

LEGISLATIVE REFERENCE BUREAU

AMENDMENTS TO SENATE BILL NO. 359

Sponsor:

Printer's No. 273

1 Amend Bill, page 1, lines 1 through 7, by striking out all of
2 said lines and inserting

3 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An
4 act relating to the public school system, including certain
5 provisions applicable as well to private and parochial
6 schools; amending, revising, consolidating and changing the
7 laws relating thereto," in enforcing attendance, further
8 providing for definitions; providing for attendance policy at
9 charter and cyber charter schools; further providing for
10 reports of enrollments, attendance and withdrawals and public
11 and private schools, and for penalties for violation of
12 compulsory attendance requirements; providing for procedure
13 by school when child habitually truant, for procedure upon
14 filing of citation and for penalties for violating compulsory
15 school attendance requirements; and repealing provisions
16 relating to suspension of operating privilege.

17 Amend Bill, page 1, lines 10 through 20; pages 2 through 5,
18 lines 1 through 30; page 6, lines 1 through 24; by striking out
19 all of said lines on said pages and inserting

20 Section 1. Section 1326 of the act of March 10, 1949
21 (P.L.30, No.14), known as the Public School Code of 1949, is
22 amended to read:

23 Section 1326. Definitions.--When used in this subdivision,
24 the following words and phrases shall have the following
25 meanings:

26 The term "citation" shall mean a non-traffic citation or
27 private criminal complaint.

28 The term ["compulsory school age," as hereinafter used,]
29 "compulsory school age" shall mean the period of a child's life
30 from the time the child's parents elect to have the child enter
31 school, which shall be not later than at the age of eight (8)
32 years, until the age of seventeen (17) years. The term shall not
33 include any child who holds a certificate of graduation from a
34 regularly accredited licensed, registered or approved senior
35 high school.

1 The term "conviction" shall mean a conviction under section
2 1333, 1333.1, 1333.2 or 1333.3 for violation of the compulsory
3 school attendance requirements.

4 The term "court" shall mean a magisterial district court or a
5 court of common pleas.

6 The term "excused absence" shall mean an absence from school
7 which is permitted under section 1329.

8 The term "habitually truant" shall mean having incurred
9 unexcused absences for six (6) or more days during the current
10 school year by a child subject to compulsory school attendance.

11 The term "judge" shall mean a magisterial district judge or
12 judge of a court of common pleas.

13 The term ["migratory child," wherever used in this
14 subdivision of this article,] "migratory child" shall include
15 any child domiciled temporarily in any school district for the
16 purpose of seasonal employment, but not acquiring residence
17 therein, and any child accompanying his [parent or guardian] or
18 her person in parental relation who is so domiciled.

19 The term "offense" shall mean each citation filed under
20 section 1333, 1333.1, 1333.2 or 1333.3 for a violation of the
21 compulsory school attendance requirement regardless of the
22 number of unexcused absences averred in the citation.

23 The term "person in parental relation" shall mean a:

24 (1) biological or adoptive parent;

25 (2) noncustodial biological or adoptive parent;

26 (3) guardian of the person of the child; or

27 (4) person with whom the child lives and who is acting
28 in a parental role for a child of compulsory school age.

29 The term does not include a county agency or person acting as
30 an agent of the county agency in the jurisdiction of a dependent
31 child as defined under 42 Pa.C.S. § 6302 (relating to
32 definitions). This definition shall not be construed to expand
33 the right of a child under any other provision of this act.

34 The term "school" shall mean the educational entity in which
35 the child is enrolled.

36 The term "school attendance improvement conference" shall
37 mean a conference where the child's absences and the reasons for
38 the absences are examined in an effort to improve attendance,
39 with or without additional services. The following individuals
40 shall be invited:

41 (1) The child.

42 (2) The child's person in parental relation.

43 (3) Other individuals identified by the person in parental
44 relation who may be a resource.

45 (4) Appropriate school personnel.

46 (5) Recommended service providers.

47 The term "school day" shall mean the length of time that a
48 child subject to compulsory attendance is expected to be
49 receiving instruction during a calendar day, as determined by
50 the school.

