

1 **H. B. 2126**

2
3 (By Delegate Paxton)

4 [Introduced January 12, 2011; referred to the
5 Committee on Education.]
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10 A BILL to amend and reenact §18-8-1 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §18-28-3 of said
12 code, all relating to exempting children receiving an
13 exemption from compulsory school attendance in favor of church
14 school from the standardized testing requirement.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §18-8-1 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted; and that §18-28-3 of said code be amended
18 and reenacted, all to read as follows:

19 **ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

20 **§18-8-1. Compulsory school attendance; exemptions.**

21 (a) Exemption from the requirements of compulsory public
22 school attendance established in section one-a of this article
23 shall be made on behalf of any child for the causes or conditions
24 set forth in this section. Each cause or condition set forth in
25 this section is subject to confirmation by the attendance authority
26 of the county.

1 (b) A child is exempt from the compulsory school attendance
2 requirement set forth in section one-a of this article if the
3 requirements of this subsection, relating to instruction in a
4 private, parochial or other approved school, are met. The
5 instruction shall be in a school approved by the county board and
6 for a time equal to the instructional term set forth in section
7 forty-five, article five of this chapter. In all private,
8 parochial or other schools approved pursuant to this subsection it
9 is the duty of the principal or other person in control, upon the
10 request of the county superintendent, to furnish to the county
11 board such information and records as may be required with respect
12 to attendance, instruction and progress of students enrolled.

13 (c) A child is exempt from the compulsory school attendance
14 requirement set forth in section one-a of this article if the
15 requirements of either subdivision (1) or subdivision (2) of this
16 subsection, both relating to home instruction, are met.

17 (1) The instruction shall be in the home of the child or
18 children or at some other place approved by the county board and
19 for a time equal to the instructional term set forth in section
20 forty-five, article five of this chapter. If the request for home
21 instruction is denied by the county board, good and reasonable
22 justification for the denial shall be furnished in writing to the
23 applicant by the county board. The instruction shall be conducted
24 by a person or persons who, in the judgment of the county
25 superintendent and county board, are qualified to give instruction
26 in subjects required to be taught in public elementary schools in

1 the state. The person or persons providing the instruction, upon
2 request of the county superintendent, shall furnish to the county
3 board information and records as may be required periodically with
4 respect to attendance, instruction and progress of students
5 receiving the instruction. The state board shall develop
6 guidelines for the home schooling of special education students
7 including alternative assessment measures to assure that
8 satisfactory academic progress is achieved.

9 (2) The child meets the requirements set forth in this
10 subdivision: *Provided*, That the county superintendent may seek
11 from the circuit court of the county an order denying home
12 instruction of the child. The order may be granted upon a showing
13 of clear and convincing evidence that the child will suffer neglect
14 in his or her education or that there are other compelling reasons
15 to deny home instruction.

16 (A) Annually, the person or persons providing home instruction
17 shall present to the county superintendent or county board a notice
18 of intent to provide home instruction and the name, address, age
19 and grade level of any child of compulsory school age to be
20 instructed: *Provided*, That if a child is enrolled in a public
21 school, notice of intent to provide home instruction shall be given
22 at least two weeks prior to withdrawing the child from public
23 school;

24 (B) The person or persons providing home instruction shall
25 submit satisfactory evidence of a high school diploma or
26 equivalent;

1 (C) The person or persons providing home instruction shall
2 outline a plan of instruction for the ensuing school year; and

3 (D) On or before June 30 annually, the person or persons
4 providing home instruction shall obtain an academic assessment of
5 the child for the previous school year and submit the results to
6 the county superintendent. When the academic assessment takes
7 place outside of a public school, the parent or legal guardian
8 shall pay the cost. The requirement of an academic assessment is
9 satisfied in one of the following ways:

10 (i) The child receiving home instruction takes a nationally
11 normed standardized achievement test to be administered under
12 standardized conditions as set forth by the published instructions
13 of the selected test in the subjects of reading, language,
14 mathematics, science and social studies. The child's parent or
15 legal guardian may not administer the test in any event: Provided,
16 That in accordance with the United States Supreme Court's holding
17 in *Wisconsin v. Yoder*, 406 U.S. 205 (1972) a child receiving
18 instruction from certain church schools may be exempted from the
19 requirement of standardized testing by the county superintendent:
20 Provided, however, That in lieu of standardized testing, the church
21 school shall administer an established test used within the
22 particular religious community, substantially equivalent to the
23 standardized test, which is designed to test for achievement and
24 proficiency in the subjects of English, grammar, reading, social
25 studies, science and mathematics. The publication date of the
26 chosen test may not be more than ten years from the date the test

