

STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

SENATE BILL 394

By: Wilson

AS INTRODUCED

An Act relating to school attendance; amending 70 O.S. 2001, Section 10-105, as last amended by Section 1, Chapter 57, O.S.L. 2010 (70 O.S. Supp. 2010, Section 10-105), which relates to school attendance; establishing notification requirements for students educated by other means; amending 70 O.S. 2001, Section 10-109, as amended by Section 158, Chapter 234, O.S.L. 2009 (70 O.S. Supp. 2010, Section 10-109), which relates to temporary detention and custody of children subject to compulsory attendance law; removing exception for children being home schooled; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 70 O.S. 2001, Section 10-105, as last amended by Section 1, Chapter 57, O.S.L. 2010 (70 O.S. Supp. 2010, Section 10-105), is amended to read as follows:

Section 10-105. A. 1. It shall be unlawful for a parent, guardian, or other person having custody of a child who is over the age of five (5) years, and under the age of eighteen (18) years, to neglect or refuse to cause or compel such child to attend and comply

1 with the rules of some public, private or other school, unless other
2 means of education are provided for the full term the schools of the
3 district are in session or the child is excused as provided in this
4 section.

5 2. The parent or guardian of a child utilizing other means of
6 education shall provide written notification to the public school
7 district of residence of:

8 a. intent to utilize other means of education prior to
9 the first day of each school year, or within ten (10)
10 days of the beginning of the provision of such other
11 means of education to the student, and

12 b. a report of the student's academic progress at the end
13 of each semester of the school year.

14 3. One-half (1/2) day of kindergarten shall be required of all
15 children five (5) years of age or older unless the child is excused
16 from kindergarten attendance as provided in this section. A child
17 who is five (5) years of age shall be excused from kindergarten
18 attendance until the next school year after the child is six (6)
19 years of age if a parent, guardian, or other person having custody
20 of the child notifies the superintendent of the district where the
21 child is a resident by certified mail prior to enrollment in
22 kindergarten, or at any time during the first school year that the
23 child is required to attend kindergarten pursuant to this section,
24 of election to withhold the child from kindergarten until the next

1 school year after the child is six (6) years of age. A kindergarten
2 program shall be directed toward developmentally appropriate
3 objectives for such children. The program shall require that any
4 teacher employed on and after January 1, 1993, to teach a
5 kindergarten program within the public school system shall be
6 certified in early childhood education. All teachers hired to teach
7 a kindergarten program within the public school system prior to
8 January 1, 1993, shall be required to obtain certification in early
9 childhood education on or before the 1996-97 school year in order to
10 continue to teach a kindergarten program.

11 B. It shall be unlawful for any child who is over the age of
12 twelve (12) years and under the age of eighteen (18) years, and who
13 has not finished four (4) years of high school work, to neglect or
14 refuse to attend and comply with the rules of some public, private
15 or other school, or receive an education by other means for the full
16 term the schools of the district are in session.

17 Provided, that this section shall not apply:

18 1. If any child is prevented from attending school by reason of
19 mental or physical disability, to be determined by the board of
20 education of the district upon a certificate of the school physician
21 or public health physician, or, if no such physician is available, a
22 duly licensed and practicing physician;

23 2. If any child is excused from attendance at school, due to an
24 emergency, by the principal teacher of the school in which such

1 child is enrolled, at the request of the parent, guardian, custodian
2 or other person having control of such child;

3 3. If any child who has attained his or her sixteenth birthday
4 is excused from attending school by written, joint agreement
5 between:

6 a. the school administrator of the school district where
7 the child attends school, and

8 b. the parent, guardian or custodian of the child.

9 Provided, further, that no child shall be excused from
10 attending school by such joint agreement between a
11 school administrator and the parent, guardian or
12 custodian of the child unless and until it has been
13 determined that such action is for the best interest
14 of the child and/or the community, and that said child
15 shall thereafter be under the supervision of the
16 parent, guardian or custodian until the child has
17 reached the age of eighteen (18) years;

18 4. If any child is excused from attending school for the
19 purpose of observing religious holy days if before the absence, the
20 parent, guardian, or person having custody or control of the student
21 submits a written request for the excused absence. The school
22 district shall excuse a student pursuant to this subsection for the
23 days on which the religious holy days are observed and for the days
24

1 on which the student must travel to and from the site where the
2 student will observe the holy days; or

3 5. If any child is excused from attending school for the
4 purpose of participating in a military funeral honors ceremony upon
5 approval of the school principal.

