

1 **Committee Substitute**

2 **for**

3 **H. B. 2793**

4
5 (By Delegates Kurcaba, Statler, Ellington, Pasdon, Cooper, Ambler and Kelly)

6 [Originating in the Committee on Education.]

7 (February 25, 2015)

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9
10 A BILL to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended, relating to
11 exemptions from mandatory school attendance; restoring historical exemption nomenclature;
12 clarifying that parents and guardians of exempt children may not be prosecuted under §18-8-
13 2; clarifying that exempt children are not status offenders; requiring leave of court and
14 probable cause before petition may be filed to deny home schooling; providing for one-time
15 notice of intent to home school and revising notice contents; removing waiting period;
16 providing for notice of termination; providing for notice when children move between
17 counties; removing required submissions; revising requirements and standards for annual
18 assessments and acceptable progress; removing requirement that parents pay costs of
19 assessments not conducted in public schools; requiring parents to retain copies of
20 assessments; and requiring evaluations for learning disabilities when children fail to make
21 acceptable progress.

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

1 That §18-8-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted
2 to read as follows:

3 **ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

4 **§18-8-1. Compulsory school attendance; exemptions.**

5 (a) Exemption from the requirements of compulsory public school attendance established in
6 section one-a of this article shall be made on behalf of any child for the causes or conditions set forth
7 in this section. Each cause or condition set forth in this section is subject to confirmation by the
8 attendance authority of the county. A parent or legal guardian of a child who is exempt from
9 compulsory school attendance under this section is not subject to prosecution under section two of
10 this article, nor is such a child a status offender as defined by section four, article one, chapter forty-
11 nine of this code.

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

21 (c) Exemption B. Instruction in home or other approved place. -- A child is exempt from the
22 compulsory school attendance requirement set forth in section one-a of this article if the

1 requirements of either subdivision (1) or subdivision (2) of this subsection, both relating to home
2 instruction, are met.

3 (1) The instruction shall be in the home of the child or children or at some other place
4 approved by the county board and for a time equal to the instructional term set forth in section
5 forty-five, article five of this chapter. If the request for home instruction is denied by the county
6 board, good and reasonable justification for the denial shall be furnished in writing to the applicant
7 by the county board. The instruction shall be conducted by a person or persons who, in the judgment
8 of the county superintendent and county board, are qualified to give instruction in subjects required
9 to be taught in public elementary schools in the state. The person or persons providing the
10 instruction, upon request of the county superintendent, shall furnish to the county board information
11 and records as may be required periodically with respect to attendance, instruction and progress of
12 students receiving the instruction. The state board shall develop guidelines for the home schooling
13 of special education students including alternative assessment measures to assure that satisfactory
14 academic progress is achieved.

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

20 (A) ~~Annually, the person or persons providing~~ Upon commencing home instruction under
21 this subdivision, the parent or legal guardian of a child receiving home instruction shall present to
22 the county superintendent or county board a notice of intent to provide home instruction ~~and that~~

1 includes the name, address and age ~~and grade level~~ of any child of compulsory school age to be
2 instructed ~~Provided, That if a child is enrolled in a public school, notice of intent to provide home~~
3 ~~instruction shall be given at least two weeks prior to withdrawing the child from public school; and~~
4 assurance that the child shall receive instruction in reading, language, mathematics, science and
5 social studies and that the child shall be assessed annually in accordance with this subdivision. The
6 person providing home instruction shall notify the county superintendent or county board upon
7 termination of home instruction for a child who is of compulsory attendance age. Upon establishing
8 residence in a new county, the person providing home instruction shall notify the previous county
9 superintendent or county board and submit a new notice of intent to the superintendent or county
10 board of the new county of residence.

11 ~~(B) The person or persons providing home instruction shall submit satisfactory evidence of~~
12 ~~a high school diploma or equivalent;~~

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

15 ~~(D) (B) On or before June 30 annually; Annually,~~ the person or persons providing home
16 instruction shall obtain an academic assessment of the child for the previous school year ~~and submit~~
17 ~~the results to the county superintendent. When the academic assessment takes place outside of a~~
18 ~~public school, the parent or legal guardian shall pay the cost. The requirement of an academic~~
19 ~~assessment is satisfied in one of the following ways:~~

20 (i) The child receiving home instruction takes a nationally normed standardized achievement
21 test normed not more than ten years from the date of administration and to be administered under
22 standardized the conditions as set forth by in the published instructions of the selected test and by

1 a person qualified in accordance with the test's published guidelines in the subjects of reading,
2 language, mathematics, science and social studies. ~~The child's parent or legal guardian may not~~
3 ~~administer the test in any event. The publication date of the chosen test may not be more than ten~~
4 ~~years from the date the test is administered.~~ The child is considered to have made acceptable
5 progress when the mean of the child's test results in the required subject areas for any single year
6 ~~meets or exceeds the fiftieth percentile or, if below the fiftieth percentile, is within or above the~~
7 average range for that test or, if below that range, shows improvement from the previous year's
8 results;

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

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

22 (iv) The child completes an alternative academic assessment of proficiency that is mutually

1 agreed upon by the parent or legal guardian and the county superintendent. ~~Criteria for acceptable~~
2 ~~progress shall be mutually agreed upon by the same parties; and~~

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

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

22 (d) Exemption C. Physical or mental incapacity. -- A child is exempt from the compulsory

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

8 (e) Exemption D. – Repealed.

9 (f) Exemption E Hazardous conditions. -- A child is exempt from the compulsory school
10 attendance requirement set forth in section one-a of this article if conditions rendering school
11 attendance impossible or hazardous to the life, health or safety of the child exist.

12 (g) Exemption F. High school graduation. -- A child is exempt from the compulsory
13 school attendance requirement set forth in section one-a of this article upon regular graduation from
14 a standard senior high school or alternate secondary program completion as determined by the state
15 board.

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

22 (i) Exemption H. Serious illness or death in the immediately family of the child. -- A child

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

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

16 (†) (k) Exemption J. Church ordinances; observances of regular church ordinances. -- A
17 child is exempt from the compulsory school attendance requirement set forth in section one-a of this
18 article if the requirements of this subsection, relating to church ordinances and observances of
19 regular church ordinances, are met. The county board may approve exemption for religious
20 instruction upon written request of the person having legal or actual charge of a child or children.
21 This exemption is subject to the rules prescribed by the county superintendent and approved by the
22 county board.

1 ~~(k)~~ (l) *Exemption K. Alternative private, parochial, church or religious school instruction. --*

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

7 ~~(j)~~ (m) Completion of the eighth grade does not exempt any child under the termination age
8 designated in section one-a of this article from the compulsory attendance provision of this article.

NOTE: The purpose of this bill is to clarify that parents and guardians of exempt children may not be prosecuted under §18-8-2; to clarify that exempt children are not status offenders; to restore historical nomenclature relating to exemptions; to require superintendents to obtain leave of court and show probable cause before seeking orders denying home schooling; to provide for notices to county superintendents or county boards; to require assurances regarding the schooling to be provided; to remove a waiting period for parents who wish to withdraw their children from public schools; to remove requirements for instructor qualifications and instruction plan outlines; to remove requirements that assessment results be submitted to the county superintendent and that parents pay the cost of any assessment that occurs outside of a public school; to change requirements regarding assessments and their administration; to change the standard of acceptable progress on assessment tests from the mean to the average range; to remove a requirement that parents and county superintendents agree on the standard of acceptable progress when alternative assessments are used; to require parents to retain copies of academic assessments for three years; and to require that children be evaluated for learning disabilities if they fail to make satisfactory progress for two consecutive years.

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