

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1907 Session of 2015

INTRODUCED BY BENNINGHOFF, SAYLOR, ADOLPH, BAKER, V. BROWN, D. COSTA, CUTLER, DeLUCA, ELLIS, EVERETT, GILLESPIE, HARHART, A. HARRIS, PHILLIPS-HILL, KLUNK, OBERLANDER, PICKETT, STEPHENS, THOMAS, TOOHIL, WARD, WATSON, WHITE, PEIFER AND ZIMMERMAN, MARCH 17, 2016

AS REPORTED FROM COMMITTEE ON EDUCATION, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 4, 2016

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An
2 act relating to the public school system, including certain
3 provisions applicable as well to private and parochial
4 schools; amending, revising, consolidating and changing the
5 laws relating thereto," in pupils and attendance, further
6 providing for definitions and for penalties for violation of
7 compulsory attendance requirements and, providing for <--
8 procedure by school when child habitually truant, for
9 procedure upon filing of citation and for penalties for <--
10 violating compulsory school attendance requirements AND
11 FURTHER PROVIDING FOR SUSPENSION OF OPERATING PRIVILEGE.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

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

17 Section 1326. Definitions.--[The term "compulsory school
18 age," as hereinafter used, shall mean the period of a child's
19 life from the time the child's parents elect to have the child
20 enter school, which shall be not later than at the age of eight

1 (8) years, until the age of seventeen (17) years. The term shall
2 not include any child who holds a certificate of graduation from
3 a regularly accredited senior high school.

4 The term "migratory child," wherever used in this subdivision
5 of this article, shall include any child domiciled temporarily
6 in any school district for the purpose of seasonal employment,
7 but not acquiring residence therein, and any child accompanying
8 his parent or guardian who is so domiciled.] When used in this
9 article, the following words and phrases shall have the
10 following meanings:

11 "Citation" shall mean a nontraffic citation or private
12 criminal complaint.

13 "Compulsory school age" shall mean the period of a child's
14 life between eight (8) and seventeen (17) years of age. The term
15 does not include a child who holds a certificate of graduation
16 from a regularly accredited, licensed, registered or approved
17 high school.

18 "Conviction" shall mean a conviction under section 1333.2 for
19 violation of the requirement for compulsory school attendance.

20 "Court" shall mean a magisterial district court or a court of
21 common pleas.

22 "Department" shall mean the Department of Education of the
23 Commonwealth.

24 "Excused absence" shall mean an absence from school which is
25 permitted under section 1329.

26 "Governing body" shall mean the board of school directors of
27 a school district or any other governing entity of a school.

28 "Habitually truant" shall mean six (6) or more school days of
29 unexcused absences during the current school year by a child
30 subject to compulsory school attendance under this article.

1 "Judge" shall mean a magisterial district judge or a judge of
2 a court of common pleas.

3 "Juvenile act" shall mean the provisions of 42 Pa.C.S. Ch. 63
4 (relating to juvenile matters).

5 "Migratory child" shall mean a child domiciled temporarily in
6 a school district for the purpose of seasonal employment, but
7 not acquiring residence therein, and a child accompanying his or
8 her person in parental relation who is so domiciled.

9 "Offense" shall mean each citation filed under section 1333.1
10 for a violation of the requirement for compulsory school
11 attendance under this article regardless of the number of
12 unexcused absences alleged in the citation.

13 "Person in parental relation" shall mean a:

14 (1) Custodial biological or adoptive parent.

15 (2) Noncustodial biological or adoptive parent.

16 (3) Guardian of the person of a child.

17 (4) Person with whom a child lives and who is acting in a
18 parental role of a child.

19 This definition shall not include any county agency or person
20 acting as an agent of the county agency in the jurisdiction of a
21 dependent child defined under 42 Pa.C.S. § 6302 (relating to
22 definitions). This definition shall not expand the right of a
23 child under any other section of this act.

24 "School" shall mean the educational entity in which the child
25 is enrolled and at which a resident of this Commonwealth may
26 legally fulfill the compulsory school attendance requirements of
27 this article.

