

CHAPTER 1135**SCHOOLS — MISCELLANEOUS PROVISIONS***H.F. 2384*

AN ACT relating to methods by which students may attend instruction in other than the students' public school district of residence; by making changes in the requirement relating to the offering and charging of tuition for drivers education; by making changes in the transportation and athletic participation provisions under open enrollment; making changes in other athletic participation requirements; making changes in the method by which the amount of phase II and phase III moneys transferred between districts engaged in whole grade sharing are calculated; changing the date by which phase III plans must be submitted to the department of education; changing the reporting requirements and testing requirements of some students receiving competent private instruction who are also enrolled in a public school district under dual enrollment or in a home school assistance program; modifying rules relating to parental notice and presence during questioning in sexual abuse investigations; making other related changes; and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 256.46, Code 1991, is amended to read as follows:

256.46 RULES FOR PARTICIPATION IN EXTRACURRICULAR ACTIVITIES BY CERTAIN CHILDREN.

The state board shall adopt rules that permit a child who does not meet the residence requirements for participation in extracurricular interscholastic contests or competitions sponsored or administered by an organization as defined in section 280.13 to participate in the contests or competitions immediately if the child is duly enrolled in a school, is otherwise eligible to participate, and meets one of the following circumstances or a similar circumstance: the child has been adopted; the child is placed under foster or shelter care; the child is living with one of the child's parents as a result of divorce, separation, death, or other change in the child's parents' marital relationship; the child is or has been a foreign exchange student; the child has been placed in a juvenile correctional facility; the child is a ward of the court or the state; or the child is a participant in a substance abuse or mental health program; or the child is enrolled in an accredited nonpublic high school because the child's district of residence has entered into a whole grade sharing agreement for the pupil's grade with another district.

Sec. 2. Section 282.6, unnumbered paragraph 1, Code 1991, is amended to read as follows:

Every school shall be free of tuition to all actual residents between the ages of five and twenty-one years and to resident honorably discharged soldiers, sailors, and marines, as many months after becoming twenty-one years of age as they have spent in the military or naval service of the United States before they became twenty-one, provided, however, fees may be charged covering instructional costs for a summer school or drivers education program. The board of education may, in a hardship case, exempt a student from payment of the above fees. Every person, however, who shall attend any school after graduation from a four-year course in an approved high school or its equivalent shall be charged a sufficient tuition fee to cover the cost of the instruction received by such person.

Sec. 3. Section 282.18, subsection 11, Code Supplement 1991, is amended to read as follows:

11. Notwithstanding section 285.1 relating to transportation of nonresident pupils, the parent or guardian is responsible for transporting the pupil without reimbursement to and from a point on a regular school bus route of the receiving district. A However, a receiving district shall not may send school vehicles into the district of residence of the pupil using the open enrollment option under this section, for the purpose of transporting the pupil to and from school in the receiving district, if the boards of both the sending and receiving districts agree to this arrangement. If the pupil meets the economic eligibility requirements established by the department and state board of education, the sending district is responsible for providing

transportation or paying the pro rata cost of the transportation to a parent or guardian for transporting the pupil to and from a point on a regular school bus route of a contiguous receiving district unless the cost of providing transportation or the pro rata cost of the transportation to a parent or guardian exceeds the average transportation cost per pupil transported for the previous school year in the district. If the cost exceeds the average transportation cost per pupil transported for the previous school year, the sending district shall only be responsible for that average per pupil amount. A sending district which provides transportation for a pupil to a contiguous receiving district under this subsection may withhold from the district cost per pupil amount, that is to be paid to the receiving district, an amount which represents the average or pro rata cost per pupil for transportation, whichever is less.

