

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Introduced**

## **Senate Bill 366**

BY SENATOR KARNES

[Introduced February 19, 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 the home instruction exemption for compulsory school attendance; removing the  
 3 requirement that the state board develop guidelines for homeschooling special education  
 4 students; clarifying when a child is considered homeschooled; providing that a parent,  
 5 guardian, or adult relative may provide home instruction; modifying the required annual  
 6 assessment used to evaluate a child's academic proficiency; removing the obligation to  
 7 submit academic assessment results to a county by a certain date; providing that a child  
 8 enrolled in more than three classes in public school be considered a full-time public school  
 9 student; and making technical corrections.

*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 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~~ §49-1-202 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~~ §18-5-45 of this code. In all private, parochial or other schools approved  
 13 pursuant to this subsection it is the duty of the principal or other person in control, upon the request  
 14 of the county superintendent, to furnish to the county board such information and records as may

15 be required 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~~ §18-5-45 of this code. If the request for home instruction is  
22 denied by the county board, good and reasonable justification for the denial shall be furnished in  
23 writing to the applicant by the county board. The instruction shall be conducted by a person or  
24 persons who, in the judgment of the county superintendent and county board, are qualified to give  
25 instruction in subjects required to be taught in public elementary schools in the state. The person  
26 or persons providing the instruction, upon request of the county superintendent, shall furnish to  
27 the county board information and records as may be required periodically with respect to  
28 attendance, instruction and progress of students receiving the instruction. ~~The state board shall~~  
29 ~~develop guidelines for the home schooling of special education students including alternative~~  
30 ~~assessment 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. The county will consider such child to be homeschooled unless notice of termination is  
44 received, notice of graduation is received, the child is subsequently enrolled in public or private  
45 school, or other such evidence of termination is noted by the county. Upon establishing residence  
46 in a new county, the person providing home instruction shall notify the previous county  
47 superintendent and submit a new notice of intent to the superintendent of the new county of  
48 residence: *Provided*, That if a child is enrolled in a public school, notice of intent to provide home  
49 instruction shall be given on or before the date home instruction is to begin.

50 (B) The person or persons providing home instruction shall ~~submit satisfactory evidence~~  
51 ~~of~~ assure the board that the person providing home instruction has a high school diploma or  
52 equivalent, ~~or~~ a post-secondary degree or certificate from a regionally accredited institution or  
53 from an institution of higher education that has been authorized to confer a post-secondary degree  
54 or certificate in West Virginia by the West Virginia Council for Community and Technical College  
55 Education or by the West Virginia Higher Education Policy Commission, is the parent or guardian  
56 of the child, or is an adult relative of the child designated by the parent or guardian.

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

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

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

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

79 (iv) The child completes an alternative academic assessment of academic proficiency that  
80 ~~is mutually agreed upon by the parent or legal guardian and the county superintendent~~ evaluates  
81 the child's progress in the required subjects.

82 (D) An assessment completed pursuant to this section shall be provided by the parent and  
83 considered in any proceeding conducted in accordance with this subdivision.

84 ~~(D)~~ (E) A parent or legal guardian shall maintain copies of each student's Academic  
85 Assessment for three years. When the annual assessment fails to show acceptable progress, the  
86 person or persons providing home instruction shall initiate a remedial program to foster  
87 acceptable progress. ~~The~~ Upon the request of a parent or a person providing home instruction,  
88 the county board upon request shall notify inform the parents, ~~or~~ legal guardian ~~of~~ or person  
89 providing home instruction to the child, in writing, of the services available to assist in the  
90 assessment of the child's eligibility for special education services. Identification of a disability does  
91 not preclude the continuation of home schooling. In the event that the child does not achieve  
92 acceptable progress for a second consecutive year, the person or persons providing instruction

93 shall submit to the county superintendent additional evidence that appropriate instruction is being  
94 provided.

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

98 (3) This subdivision applies to both home instruction exemptions set forth in subdivisions  
99 (1) and (2) of this subsection. The county superintendent or a designee shall offer such  
100 assistance, including textbooks, other teaching materials and available resources, all subject to  
101 availability, as may assist the person or persons providing home instruction. Any child receiving  
102 home instruction may ~~upon approval of the county board~~ exercise the option to attend any class  
103 offered by the county board as the person or persons providing home instruction may consider  
104 appropriate subject to normal registration and attendance requirements: Provided, That a student  
105 who enrolls in more than three classes in a public school in the subjects required to be taught  
106 under this section shall be considered a full-time public school student and home instruction for  
107 that child shall be considered to have been terminated.

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

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

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

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

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

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

143 (j) A child is exempt from the compulsory school attendance requirement set forth in  
144 section one-a of this article if the requirements of this subsection, relating to church ordinances

145 and observances of regular church ordinances, are met. The county board may approve  
146 exemption for religious instruction upon written request of the person having legal or actual charge  
147 of a child or children. This exemption is subject to the rules prescribed by the county  
148 superintendent and approved by the county board.

149 (k) A child is exempt from the compulsory school attendance requirement set forth in  
150 section one-a of this article if the requirements of this subsection, relating to alternative private,  
151 parochial, church or religious school instruction, are met. Exemption shall be made for any child  
152 attending any private school, parochial school, church school, school operated by a religious order  
153 or other nonpublic school which elects to comply with the provisions of ~~article twenty-eight of this~~  
154 ~~chapter~~ §18-28-1 et seq. of this code.

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

NOTE: The purpose of this bill is to modify the home instruction exemption for compulsory school attendance. The bill removes the requirement that the state board develop guidelines for home schooling special education students and clarifies when a child is considered homeschooled. It provides that a parent, guardian, or adult relative may provide home instruction, modifies the required annual assessment used to evaluate a child's academic proficiency, and removes the obligation to submit academic assessment results to a county by a certain date. The bill provides that a child enrolled in more than three classes in public school is considered a full-time public school student and makes technical corrections.

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