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SENATE BILL 393

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Craig Brandt

AN ACT

RELATING TO PUBLIC EDUCATION; ADDING TO THE PUBLIC SCHOOL CODE
AN EARLY IDENTIFICATION AND NOTIFICATION AND IMMEDIATE
INTERVENTION SYSTEM TO PREVENT UNEXCUSED ABSENCES, HABITUAL
TRUANCY AND WITHDRAWAL FROM SCHOOL; PROVIDING FOR THE
SUSPENSION OR POSTPONEMENT OF DRIVING PRIVILEGES OF SCHOOL-AGE
PERSONS IN VIOLATION OF THE COMPULSORY SCHOOL ATTENDANCE LAW
UPON A HEARING BY THE MOTOR VEHICLE DIVISION OF THE TAXATION
AND REVENUE DEPARTMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-12-2 NMSA 1978 (being Laws 1967,
Chapter 16, Section 170, as amended by Laws 2007, Chapter 307,
Section 6 and by Laws 2007, Chapter 308, Section 6) is amended
to read:

"22-12-2. COMPULSORY SCHOOL ATTENDANCE--WITHDRAWAL

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1 REQUIREMENTS--RESPONSIBILITY.--

2 A. Except as otherwise provided, a school-age
3 person shall attend public school, private school, home school
4 or a state institution until the school-age person is at least
5 eighteen years of age unless that person has graduated from
6 high school or received a general educational development
7 certificate. [~~A parent may give written, signed permission for~~
8 ~~the school-age person to leave school in case of hardship~~
9 ~~approved by the local superintendent.~~]

10 B. A school-age person subject to the provisions of
11 the Compulsory School Attendance Law shall attend school for at
12 least the length of time of the school year that is established
13 in the school district in which the person is a resident or the
14 state-chartered charter school in which the person is enrolled,
15 and the school district or state-chartered charter school shall
16 not excuse a student from attending school except as provided
17 in that law or for parent-authorized medical reasons.

18 C. Any parent of a school-age person subject to the
19 provisions of the Compulsory School Attendance Law is
20 responsible for the school attendance of that person.

21 D. A school-age person who is subject to the
22 provisions of the Compulsory School Attendance Law shall not
23 withdraw from a public school unless:

24 (1) the parent of the school-age person
25 provides written documentation of the person's enrollment in

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1 another public school or a private school or a home school
2 operated pursuant to the provisions of Section 22-1-2.1 NMSA
3 1978;

4 (2) the school receives:

5 (a) written documentation of the school-
6 age person's illness;

7 (b) written documentation of a financial
8 hardship causing the school-age person to be employed full time
9 to support the person's family; or

10 (c) an order by a court that has
11 jurisdiction over the school-age person; or

12 (3) at an exit interview:

13 (a) the school-age person, the parent of
14 the school-age person and the principal meet to discuss the
15 intention to withdraw from school;

16 (b) the school-age person and the parent
17 of the school-age person sign a written acknowledgment that a
18 withdrawal from school is likely to diminish the future
19 earnings and long-term employment prospects of the school-age
20 person; and

21 (c) the principal agrees to the
22 withdrawal and signs the written acknowledgment signed by the
23 school-age person and the parent of the school-age person.

24 E. Starting with the 2014-2015 school year, a
25 school-age person in grade eight through twelve who withdraws

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1 from a public school without meeting the requirements in
2 Subsection D of this section may be certified as a school-age
3 person in violation of the Compulsory School Attendance Law by
4 the department and referred to the motor vehicle division of
5 the taxation and revenue department for a hearing to determine
6 the suspension or postponement of driving privileges. The
7 motor vehicle division may suspend or postpone driving
8 privileges until the person is no longer of school age or the
9 department certifies to the motor vehicle division that the
10 school-age person is in compliance with the Compulsory School
11 Attendance Law, whichever occurs first.

12 ~~[D-]~~ F. Each local school board and each governing
13 body of a charter school or private school shall enforce the
14 provisions of the Compulsory School Attendance Law for students
15 enrolled in their respective schools."

16 **SECTION 2.** Section 22-12-7 NMSA 1978 (being Laws 1967,
17 Chapter 16, Section 175, as amended) is amended to read:

18 "22-12-7. ENFORCEMENT OF ATTENDANCE LAW--HABITUAL
19 TRUANTS--PENALTY.--

20 A. Each local school board and each governing body
21 of a charter school or private school shall initiate the
22 enforcement of the provisions of the Compulsory School
23 Attendance Law for students enrolled in their respective
24 schools.

