

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** CS/HB 117a

**52nd Legislature, 2nd Session, 2015**

**Tracking Number:** .199486.2

**Short Title:** No Driving for Certain Students

**Sponsor(s):** Representative Jimmie C. Hall

**Analyst:** Kevin Force

**Date:** March 14, 2015

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**HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR HB 117**

**AS AMENDED**

**House Floor Amendment Number 1:**

- **changes the title of the bill to reflect that driving privileges of school-age persons may be suspended or “denied,” rather than “postponed”;**
- **extends to students’ guardians in addition to their parents notice of:**
  - **noncompliance with the *Compulsory School Attendance Law*; and**
  - **the opportunity to request an optional meeting with the school principal or head administrator; and**
- **extends to students’ parents or guardians, rather than only to the students, the opportunity to:**
  - **request a meeting with the school district or charter school to provide evidence supporting a request that the school district or charter school give the Motor Vehicle Division a certification that the student is no longer subject to the *Compulsory School Attendance Law*;**
  - **appeal the determination of truancy by requesting a hearing and final decision from the Public Education Department (PED), according to department rule; and**
  - **appeal PED’s final decision to the district court for the county in which the student resides.**

**Original Bill Summary:**

CS/HB 117 proposes to amend the *Compulsory School Attendance Law* and the *Motor Vehicle Code* to provide for the suspension or postponement of driving privileges of school-aged persons in violation of the *Compulsory School Attendance Law*. Specifically:

- Section 1 of the bill amends the section of the *Compulsory School Attendance Law* that addresses enforcement;

- Section 2 creates a new section of the *Public School Code* to address the issue of data collection and reporting; and
- Section 3 creates a new section of the *Motor Vehicle Code* setting forth procedures for the Motor Vehicle Division (MVD) to follow regarding the disposition of students' driving privileges.

**Section 1. [Suspension or denial of driving privileges, and appeals]:**

Beginning with school year 2016-2017, when a student in grades 8 through 12 accumulates 10 or more unexcused absences (habitual truancy):

- a school must give the student's parent a notice of noncompliance with attendance laws, including notice of the opportunity to request a meeting with the school principal or head administrator to:
  - commit to returning to school;
  - contest the occurrences and number of alleged absences;
  - provide evidence that the student is no longer subject to the *Compulsory School Attendance Law*; or
  - request a hardship waiver according to PED rule in order to fulfill unavoidable employment or family medical care-giving duties;
- no fewer than 30 days after transmittal of the notice of noncompliance, a school district or state-chartered charter school shall provide to the parent and the MVD certification of noncompliance, if the student remains noncompliant, unless the student has received a hardship waiver;
- upon receipt of the certification of noncompliance, the MVD must suspend or deny the issuance of an instruction permit, driver's license, or provisional license to the student; and
- after suspension or denial of driving privileges, the student may request a meeting with the district or charter school for the student to:
  - provide evidence supporting certification from the district or charter school to the MVD that the student is either no longer subject to or in compliance with the attendance laws;
  - appeal the district or charter school's finding of noncompliance by requesting a hearing and final decision from the Public Education Department (PED); and
  - appeal the department's final decision to the district court.

Additionally, Section 1 of the bill removes the option for the Children's Court to suspend an habitual truant's driving privileges for up to 90 days for a first finding of habitual truancy, and for up to one year for subsequent findings.

**Section 2. [New Section of the *Public School Code*: Reporting]**

Beginning in 2017, by November 15 of each year, PED, in collaboration with MVD, shall submit a report on the implementation of the *Compulsory School Attendance Law* to the Governor, the Legislative Education Study Committee (LESC), and the Legislative Finance Committee (LFC). The report must include:

- aggregate data for each middle school, high school, school district, and charter school, including the number of:
  - habitual truants within a school year;
  - certificates of noncompliance with the *Compulsory School Attendance Law* issued by the state;
  - students whose driving privileges were denied or suspended;
  - students who had more than one such denial or suspension; and
  - instruction permits, licenses, or provisional licenses that were granted or reinstated after students demonstrated compliance with the attendance law;
- an evaluation of any improved academic achievement that can be attributed to the implementation of the *Compulsory School Attendance Law*, including:
  - students' scores on mathematics and English language arts assessments;
  - the four-year cohort graduation rate; and
  - the most recent grade received by a school under the *A-B-C-D-F Schools Rating Act*.