51 The term "school or community-based attendance improvement

1. program" shall mean any program designed to improve school
2 attendance by seeking to identify and address the underlying
3 reasons for a child's absences.

4 The term "school year" shall have the same meaning as the
5 term "school year" as defined in section 102 and as further
6 defined in section 1327(b) for parochial schools, section
7 1327.1(c) for home education programs, sections 1501 and 1504
8 for all public schools, section 1715-A(9) for charter schools
9 and section 1749-(A)(a)(1) for cyber charter schools.

10 The term "truant" shall mean having incurred unexcused
11 absences of three (3) or more school days during the current
12 school year by a child subject to compulsory school attendance.

13 The term "unexcused absence" shall mean an absence from
14 school which is not permitted under section 1329 and where an
15 approved explanation has not been submitted within the time
16 period specified. An out-of-school suspension may not be
17 considered an unexcused absence.

18 Section 2. The act is amended by adding a section to read:

19 Section 1327.2. Attendance Policy at Charter and Cyber
20 Charter Schools.--(a) Each charter and cyber charter school
21 shall establish an attendance policy designed to accurately
22 determine when a child who is enrolled in a charter or cyber
23 charter school has an unexcused absence, which may differ from
24 the policy of the home school district of the child. The policy
25 must conform to the provisions of this act relating to
26 compulsory attendance.

27 (b) The department shall, in consultation with cyber charter
28 schools, develop guidelines setting forth alternative methods of
29 calculating unexcused absences for the purposes of determining
30 whether a child enrolled in a cyber charter school has an
31 unexcused absence.

32 (c) When proceeding under section 1333.2 for the filing of a
33 citation, venue shall be based upon the residence of the child.
34 Participation by any cyber charter school in the proceedings may
35 be conducted in person or via video conferencing.

36 Section 3. Section 1332 of the act, amended January 14, 1970
37 (1969 P.L.468, No.192), is amended to read:

38 Section 1332. Reports of Enrollments; Attendance and
39 Withdrawals; Public and Private Schools.--Every principal or
40 teacher in every public school, and every principal, teacher or
41 tutor in every school other than a public school, and in every
42 institution for children, and every private teacher in every
43 school district, shall, immediately after their admission to
44 such school or institution, or at the beginning of such private
45 teaching, furnish to the district superintendents, attendance
46 officers, home and school visitors, or secretaries of the boards
47 of school directors of the districts wherein the parents or
48 guardians of such children reside, lists of the names and
49 residences of all children between [six (6)] eight (8) and
50 eighteen (18) years of age enrolled in such school or
51 institution, or taught by such private teachers; and shall

1 further report at once to such district superintendent, or
2 secretary of the board of school directors, the name and date of
3 withdrawal of any such pupil withdrawing from any such school or
4 institution, or from such private instruction, if such
5 withdrawal occurs during the period of compulsory attendance in
6 said district. Every principal or teacher in a school other than
7 a public school, and every private teacher, shall also report at
8 once to the superintendent, attendance officer, home and school
9 visitor, or secretary of the board of school directors of the
10 district, any such child who has been absent three (3) days, or
11 their equivalent, during the term of compulsory attendance,
12 without lawful excuse. Charter and cyber charter schools shall
13 report unexcused absences directly to the Department of
14 Education via the annual Pennsylvania Information Management
15 System (PIMS) in accordance with policies and guidelines
16 established under section 1327.2.