28 "School attendance improvement conference" shall mean a
29 conference where the child's absences and reasons therefore are
30 examined in an effort to improve attendance, with or without

1 additional services, and to which the child, the child's person
2 in parental relation, other individuals identified by the person
3 in parental relation who may be a resource, appropriate school
4 personnel and recommended service providers shall be invited.

5 "School day" shall mean the length of time that a child
6 subject to compulsory school attendance is expected to be
7 receiving instruction during a calendar day, as determined by
8 the governing body.

9 "School year" shall have the same meaning as "school term" as
10 defined in section 102, as applicable to a school district, and
11 as further defined in section 1327(b) for a day school which is
12 operated by a bona fide church or other religious body, section
13 1327.1(c) for a day school or boarding school accredited by an
14 accrediting association which is approved by the State Board of
15 Education, section 1327.1(d) for a home education program, and
16 sections 1501 and 1504 for a public kindergarten, elementary or
17 secondary school or a school district.

18 "Truant" shall mean three (3) or more school days of
19 unexcused absences during the current school year by a child
20 subject to compulsory school attendance under this article.

21 "Unexcused absence" shall mean an absence from school which
22 is not permitted by the provisions of section 1329 and for which
23 an approved explanation has not been submitted within the time
24 period and in the manner prescribed by the governing body. An
25 out-of-school suspension may not be considered an unexcused
26 absence.

27 Section 2. Section 1333 of the act, amended November 17,
28 1995 (1st Sp.Sess. P.L.1110, No.29), is amended to read:

29 Section 1333. [Penalties for Violation of Compulsory
30 Attendance Requirements.--(a) (1) Every parent, guardian, or

1 person in parental relation, having control or charge of any
2 child or children of compulsory school age, who shall fail to
3 comply with the provisions of this act regarding compulsory
4 attendance, shall on summary conviction thereof, be sentenced to
5 pay a fine, for the benefit of the school district in which such
6 offending person resides, not exceeding three hundred dollars
7 (\$300) and to pay court costs or be sentenced to complete a
8 parenting education program offered and operated by a local
9 school district, medical institution or other community
10 resources, and, in default of the payment of such fine and costs
11 or completion of the parenting program by the person so
12 offending, shall be sentenced to the county jail for a period
13 not exceeding five (5) days. Any person sentenced to pay any
14 such fine may appeal to the court of common pleas of the proper
15 county, upon entering into a recognizance, with one or more
16 proper sureties, in double the amount of penalty and costs.
17 Before any proceedings are instituted against any parent,
18 guardian, or person in parental relation, for failure to comply
19 with the provisions of this act, the district superintendent,
20 attendance officer, or secretary of the board of school
21 directors, shall give the offending person three (3) days'
22 written notice of such violation. If, after such notice has been
23 given, the provisions of this act regarding compulsory
24 attendance are again violated by the persons so notified, at any
25 time during the term of compulsory attendance, such person, so
26 again offending, shall be liable under the provisions of this
27 section without further notice.

28 (2) The child and every parent, guardian or person in
29 parental relation must appear at a hearing established by the
30 district justice. If the parent, guardian or person in parental

1 relation charged with a summary offense under this subsection
2 shows that he or she took every reasonable step to insure
3 attendance of the child at school, he or she shall not be
4 convicted of the summary offense.

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

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

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

29 (2) For any child who has attained the age of thirteen (13)
30 years who fails to pay the fine under clause (1) or to comply

1 with the adjudication alternative program, the district justice
2 may allege the child to be dependent under 42 Pa.C.S. § 6303(a)
3 (1) (relating to scope of chapter). The failure by the child to
4 pay a fine or comply with the adjudication alternative program
5 shall not constitute a delinquent act under 42 Pa.C.S. Ch. 63
6 (relating to juvenile matters).

7 (3) Upon a summary conviction or assignment to an
8 adjudication alternative program, the district justice may
9 suspend, in whole or in part, a sentence or an adjudication
10 alternative program in which a child who has attained the age of
11 thirteen (13) years must pay or comply with the adjudication
12 alternative program: Provided, That the child no longer is
13 habitually truant from school without justification.