**Section 3.** [New Section of the *Motor Vehicle Code: Authority of the Division to suspend the license of a school-age person*]:

The MVD is authorized to:

- suspend or deny a student's driver's license, instruction permit, or provisional license without a preliminary hearing upon receipt of certification of noncompliance with attendance laws from a school district, state-chartered charter school, or PED, until the person is 18 years old;
- upon receipt of certification that the student is in compliance with, or no longer subject to, the *Compulsory School Attendance Law*, grant or reinstate the student's instruction permit, driver's license, or provisional license; and
- adopt rules to implement these provisions.

**Fiscal Impact:**

CS/HB 117 does not contain an appropriation.

**Fiscal Issues:**

The recommendation of the LFC for public education funding for FY 16 increases General Fund spending by 2.6 percent and includes \$6.0 million to support district and charter school efforts to decrease truancy and dropouts.<sup>1</sup> Notably, according to a recent LFC evaluation:<sup>2</sup>

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<sup>1</sup> Please see the Legislative Finance Committee FY2016 Budget Recommendations, at: <http://www.nmlegis.gov/lcs/lfc/lfcdocs/budget/2016RecommendVolIII.pdf>.

<sup>2</sup> Please see *Public Education Department and Higher Education Department Cost Effective Options for Increasing High School Graduation and Improving Adult Education*, Report # 14-09, September 2014, at: <http://www.nmlegis.gov/lcs/lfc/lfcdocs/perfaudit/Public%20Education%20Department%20and%20Higher%20Education%20Department%20%20CostEffective%20Options%20for%20Increasing%20High%20School%20Graduation%20and%20Improving%20Adult%20.pdf>.

- while New Mexico’s graduation rate has increased, the state’s dropout rate has experienced a corresponding increase, from 3.6 percent in FY 08 to 4.7 percent in FY 13, with more than half of the state’s dropouts concentrated in just 25 schools; and
- increasing the state’s annual graduation rate by just 10 percent would yield approximately \$700 million in net benefits to the students, taxpayers, and society as a whole over the course of these students’ lifetimes.

As noted in the analysis from PED, while there are no financial allocations associated with CS/HB 117, the added administrative burden associated with the reporting requirements of Section 2 of the bill may, in turn, create additional costs.

According to the LFC’s Fiscal Impact Report (FIR) of HB 47 (2014), a bill substantially similar to current CS/HB 117:

- PED will be required to promulgate rules at least for the determination of a school-age person’s truancy and the administration of hearings and appeals. Depending upon the number of such appeals, PED may be significantly burdened.
- There may be increased administrative costs to PED and MVD.

The Administrative Office of the Courts (AOC) notes that:

- there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes;
- additional fiscal impact on the judiciary would be proportional to the enforcement of this law; and
- new laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

**Technical Issues:**

Section 1 of the bill, which proposes to amend the *Public School Code*, states that, upon certification of noncompliance with the *Compulsory School Attendance Law*, the MVD “shall” suspend or deny driving privileges, while proposed amendments to the *Motor Vehicle Code*, in Section 2, merely “authorize” the MVD to suspend or deny driving privileges.

Similarly, Section 3 “authorizes” but does not mandate MVD to promulgate rules for the implementation of the bill’s provisions.

Currently, CS/HB 117 allows only the noncompliant student to request a hearing or appeal from the decision resulting in suspension of driving privileges; it does not allow not the student’s parents to request such a hearing.

**Substantive Issues:**

The provisions of CS/HB 117 align with research from the National Dropout Prevention Center/Network that identifies 15 effective strategies that have the most positive impact on the

dropout rate.<sup>3</sup> These strategies have been implemented successfully at all education levels and environments throughout the nation.

According to PED:

- in school year 2013-2014, 16.26 percent of New Mexico students were identified as “habitual truants,” meaning that they had accumulated 10 or more unexcused absences,<sup>4</sup> an increase of 3.0 percent over last year;
- currently, there are no clear penalties for habitual truants in grades 8-12;
- New Mexico saw chronic absenteeism particularly in fourth and eighth grades, where 26 percent of students reported missing three or more days of school in a month;
- the department would need to revise rules on attendance to be in alignment with new language, should CS/HB 117 be enacted; and
- while student attendance records are captured in the Student Teacher Accountability Reporting System (STARS), PED staff would need to enhance this system, in order to include referrals from other agencies.

