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SENATE BILL NO. 1031
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on _____)
(Patron Prior to Substitute—Senator Pekarsky)

A *BILL to amend and reenact §§ 22.1-7, 22.1-205, 22.1-254, and 22.1-254.1 of the Code of Virginia, relating to public elementary and secondary schools; compulsory attendance requirements; religious exemption; requirements.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-7, 22.1-205, 22.1-254, and 22.1-254.1 of the Code of Virginia are amended and reenacted as follows:

§ 22.1-7. Responsibility of each state board, agency, and institution having children in residence or in custody.

A. Each state board, state agency, and state institution having children in residence or in custody shall have responsibility for providing for the education and training to such children which is at least comparable to that which would be provided to such children in the public school system. Such board, agency, or institution may provide such education and training either directly with its own facilities and personnel in cooperation with the Board of Education or under contract with a school division or any other public or private nonreligious school, agency, or institution.

B. The Board of Education shall supervise the education and training provided to school-age individuals in state training centers, and shall provide for and direct the education for school-age individuals in state hospitals operated by the Department of Behavioral Health and Developmental Services in cooperation with the Department of Behavioral Health and Developmental Services.

C. The Board shall prescribe standards and regulations for all such education and training provided directly by a state board, state agency, or state institution.

D. Each state board, state agency, or state institution providing such education and training shall submit annually its program therefor to the Board of Education for approval in accordance with regulations of the Board.

E. If any child in the custody of any state board, state agency, or state institution is a child with disabilities as defined in § 22.1-213 and such board, agency, or institution must contract with a private nonreligious school to provide special education as defined in § 22.1-213 for such child, the state board, state agency, or state institution may proceed as a guardian pursuant to the provisions of subsection A of § 22.1-218.

F. Any person of school age who is admitted pursuant to § 16.1-338, 16.1-339, or 16.1-340.1 or in accordance with an order of involuntary commitment entered pursuant to §§ 16.1-341 through 16.1-345 to a state facility for children and adolescents operated by the Department of Behavioral Health and Developmental Services shall, upon admission, be permitted to participate in any education program offered in the facility that is administered by the Department of Education, regardless of his enrollment status. Information required to enroll such person in any such education program may be disclosed in accordance with state and federal law: ~~Nothing in this subsection shall be construed to require enrollment in an education program if such person has been excused from attendance at school pursuant to subdivision B 1 of § 22.1-254~~

§ 22.1-205. Driver education programs.

A. The Board of Education shall establish for the public school system a standardized program of driver education in the safe operation of motor vehicles. Such program shall consist of classroom training and behind-the-wheel driver training. However, any student who participates in such a program of driver education shall meet the academic requirements established by the Board, and no student in a course shall be permitted to operate a motor vehicle without a license or other document issued by the Department of Motor Vehicles under Chapter 3 (§ 46.2-300 et seq.) of Title 46.2, or the comparable law of another jurisdiction, authorizing the operation of a motor vehicle upon the highways.

1. The driver education program shall include (i) instruction concerning (a) alcohol and drug abuse; (b) aggressive driving; (c) the dangers of distracted driving and speeding; (d) motorcycle awareness; (e) organ and tissue donor awareness; (f) fuel-efficient driving practices; and (g) traffic stops, including law-enforcement procedures for traffic stops, appropriate actions to be taken by drivers during traffic stops, and appropriate interactions with law-enforcement officers who initiate traffic stops, and (ii) an additional minimum 90-minute parent/student driver education component as part of the classroom portion of the driver education curriculum. However, no student who is (1) at least 18 years of age, (2) an emancipated minor, or (3) an unaccompanied minor who is not in the physical custody of his parent or guardian shall be required to participate in the parent/student driver education component.