14 (4) Any child who has not attained the age of thirteen (13)
15 years who fails to comply with the compulsory attendance
16 provisions of this act and is habitually truant shall be
17 referred by the school district for services or possible
18 disposition as a dependent child as defined under 42 Pa.C.S. §
19 6302 (relating to definitions). Any child who has attained the
20 age of thirteen (13) years who fails to comply with the
21 compulsory attendance provisions of this act and is habitually
22 truant may, in lieu of a prosecution under clause (1), be
23 referred by the school district for services or possible
24 disposition as a dependent child as defined under 42 Pa.C.S. §
25 6302.

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

29 "Community resources" shall mean those agencies and services
30 for children and youth provided by the juvenile court, the

1 county, the Department of Health, the Department of Public
2 Welfare and other public or private institutions.

3 "District justice" shall mean such court as the court of
4 common pleas shall direct in counties not having district
5 justices.

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

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

12 "Person in parental relation" shall not include any county
13 agency or person acting as an agent of the county agency in the
14 jurisdiction of a dependent child defined under 42 Pa.C.S. §
15 6302 (relating to definitions).

16 (c) If a child is convicted for a violation of this section,
17 the court, including a court not of record, shall send to the
18 Department of Transportation a certified record of the
19 conviction or other disposition on a form prescribed by the
20 department.

21 (d) Nothing in this section shall be construed to apply to a
22 parent, guardian or person in parental relation whose child or
23 children are in a home education program under section 1327.1.]
24 Procedure When Child is Truant.--(a) (1) When a child is
25 truant the school shall provide written notice to the person in
26 parental relation who resides in the same household as the child
27 of the child's violation of compulsory school attendance within
28 ten (10) school days of the child's third unexcused absence.

29 (2) The notice required under paragraph (1):

30 (i) Shall include a description of the consequences that

1 will follow if the child becomes habitually truant.

2 (ii) Shall be in a form and use language that would be
3 considered reasonably understandable by the person in parental
4 relation.

5 (iii) May include the offer of a school attendance
6 improvement conference.

7 (3) If the individual receiving notification under paragraph
8 (1) is not the biological or adoptive parent, written notice
9 shall also be provided to the child's biological or adoptive
10 parents if their mailing addresses are on file with the school
11 and they are not precluded to receive the information by a court
12 order.

13 (b) (1) If unexcused absences continue after the school has
14 issued the notice required under subsection (a), the school
15 shall offer, by advance written notice, a school attendance
16 improvement conference to the child and person in parental
17 relation unless such a conference was previously held following
18 the notice provided under subsection (a) (1). This subsection
19 shall not be construed to place a legal obligation on the child
20 or the person in parental relation to attend the conference. The
21 conference may occur if the person in parental relation declines
22 to participate.

23 (2) The outcome of the conference shall be documented in a
24 written school attendance improvement plan. The department shall
25 develop a form to be used for this purpose, and each school
26 shall use a form substantially similar to the form developed by
27 the department.

28 (3) The school may not take further legal action to address
29 unexcused absences by the child until after the date for the
30 scheduled school attendance improvement conference has passed.

1 Section 3. The act is amended by adding sections to read:

2 Section 1333.1. Procedure By School When Child Habitually
3 Truant.--(a) When a child is habitually truant and under

4 fifteen (15) years of age at the time of referral, the school:

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

6 (i) A school-based or community-based attendance improvement
7 program.

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

11 (2) May file a citation in the office of the appropriate
12 magisterial district judge against the person in parental
13 relation who resides in the same household as the child.

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

17 (1) Refer the child to a school-based or community-based
18 attendance improvement program or service.

19 (2) File a citation in the office of the appropriate
20 magisterial district judge against the child or the person in
21 parental relation who resides in the same household as the
22 child.

23 (c) If a child who is fifteen (15) years of age or older
24 continues to incur additional unexcused absences after being
25 referred to a school-based or community-based attendance
26 improvement program or refuses to participate in a school-based
27 or community-based attendance improvement program as recommended
28 through the school attendance improvement conference, the school
29 may refer the child to the county children and youth agency for
30 possible disposition as a dependent child under the provisions

1 of 42 Pa.C.S. Ch. 63.