25 B. To initiate enforcement of the provisions of the

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1 Compulsory School Attendance Law against ~~[an]~~ a student who is
2 a habitual truant, a local school board or governing body of a
3 charter school or private school or its authorized
4 representatives shall give written notice of the habitual
5 truancy by mail to or by personal service on the parent of the
6 student subject to and in noncompliance with the provisions of
7 the Compulsory School Attendance Law. The notice shall include
8 a date, time and place for the parent to meet with the local
9 school district, charter school or private school to develop
10 intervention strategies that focus on keeping the student in an
11 educational setting.

12 C. If unexcused absences continue after written
13 notice of habitual truancy as provided in Subsection B of this
14 section has occurred, the student shall be reported to the
15 juvenile probation ~~[services]~~ office of the judicial district
16 where the student resides for an investigation as to whether
17 the student shall be considered to be a neglected child or a
18 child in a family in need of services because of habitual
19 truancy and thus subject to the provisions of the Children's
20 Code. The juvenile probation ~~[services]~~ office may send a
21 written notice to a parent of the student directing the parent
22 and student to report to the juvenile probation ~~[services]~~
23 office to discuss services for the student or the family. ~~[In~~
24 ~~addition to any other disposition, the children's court may~~
25 ~~order the habitual truant's driving privileges to be suspended~~

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1 ~~for a specified time not to exceed ninety days on the first~~
2 ~~finding of habitual truancy and not to exceed one year for a~~
3 ~~subsequent finding of habitual truancy.]~~

4 D. If, after review by the juvenile probation
5 office where the student resides, a determination and finding
6 is made that the habitual truancy by the student may have been
7 caused by the parent of the student, then the matter [~~will~~]
8 shall be referred by the juvenile probation office to the
9 district attorney's office or any law enforcement agency having
10 jurisdiction for appropriate investigation and filing of
11 charges allowed under the Compulsory School Attendance Law.
12 Charges against the parent may be filed in metropolitan court,
13 magistrate court or district court.

14 E. A parent of the student who, after receiving
15 written notice as provided in Subsection B of this section and
16 after the matter has been reviewed in accordance with
17 Subsection D of this section, knowingly allows the student to
18 continue to violate the Compulsory School Attendance Law [~~shall~~
19 ~~be~~] is guilty of a petty misdemeanor. Upon the first
20 conviction, a fine of not less than twenty-five dollars
21 (\$25.00) or more than one hundred dollars (\$100) may be
22 imposed, or the parent of the student may be ordered to perform
23 community service. If violations of the Compulsory School
24 Attendance Law continue, upon the second and subsequent
25 convictions, the parent of the student who knowingly allows the

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1 student to continue to violate the Compulsory School Attendance
2 Law [~~shall be~~] is guilty of a petty misdemeanor and shall be
3 subject to a fine of not more than five hundred dollars (\$500)
4 or imprisonment for a definite term not to exceed six months or
5 both.

6 F. [~~The provisions of this section shall apply~~
7 ~~beginning July 1, 2004.~~] Starting with the 2014-2015 school
8 year, a student in grade eight through twelve who is an
9 habitual truant may be certified as a student in violation of
10 the Compulsory School Attendance Law by the department and
11 referred to the motor vehicle division of the taxation and
12 revenue department for a hearing to determine the suspension or
13 postponement of driving privileges. The student's driving
14 privileges shall be suspended or postponed until the student is
15 no longer of school age or the department certifies to the
16 motor vehicle division that the student is in compliance with
17 the Compulsory School Attendance Law, whichever occurs first."

18 SECTION 3. Section 22-12-8 NMSA 1978 (being Laws 1985,
19 Chapter 104, Section 1, as amended) is amended to read:

20 "22-12-8. EARLY IDENTIFICATION AND NOTIFICATION AND
21 IMMEDIATE INTERVENTION SYSTEM FOR UNEXCUSED ABSENCES AND
22 [~~TRUANCY~~] WITHDRAWAL RISK FACTORS.--~~[Notwithstanding the~~
23 ~~provisions of Section 22-12-7 NMSA 1978, if a student is in~~
24 ~~need of early intervention, the school district, charter school~~
25 ~~or private school shall contact the student's parent to inform~~

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1 ~~the parent that the student has unexcused absences from school~~
2 ~~and to discuss possible interventions. The provisions of this~~
3 ~~section do not apply to any absence if the parent has contacted~~
4 ~~the school to explain the absence.]~~

5 A. The department shall develop, and school
6 districts shall implement, an early identification and
7 notification and immediate intervention system pursuant to this
8 section to minimize unexcused absences and prevent habitual
9 truancy and withdrawal from school.