1 is administered. The child is considered to have made acceptable
2 progress when the mean of the child's test results in the required
3 subject areas for any single year meets or exceeds the fiftieth
4 percentile or, if below the fiftieth percentile, shows improvement
5 from the previous year's results;

6 (ii) The child participates in the testing program currently
7 in use in the state's public schools. The test shall be
8 administered to the child at a public school in the county of
9 residence. Determination of acceptable progress shall be based on
10 current guidelines of the state testing program;

11 (iii) The county superintendent is provided with a written
12 narrative indicating that a portfolio of samples of the child's
13 work has been reviewed and that the child's academic progress for
14 the year is in accordance with the child's abilities. If the
15 narrative indicates that the child's academic progress for the year
16 is in accordance with the child's abilities, the child is
17 considered to have made acceptable progress. This narrative shall
18 be prepared by a certified teacher whose certification number shall
19 be provided. The narrative shall include a statement about the
20 child's progress in the areas of reading, language, mathematics,
21 science and social studies and shall note any areas which, in the
22 professional opinion of the reviewer, show need for improvement or
23 remediation; or

24 (iv) The child completes an alternative academic assessment of
25 proficiency that is mutually agreed upon by the parent or legal
26 guardian and the county superintendent. Criteria for acceptable

1 progress shall be mutually agreed upon by the same parties; and

2 (E) When the annual assessment fails to show acceptable
3 progress as defined under the appropriate assessment option set
4 forth in paragraph (D) of this subdivision, the person or persons
5 providing home instruction shall initiate a remedial program to
6 foster acceptable progress. The county board shall notify the
7 parents or legal guardian of the child, in writing, of the services
8 available to assist in the assessment of the child's eligibility
9 for special education services. Identification of a disability
10 does not preclude the continuation of home schooling. In the event
11 that the child does not achieve acceptable progress as defined
12 under the appropriate assessment option set forth in paragraph (D)
13 of this subdivision for a second consecutive year, the person or
14 persons providing instruction shall submit to the county
15 superintendent additional evidence that appropriate instruction is
16 being provided.

17 (3) This subdivision applies to both home instruction
18 exemptions set forth in subdivisions (1) and (2) of this
19 subsection. The county superintendent or a designee shall offer
20 such assistance, including textbooks, other teaching materials and
21 available resources, all subject to availability, as may assist the
22 person or persons providing home instruction. Any child receiving
23 home instruction may upon approval of the county board exercise the
24 option to attend any class offered by the county board as the
25 person or persons providing home instruction may consider
26 appropriate subject to normal registration and attendance

1 requirements.

2 (d) A child is exempt from the compulsory school attendance
3 requirement set forth in section one-a of this article if the
4 requirements of this subsection, relating to physical or mental
5 incapacity, are met. Physical or mental incapacity consists of
6 incapacity for school attendance and the performance of school
7 work. In all cases of prolonged absence from school due to
8 incapacity of the child to attend, the written statement of a
9 licensed physician or authorized school nurse is required.
10 Incapacity shall be narrowly defined and in any case the provisions
11 of this article may not allow for the exclusion of the mentally,
12 physically, emotionally or behaviorally handicapped child otherwise
13 entitled to a free appropriate education.

14 (e) A child is exempt from the compulsory school attendance
15 requirement set forth in section one-a of this article if
16 conditions rendering school attendance impossible or hazardous to
17 the life, health or safety of the child exist.

18 (f) A child is exempt from the compulsory school attendance
19 requirement set forth in section one-a of this article upon regular
20 graduation from a standard senior high school or alternate
21 secondary program completion as determined by the state board.

22 (g) A child is exempt from the compulsory school attendance
23 requirement set forth in section one-a of this article if the
24 child is granted a work permit pursuant to the subsection. After
25 due investigation the county superintendent may grant work permits
26 to youths under the termination age designated in section one-a of

1 this article, subject to state and federal labor laws and
2 regulations. A work permit may not be granted on behalf of any
3 youth who has not completed the eighth grade of school.

4 (h) A child is exempt from the compulsory school attendance
5 requirement set forth in section one-a of this article if a serious
6 illness or death in the immediate family of the child has occurred.
7 It is expected that the county attendance director will ascertain
8 the facts in all cases of such absences about which information is
9 inadequate and report the facts to the county superintendent.

10 (i) A child is exempt from the compulsory school attendance
11 requirement set forth in section one-a of this article if the
12 requirements of this subsection, relating to destitution in the
13 home, are met. Exemption based on a condition of extreme
14 destitution in the home may be granted only upon the written
15 recommendation of the county attendance director to the county
16 superintendent following careful investigation of the case. A copy
17 of the report confirming the condition and school exemption shall
18 be placed with the county director of public assistance. This
19 enactment contemplates every reasonable effort that may properly be
20 taken on the part of both school and public assistance authorities
21 for the relief of home conditions officially recognized as being so
22 destitute as to deprive children of the privilege of school
23 attendance. Exemption for this cause is not allowed when the
24 destitution is relieved through public or private means.