2. The parent/student driver education component shall be administered as part of the classroom portion of

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60 the driver education curriculum. In Planning District 8, the parent/student driver education component shall
61 be administered in-person. Outside Planning District 8, the parent/student driver education component may
62 be administered either in-person or online by a public school or a driver training school that is licensed as a
63 computer-based driver education provider. The participation of the student's parent or guardian in the
64 parent/student driver education component shall be required in Planning District 8 unless the student is
65 otherwise exempted from participation in the parent/student driver education component pursuant to the
66 provisions of subdivision 1. Outside Planning District 8, the participation of the student's parent or guardian
67 in the parent/student driver education component shall be encouraged, but shall not be required. The program
68 shall emphasize (i) parental responsibilities regarding juvenile driver behavior, (ii) juvenile driving
69 restrictions pursuant to this Code, (iii) the dangers of driving while intoxicated and underage consumption of
70 alcohol, and (iv) the dangers of distracted driving. Such instruction shall be developed by the Department in
71 cooperation with the Virginia Alcohol Safety Action Program, the Department of Health, and the Department
72 of Behavioral Health and Developmental Services, as appropriate. Nothing in this subdivision precludes any
73 school division from including a program of parental involvement as part of a driver education program in
74 addition to the minimum 90-minute parent/student driver education component.

75 3. Any driver education program shall require a minimum number of miles driven during the behind-the-
76 wheel driver training.

77 B. The Board shall assist school divisions by preparation, publication and distribution of competent driver
78 education instructional materials to ensure a more complete understanding of the responsibilities and duties
79 of motor vehicle operators.

80 C. Each school board shall determine whether to offer the program of driver education in the safe
81 operation of motor vehicles and, if offered, whether such program shall be an elective or a required course. In
82 addition to the fee approved by the Board of Education pursuant to the appropriation act that allows local
83 school boards to charge a per pupil fee for behind-the-wheel driver education, the Board of Education may
84 authorize a local school board's request to assess a surcharge in order to further recover program costs that
85 exceed state funds distributed through basic aid to school divisions offering driver education programs. Each
86 school board may waive the fee or the surcharge in total or in part for those students it determines cannot pay
87 the fee or surcharge. Only school divisions complying with the standardized program and regulations
88 established by the Board of Education and the provisions of § 46.2-335 shall be entitled to participate in the
89 distribution of state funds appropriated for driver education.

90 Each school board shall make the 90-minute parent/student driver education component available to all
91 students and their parents or guardians who are in compliance with § 22.1-254.

92 D. The actual initial driving instruction shall be conducted, with motor vehicles equipped as may be
93 required by regulation of the Board of Education, on private or public property removed from public
94 highways if practicable; if impracticable, then, at the request of the school board, the Commissioner of
95 Highways shall designate a suitable section of road near the school to be used for such instruction. Such
96 section of road shall be marked with signs, which the Commissioner of Highways shall supply, giving notice
97 of its use for driving instruction. Such signs shall be removed at the close of the instruction period. No
98 vehicle other than those used for driver training shall be operated between such signs at a speed in excess of
99 25 miles per hour. Violation of this limit shall be a Class 4 misdemeanor.

100 E. The Board of Education may, in its discretion, promulgate regulations for the use and certification of
101 paraprofessionals as teaching assistants in the driver education programs of school divisions.

102 F. The Board of Education shall approve correspondence courses for the classroom training component of
103 driver education. These correspondence courses shall be consistent in quality with instructional programs
104 developed by the Board for classroom training in the public schools. Students completing the correspondence
105 courses for classroom training, who are eligible to take behind-the-wheel driver training, may receive
106 behind-the-wheel driver training (i) from a public school, upon payment of the required fee, if the school
107 division offers behind-the-wheel driver training and space is available, (ii) from a driver training school
108 licensed by the Department of Motor Vehicles, or (iii) in the case of a home schooling parent or guardian
109 instructing his own child who meets the requirements for home school instruction under § 22.1-254.1 ~~or~~
110 ~~subdivision B 1 of § 22.1-254~~, from a behind-the-wheel training course approved by the Board. Nothing
111 herein shall be construed to require any school division to provide behind-the-wheel driver training to
112 nonpublic school students.

113 **§ 22.1-254. Compulsory attendance required; excuses and waivers; alternative education program**
114 **attendance; exemptions from article.**

115 A. As used in this subsection, "attend" includes participation in educational programs and courses at a site
116 remote from the school with the permission of the school and in conformity with applicable requirements.

