22.1-3, 22.1-3.1, and 22.1-270 of the Code of Virginia, relating to public schools; homeless children.

Patron—Mason

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-3, 22.1-3.1, and 22.1-270 of the Code of Virginia are amended and reenacted as follows:

§ 22.1-3. Persons to whom public schools shall be free.

A. The public schools in each school division shall be free to each person of school age who resides within the school division. Every person of school age shall be deemed to reside in a school division:

1. When the person is living with a natural parent or a parent by legal adoption;
2. When, in accordance with the provisions of § 22.1-360, the person is living with a noncustodial parent or other person standing in loco parentis, not solely for school purposes, pursuant to a Special Power of Attorney executed under 10 U.S.C. § 1044b by the custodial parent;

3. When the parents of such person are dead and the person is living with a person in loco parentis who actually resides within the school division;

4. When the parents of such person are unable to care for the person and the person is living, not solely for school purposes, with another person who resides in the school division and is (i) the court-appointed guardian, or has legal custody, of the person; (ii) acting in loco parentis pursuant to placement of the person for adoption by a person or entity authorized to do so under § 63.2-1200; or (iii) an adult relative providing temporary kinship care as that term is defined in § 63.2-100. Local school divisions may require one or both parents and the relative providing kinship care to submit signed, notarized affidavits (a) explaining why the parents are unable to care for the person, (b) detailing the kinship care arrangement, and (c) agreeing that the kinship care provider or the parent will notify the school within 30 days of when the kinship care arrangement ends, as well as a power of attorney authorizing the adult relative to make educational decisions regarding the person. A school division may also require the parent or adult relative to obtain written verification from the local department of social services where the parent or parents live, or from both that department and the department of social services where the kinship provider lives, that the kinship arrangement serves a legitimate purpose that is in the best interest of the person other than school enrollment. With written consent from the parent or adult relative, for the purposes of expediting enrollment, a school division may obtain such written verification directly from the local department or departments of social services. The verification process shall be consistent with confidentiality provisions of Article 5 (§ 22.1-287 et seq.) of Chapter 14 of this title and Chapter 1 (§ 63.2-100 et seq.) of Title 63.2. If the kinship care arrangement lasts more than one year, a school division may require continued verification directly from one or both departments of social services as to why the parents are unable to care for the person and that the kinship care arrangement serves a legitimate purpose other than school enrollment. A local school division may enroll a person living with a relative in a kinship care arrangement that has not been verified by a local department of social services;

5. When the person is living in the school division not solely for school purposes, as an emancipated minor; or

6. When the person living in the school division is a homeless child or youth, as set forth in this subdivision, who lacks a fixed, regular, and adequate nighttime residence. Such persons shall include (i) children and youths, including unaccompanied youths who are not in the physical custody of their parents, who (a) are sharing the housing of other persons due to loss of housing, economic hardship, or ~~other causes a similar reason~~; are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations or in emergency, ~~congregate, temporary,~~ or transitional shelters; ~~or are abandoned in hospitals; or are awaiting foster care placement;~~ (b) ~~are living in an institution that provides a temporary residence for individuals with mental illness or individuals intended to be institutionalized;~~ (c) have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or ~~(d)~~ (c) are living in parked cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and (ii) migratory children, as defined in the federal Elementary and Secondary Education Act of 1965, P.L. 89-10, as amended, who are deemed homeless as they are living in

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59 circumstances set forth in clause (i).

60 For purposes of clause (i) of subdivision 6, "temporary shelter" means (1) any home, single or
61 multi-unit dwelling, or housing unit in which persons who are without housing or a fixed address
62 receive temporary housing or shelter or (2) any facility specifically designed or approved for the purpose
63 of providing temporary housing or shelter to persons who are without permanent housing or a fixed
64 address.