Sec. 4. Section 282.18, subsection 15, Code Supplement 1991, is amended by striking the subsection and inserting in lieu thereof the following:

15. A pupil who participates in open enrollment for purposes of attending a grade in grades ten through twelve in a school district other than the district of residence is ineligible to participate in interscholastic athletic contests and athletic competitions during the pupil's first ninety school days of enrollment in the district except that the pupil may participate immediately in an interscholastic sport if the district of residence and the other school district jointly participate in the sport, if the sport in which the pupil wishes to participate is not offered in the district of residence, if the pupil chooses to use open enrollment to attend school in another school district because the district in which the student previously attended school was dissolved and merged with one or more contiguous school districts under section 256.11, subsection 12, if the pupil participates in open enrollment because the pupil's district of residence has entered into a whole grade sharing agreement with another district for the pupil's grade, or if the parent or guardian of the pupil participating in open enrollment is an active member of the armed forces and resides in permanent housing on government property provided by a branch of the armed services. A pupil who has paid tuition and attended school, or has attended school pursuant to a mutual agreement between the two districts, in a district other than the pupil's district of residence for at least one school year prior to March 10, 1989, is also eligible to participate immediately in interscholastic athletic contests and athletic competitions under this section, but only as a member of a team from the district that pupil had attended. For purposes of this subsection, "school days of enrollment" do not include enrollment in summer school.

Sec. 5. Section 282.18, Code Supplement 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 20. Notwithstanding the general limitations contained in this section, in appeals to the state board from decisions of school boards relating to student transfers under open enrollment, the state board shall exercise broad discretion to achieve just and equitable results which are in the best interest of the affected child or children.

Sec. 6. Section 294A.9, unnumbered paragraph 3, Code 1991, is amended to read as follows:

If a school district has discontinued grades under section 282.7, subsection 1, or students attend school in another school district, under an agreement with the board of the other school district, the board of directors of the district of residence either shall transmit the phase II moneys allocated to the district for those students based upon the full-time equivalent attendance of those students to the board of the school district of attendance of the students or shall transmit to the board of the school district of attendance of the students a portion of the phase II moneys allocated to the district of residence based upon an agreement between the board of the resident district and the board of the district of attendance.

Sec. 7. Section 294A.14, unnumbered paragraph 3, Code 1991, is amended to read as follows:

If a school district has discontinued grades under section 282.7, subsection 1, or students attend school in another school district, under an agreement with the board of the other school district, the board of directors of the district of residence either shall transmit the phase III

moneys allocated to the district for those students based upon the full-time equivalent attendance of those students to the board of the school district of attendance of the students or shall transmit to the board of the school district of attendance of the students a portion of the phase III moneys allocated to the district of residence based upon an agreement between the board of the resident district and the board of the district of attendance.

Sec. 8. Section 294A.16, unnumbered paragraph 1, Code 1991, is amended to read as follows:

A plan adopted by the board of directors of a school district or area education agency shall be submitted to the department of education not later than ~~March~~ April 15 of a school year for that school year for a school district, and not later than June 15 of a school year for that school year for an area education agency. Amendments to multiple year plans may be submitted annually.

Sec. 9. Section 299.4, Code Supplement 1991, is amended to read as follows:

299.4 REPORTS AS TO PRIVATE INSTRUCTION.

The parent, guardian, or legal ~~or actual~~ custodian of a child who is of compulsory attendance age, who places the child under competent private instruction under ~~chapter 299A~~ either section 299A.2 or 299A.3, not in an accredited school or a home school assistance program operated by a public or accredited nonpublic school, shall furnish a report in duplicate on forms provided by the public school district, to the district by the earliest starting date specified in section 279.10, subsection 1. The secretary shall retain and file one copy and forward the other copy to the district's area education agency. The report shall state the name and age of the child, the period of time during which the child has been or will be under competent private instruction for the year, an outline of the course of study, texts used, and the name and address of the instructor. The parent, guardian, or legal ~~or actual~~ custodian of a child, who is placing the child under competent private instruction, for the first time, shall also provide the district with evidence that the child has had the immunizations required under section 139.9. The term "outline of course of study" shall include subjects covered, lesson plans, and time spent on the areas of study.

Sec. 10. Section 299A.2, Code Supplement 1991, is amended to read as follows:

299A.2 COMPETENT PRIVATE INSTRUCTION BY LICENSED PRACTITIONER.