117 Except as otherwise provided in this article, every parent, guardian, or other person in the Commonwealth
118 having control or charge of any child who will have reached the fifth birthday on or before September 30 of
119 any school year and who has not passed the eighteenth birthday shall, during the period of each year the
120 public schools are in session and for the same number of days and hours per day as the public schools, cause

121 such child to attend a public school or a private, denominational, or parochial school or have such child
 122 taught by a tutor or teacher of qualifications prescribed by the Board and approved by the division
 123 superintendent, or provide for home instruction of such child as described in § 22.1-254.1.

124 As prescribed in the regulations of the Board, the requirements of this section may also be satisfied by
 125 causing a child to attend an alternative program of study or work/study offered by a public, private,
 126 denominational, or parochial school or by a public or private degree-granting institution of higher education.
 127 Further, in the case of any five-year-old child who is subject to the provisions of this subsection, the
 128 requirements of this section may be alternatively satisfied by causing the child to attend any public
 129 educational pre-kindergarten program, including a Head Start program, or in a private, denominational, or
 130 parochial educational pre-kindergarten program.

131 Instruction in the home of a child or children by the parent, guardian, or other person having control or
 132 charge of such child or children shall not be classified or defined as a private, denominational or parochial
 133 school.

134 The requirements of this section shall apply to (i) any child in the custody of the Department of Juvenile
 135 Justice or the Department of Corrections who has not passed his eighteenth birthday and (ii) any child whom
 136 the division superintendent has required to take a special program of prevention, intervention, or remediation
 137 as provided in subsection C of § 22.1-253.13:1 and in § 22.1-254.01. The requirements of this section shall
 138 not apply to (a) any person 16 through 18 years of age who is housed in an adult correctional facility when
 139 such person is actively pursuing the achievement of a passing score on a high school equivalency
 140 examination approved by the Board but is not enrolled in an individual student alternative education plan
 141 pursuant to subsection E, and (b) any child who has obtained a high school diploma or its equivalent, a
 142 certificate of completion, or has achieved a passing score on a high school equivalency examination approved
 143 by the Board, or who has otherwise complied with compulsory school attendance requirements as set forth in
 144 this article.

145 B. A school board shall excuse from attendance at school:

146 1. ~~Any pupil who, together with his parents, by reason of bona fide religious training or belief is~~
 147 ~~conscientiously opposed to attendance at school. For purposes of this subdivision, "bona fide religious~~
 148 ~~training or belief" does not include essentially political, sociological or philosophical views or a merely~~
 149 ~~personal moral code; and~~

150 2. ~~On~~, on the recommendation of the juvenile and domestic relations district court of the county or city in
 151 which the pupil resides and for such period of time as the court deems appropriate, any pupil who, together
 152 with his parents, is opposed to attendance at a school by reason of concern for such pupil's health, as verified
 153 by competent medical evidence, or by reason of such pupil's reasonable apprehension for personal safety
 154 when such concern or apprehension in that pupil's specific case is determined by the court, upon
 155 consideration of the recommendation of the principal and division superintendent, to be justified.

156 C. Each local school board shall develop policies for excusing students who are absent by reason of
 157 observance of a religious holiday. Such policies shall ensure that a student shall not be deprived of any award
 158 or of eligibility or opportunity to compete for any award, or of the right to take an alternate test or
 159 examination, for any which he missed by reason of such absence, if the absence is verified in a manner
 160 acceptable to the school board.

161 D. A school board may excuse from attendance at school:

162 1. On recommendation of the principal and the division superintendent and with the written consent of the
 163 parent or guardian, any pupil who the school board determines, in accordance with regulations of the Board,
 164 cannot benefit from education at such school; or

165 2. On recommendation of the juvenile and domestic relations district court of the county or city in which
 166 the pupil resides, any pupil who, in the judgment of such court, cannot benefit from education at such school.

