

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 318**

BY SENATORS KARNES, BOSO, GAUNCH, HALL, MAYNARD

AND TAKUBO

[Introduced January 19, 2016;

Referred to the Committee on Education.]

1 A BILL to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended, relating  
 2 generally to home schooling; clarifying that a student who is home schooled may not be  
 3 classified as habitually absent; changing annual requirement that a parent of a child who  
 4 is to be home schooled notify the county superintendent of intent to home school to a one-  
 5 time notification; requiring a parent provide certain assurances; removing requirement that  
 6 the person providing the home schooling instruction have a high school diploma; removing  
 7 requirement that the person providing home schooling instruction have an outline of a plan  
 8 for home schooling instruction for the ensuing year; permitting a parent to administer the  
 9 required nationally normed standardized test; providing that student has made acceptable  
 10 academic progress if it is within or above the fourth stanine, or if below that stanine then  
 11 student must show improvement from the previous year; requiring certified teacher to  
 12 review a student's progress and submit a written narrative; removing requirement that a  
 13 county superintendent be given two weeks' notice before a student enrolled in a public  
 14 school may receive home instruction; requiring parent to keep academic assessments for  
 15 three years; and providing that a county board of education may only provide information  
 16 about the availability of special education services only if the parent requests it.

*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:

**ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

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

1 (a) Exemption from the requirements of compulsory public school attendance established  
 2 in section one-a of this article shall be made on behalf of any child for the causes or conditions  
 3 set forth in this section. Each cause or condition set forth in this section is subject to confirmation  
 4 by the attendance authority of the county. A child who is exempt from compulsory school  
 5 attendance under this section is not subject to prosecution under section two of this article, nor is

6 such a child a status offender as defined by section four, article one, chapter forty-nine of this  
7 code.

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

16 (c) A child is exempt from the compulsory school attendance requirement set forth in  
17 section one-a of this article if the 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 children or at some other place  
20 approved by the county board and for a time equal to the instructional term set forth in section  
21 forty-five, article five of this chapter. If the request for home instruction is denied by the county  
22 board, good and reasonable justification for the denial shall be furnished in writing to the applicant  
23 by the county board. The instruction shall be conducted by a person or persons who, in the  
24 judgment of the county superintendent and county board, are qualified to give instruction in  
25 subjects required to be taught in public elementary schools in the state. The person or persons  
26 providing the instruction, upon request of the county superintendent, shall furnish to the county  
27 board information and records as may be required periodically with respect to attendance,  
28 instruction and progress of students receiving the instruction. The state board shall develop  
29 guidelines for the home schooling of special education students including alternative assessment  
30 measures to assure that satisfactory academic progress is achieved.

31 (2) The child meets the requirements set forth in this subdivision: *Provided, That the*

32 county superintendent may, after a showing of probable cause, seek from the circuit court of the  
33 county an order denying home instruction of the child. The order may be granted upon a showing  
34 of clear and convincing evidence that the child will suffer neglect in his or her education or that  
35 there are other compelling reasons to deny home instruction.

36 (A) ~~Annually, the person or persons providing~~ Upon commencing home instruction under  
37 this section the parent of a child receiving home instruction shall present to the county  
38 superintendent or county board a notice of intent to provide home instruction ~~and~~ that includes  
39 the name, address, and age ~~and grade level~~ of any child of compulsory school age to be instructed  
40 and assurance that the child shall receive instruction in reading, language, mathematics, science  
41 and social studies and that the child shall be assessed annually in accordance with this  
42 subdivision. The person providing home instruction shall notify the county superintendent upon  
43 termination of home instruction for a child who is of compulsory attendance age. Upon  
44 establishing residence in a new county, the person providing home instruction shall notify the  
45 previous county superintendent and submit a new notice of intent to the superintendent of the  
46 new county of residence: Provided, That if a child is enrolled in a public school, notice of intent to  
47 provide home instruction shall be given least two weeks prior to withdrawing the child from public  
48 school on or before the date home instruction is to begin.

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

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

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

58 (i) The child receiving home instruction takes a nationally normed standardized  
59 achievement test published or normed not more than ten years from the date of administration  
60 and to be administered under standardized the conditions as set forth by the published  
61 instructions of the selected test and by a person qualified in accordance with the test's published  
62 guidelines in the subjects of reading, language, mathematics, science and social studies. ~~The~~  
63 ~~child's parent or legal guardian may not administer the test in any event. The publication date of~~  
64 ~~the chosen test may not be more than ten years from the date the test is administered. The child~~  
65 is considered to have made acceptable progress when the mean of the child's test results in the  
66 required subject areas for any single year ~~meets or exceeds the fiftieth percentile or, if below the~~  
67 ~~fiftieth percentile,~~ is within or above the fourth stanine or, if below the fourth stanine, shows  
68 improvement from the previous year's results;

