

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 3017**

BY DELEGATES PRITT MANDT

[Introduced March 09, 2021; 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 to homeschooling requirements.

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

## **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 §18-8-1a of this code shall be made on behalf of any child for the causes or conditions set forth  
3 in this section. Each cause or condition set forth in this section is subject to confirmation by the  
4 attendance authority of the county. A child who is exempt from compulsory school attendance  
5 under this section is not subject to prosecution under §18-8-2 of this code, nor is such a child a  
6 status offender as defined by §49-1-202 of this code.

7 (b) A child is exempt from the compulsory school attendance requirement set forth in §18-  
8 8-1a of this code if the requirements of this subsection, relating to instruction in a private, parochial  
9 or other approved school, are met. The instruction shall be in a school approved by the county  
10 board and for a time equal to the instructional term set forth in §18-5-45 of this code. In all private,  
11 parochial or other schools approved pursuant to this subsection it is the duty of the principal or  
12 other person in control, upon the request of the county superintendent, to furnish to the county  
13 board such information and records as may be required with respect to attendance, instruction  
14 and progress of students enrolled.

15 (c) A child is exempt from the compulsory school attendance requirement set forth in §18-  
16 8-1a of this code if the requirements of either subdivision (1) or subdivision (2) of this subsection,  
17 both relating to home instruction, are met.

18 (1) The instruction shall be in the home of the child or children or at some other place  
19 approved by the county board and for a time equal to the instructional term set forth §18-5-45 of  
20 this code. If the request for home instruction is denied by the county board, good and reasonable  
21 justification for the denial shall be furnished in writing to the applicant by the county board. The

22 instruction shall be conducted by a person or persons who, in the judgment of the county  
23 superintendent and county board, are qualified to give instruction in subjects required to be taught  
24 in public elementary schools in the state. The person or persons providing the instruction, upon  
25 request of the county superintendent, shall furnish to the county board information and records  
26 as may be required periodically with respect to attendance, instruction and progress of students  
27 receiving the instruction. The state board shall develop guidelines for the home schooling of  
28 special education students including alternative assessment measures to assure that satisfactory  
29 academic progress is achieved.

30 (2) The child meets the requirements set forth in this subdivision: *Provided*, That the  
31 county superintendent may, after a showing of probable cause, seek from the circuit court of the  
32 county an order denying home instruction of the child. The order may be granted upon a showing  
33 of clear and convincing evidence that the child will suffer neglect in his or her education or that  
34 there are other compelling reasons to deny home instruction.

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

46 (B) The person or persons providing home instruction shall submit satisfactory evidence  
47 of a high school diploma or equivalent, or a post-secondary degree or certificate from a regionally

48 accredited institution or from an institution of higher education that has been authorized to confer  
49 a post-secondary degree or certificate in West Virginia by the West Virginia Council for  
50 Community and Technical College Education or by the West Virginia Higher Education Policy  
51 Commission.

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

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

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

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

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

74 ~~mutually agreed upon by the parent or legal guardian and the county superintendent~~

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

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

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

94 (d) A child is exempt from the compulsory school attendance requirement set forth in §18-  
95 8-1a of this code if the requirements of this subsection, relating to physical or mental incapacity,  
96 are met. Physical or mental incapacity consists of incapacity for school attendance and the  
97 performance of school work. In all cases of prolonged absence from school due to incapacity of  
98 the child to attend, the written statement of a licensed physician or authorized school nurse is  
99 required. Incapacity shall be narrowly defined and in any case the provisions of this article may

100 not allow for the exclusion of the mentally, physically, emotionally or behaviorally handicapped  
101 child otherwise entitled to a free appropriate education.

102 (e) A child is exempt from the compulsory school attendance requirement set forth in §18-  
103 8-1a of this code if conditions rendering school attendance impossible or hazardous to the life,  
104 health or safety of the child exist.

105 (f) A child is exempt from the compulsory school attendance requirement set forth in §18-  
106 8-1a of this code upon regular graduation from a standard senior high school or alternate  
107 secondary program completion as determined by the state board.

108 (g) A child is exempt from the compulsory school attendance requirement set forth in §18-  
109 8-1a of this code if the child is granted a work permit pursuant to the subsection. After due  
110 investigation the county superintendent may grant work permits to youths under the termination  
111 age designated in §18-8-1a of this code, subject to state and federal labor laws and regulations.  
112 A work permit may not be granted on behalf of any youth who has not completed the eighth grade  
113 of school.

114 (h) A child is exempt from the compulsory school attendance requirement set forth in §18-  
115 8-1a of this code if a serious illness or death in the immediate family of the child has occurred. It  
116 is expected that the county attendance director will ascertain the facts in all cases of such  
117 absences about which information is inadequate and report the facts to the county superintendent.

118 (i) A child is exempt from the compulsory school attendance requirement set forth in §18-  
119 8-1a of this code if the requirements of this subsection, relating to destitution in the home, are  
120 met. Exemption based on a condition of extreme destitution in the home may be granted only  
121 upon the written recommendation of the county attendance director to the county superintendent  
122 following careful investigation of the case. A copy of the report confirming the condition and school  
123 exemption shall be placed with the county director of public assistance. This enactment  
124 contemplates every reasonable effort that may properly be taken on the part of both school and  
125 public assistance authorities for the relief of home conditions officially recognized as being so

126 destitute as to deprive children of the privilege of school attendance. Exemption for this cause is  
127 not allowed when the destitution is relieved through public or private means.

128 (j) A child is exempt from the compulsory school attendance requirement set forth in §18-  
129 8-1a of this code if the requirements of this subsection, relating to church ordinances and  
130 observances of regular church ordinances, are met. The county board may approve exemption  
131 for religious instruction upon written request of the person having legal or actual charge of a child  
132 or children. This exemption is subject to the rules prescribed by the county superintendent and  
133 approved by the county board.

134 (k) A child is exempt from the compulsory school attendance requirement set forth in §18-  
135 8-1a of this code if the requirements of this subsection, relating to alternative private, parochial,  
136 church or religious school instruction, are met. Exemption shall be made for any child attending  
137 any private school, parochial school, church school, school operated by a religious order or other  
138 nonpublic school which elects to comply with the provisions of §18-28-1 *et seq.* of this code.

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

NOTE: The purpose of this bill is to remove testing and portfolio requirements for homeschooled students.

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