167 E. Local school boards may allow the requirements of subsection A to be met under the following
 168 conditions:

169 For a student who is at least 16 years of age, there shall be a meeting of the student, the student's parents,
 170 and the principal or his designee of the school in which the student is enrolled in which an individual student
 171 alternative education plan shall be developed in conformity with guidelines prescribed by the Board, which
 172 plan must include:

173 1. Career guidance counseling;

174 2. Mandatory enrollment and attendance in a preparatory program for passing a high school equivalency
 175 examination approved by the Board or other alternative education program approved by the local school
 176 board with attendance requirements that provide for reporting of student attendance by the chief administrator
 177 of such preparatory program or approved alternative education program to such principal or his designee;

178 3. Mandatory enrollment in a program to earn a Board-approved career and technical education credential,
 179 such as the successful completion of an industry certification, a state licensure examination, a national
 180 occupational competency assessment, the Armed Services Vocational Aptitude Battery, or the Virginia
 181 workplace readiness skills assessment;

182 4. Successful completion of the course in economics and personal finance required to earn a Board-

183 approved high school diploma;

184 5. Counseling on the economic impact of failing to complete high school; and

185 6. Procedures for reenrollment to comply with the requirements of subsection A.

186 A student for whom an individual student alternative education plan has been granted pursuant to this
187 subsection and who fails to comply with the conditions of such plan shall be in violation of the compulsory
188 school attendance law, and the division superintendent or attendance officer of the school division in which
189 such student was last enrolled shall seek immediate compliance with the compulsory school attendance law
190 as set forth in this article.

191 Students enrolled with an individual student alternative education plan shall be counted in the average
192 daily membership of the school division.

193 F. A school board may, in accordance with the procedures set forth in Article 3 (§ 22.1-276.01 et seq.) of
194 Chapter 14 and upon a finding that a school-age child has been (i) charged with an offense relating to the
195 Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol or drugs, or
196 intentional injury to another person; (ii) found guilty or not innocent of a crime that resulted in or could have
197 resulted in injury to others, or of an offense that is required to be disclosed to the superintendent of the school
198 division pursuant to subsection G of § 16.1-260; (iii) suspended pursuant to § 22.1-277.05; or (iv) expelled
199 from school attendance pursuant to § 22.1-277.06 or 22.1-277.07 or subsection C of § 22.1-277, require the
200 child to attend an alternative education program as provided in § 22.1-209.1:2 or 22.1-277.2:1.

201 G. Whenever a court orders any pupil into an alternative education program, including a program
202 preparing students for a high school equivalency examination approved by the Board, offered in the public
203 schools, the local school board of the school division in which the program is offered shall determine the
204 appropriate alternative education placement of the pupil, regardless of whether the pupil attends the public
205 schools it supervises or resides within its school division.

206 The juvenile and domestic relations district court of the county or city in which a pupil resides or in which
207 charges are pending against a pupil, or any court in which charges are pending against a pupil, may require
208 the pupil who has been charged with (i) a crime that resulted in or could have resulted in injury to others, (ii)
209 a violation of Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, or (iii) any offense related to possession
210 or distribution of any Schedule I, II, or III controlled substances to attend an alternative education program,
211 including, but not limited to, night school, adult education, or any other education program designed to offer
212 instruction to students for whom the regular program of instruction may be inappropriate.

213 This subsection shall not be construed to limit the authority of school boards to expel, suspend, or exclude
214 students, as provided in §§ 22.1-277.04, 22.1-277.05, 22.1-277.06, 22.1-277.07, and 22.1-277.2. As used in
215 this subsection, the term "charged" means that a petition or warrant has been filed or is pending against a
216 pupil.

217 H. Within one calendar month of the opening of school, each school board shall send to the parents or
218 guardian of each student enrolled in the division a copy of the compulsory school attendance law and the
219 enforcement procedures and policies established by the school board.

220 I. The provisions of this article shall not apply to:

221 1. Children suffering from contagious or infectious diseases while suffering from such diseases;

222 2. Children whose immunizations against communicable diseases have not been completed as provided in
223 § 22.1-271.2;

224 3. Children under 10 years of age who live more than two miles from a public school unless public
225 transportation is provided within one mile of the place where such children live;

226 4. Children between the ages of 10 and 17, inclusive, who live more than 2.5 miles from a public school
227 unless public transportation is provided within 1.5 miles of the place where such children live; and

228 5. Children excused pursuant to subsections B and D.

229 Further, any child who will not have reached his sixth birthday on or before September 30 of each school
230 year whose parent or guardian notifies the appropriate school board that he does not wish the child to attend
231 school until the following year because the child, in the opinion of the parent or guardian, is not mentally,
232 physically, or emotionally prepared to attend school, may delay the child's attendance for one year.