2 (d) When referring a habitually truant child to the county
3 children and youth agency or filing a citation with the
4 magisterial district court because a child has been habitually
5 truant, the school shall provide verification that a school
6 attendance improvement conference was offered.

7 Section 1333.2. Procedure Upon Filing of Citation.--(a) The
8 venue for the filing of a citation under section 1333.1 shall be
9 based on the location of the school in which the child is
10 enrolled.

11 (b) When a citation is filed against a child or a person in
12 parental relation who resides in the same household as the child
13 under the provisions of section 1333.1, the magisterial district
14 judge shall provide the following notices:

15 (1) Written notice of the hearing with respect to the
16 citation to the school, the person in parental relation, the
17 child and the county children and youth agency.

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

22 (c) At the hearing with respect to the citation, the burden
23 is upon the school to prove beyond a reasonable doubt that the
24 child was habitually truant in noncompliance with the compulsory
25 school attendance requirements of this article.

26 (d) If the citation is filed against the person in parental
27 relation who resides in the same household as the child, it is a
28 defense if the person in parental relation can prove by a
29 preponderance of the evidence that every reasonable step to
30 ensure attendance of the child at school was taken.

1 (e) Before entering a sentence, the judge shall permit the
2 school, person in parental relation or child to present relevant
3 information that will assist the judge in making an informed
4 decision regarding the appropriate sentence. The judge may
5 consider the child's school attendance after the citation was
6 filed and while the proceeding was pending for the purpose of
7 imposing a sentence.

8 Section 1333.3. Penalties for Violating Compulsory School
9 Attendance Requirements.--(a) A person convicted of a summary
10 offense under section 1333.2 may be sentenced:

11 (1) To pay a fine for the benefit of the school in an amount
12 not exceeding three hundred dollars (\$300) for each citation,
13 together with court costs.

14 (2) To perform community service.

15 (3) To complete an appropriate course or program designed to
16 improve school attendance, which has been approved by the
17 president judge of the judicial district.

18 (b) The court may suspend the sentence of a person convicted
19 under the provisions of sections 1333, 1333.1 and 1333.2 and may
20 remit or waive fines and costs if the child attends school in
21 accordance with a plan devised by the court.

22 (c) A person convicted of a summary offense under this
23 section by a magisterial district judge shall have a right to
24 appeal de novo to a court of common pleas of the proper county
25 within thirty (30) days after conviction. Thereafter, the appeal
26 shall proceed as any other appeal of a summary conviction.

27 (d) No citation shall be filed against a child or a person
28 in parental relation who resides in the same household as the
29 child for a subsequent violation of compulsory school attendance
30 if any of the following circumstances apply:

1 (1) A proceeding under sections 1333.1 and 1333.2 is already
2 pending against the child or the person in parental relation who
3 resides in the same household as the child until the judgment
4 has been entered in such proceeding unless a warrant has been
5 issued for failure of that parent or child to appear before the
6 court and the warrant has not yet been served.

7 (2) A referral for services has been made to the county's
8 children and youth agency under section 1333.1 and the agency
9 has not closed the case.

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

14 (e) Upon a second or subsequent conviction of a child or a
15 person in parental relation who resides in the same household as
16 the child for a violation of the compulsory school attendance
17 requirements of this article in a court within this Commonwealth
18 within a period of three (3) years, the court shall refer the
19 child for services or possible disposition as a dependent child
20 under 42 Pa.C.S. Ch. 63.

21 (f) Upon the willful failure of a person to satisfy a fine
22 or costs imposed under this section, AND A FINDING BY THE COURT <--
23 THAT THE PERSON HAS THE ABILITY TO PAY THE FINANCIAL OBLIGATION
24 IMPOSED, THE WILLFUL FAILURE to comply with a payment plan or
25 THE WILLFUL FAILURE to comply with any other part of the <--
26 sentence imposed by the court under subsection (a), the
27 following shall apply:

28 (1) The court may, after finding that the person has the <--
29 ability to pay the financial obligation imposed:

30 (i) In the case of a person in parental relation who resides

1 in the same household as the child, impose a period of
2 incarceration not to exceed five (5) days.