25 (j) A child is exempt from the compulsory school attendance
26 requirement set forth in section one-a of this article if the

1 requirements of this subsection, relating to church ordinances and
 2 observances of regular church ordinances, are met. The county
 3 board may approve exemption for religious instruction upon written
 4 request of the person having legal or actual charge of a child or
 5 children. This exemption is subject to the rules prescribed by the
 6 county superintendent and approved by the county board.

7 (k) A child is exempt from the compulsory school attendance
 8 requirement set forth in section one-a of this article if the
 9 requirements of this subsection, relating to alternative private,
 10 parochial, church or religious school instruction, are met.
 11 Exemption shall be made for any child attending any private school,
 12 parochial school, church school, school operated by a religious
 13 order or other nonpublic school which elects to comply with the
 14 provisions of article twenty-eight of this chapter.

15 (l) Completion of the eighth grade does not exempt any child
 16 under the termination age designated in section one-a of this
 17 article from the compulsory attendance provision of this article.

18 **ARTICLE 28. PRIVATE, PAROCHIAL OR CHURCH SCHOOLS, OR SCHOOLS OF A**
 19 **RELIGIOUS ORDER.**

20 **§18-28-3. Standardized testing requirements.**

21 (a) With the exception of a church school receiving an
 22 exemption under subsection (b) , section one, article eight of this
 23 chapter, each private, parochial or church school or school of a
 24 religious order or other nonpublic school electing to operate under
 25 this statute in lieu of the approval requirements set forth as part
 26 of section one, article eight, chapter eighteen, exemption A shall

1 administer on an annual basis during each school year to every
2 child enrolled therein between the ages of seven and sixteen years
3 either the comprehensive test of basic skills, the California
4 achievement test, the Stanford achievement test or the Iowa tests
5 of basic skills tests of achievement and proficiency, which test
6 will be selected by the chief administrative officer of each school
7 in the subjects of English, grammar, reading, social studies,
8 science and mathematics; and shall be administered under
9 standardized conditions as set forth by the published instructions
10 of the selected test: *Provided*, That any private, parochial,
11 church school, school of a religious order or other nonpublic
12 school that exclusively teaches special education students or
13 children with learning disabilities shall not be required to comply
14 with this subsection or subsection (d) of this section, but shall
15 academically assess every child enrolled therein between the ages
16 of seven and sixteen years on an annual basis during each school
17 year by one or more of the following methods: (1) A standardized
18 group achievement test; (2) a standardized individual achievement
19 test; (3) a written narrative of an evaluation of a portfolio of
20 samples of a child's work; (4) an alternative academic assessment
21 of the child's proficiency as mutually agreed by the county
22 superintendent, parent(s) or legal guardian(s) and the school.

23 (b) Each child's testing results and the school composite test
24 results shall be made available to such child's parents or legal
25 guardians. Upon request of a duly authorized representative of the
26 West Virginia Department of Education, the school composite test

1 results shall be furnished by the school or by a parents
2 organization composed of the parents or guardians of children
3 enrolled in said school to the State Superintendent of Schools.

4 (c) Each school to which this article applies shall:

5 (1) Establish curriculum objectives, the attainment of which
6 will enable students to develop the potential for becoming literate
7 citizens.

8 (2) Provide an instructional program that will make possible
9 the acquisition of competencies necessary to become a literate
10 citizen.

11 (d) If ~~such~~ the school composite test results for any single
12 year for English, grammar, reading, social studies, science and
13 mathematics fall below the fortieth percentile on the selected
14 tests, the school as herein described shall initiate a remedial
15 program to foster achievement above that level. If after two
16 consecutive calendar years school composite test results are not
17 above the fortieth percentile level, attendance at the school may
18 no longer satisfy the compulsory school attendance requirement
19 exemption of exemption K, section one, article eight, chapter
20 eighteen, until such time as the percentile standards herein set
21 forth are met.

NOTE: The purpose of this bill is to authorize an exemption from standardized testing for children receiving an exemption from compulsory school attendance who attend church school. The actual intent of the bill is to provide an exemption for Amish children, but due to Constitutional concerns, Amish children are not specifically singled out for the exemption, and other religious

groups could also theoretically apply for and be granted the exemption. The draft cites the United States Supreme Court decision of Wisconsin v. Yoder as precedent for the exemption. This court case involved a successful Amish challenge to Wisconsin law providing for compulsory school attendance.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.