10 B. When a student accumulates five unexcused
11 absences, the school shall request in writing a meeting and
12 meet with the student's parent to discuss:

13 (1) the reasons for the unexcused absences;

14 (2) immediate interventions to prevent further
15 unexcused absences;

16 (3) parental involvement in preventing further
17 unexcused absences; and

18 (4) the potential consequences of habitual
19 truancy.

20 C. For each student who demonstrates any risk
21 factor that may lead to withdrawal from school, each school
22 shall provide to the student immediate interventions aligned to
23 the student's next step plan pursuant to Section 22-13-1.1 NMSA
24 1978 and the risk factors demonstrated by the student.

25 D. For a student who demonstrates any risk factor

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1 for withdrawing from school, the school shall maintain and
2 provide to the student's parent and the school district a
3 record of each risk factor and immediate intervention taken.

4 E. As used in this section, a "risk factor"
5 includes:

- 6 (1) multiple discipline referrals;
- 7 (2) third grade reading scores below the
8 proficiency level;
- 9 (3) habitual truancy in grades six through
10 nine;
- 11 (4) failing in a course in grades six through
12 nine; or
- 13 (5) a grade point average of 1.5 or below in
14 grade nine."

15 SECTION 4. Section 22-12-9 NMSA 1978 (being Laws 2004,
16 Chapter 28, Section 1, as amended) is amended to read:

17 "22-12-9. UNEXCUSED ABSENCES [~~AND~~], TRUANCY AND
18 WITHDRAWAL--ATTENDANCE POLICIES.--

19 A. As used in this section and Sections 22-12-7 and
20 22-12-8 NMSA 1978:

21 (1) "habitual truant" means a student who has
22 accumulated the equivalent of ten days or more of unexcused
23 absences within a school year;

24 [~~(2) "student in need of early intervention"~~
25 ~~means a student who has accumulated five unexcused absences~~

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1 ~~within a school year;~~ and

2 [~~(3)~~] (2) "unexcused absence" means an absence
3 from school or classes for which the student does not have an
4 allowable excuse pursuant to the Compulsory School Attendance
5 Law or rules of the local school board or governing authority
6 of a charter school or private school.

7 B. An unexcused absence of two or more classes up
8 to fifty percent of an instructional day shall be counted as
9 one-half day absence, and the unexcused absence of more than
10 fifty percent of an instructional day shall be counted as one
11 full-day absence.

12 C. Each school district and charter school shall
13 maintain an attendance policy that:

14 (1) provides for an early identification ~~[of~~
15 ~~students with unexcused absences, students in need of early~~
16 ~~intervention and habitual truants and provides intervention~~
17 ~~strategies that focus on keeping students in need of early~~
18 ~~intervention in an educational setting and prohibit out-of-~~
19 ~~school suspension and expulsion as the punishment for unexcused~~
20 ~~absences and habitual truancy]~~ and notification and immediate
21 intervention system, pursuant to Section 22-12-8 NMSA 1978, for
22 keeping in an educational setting, without out-of-school
23 suspension or expulsion as a punishment, students who have five
24 or more unexcused absences, students who are habitual truants
25 and students who demonstrate risk factors for withdrawing from

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1 school;

2 (2) [~~uses~~] allows withdrawal [~~as provided in~~
3 ~~Section 22-8-2 NMSA 1978~~] only after exhausting intervention
4 efforts to keep students in educational settings;

5 (3) requires that class attendance be taken
6 for every instructional day in every public school or school
7 program in the school district; and

8 (4) provides for schools to document the
9 following for each student identified as an habitual truant:

10 (a) attempts of the school to notify the
11 parent that the student had unexcused absences;

12 (b) attempts of the school to meet with
13 the parent to discuss intervention strategies; and

14 (c) intervention strategies implemented
15 to support keeping the student in school.

16 D. The department shall review and approve school
17 district and charter school attendance policies.

18 E. School districts and charter schools shall
19 report unexcused absences and habitual truancy rates to the
20 department in a form and at such times as the department
21 determines and shall document intervention efforts made to
22 keep students in need of early intervention and habitual
23 truants in educational settings. Locally chartered charter
24 schools shall provide copies of their reports to the school
25 district.

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1 F. Once per semester, each school shall report to
2 the school district, and once per school year, each school
3 district shall report to the department, the number of
4 students who:

- 5 (1) accumulated five unexcused absences;
- 6 (2) accumulated ten unexcused absences;
- 7 (3) withdrew from school pursuant to the
8 provisions of Subsection D of Section 22-12-2 NMSA 1978:

- 9 (a) with an exit interview; or
- 10 (b) without an exit interview;
- 11 (4) stopped attending school during a
12 semester; or

- 13 (5) failed to return to school after a
14 school break.