17 Section 4. Section 1333 of the act, amended November 17,
18 1995 (1st Sp.Sess., P.L.1110, No.29), is amended to read:

19 Section 1333. [Penalties for Violation of Compulsory
20 Attendance Requirements.--(a) (1) Every parent, guardian, or
21 person in parental relation, having control or charge of any
22 child or children of compulsory school age, who shall fail to
23 comply with the provisions of this act regarding compulsory
24 attendance, shall on summary conviction thereof, be sentenced to
25 pay a fine, for the benefit of the school district in which such
26 offending person resides, not exceeding three hundred dollars
27 (\$300) and to pay court costs or be sentenced to complete a
28 parenting education program offered and operated by a local
29 school district, medical institution or other community
30 resources, and, in default of the payment of such fine and costs
31 or completion of the parenting program by the person so
32 offending, shall be sentenced to the county jail for a period
33 not exceeding five (5) days. Any person sentenced to pay any
34 such fine may appeal to the court of common pleas of the proper
35 county, upon entering into a recognizance, with one or more
36 proper sureties, in double the amount of penalty and costs.
37 Before any proceedings are instituted against any parent,
38 guardian, or person in parental relation, for failure to comply
39 with the provisions of this act, the district superintendent,
40 attendance officer, or secretary of the board of school
41 directors, shall give the offending person three (3) days'
42 written notice of such violation. If, after such notice has been
43 given, the provisions of this act regarding compulsory
44 attendance are again violated by the persons so notified, at any
45 time during the term of compulsory attendance, such person, so
46 again offending, shall be liable under the provisions of this
47 section without further notice.

48 (2) The child and every parent, guardian or person in
49 parental relation must appear at a hearing established by the
50 district justice. If the parent, guardian or person in parental
51 relation charged with a summary offense under this subsection

1 shows that he or she took every reasonable step to insure
2 attendance of the child at school, he or she shall not be
3 convicted of the summary offense.

4 (3) Upon a summary conviction, the district justice may
5 suspend, in whole or in part, a sentence in which a parent,
6 guardian or person in parental relation is summoned to pay as
7 required under this section: Provided, That the child no longer
8 is habitually truant from school without justification.

9 (4) In lieu of or in addition to any other sentence imposed
10 under this section, the district justice may order the parent,
11 guardian or person in parental relation to perform community
12 service in the school district in which the offending child
13 resides for a period not to exceed six (6) months.

14 (b) (1) If the parent, guardian or person in parental
15 relation is not convicted of a summary offense because he or she
16 took every reasonable step to insure attendance of the child at
17 school, a child of compulsory school age who has attained the
18 age of thirteen (13) years and fails to comply with the
19 provisions of this act regarding compulsory attendance or who is
20 habitually truant from school without justification commits a
21 summary offense and except as provided in clause (4) shall, upon
22 conviction, be sentenced to pay a fine not exceeding three
23 hundred dollars (\$300) for each offense for the benefit of the
24 school district in which such offending child resides or shall
25 be assigned to an adjudication alternative program pursuant to
26 42 Pa.C.S. § 1520 (relating to adjudication alternative
27 program).

28 (2) For any child who has attained the age of thirteen (13)
29 years who fails to pay the fine under clause (1) or to comply
30 with the adjudication alternative program, the district justice
31 may allege the child to be dependent under 42 Pa.C.S. § 6303(a)
32 (1) (relating to scope of chapter). The failure by the child to
33 pay a fine or comply with the adjudication alternative program
34 shall not constitute a delinquent act under 42 Pa.C.S. Ch. 63
35 (relating to juvenile matters).

36 (3) Upon a summary conviction or assignment to an
37 adjudication alternative program, the district justice may
38 suspend, in whole or in part, a sentence or an adjudication
39 alternative program in which a child who has attained the age of
40 thirteen (13) years must pay or comply with the adjudication
41 alternative program: Provided, That the child no longer is
42 habitually truant from school without justification.

43 (4) Any child who has not attained the age of thirteen (13)
44 years who fails to comply with the compulsory attendance
45 provisions of this act and is habitually truant shall be
46 referred by the school district for services or possible
47 disposition as a dependent child as defined under 42 Pa.C.S. §
48 6302 (relating to definitions). Any child who has attained the
49 age of thirteen (13) years who fails to comply with the
50 compulsory attendance provisions of this act and is habitually
51 truant may, in lieu of a prosecution under clause (1), be

1 referred by the school district for services or possible
2 disposition as a dependent child as defined under 42 Pa.C.S. §
3 6302.

4 (5) The following words, when used in this subsection, shall
5 have the following meaning, except where the context clearly
6 indicates or requires a different meaning:

7 "Community resources" shall mean those agencies and services
8 for children and youth provided by the juvenile court, the
9 county, the Department of Health, the Department of Public
10 Welfare and other public or private institutions.

11 "District justice" shall mean such court as the court of
12 common pleas shall direct in counties not having district
13 justices.