233 The distances specified in subdivisions 3 and 4 shall be measured or determined from the child's residence
234 to the entrance to the school grounds or to the school bus stop nearest the entrance to the residence of such
235 children by the nearest practical routes which are usable for walking or riding. Disease shall be established by
236 the certificate of a reputable practicing physician in accordance with regulations adopted by the Board.

237 J. Subject to guidelines established by the Department, any student who is absent from school due to his
238 mental or behavioral health shall be granted an excused absence.

239 K. Subject to guidelines established by the Department, each school board (i) shall permit one school day-
240 long excused absence per school year for any middle school or high school student in the local school
241 division who is absent from school to engage in a civic event and (ii) may permit additional excused absences
242 for such students who are absent for such purpose. Local school boards may require that the student provide
243 advance notice of the intended absence and require that the student provide documentation of participation in

244 a civic event.

245 L. Subject to guidelines established by the Department, any student who is a member of a state-recognized
246 or federally recognized tribal nation that is headquartered in the Commonwealth and who is absent from
247 school to attend such tribal nation's pow wow gathering shall be granted one excused absence per academic
248 year, provided that the parent of such student provides to the student's school advance notice of such absence
249 in the manner required by the school.

250 **§ 22.1-254.1. Declaration of policy; requirements for home instruction of children.**

251 A. When the requirements of this section have been satisfied, instruction of children by their parents is an
252 acceptable alternative form of education under the policy of the Commonwealth of Virginia. Any parent of
253 any child who will have reached the fifth birthday on or before September 30 of any school year and who has
254 not passed the eighteenth birthday may, *for any reason, including being conscientiously opposed to*
255 *attendance at school by reason of bona fide religious training or belief,* elect to provide home instruction in
256 lieu of school attendance if he (i) holds a high school diploma; (ii) is a teacher of qualifications prescribed by
257 the Board; (iii) provides the child with a program of study or curriculum, which may be delivered through a
258 correspondence course or distance learning program or in any other manner; or (iv) provides evidence that he
259 is able to provide an adequate education for the child.

260 B. Any parent who elects to provide home instruction in lieu of school attendance shall annually notify the
261 division superintendent in August of his intention to so instruct the child and provide a description of the
262 curriculum, limited to a list of subjects to be studied during the coming year, and evidence of having met one
263 of the criteria for providing home instruction as required by subsection A. Parents electing to provide home
264 instruction shall provide such annual notice no later than August 15. Any parent who moves into a school
265 division or begins home instruction after the school year has begun shall notify the division superintendent of
266 his intention to provide home instruction as soon as practicable and shall thereafter comply with the
267 requirements of this section within 30 days of such notice. The division superintendent shall notify the
268 Superintendent of the number of students in the school division receiving home instruction.

269 C. The parent who elects to provide home instruction shall, *in order to periodically evaluate his child's*
270 *educational growth and progress and provide the division superintendent by*

271 *August 1 following the school year in which the child has received home instruction with either: (i)*
272 *evidence that the child has attained a composite score in or above the fourth stanine on any nationally normed*
273 *standardized achievement test, or an equivalent score on the ACT, SAT, or PSAT test or (ii) an evaluation or*
274 *assessment that the division superintendent determines to indicate that the child is achieving an adequate*
275 *level of educational growth and progress, including (a) an evaluation letter from a person licensed to teach in*
276 *any state, or a person with a master's degree or higher in an academic discipline, having knowledge of the*
277 *child's academic progress, stating that the child is achieving an adequate level of educational growth and*
278 *progress or (b) a report card or transcript from an institution of higher education, college distance learning*
279 *program, or home education correspondence school evidence of the child's educational growth and progress,*
280 *cause his child to be examined at grades three, five, and eight, through the administration of a nationally*
281 *normed standardized achievement test, statewide assessments in reading or language arts and mathematics*
282 *administered to all public school students at such grade levels, or a locally developed assessment in reading*
283 *or language arts and mathematics administered to all public school students at such grades levels in the*
284 *resident school division. The parent shall submit or direct the administrator of the assessment to submit to*
285 *the division superintendent evidence of such examination, including the child's score, by August 1 following*
286 *the administration of each assessment. In the event that the child was previously enrolled in public school*
287 *before the parent elected to provide home instruction, the parent shall ensure that the first examination is*
288 *administered at least 18 months after the date on which the child was withdrawn from public school.*

