

H. B. 3152

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(By Delegate Manypenny)
[Introduced February 15, 2011; referred to the
Committee on Education then the Judiciary.]

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 permitting the West Virginia Educational
13 Standards Test 2 to be one of the optional methods to annually
14 assess the academic achievement levels of home schooled
15 students and students in private, parochial and church
16 schools; and providing rule-making authority.

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

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

21 **ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

22 **§18-8-1. Compulsory school attendance; exemptions.**

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

1 this section is subject to confirmation by the attendance authority
2 of the county.

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

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

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

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

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

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

26 (B) The person or persons providing home instruction shall

1 submit satisfactory evidence of a high school diploma or
2 equivalent;

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

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

12 (i) ~~The child receiving home instruction takes a nationally~~
13 ~~normed standardized achievement test to be administered under~~
14 ~~standardized conditions as set forth by the published instructions~~
15 ~~of the selected test in the subjects of reading, language,~~
16 ~~mathematics, science and social studies. The child's parent or~~
17 ~~legal guardian may not administer the test in any event. The~~
18 ~~publication date of the chosen test may not be more than ten years~~
19 ~~from the date the test is administered. The child is considered to~~
20 ~~have made acceptable progress when the mean of the child's test~~
21 ~~results in the required subject areas for any single year meets or~~
22 ~~exceeds the fiftieth percentile or, if below the fiftieth~~
23 ~~percentile, shows improvement from the previous year's results and~~
24 completes the West Virginia Educational Standards Test 2
25 (WESTEST2). The State Board of Education is granted rule-making
26 authority to promulgate rules by July 1, 2011 to determine the

1 subjects to be tested for each grade and the proficiency scores
2 necessary to remain in a home school environment;

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

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

21 (iv) The child completes an alternative academic assessment of
22 proficiency that is mutually agreed upon by the parent or legal
23 guardian and the county superintendent. Criteria for acceptable
24 progress shall be mutually agreed upon by the same parties; and

25 (E) When the annual assessment fails to show acceptable
26 progress as defined under the appropriate assessment option set

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

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

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

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

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

19 (g) A child is exempt from the compulsory school attendance
20 requirement set forth in section one-a of this article if the
21 child is granted a work permit pursuant to the subsection. After
22 due investigation the county superintendent may grant work permits
23 to youths under the termination age designated in section one-a of
24 this article, subject to state and federal labor laws and
25 regulations. A work permit may not be granted on behalf of any
26 youth who has not completed the eighth grade of school.

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

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

22 (j) A child is exempt from the compulsory school attendance
23 requirement set forth in section one-a of this article if the
24 requirements of this subsection, relating to church ordinances and
25 observances of regular church ordinances, are met. The county
26 board may approve exemption for religious instruction upon written

1 request of the person having legal or actual charge of a child or
2 children. This exemption is subject to the rules prescribed by the
3 county superintendent and approved by the county board.

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

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

15 **ARTICLE 28. PRIVATE, PAROCHIAL OR CHURCH SCHOOLS, OR SCHOOLS OF A**
16 **RELIGIOUS ORDER.**

17 **§18-28-3. Standardized testing requirements.**

18 (a) Each private, parochial or church school or school of a
19 religious order or other nonpublic school electing to operate under
20 this statute in lieu of the approval requirements set forth as part
21 of section one, article eight, chapter eighteen, exemption A shall
22 administer on an annual basis during each school year to every
23 child enrolled therein between the ages of seven and sixteen years
24 either the comprehensive test of basic skills, the California
25 achievement test, the Stanford achievement test, the West Virginia
26 Educational Standards Test 2 (WESTEST2) or the Iowa tests of basic

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

19 (b) Each child's testing results and the school composite test
20 results shall be made available to such child's parents or legal
21 guardians. Upon request of a duly authorized representative of the
22 West Virginia Department of Education, the school composite test
23 results shall be furnished by the school or by a parents
24 organization composed of the parents or guardians of children
25 enrolled in said school to the state superintendent of Schools.

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

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

4 (2) Provide an instructional program that will make possible
5 the acquisition of competencies necessary to become a literate
6 citizen.

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

NOTE: The purpose of this bill is to permit the West Virginia Educational Standards Test 2 to be one of the optional methods to annually assess the basic skills of achievement and proficiency of home schooled students and students in private, parochial or church schools. The bill also grants the State Board of Education rulemaking authority to determine the subjects to be tested and the proficiency scores necessary to be home schooled.

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