65 If a person resides within housing, temporary shelter, or primary nighttime residence as described in
66 subdivision 6 that is situated in more than one school division, the person shall be deemed to reside in
67 and shall be entitled to attend a public school within either school division. However, if a person resides
68 in housing, temporary shelter, or primary nighttime residence as described in subdivision 6 that is
69 located in one school division, but the property on which such housing, temporary shelter, or primary
70 nighttime residence is located lies within more than one school division, such person shall be deemed to
71 reside only in the single school division in which the housing, temporary shelter, or primary nighttime
72 residence is located. Notwithstanding any such residency determination, any person residing in housing,
73 a temporary shelter, or primary nighttime residence as described in subdivision 6 that is located in one
74 school division, but the property on which such housing, temporary shelter, or primary nighttime
75 residence is located lies within more than one school division, shall be deemed to reside in either school
76 division, if such person or any sibling of such person residing in the same housing or temporary shelter
77 attends, prior to July 1, 1999, or, in the case of a primary nighttime residence as described in
78 subdivision 6, prior to July 1, 2000, a school within either school division in which the property on
79 which the housing, temporary shelter, or primary nighttime residence is located.

80 School divisions shall comply with the requirements of *Subtitle VII-B* of the federal McKinney-Vento
81 Homeless Education Assistance Improvements Act of 2001, as amended (42 U.S.C. § 11431 et seq.), to
82 ensure that homeless children and youths shall receive the educational services comparable to those
83 offered to other public school students.

84 School divisions serving the students identified in subdivision 6 shall coordinate the identification
85 and provision of services to such students with relevant local social services agencies and other agencies
86 and programs providing services to such students, and with other school divisions as may be necessary
87 to resolve interdivisional issues.

88 B. In the interest of providing educational continuity to the children of military personnel, no child
89 of a person on active military duty attending a school free of charge in accordance with this section
90 shall be charged tuition by that school division upon such child's relocation to military housing located
91 in another school division in the Commonwealth, pursuant to orders received by such child's parent to
92 relocate to base housing and forfeit his military housing allowance. Such children shall be allowed to
93 continue attending school in the school division they attended immediately prior to the relocation and
94 shall not be charged tuition for attending such school. Such children shall be counted in the average
95 daily membership of the school division in which they are enrolled. Further, the school division in
96 which such children are enrolled subsequent to their relocation to base housing shall not be responsible
97 for providing for their transportation to and from school.

98 **§ 22.1-3.1. Birth certificates required upon admission; required notice to the local**
99 **law-enforcement agency.**

100 A. Except as otherwise provided in this subsection, no pupil shall be admitted for the first time to
101 any public school in any school division in this Commonwealth unless the person enrolling the pupil
102 shall present, upon admission, a certified copy of the pupil's birth record. The principal or his designee
103 shall record the official state birth number from the pupil's birth record into the pupil's permanent school
104 record and may retain a copy in the pupil's permanent school record. If a certified copy of the pupil's
105 birth record cannot be obtained, the person so enrolling the pupil shall submit an affidavit setting forth
106 the pupil's age and explaining the inability to present a certified copy of the birth record. If the school
107 division cannot ascertain a child's age because of the lack of a birth certificate, the child shall
108 nonetheless be admitted into the public schools if the division superintendent determines that the person
109 submitting the affidavit presents information sufficient to estimate with reasonable certainty the age of
110 such child.

111 However, if the student seeking enrollment is a homeless child or youth as defined in § 22.1-3, the
112 school shall immediately enroll such student, even if such student is unable to produce the records
113 required for enrollment, and shall immediately contact the school last attended by the student to obtain
114 relevant academic and other records, and shall comply with the provisions of *Subtitle VII-B* of the
115 federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001, as amended (42
116 U.S.C. § 11431 et seq.), including immediately referring the parent of the student or the youth to the
117 local school division liaison, as described in the federal Act, who shall assist in obtaining the necessary
118 records for enrollment.