If a licensed practitioner provides competent instruction to a child of compulsory attendance age, the practitioner shall possess a valid license or certificate which has been issued by the state board of educational examiners under chapter 260 and which is appropriate to the ages and grade levels of the children to be taught. Competent private instruction may include, but is not limited to, a home school assistance program which provides instruction or instructional supervision offered through an accredited nonpublic school or public school district by a teacher, who is employed by the accredited nonpublic school or public school district, who assists and supervises a parent, guardian, or legal custodian in providing instruction to a child. ~~If competent private instruction is provided through a public school district, the child shall be enrolled and included in the basic enrollment of the school district.~~ Sections 299A.3 through 299A.7 do not apply to competent private instruction provided by a licensed practitioner under this section. However, the reporting requirement contained in section 299A.3, subsection 1, shall apply to competent private instruction provided by licensed practitioners that is not part of a home school assistance program offered through an accredited nonpublic school or public school district.

Sec. 11. Section 299A.6, unnumbered paragraph 1, Code Supplement 1991, is amended to read as follows:

If the results of evaluations, administered to a child of compulsory attendance age who is under competent private instruction, indicate that the student has failed to make adequate progress, the parent, guardian, or legal custodian shall cause the child to attend an accredited public or nonpublic school at the beginning of the next school year unless, before the beginning of the next school year, the child retakes a different form of the same evaluation, or another

evaluation from the approved list of tests or assessment tools recognized by the department of education, and the results indicate that adequate progress has been made, the child has demonstrated adequate performance in the opinion of an evaluator and documented in a report under section 299A.4, subsection 7, or the director of the department of education, or the director's designee, grants approval for competent private instruction to continue under a plan for remediation.

Sec. 12. 1991 Iowa Acts, chapter 201, section 2, is amended to read as follows:

SEC. 2. RULEMAKING. The department of education shall recommend, and the state board of education shall adopt under chapter 17A, rules which shall be effective by January 1, 1992 1993, which require local school districts to immediately notify the parent, guardian, or legal custodian of a child in prekindergarten through sixth grade, who is the alleged victim of sexual abuse or who is a potential or actual witness in the investigation of an allegation of sexual abuse pursuant to a report initiated under section 280.17, that the child is being questioned as provided under section 280.17 and permit to be interviewed. The notice shall include the right of the child's parent, guardian, or legal custodian to be present during the questioning observe and hear the interview.

Sec. 13. HOME SCHOOL ASSISTANCE PROGRAM — DEFINITION. The department of education shall develop, and the state board of education shall adopt, rules by September 1, 1992, which establish criteria for the maintenance of home school assistance programs by public school districts. In developing the criteria the department shall consider program offerings in districts which have created and maintained programs for a number of years that provide instruction or instructional supervision by teachers employed by the districts to parents, guardians, or legal custodians who are providing instruction to their children or wards in the districts.

Sec. 14. Sections 8 and 13 of this Act, being deemed of immediate importance, take effect upon enactment.

Approved April 23, 1992

CHAPTER 1136

CIVIL LIABILITY FOR SALE OF BEER, WINE, OR LIQUOR

H.F. 2428

AN ACT relating to including out-of-state liquor, wine, or beer licensees or permittees in, and exempting class "E" liquor control licensees from, Iowa's dramshop Act.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 123.92, Code 1991, is amended to read as follows:

123.92 CIVIL LIABILITY FOR SALE AND SERVICE OF BEER, WINE, OR INTOXICATING LIQUOR (DRAMSHOP ACT).

Any person who is injured in person or property or means of support by an intoxicated person or resulting from the intoxication of a person, has a right of action for all damages actually sustained, severally or jointly, against any licensee or permittee, whether or not the license or permit was issued by the division or by the licensing authority of any other state, who sold and served any beer, wine, or intoxicating liquor to the intoxicated person when the licensee or permittee knew or should have known the person was intoxicated, or who sold to and served the person to a point where the licensee or permittee knew or should have known the person would become intoxicated. If the injury was caused by an intoxicated person, a permittee or