15 G. The department shall compile school district
16 and charter school reports on rates of unexcused absences
17 [~~and~~], habitual truancy and withdrawals and require school
18 districts and charter schools to certify that the information
19 is being reported consistently."

20 SECTION 5. Section 66-5-30 NMSA 1978 (being Laws 1978,
21 Chapter 35, Section 252, as amended) is amended to read:

22 "66-5-30. AUTHORITY OF DIVISION TO SUSPEND OR REVOKE
23 LICENSE.--

24 A. The division is authorized to suspend the
25 instruction permit, driver's license or provisional license

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1 of a driver without preliminary hearing upon a showing by its
2 records or other sufficient evidence, including information
3 provided to the state pursuant to an intergovernmental
4 agreement authorized by Section 66-5-27.1 NMSA 1978, that the
5 licensee:

6 (1) has been convicted of an offense for
7 which mandatory revocation of license is required upon
8 conviction;

9 (2) has been convicted as a driver in an
10 accident resulting in the death or personal injury of another
11 or serious property damage;

12 (3) has been convicted with such frequency
13 of offenses against traffic laws or rules governing motor
14 vehicles as to indicate a disrespect for traffic laws and a
15 disregard for the safety of other persons on the highways;

16 (4) is an habitually reckless or negligent
17 driver of a motor vehicle;

18 (5) is incompetent to drive a motor vehicle;

19 (6) has permitted an unlawful or fraudulent
20 use of the license;

21 (7) has been convicted of an offense in
22 another state or tribal jurisdiction that if committed within
23 this state's jurisdiction would be grounds for suspension or
24 revocation of the license;

25 (8) has violated provisions stipulated by a

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1 district court in limitation of certain driving privileges;

2 (9) has failed to fulfill a signed promise
3 to appear or notice to appear in court as evidenced by notice
4 from a state court or tribal court, whenever appearance is
5 required by law or by the court as a consequence of a charge
6 or conviction under the Motor Vehicle Code or pursuant to the
7 laws of the tribe;

8 (10) has failed to pay a penalty assessment
9 within thirty days of the date of issuance by the state or a
10 tribe; or

11 (11) has accumulated seven points, but less
12 than eleven points, and when the division has received a
13 recommendation from a municipal or magistrate judge that the
14 license be suspended for a period not to exceed three months.

15 B. Upon suspending the license of a person as
16 authorized in Subsection A of this section, the division
17 shall immediately notify the licensee in writing and upon
18 [~~his~~] the licensee's request shall afford [~~him~~] the licensee
19 an opportunity for a hearing as early as practicable within
20 not to exceed twenty days, not counting Saturdays, Sundays
21 and legal holidays, after receipt of the request in the
22 county wherein the licensee resides unless the division and
23 the licensee agree that the hearing may be held in some other
24 county; provided that the hearing request is received within
25 twenty days from the date that the suspension was deposited

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1 in the United States mail. The director may, in [~~his~~] the
2 director's discretion, extend the twenty-day period. Upon
3 the hearing, the director or [~~his~~] the director's duly
4 authorized agent may administer oaths and may issue subpoenas
5 for the attendance of witnesses and the production of
6 relevant books and papers and may require a reexamination of
7 the licensee. Upon the hearing, the division shall either
8 rescind its order of suspension or, good cause appearing
9 therefor, may continue, modify or extend the suspension of
10 the license or revoke the license.

11 C. The division is authorized to suspend or
12 postpone the granting of an instruction permit, driver's
13 license or provisional license to a school-age person or
14 student certified and referred by the public education
15 department as being in violation of the Compulsory School
16 Attendance Law, following a hearing to be held within twenty
17 days of the division's receipt of the certification and in
18 the county where the school-age person or student resides.
19 The twenty-day period shall not include Saturdays, Sundays
20 and legal holidays. The director may, in the director's
21 discretion, extend the twenty-day period. Upon the hearing,
22 the director or the director's duly authorized agent may
23 administer oaths and issue subpoenas for the attendance of
24 witnesses and the production of relevant books and papers and
25 may require an examination of the school-age person or

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1 student. Upon the hearing, the division may suspend or
2 postpone driving privileges until the school-age person or
3 student is no longer of school age or the public education
4 department certifies to the division that the school-age
5 person or student is in compliance with the Compulsory School
6 Attendance Law."

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