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

73 (iii) ~~The county superintendent is provided with a written narrative indicating that a A~~  
74 ~~portfolio of samples of the child's work has been~~ is reviewed and by a certified teacher who  
75 determines that the child's academic progress for the year is in accordance with the child's  
76 abilities. If the narrative indicates that the child's academic progress for the year is in accordance  
77 with the child's abilities, the child is considered to have made acceptable progress. ~~This narrative~~  
78 ~~shall be prepared by a certified teacher whose certification number shall be provided. The~~  
79 ~~narrative shall include a statement~~ The teacher shall provide a written narrative about the child's  
80 progress in the areas of reading, language, mathematics, science and social studies and shall  
81 note any areas which, in the professional opinion of the reviewer, show need for improvement or  
82 remediation; or

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

84 mutually agreed upon by the parent or legal guardian and the county superintendent: ~~Criteria for~~  
85 ~~acceptable progress shall be mutually agreed upon by the same parties; and~~

86 ~~(E)~~ (C) A parent shall maintain copies of each student's academic assessment for three  
87 years. When the annual assessment fails to show acceptable progress as defined under the  
88 appropriate assessment option set forth in paragraph ~~(D)~~ (B) of this subdivision, the person or  
89 persons providing home instruction shall initiate a remedial program to foster acceptable  
90 progress. The county board upon request shall notify the parents or legal guardian of the child,  
91 in writing, of the services available to assist in the assessment of the child's eligibility for special  
92 education services. Identification of a disability does not preclude the continuation of home  
93 schooling. In the event that the child does not achieve acceptable progress as defined under the  
94 appropriate assessment option set forth in paragraph ~~(D)~~ (B) of this subdivision for a second  
95 consecutive year, the person or persons providing instruction shall submit to the county  
96 superintendent additional evidence that appropriate instruction is being provided.

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

104 (d) A child is exempt from the compulsory school attendance requirement set forth in  
105 section one-a of this article if the requirements of this subsection, relating to physical or mental  
106 incapacity, are met. Physical or mental incapacity consists of incapacity for school attendance  
107 and the performance of school work. In all cases of prolonged absence from school due to  
108 incapacity of the child to attend, the written statement of a licensed physician or authorized school  
109 nurse is required. Incapacity shall be narrowly defined and in any case the provisions of this

110 article may not allow for the exclusion of the mentally, physically, emotionally or behaviorally  
111 handicapped child otherwise entitled to a free appropriate education.

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

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

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

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

129 (i) A child is exempt from the compulsory school attendance requirement set forth in  
130 section one-a of this article if the requirements of this subsection, relating to destitution in the  
131 home, are met. Exemption based on a condition of extreme destitution in the home may be  
132 granted only upon the written recommendation of the county attendance director to the county  
133 superintendent following careful investigation of the case. A copy of the report confirming the  
134 condition and school exemption shall be placed with the county director of public assistance. This  
135 enactment contemplates every reasonable effort that may properly be taken on the part of both

136 school and public assistance authorities for the relief of home conditions officially recognized as  
137 being so destitute as to deprive children of the privilege of school attendance. Exemption for this  
138 cause is not allowed when the destitution is relieved through public or private means.

139 (j) A child is exempt from the compulsory school attendance requirement set forth in  
140 section one-a of this article if the requirements of this subsection, relating to church ordinances  
141 and observances of regular church ordinances, are met. The county board may approve  
142 exemption for religious instruction upon written request of the person having legal or actual charge  
143 of a child or children. This exemption is subject to the rules prescribed by the county  
144 superintendent and approved by the county board.

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

151 (l) Completion of the eighth grade does not exempt any child under the termination age  
152 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 a student who is home schooled may not be classified as habitually absent. The bill changes the annual requirement that a parent of a child who is to be home schooled notify the county superintendent of intent to home school to a one time notification. The bill requires a parent provide certain assurances. The bill removes the requirement that the person providing the home schooling instruction have a high school diploma. The bill removes the requirement that the person providing the home schooling instruction have an outline of a plan for the home schooling instruction for the ensuing year. The bill removes the requirement that a county superintendent be given two weeks' notice before a student enrolled in a public school may receive home instruction. The bill permits a parent to administer the required nationally normed standardized test. The bill provides that a student has made acceptable academic progress if it is within or above the fourth stanine, or if below that stanine then the student must show improvement from the previous year. The bill requires a certified teacher to review a student's progress and submit a written narrative. The bill requires academic assessments be kept for three years. The bill provides that a county board of education may only provide information about the availability of special education services only if the parent requests



it.

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