14 "Habitually truant" shall mean absence for more than three
15 (3) school days or their equivalent following the first notice
16 of truancy given under section 1354. A person may be habitually
17 truant after such notice.

18 "Offense" shall mean each citation which goes before a
19 district justice or court of common pleas.

20 "Person in parental relation" shall not include any county
21 agency or person acting as an agent of the county agency in the
22 jurisdiction of a dependent child defined under 42 Pa.C.S. §
23 6302 (relating to definitions).

24 (c) If a child is convicted for a violation of this section,
25 the court, including a court not of record, shall send to the
26 Department of Transportation a certified record of the
27 conviction or other disposition on a form prescribed by the
28 department.

29 (d) Nothing in this section shall be construed to apply to a
30 parent, guardian or person in parental relation whose child or
31 children are in a home education program under section 1327.1.]
32 Procedure When Child is Truant.--(a) When a child is truant,
33 the school shall notify in writing the person in parental
34 relation with the child who resides in the same household as the
35 child of the child's violation of compulsory school attendance
36 within ten (10) school days of the child's third unexcused
37 absence. The notice:

38 (1) shall include a description of the consequences that
39 will follow if the child becomes habitually truant;

40 (2) shall be in a form and use language that would be
41 considered reasonably understandable by the person in parental
42 relation;

43 (3) may include the offer of a school attendance improvement
44 conference; or

45 (4) when transmitted to a person who is not the biological
46 or adoptive parent, shall also be provided to the child's
47 biological or adoptive parent if the parent's mailing address is
48 on file with the school and the parent is not precluded from
49 receiving the information by court order.

50 (b) If the child continues to incur unexcused absences after
51 the school has issued the notice under subsection (a), the

1. school shall then offer by advance written notice a school
2 attendance improvement conference, unless previously held
3 following the notice provided under subsection (a). The
4 following shall apply:

5 (1) This subsection does not place a legal requirement upon
6 the child or person in parental relation to attend the
7 conference. The conference may occur if the person in parental
8 relation declines to participate.

9 (2) The outcome of the conference shall be documented in a
10 written school attendance improvement plan. The department shall
11 develop a form to be used for this purpose, and each school
12 shall use a form substantially similar to the form developed by
13 the department.

14 (3) Further legal action may not be taken by the school to
15 address unexcused absences by the child until after the date for
16 the scheduled school attendance improvement conference has
17 passed.

18 Section 5. The act is amended by adding sections to read:

19 Section 1333.1. Procedure By School When Child Habitually
20 Truant.--(a) When a child is habitually truant and is under
21 fifteen (15) years of age at the time of referral, the school:

22 (1) Shall refer the child to either of the following:

23 (i) a school or community-based attendance improvement
24 program; or

25 (ii) the county children and youth agency for services or
26 for possible disposition as a dependent child under the
27 provisions of 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

28 (2) May file a citation in the office of the appropriate
29 magisterial district judge against the person in parental
30 relation with the child who resides in the same household as the
31 child.

32 (b) When a child is habitually truant and is fifteen (15)
33 years of age or older at the time of referral, the school shall
34 either:

35 (1) refer the child to a school or community-based
36 attendance improvement program; or

37 (2) file a citation in the office of the appropriate
38 magisterial district judge against the child or the person in
39 parental relation with the child who resides in the same
40 household as the child. Jurisdiction shall be based on the
41 residence of the child.

42 (c) If a child continues to incur additional unexcused
43 absences after being referred to a school or community-based
44 attendance improvement program or refuses to participate in a
45 school or community-based attendance improvement program as
46 recommended through the school attendance improvement
47 conference, the school may refer the child to the county
48 children and youth agency for possible disposition as a
49 dependent child under the provisions of 42 Pa.C.S. Ch. 63 if the
50 child is fifteen (15) years of age or older.

51 (d) When referring a case to the county children and youth

1 agency or the magisterial district court because the child has
2 been habitually truant, the school shall provide verification
3 that a school attendance improvement conference was offered.

4 Section 1333.2. Procedure Upon Filing of Citation.--(a) The
5 venue for the filing of a citation shall be the location of the
6 school in which the child is enrolled or should be enrolled
7 except where section 1327.2(c) applies.