6 C. It shall be the duty of the attendance officer to enforce
7 the provisions of this section. In the prosecution of a parent,
8 guardian, or other person having custody of a child for violation of
9 any provision of this section, it shall be an affirmative defense
10 that the parent, guardian, or other person having custody of the
11 child has made substantial and reasonable efforts to comply with the
12 compulsory attendance requirements of this section but is unable to
13 cause the child to attend school. If the court determines the
14 affirmative defense is valid, it shall dismiss the complaint against
15 the parent, guardian, or other person having custody of the child
16 and shall notify the school attendance officer who shall refer the
17 child to the district attorney for the county in which the child
18 resides for the filing of a Child in Need of Supervision petition
19 against the child pursuant to the Oklahoma Juvenile Code.

20 D. Any parent, guardian, custodian, child or other person
21 violating any of the provisions of this section, upon conviction,
22 shall be guilty of a misdemeanor, and shall be punished as follows:

23 1. For the first offense, a fine of not less than Twenty-five
24 Dollars (\$25.00) nor more than Fifty Dollars (\$50.00), or

1 imprisonment for not more than five (5) days, or both such fine and
2 imprisonment;

3 2. For the second offense, a fine of not less than Fifty
4 Dollars (\$50.00) nor more than One Hundred Dollars (\$100.00), or
5 imprisonment for not more than ten (10) days, or both such fine and
6 imprisonment; and

7 3. For the third or subsequent offense, a fine of not less than
8 One Hundred Dollars (\$100.00) nor more than Two Hundred Fifty
9 Dollars (\$250.00), or imprisonment for not more than fifteen (15)
10 days, or both such fine and imprisonment.

11 Each day the child remains out of school after the oral and
12 documented or written warning has been given to the parent,
13 guardian, custodian, child or other person or the child has been
14 ordered to school by the juvenile court shall constitute a separate
15 offense.

16 E. At the trial of any person charged with violating the
17 provisions of this section, the attendance records of the child or
18 ward may be presented in court by any authorized employee of the
19 school district.

20 F. The court may order the parent, guardian, or other person
21 having custody of the child to perform community service in lieu of
22 the fine set forth in this section. The court may require that all
23 or part of the community service be performed for a public school
24 district.

1 G. The court may order as a condition of a deferred sentence or
2 as a condition of sentence upon conviction of the parent, guardian,
3 or other person having custody of the child any conditions as the
4 court considers necessary to obtain compliance with school
5 attendance requirements. The conditions may include, but are not
6 limited to, the following:

- 7 1. Verifying attendance of the child with the school;
- 8 2. Attending meetings with school officials;
- 9 3. Taking the child to school;
- 10 4. Taking the child to the bus stop;
- 11 5. Attending school with the child;
- 12 6. Undergoing an evaluation for drug, alcohol, or other
13 substance abuse and following the recommendations of the evaluator;
14 and
- 15 7. Taking the child for drug, alcohol, or other substance abuse
16 evaluation and following the recommendations of the evaluator,
17 unless excused by the court.

18 SECTION 2. AMENDATORY 70 O.S. 2001, Section 10-109, as
19 amended by Section 158, Chapter 234, O.S.L. 2009 (70 O.S. Supp.
20 2010, Section 10-109), is amended to read as follows:

21 Section 10-109. A. An attendance officer, any school
22 administrator, or designee of the school administrator who is
23 employed by the school, or any peace officer may, ~~except for~~
24 ~~children being home schooled pursuant to Section 10-105 of the~~

1 ~~Oklahoma Statutes~~, temporarily detain and assume temporary custody
2 of any child subject to compulsory full-time education, during hours
3 in which school is actually in session, who is found away from the
4 home of such child and who is absent from school without lawful
5 excuse within the school district that such attendance officer,
6 peace officer or school official serves, if ~~said~~ the school district
7 has previously approved the temporary detention and custody pursuant
8 to this section.

9 B. Any person temporarily detaining and assuming temporary
10 custody of a child pursuant to this section shall immediately
11 deliver the child either to the parent, guardian, or other person
12 having control or custody of the child, or to the school from which
13 the child is absent without valid excuse, or to a nonsecure youth
14 service or community center servicing the school district, or to a
15 community intervention center, as defined by Section 2-1-103 of
16 Title 10A of the Oklahoma Statutes.

17 C. The temporary custody or detention provided by this section
18 shall be utilized as a means of reforming and returning the truant
19 students to school and shall not be used as a pretext for
20 investigating criminal matters. The temporary custody or detention
21 herein provided is a severely limited type of detention and is not
22 justified unless there are specific facts causing an attendance
23 officer or other authorized person to reasonably suspect that a
24

1 truancy violation is occurring and that the person the officer
2 intends to detain is a truant.

3 SECTION 3. This act shall become effective July 1, 2011.

4 SECTION 4. It being immediately necessary for the preservation
5 of the public peace, health and safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

8

9 53-1-90 ALM 1/18/2011 10:16:45 AM

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24