The AOC notes that:

- judges currently use driving privileges as a tool in juvenile cases, but the provisions of the bill are unclear as to whether Children’s Court judges would receive pertinent information regarding a student’s driving privilege;
- the bill’s process for appeals from a decision revoking, suspending or denying a student’s driving privilege:
  - lacks established timelines; and
  - permits only the school-age person to request a hearing or appeal, but includes no parallel provision for the student’s parents; and
- the provisions of the bill that deal with notice of students’ noncompliance, as well as students’ requests for meetings or appeals, appear to apply only to students enrolled in public schools, although private and homeschooled students, as well as students of state institutions, are all also subject to the *Compulsory School Attendance Law*.

The Taxation and Revenue Department (TRD) notes that CS/HB 117 would necessitate:

- the creation of a new code for suspending current drivers;
- the creation of a new, non-driver record for anyone whose driving privilege is suspended but does not hold a current driver’s license or permit; and
- promulgation and implementation of regulations for hearings when a student disputes the certification of noncompliance provided to MVD.

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<sup>3</sup> See, generally, <http://www.dropoutprevention.org/effective-strategies>. See also *15 Effective Strategies for Improving Student Attendance and Truancy Prevention*, Reimer and Smink, National Dropout Prevention Center/Network, College of Health, Education and Human Development, Clemson University, April 2005, at: <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCAQFjAA&url=http%3A%2F%2Fwww.ct.gov%2Fopm%2Flib%2Fopm%2FCJPPD%2FCjJyd%2FjydPublications%2FataStrategies.doc&ei=2prSVKX2JIHwggSQOIPBQ&usg=AFQjCNGotXzMWnIF7pilJLnN-RFvx4PyqA&bvm=bv.85142067,d.eXY>. (Noting a California program where revocation of drivers’ licenses, until improvement is shown, has resulted in annual diminution in truancy rates.)

<sup>4</sup> Section 22-12-9(A)(1) NMSA 1978.

## **Background:**

The *Compulsory School Attendance Law* defines the term “habitual truant” as a student who has accumulated the equivalent of 10 or more days of unexcused absences in a school year. An “unexcused absence,” according to this law, means an absence from school or classes for which the student does not have an excuse allowed under the law, the rules of the local school board, the governing authority of a charter school, or a private school.

During the 2012 interim, the Center for Education Policy Research, at the University of New Mexico, testified before the LESC that more than 51,000 students in the state’s elementary, middle, and secondary schools were habitual truants in school year 2011-2012. Maps presented as part of this testimony illustrated that truancy rates vary widely among schools within given districts. This testimony also provided an overview of the entities that may take action in the enforcement of penalties for habitually truant students, including:

- the school of the truant student;
- PED;
- the Probation Services Office of the Children, Youth and Families Department (CYFD);
- the district attorney; and
- law enforcement agencies.

This testimony added that truancy is a symptom of three general factors:

- individual challenges, such as low academic performance, low educational aspirations, boredom with school, drug use, or pregnancy;
- relational challenges, such as a lack of caring adults, bullying, or a lack of participation in school sports and activities; and
- structural challenges, such as weak truancy policies, institutional racism and discrimination, and low-income families.

According to the Education Commission of the States (ECS):<sup>5</sup>

- Twenty-seven states have some policy connecting student attendance, behavior, and achievement to driving privileges:
  - seventeen states condition driving privileges on compliance with school attendance requirements;
  - four states combine academic performance and attendance requirements as conditions of driver’s license eligibility;
  - three states will revoke a student’s driving privilege based on suspensions, expulsions, and other safety infractions;
  - two states will revoke a student’s driving privilege based on attendance infractions and suspensions, expulsions, or other safety infractions; and
  - one state places conditions on driving privileges based upon compliance with attendance, behavior, and academic performance.

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<sup>5</sup> <http://www.ecs.org/clearinghouse/60/10/6010.pdf>

- State policymakers should consider that, for many teenagers, driving is real currency, and promoting this privilege as a reward for attending and succeeding in school resonates with many students.
- Districts and schools may incur administrative costs in collaborating with the MVD, but the policies can still be relatively low-cost.

**Committee Referrals:**

HEC/HTPWC/SEC/SJC

**Related Bills:**

HB 271 *CYFD & PED Information Sharing*

SB 37 *Social Workers in Certain Schools*

CS/SB 85 *No Driving for Certain Students*

SB 331 *Las Cruces School Juvenile Probation & Parole*