3 (ii) Impose community service.

4 (2) In the case of a child, the failure shall not be
5 considered a delinquent act, provided that the president judge
6 of the judicial district may adopt a local policy pursuant to 42
7 Pa.C.S. § 6304 (relating to powers and duties of probation
8 officers) and the Pennsylvania Rules of Juvenile Court Procedure
9 to provide that a juvenile probation officer may receive
10 allegations that the child is dependent for the purpose of
11 considering the commencement of proceedings under 42 Pa.C.S. Ch.
12 63.

13 (g) (1) If a child is convicted of a violation of the
14 compulsory school attendance requirements of this article, the
15 court may send the Department of Transportation a certified
16 record of the conviction on a form prescribed by the department
17 only if the child fails to comply with a lawful sentence entered
18 for the violation.

19 (2) The Department of Transportation shall suspend for
20 ninety (90) days the operating privilege of a child upon
21 receiving a certified record that the child was convicted of a
22 summary offense under the compulsory school attendance
23 requirements of this article. If the Department of
24 Transportation receives a certified record of a second or
25 subsequent conviction of a child pursuant to this section, the
26 department shall suspend the child's operating privilege for six
27 (6) months.

28 (3) A child whose record is received by the Department of
29 Transportation under this section and who does not have a
30 driver's license shall be ineligible to apply for a driver's

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

9 (4) A child whose driving privileges have been suspended or
10 whose eligibility for a permit or license is delayed under this
11 section may have that license or eligibility restored by
12 providing the Department of Transportation with a form developed
13 by the Department of Transportation containing the following
14 information in the form of a certified record from the child's
15 school that the child:

16 (i) Has attended school for a period of at least two (2)
17 months after the first conviction or four (4) months after the
18 second conviction without an unexcused absence or unexcused
19 tardy.

20 (ii) Has no school disciplinary actions pending or has not
21 served a disciplinary sanction during the period of the
22 suspension or delay.

23 (iii) Is attending and passing all classes.

24 (5) An insurer may not increase premiums, impose a surcharge
25 or rate penalty, make a driver record point assignment for
26 automobile insurance or cancel or refuse to renew an automobile
27 insurance policy on account of a suspension under this section.

28 Section 4. Section 1338.1 of the act, added November 17,
29 1995 (1st Sp.Sess. P.L.1110, No.29), is repealed:

30 [Section 1338.1. Suspension of Operating Privilege.--(a)

1 The Department of Transportation shall suspend for 90 days the
2 operating privilege of any child upon receiving a certified
3 record that the child was convicted of violating section 1333.
4 If the department receives a second or subsequent conviction for
5 a child's violation of section 1333, the department shall
6 suspend the child's operating privilege for six months.

7 (b) Any child whose record is received by the department
8 under section 1333(c) and who does not have a driver's license
9 shall be ineligible to apply for a driver's license under 75
10 Pa.C.S. §§ 1505 (relating to learners' permits) and 1507
11 (relating to application for driver's license or learner's
12 permit by minor) for the time periods specified in subsection
13 (a). If the child is under sixteen (16) years of age when
14 convicted, suspension of operating privileges shall commence in
15 accordance with 75 Pa.C.S. § 1541 (relating to period of
16 revocation or suspension of operating privilege) for the time
17 specified in subsection (a).

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

23 ~~Section 5. This act shall take effect as follows:~~ <--

24 ~~(1) The addition of section 1333.3 of the act shall take~~
25 ~~effect immediately.~~

26 ~~(2) The remainder of this act shall take effect by the~~
27 ~~start of the school year beginning nine months after the~~
28 ~~passage of this act.~~

29 SECTION 5. THE AMENDMENT OR ADDITION OF SECTIONS 1326, 1333, <--
30 1333.1, 1333.2, 1333.3 AND 1338.1 OF THE ACT SHALL APPLY TO

1 SCHOOL YEARS BEGINNING WITH THE 2017-2018 SCHOOL YEAR AND EACH
2 SCHOOL YEAR THEREAFTER.

3 SECTION 6. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.