119 B. Upon the failure of any person enrolling a pupil to present a certified copy of the pupil's birth
120 record, the principal of the school in which the pupil is being enrolled or his designee shall immediately

121 notify the local law-enforcement agency. The notice to the local law-enforcement agency shall include
 122 copies of the submitted proof of the pupil's identity and age and the affidavit explaining the inability to
 123 produce a certified copy of the birth record.

124 C. Within 14 days after enrolling a transferred pupil, the principal of the school in which the pupil
 125 has been enrolled or his designee shall request that the principal or his designee of the school in which
 126 the pupil was previously enrolled submit documentation that a certified copy of the pupil's birth record
 127 was presented upon the pupil's initial enrollment.

128 D. Principals and their designees shall be immune from any civil or criminal liability in connection
 129 with any notice to a local law-enforcement agency of a pupil lacking a birth certificate or failure to give
 130 such notice as required by this section.

131 **§ 22.1-270. Preschool physical examinations.**

132 A. No pupil shall be admitted for the first time to any public kindergarten or elementary school in a
 133 school division unless such pupil shall furnish, prior to admission, (i) a report from a qualified licensed
 134 physician, or a licensed nurse practitioner or licensed physician assistant acting under the supervision of
 135 a licensed physician, of a comprehensive physical examination of a scope prescribed by the State Health
 136 Commissioner performed within the 12 months prior to the date such pupil first enters such public
 137 kindergarten or elementary school or (ii) records establishing that such pupil furnished such report upon
 138 prior admission to another school or school division and providing the information contained in such
 139 report.

140 If the pupil is a homeless child or youth as defined in *subdivision A 6 of § 22.1-3*, and for that
 141 reason cannot furnish the report or records required by (i) or (ii) of this subsection, and the person
 142 seeking to enroll the pupil furnishes to the school division an affidavit so stating and also indicating
 143 that, to the best of his knowledge, such pupil is in good health and free from any communicable or
 144 contagious disease, the school division shall immediately refer the student to the local school division
 145 liaison, as described in *Subtitle VII-B of the federal McKinney-Vento Homeless Education Assistance*
 146 *Improvements Act of 2001*, as amended (42 U.S.C. § 11431 et seq.) (the Act), who shall, as soon as
 147 practicable, assist in obtaining the necessary physical examination by the county or city health
 148 department or other clinic or physician's office and shall immediately admit the pupil to school, as
 149 required by such Act.

150 B. The physician, or licensed nurse practitioner or licensed physician assistant acting under the
 151 supervision of a licensed physician, making a report of a physical examination required by this section
 152 shall, at the end of such report, summarize the abnormal physical findings, if any, and shall specifically
 153 state what, if any, conditions are found that would identify the child as handicapped.

154 C. Such physical examination report shall be placed in the child's health record at the school and
 155 shall be made available for review by any employee or official of the State Department of Health or any
 156 local health department at the request of such employee or official.

157 D. Such physical examination shall not be required of any child whose parent shall object on
 158 religious grounds and who shows no visual evidence of sickness, provided that such parent shall state in
 159 writing that, to the best of his knowledge, such child is in good health and free from any communicable
 160 or contagious disease.

161 E. The health departments of all of the counties and cities of the Commonwealth shall conduct such
 162 physical examinations for medically indigent children without charge upon request and may provide
 163 such examinations to others on such uniform basis as such departments may establish.

164 F. Parents of entering students shall complete a health information form which shall be distributed by
 165 the local school divisions. Such forms shall be developed and provided jointly by the Department of
 166 Education and Department of Health, or developed and provided by the school division and approved by
 167 the Superintendent of Public Instruction. Such forms shall be returnable within 15 days of receipt unless
 168 reasonable extensions have been granted by the superintendent or his designee. Upon failure of the
 169 parent to complete such form within the extended time, the superintendent may send to the parent
 170 written notice of the date he intends to exclude the child from school; however, no child who is a
 171 homeless child or youth as defined in subdivision A 6 of § 22.1-3 shall be excluded from school for
 172 such failure to complete such form.