8 (b) When a citation is filed against a child or a person in
9 parental relation with the child who resides in the same
10 household as the child under section 1333.1, the magisterial
11 district judge shall provide the following notices:

12 (1) notice of the hearing in writing to the school, the
13 person in parental relation, the child and the county children
14 and youth agency; and

15 (2) notice to the child or person in parental relation with
16 the child who resides in the same household as the child of the
17 availability of a preconviction diversionary program authorized
18 under 42 Pa.C.S. § 1520 (relating to adjudication alternative
19 program).

20 (c) At the hearing the burden is on the school to prove
21 beyond a reasonable doubt that the child was habitually truant
22 in noncompliance with the compulsory school attendance
23 requirements.

24 (d) The following affirmative defense to a citation filed
25 under this subdivision of this article against a person in
26 parental relation to the child who resides in the same household
27 as the child is available:

28 (1) The person in parental relation to the child who resides
29 in the same household as the child took every reasonable step to
30 ensure attendance of the child at school.

31 (2) An affirmative defense under this subsection must be
32 proven by a preponderance of the evidence.

33 (e) Before entering a sentence the judge shall permit the
34 school, person in parental relation or child to present relevant
35 information that will assist the judge in making an informed
36 decision regarding the appropriate sentence. The child's school
37 attendance after the citation has been filed and while the
38 proceeding is pending may be considered for the purpose of
39 imposing a sentence.

40 Section 1333.3. Penalties for Violating Compulsory School
41 Attendance Requirements.--(a) A person convicted of an offense
42 may be:

43 (1) sentenced to pay a fine for the benefit of the school
44 that is responsible for the truancy proceedings in an amount not
45 exceeding three hundred dollars (\$300) for each citation
46 together with court costs;

47 (2) sentenced to perform community service; or

48 (3) required to complete an appropriate course or program
49 designed to improve school attendance which has been approved by
50 the president judge of the judicial district.

51 (b) The court may suspend the sentence of a person convicted

1 of an offense and may remit or waive fines and costs if the
2 child attends school in accordance with a plan devised by the
3 court.

4 (c) A person convicted of an offense shall have a right to
5 appeal de novo to a court of common pleas of the proper county
6 within thirty (30) days of the conviction. After thirty (30)
7 days, the appeal shall proceed as any other appeal of a summary
8 conviction.

9 (d) No citation may be filed against a child or a person in
10 parental relation with the child who resides in the same
11 household as the child for a subsequent violation of compulsory
12 school attendance if any of the following circumstances apply:

13 (1) A proceeding is already pending under sections 1333.1
14 and 1333.2 against the child or a person in parental relation
15 with the child who resides in the same household as the child
16 and judgment in the first proceeding has not yet been entered,
17 unless a warrant has been issued for failure of the child or
18 person in parental relation to appear before the court and the
19 warrant has not yet been served.

20 (2) A referral for services has been made to the county
21 children and youth agency under this subdivision of this article
22 and the agency has not closed the case.

23 (3) A petition has been filed alleging the child is
24 dependent due to being habitually truant under 42 Pa.C.S. Ch. 63
25 (relating to juvenile matters) and the case remains under the
26 jurisdiction of the juvenile court.

27 (e) Upon a second or subsequent conviction of a child or a
28 person in parental relation with the child who resides in the
29 same household as the child for a violation of the requirements
30 of compulsory school attendance in a court within this
31 Commonwealth within a three year period, the court shall refer
32 the child for services or possible disposition as a dependent
33 child under 42 Pa.C.S. Ch. 63.

34 (f) Upon the willful failure of a person to satisfy a fine
35 or costs imposed under this section or upon willful failure to
36 comply with a payment plan, the court may, after finding that
37 the person has the ability to pay the financial obligation
38 imposed, impose community service. The following shall apply:

39 (1) In the case of a child, the failure to satisfy a fine or
40 costs imposed under this section shall not be considered a
41 delinquent act.

