

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4175

(BY DELEGATES KURCABA, FAIRCLOTH, STATLER, ESPINOSA,
MCGEEHAN, AZINGER, UPSON, KELLY AND TRECOST)

[Passed February 23, 2016; in effect ninety days from passage.]

1 AN ACT 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 child who is exempt from compulsory school
3 attendance is not subject to prosecution for failure to attend school and is not a status
4 offender; requiring superintendent to show probable cause when seeking order to deny
5 home instruction; modifying who is to provide notice of intent to provide home instruction;
6 changing notice of intent frequency from annually to a one time notification; removing
7 requirement that notice of intent include the grade level of child; requiring notice of intent
8 include certain assurances; requiring notice upon termination of home instruction for a
9 child who is of compulsory attendance age or change in county of residence; removing
10 requirement for notice of intent two weeks prior to withdrawal from school; modifying
11 requirement that the person providing home instruction have a high school diploma or
12 equivalent; removing requirement that person providing home instruction outline plan of
13 instruction for ensuing year; replacing specific annual deadline for obtaining an academic
14 assessment of the child with the requirement that the assessment be obtained annually;
15 removing requirement to submit results of the assessment to superintendent annually;
16 removing requirement for parent or legal guardian to pay assessment cost when given
17 outside public school; allowing use of a nationally normed standardized achievement test
18 normed not more than ten years from the date of administration; removing requirement
19 that the nationally normed standardized achievement test be administered under
20 standardized conditions; requiring nationally normed standardized achievement test be
21 administered by a person qualified in accordance with the test's published guidelines;
22 permitting parent or legal guardian to administer nationally normed standardized
23 achievement test; modifying criteria for determining acceptable progress under the
24 nationally normed standardized achievement test academic assessment option; removing
25 requirement to provide written narrative of portfolio assessment to superintendent
26 annually; removing requirement to provide certification number of the certified teacher

27 providing written narrative; removing requirement that criteria for acceptable progress be
28 mutually agreed upon by certain parties under the alternative academic assessment of
29 proficiency academic assessment option; requiring parent or legal guardian to keep
30 academic assessments for three years; making requirement for county board to notify
31 parent or legal guardian of services available to assist in the assessment of the child's
32 eligibility for special education services applicable only upon request; and requiring parent
33 or legal guardian to submit to superintendent results of required assessments at grade
34 levels three, five, eight and eleven by certain date.

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 two hundred two, article one, chapter forty-
7 nine of this 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) Upon commencing home instruction under this section the parent of a child receiving
37 home instruction shall present to the county superintendent or county board a notice of intent to
38 provide home instruction that includes the name, address, and age of any child of compulsory
39 school age to be instructed and assurance that the child shall receive instruction in reading,

40 language, mathematics, science and social studies and that the child shall be assessed annually
41 in accordance with this subdivision. The person providing home instruction shall notify the county
42 superintendent upon termination of home instruction for a child who is of compulsory attendance
43 age. Upon establishing residence in a new county, the person providing home instruction shall
44 notify the previous county superintendent and submit a new notice of intent to the superintendent
45 of the new county of residence: *Provided*, That if a child is enrolled in a public school, notice of
46 intent to provide home instruction shall be given on or before the date home instruction is to begin.

47 (B) The person or persons providing home instruction shall submit satisfactory evidence
48 of a high school diploma or equivalent, or a post-secondary degree or certificate from a regionally
49 accredited institution or from an institution of higher education that has been authorized to confer
50 a post-secondary degree or certificate in West Virginia by the West Virginia Council for
51 Community and Technical College Education or by the West Virginia Higher Education Policy
52 Commission.

53 (C) Annually, the person or persons providing home instruction shall obtain an academic
54 assessment of the child for the previous school year in one of the following ways:

55 (i) The child receiving home instruction takes a nationally normed standardized
56 achievement test published or normed not more than ten years from the date of administration
57 and administered under the conditions as set forth by the published instructions of the selected
58 test and by a person qualified in accordance with the test's published guidelines in the subjects
59 of reading, language, mathematics, science and social studies. The child is considered to have
60 made acceptable progress when the mean of the child's test results in the required subject areas
61 for any single year is within or above the fourth stanine or, if below the fourth stanine, shows
62 improvement from the previous year's results;

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

67 (iii) A portfolio of samples of the child's work is reviewed by a certified teacher who
68 determines whether the child's academic progress for the year is in accordance with the child's
69 abilities. The teacher shall provide a written narrative about the child's progress in the areas of
70 reading, language, mathematics, science and social studies and shall note any areas which, in
71 the professional opinion of the reviewer, show need for improvement or remediation. If the
72 narrative indicates that the child's academic progress for the year is in accordance with the child's
73 abilities, the child is considered to have made acceptable progress; or

74 (iv) The child completes an alternative academic assessment of proficiency that is
75 mutually agreed upon by the parent or legal guardian and the county superintendent.

76 (D) A parent or legal guardian shall maintain copies of each student's Academic
77 Assessment for three years. When the annual assessment fails to show acceptable progress, the
78 person or persons providing home instruction shall initiate a remedial program to foster
79 acceptable progress. The county board upon request shall notify the parents or legal guardian of
80 the child, in writing, of the services available to assist in the assessment of the child's eligibility
81 for special education services. Identification of a disability does not preclude the continuation of
82 home schooling. In the event that the child does not achieve acceptable progress for a second
83 consecutive year, the person or persons providing instruction shall submit to the county
84 superintendent additional evidence that appropriate instruction is being provided.

85 (E) The parent or legal guardian shall submit to the county superintendent the results of
86 the academic assessment of the child at grade levels three, five, eight and eleven, as applicable,
87 by June 30 of the year in which the assessment was administered.

88 (3) This subdivision applies to both home instruction exemptions set forth in subdivisions
89 (1) and (2) of this subsection. The county superintendent or a designee shall offer such
90 assistance, including textbooks, other teaching materials and available resources, all subject to
91 availability, as may assist the person or persons providing home instruction. Any child receiving
92 home instruction may upon approval of the county board exercise the option to attend any class

93 offered by the county board as the person or persons providing home instruction may consider
94 appropriate subject to normal registration and attendance requirements.

95 (d) A child is exempt from the compulsory school attendance requirement set forth in
96 section one-a of this article if the requirements of this subsection, relating to physical or mental
97 incapacity, are met. Physical or mental incapacity consists of incapacity for school attendance
98 and the performance of school work. In all cases of prolonged absence from school due to
99 incapacity of the child to attend, the written statement of a licensed physician or authorized school
100 nurse is required. Incapacity shall be narrowly defined and in any case the provisions of this article
101 may not allow for the exclusion of the mentally, physically, emotionally or behaviorally
102 handicapped child otherwise entitled to a free appropriate education.

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

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

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

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

120 (i) A child is exempt from the compulsory school attendance requirement set forth in
121 section one-a of this article if the requirements of this subsection, relating to destitution in the
122 home, are met. Exemption based on a condition of extreme destitution in the home may be
123 granted only upon the written recommendation of the county attendance director to the county
124 superintendent following careful investigation of the case. A copy of the report confirming the
125 condition and school exemption shall be placed with the county director of public assistance. This
126 enactment contemplates every reasonable effort that may properly be taken on the part of both
127 school and public assistance authorities for the relief of home conditions officially recognized as
128 being so destitute as to deprive children of the privilege of school attendance. Exemption for this
129 cause is not allowed when the destitution is relieved through public or private means.

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

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2016.

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Governor