289 D. In the event that *the parent fails to provide the evidence of progress as required in this subsection is not*
290 *provided by the parent, the home instruction program for that child may be placed on probation for one year.*
291 *Parents by subsection C or the child fails to achieve a passing score on such assessment, the parent shall file*
292 *cause the child to be examined again the immediately following year. If the child fails to receive a passing*
293 *score on such subsequent assessment, the parent shall cause the child to be examined again for the third*
294 *consecutive year. If the child fails to receive a passing score on such third consecutive assessment, the parent*
295 *shall cause such child to be examined again the immediately following year and either:*

296 1. *Select and hire, at his own expense, a tutor or teacher of qualifications prescribed by the Board to*
297 *supervise such child's home instruction and provide remediation or instructional support to the child for a*
298 *period not to exceed 180 consecutive teaching days or 990 consecutive teaching hours; or*

299 2. *File with the division superintendent evidence of their ability to provide an adequate education for their*
300 *child in compliance with subsection A and a remediation plan for the probationary following year that*
301 *indicates their his program is designed to address any educational deficiency. Upon acceptance of such*
302 *evidence and plan by the division superintendent, the home instruction may continue for one probationary*
303 *year. If the remediation plan and evidence are not accepted or the required evidence of progress is not*
304 *provided by August 1 following the probationary year, home instruction shall cease and the parent shall make*

305 other arrangements for the education of the child that comply with § 22.1-254.

306 The requirements of this subsection shall not apply to children who are under the age of six as of
307 September 30 of the school year.

308 ~~D. Nothing in this section shall prohibit a pupil and his parents from obtaining an excuse from school
309 attendance by reason of bona fide religious training or belief pursuant to subdivision B 1 of § 22.1-254.~~

310 *E. No parent who has provided notice to the division superintendent of his intention to provide home
311 instruction for his child pursuant to subsection B shall be compelled to cease home instruction or make other
312 arrangements for the child that comply with § 22.1-254 solely on the basis of (i) failure to provide evidence
313 of progress in accordance with subsection C; (ii) the unilateral decision of the division superintendent; or
314 (iii) any other failure or deficiency in complying with the provisions of this section. However, any division
315 superintendent may, upon a showing of clear and convincing evidence that the child will suffer neglect in his
316 education or care if home instruction is permitted to continue, petition the circuit court having jurisdiction in
317 the school division to (a) seek an order for the cessation of home instruction or (b) otherwise enforce
318 compliance with the provisions of this section.*

319 ~~E. F.~~ Any party aggrieved by a decision of the division superintendent may appeal his decision within 30
320 days to an independent hearing officer. The independent hearing officer shall be chosen from the list
321 maintained by the Executive Secretary of the Supreme Court for hearing appeals of the placements of
322 children with disabilities. The costs of the hearing shall be apportioned among the parties by the hearing
323 officer in a manner consistent with his findings.

324 ~~F. G.~~ School boards shall make Advanced Placement (AP), Preliminary SAT/National Merit Scholarship
325 Qualifying Test (PSAT/NMSQT), and PreACT examinations available to students receiving home instruction
326 pursuant to this section. School boards shall adopt written policies that specify the date by which such
327 students shall register to participate in such examinations. School boards shall notify such students and their
328 parents of such registration deadline and the availability of financial assistance to low-income and needy
329 students to take such examinations.

330 ~~G. No division superintendent or local school board shall disclose to the Department or any other person
331 or entity outside of the local school division information that is provided by a parent or student to satisfy the
332 requirements of this section or subdivision B 1 of § 22.1-254. However, a division superintendent or local
333 school board may disclose, with the written consent of a student's parent, such information to the extent
334 provided by the parent's consent.~~ *H.* Nothing in this subsection shall prohibit a division superintendent from
335 notifying the Superintendent of the number of students in the school division receiving home instruction as
336 required by subsection B.