42 (2) The president judge of a judicial district may adopt a
43 local policy under 42 Pa.C.S. § 6304 (relating to powers and
44 duties of probation officers) and the Pennsylvania Rules of
45 Juvenile Court Procedure to provide that a juvenile probation
46 officer may receive allegations that the child who fails to
47 satisfy a fine or costs imposed under this section is dependent
48 for the purpose of considering the commencement of proceedings
49 under 42 Pa.C.S. Ch. 63.

50 (g) If a child is convicted of a violation of this section,
51 the following may occur:

1 (1) The court may transmit to the Department of
2 Transportation a certified record of the conviction on a form
3 prescribed by the department only if the child fails to comply
4 with a lawful sentence entered for the violation.

5 (2) The Department of Transportation shall suspend for
6 ninety (90) days the operating privilege of a child upon
7 receiving a certified record that the child was convicted of an
8 offense under this section. The Department of Transportation
9 shall suspend the child's operating privileges for six (6)
10 months upon receiving a certified record that the child was
11 convicted of a second or subsequent offense under this section.

12 (3) A child whose record is received by the Department of
13 Transportation under this section and who does not have a
14 driver's license shall be ineligible to apply for a driver's
15 license under 75 Pa.C.S. §§ 1505 (relating to learners' permits)
16 and 1507 (relating to application for driver's license or
17 learner's permit by minor) for the time period specified in
18 clause (2). If the child is under sixteen (16) years of age when
19 convicted, suspension of operating privileges shall commence in
20 accordance with 75 Pa.C.S. § 1541 (relating to period of
21 disqualification, revocation or suspension of operating
22 privilege) for the time specified in clause (2).

23 (4) The Department of Transportation may restore the license
24 or eligibility of a child whose driving privilege has been
25 suspended or whose eligibility for a permit or license is
26 delayed under this section. The Department of Transportation
27 shall make this restoration with a form that it develops. The
28 form shall contain certifications provided by the child's school
29 in the form of a certified record that the child:

30 (i) Has attended school without an unexcused absence or an
31 unexcused tardy for a period of at least two (2) months after
32 the first conviction or four (4) months after the second or
33 subsequent conviction.

34 (ii) Has no school disciplinary actions pending and has been
35 subject to no disciplinary sanction during the period described
36 under subclause (i).

37 (iii) Is attending and passing all classes.

38 (5) An insurer may not increase premiums, impose a surcharge
39 or rate penalty, make a driver record point assignment for
40 automobile insurance or cancel or refuse to renew an automobile
41 insurance policy because of a suspension under this section.

42 Section 6. Section 1338.1 of the act is repealed:

43 [Section 1338.1. Suspension of Operating Privilege.--(a)
44 The Department of Transportation shall suspend for 90 days the
45 operating privilege of any child upon receiving a certified
46 record that the child was convicted of violating section 1333.
47 If the department receives a second or subsequent conviction for
48 a child's violation of section 1333, the department shall
49 suspend the child's operating privilege for six months.

50 (b) Any child whose record is received by the department
51 under section 1333(c) and who does not have a driver's license

1. shall be ineligible to apply for a driver's license under 75
2 Pa.C.S. §§ 1505 (relating to learners' permits) and 1507
3 (relating to application for driver's license or learner's
4 permit by minor) for the time periods specified in subsection
5 (a). If the child is under sixteen (16) years of age when
6 convicted, suspension of operating privileges shall commence in
7 accordance with 75 Pa.C.S. § 1541 (relating to period of
8 revocation or suspension of operating privilege) for the time
9 specified in subsection (a).

10 (c) An insurer may not increase premiums, impose any
11 surcharge or rate penalty or make any driver record point
12 assignment for automobile insurance, nor shall an insurer cancel
13 or refuse to renew an automobile insurance policy on account of
14 a suspension under this section.]

15 Section 7. The amendment, addition or repeal of the
16 following provisions shall apply to school years which begin at
17 least nine months following the effective date of this section:

- 18 (1) Section 1326 of the act.
- 19 (2) Section 1327.2 of the act.
- 20 (3) Section 1332 of the act.
- 21 (4) Section 1333 of the act.
- 22 (5) Section 1333.1 of the act.
- 23 (6) Section 1333.2 of the act.
- 24 (7) Section 1338.1 of the act.

25 Section 8. This act shall take effect immediately.