

HB # 4546

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

Com. Sub. For

HOUSE BILL No. 4546

(By Delegate *Howman*)



Passed *March 11,* 1994

In Effect *90 Days From* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4546
(By DELEGATE HOUVOURAS)

[Passed March 11, 1994; in effect ninety days from passage.]

AN ACT to amend and reenact section one, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compulsory school attendance and permitting all children, including those with disabilities or special needs and those scoring in the "average range" of standardized testing to participate in home instruction without discrimination.

Be it enacted by the Legislature of West Virginia:

That section one, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1. Commencement and termination of compulsory school attendance; exemptions.

- 1 Compulsory school attendance shall begin with the
- 2 school year in which the sixth birthday is reached prior
- 3 to the first day of September of such year or upon
- 4 enrolling in a publicly supported kindergarten program
- 5 and continue to the sixteenth birthday.
- 6 Exemption from the foregoing requirements of
- 7 compulsory public school attendance shall be made on

8 behalf of any child for the following causes or conditions,
9 each such cause or condition being subject to confirma-
10 tion by the attendance authority of the county:

11 *Exemption A. Instruction in a private, parochial or*
12 *other approved school.* — Such instruction shall be in a
13 school approved by the county board of education and
14 for a time equal to the school term of the county for the
15 year. In all such schools it shall be the duty of the
16 principal or other person in control, upon the request of
17 the county superintendent of schools, to furnish to the
18 county board of education such information and records
19 as may be required with respect to attendance, instruc-
20 tion and progress of pupils enrolled between the
21 entrance age and sixteen years;

22 *Exemption B. Instruction in home or other approved*
23 *place.* — (a) Such instruction shall be in the home of
24 such child or children or at some other place approved
25 by the county board of education and for a time equal
26 to the school term of the county. If such request for home
27 instruction is denied by the county board of education,
28 good and reasonable justification for such denial must
29 be furnished in writing to the applicant by the county
30 board of education. The instruction in such cases shall
31 be conducted by a person or persons who, in the
32 judgment of the county superintendent and county
33 board of education, are qualified to give instruction in
34 subjects required to be taught in the free elementary
35 schools of the state. It shall be the duty of the person
36 or persons providing the instruction, upon request of the
37 county superintendent, to furnish to the county board of
38 education such information and records as may be
39 required from time to time with respect to attendance,
40 instruction and progress of pupils enrolled between the
41 entrance age and sixteen years receiving such instruc-
42 tion. The state department of education shall develop
43 guidelines for the homeschooling of special education
44 students including alternative assessment measures to
45 assure that satisfactory academic progress is achieved.

46 (b) Notwithstanding the provisions of subsection (a) of
47 this Exemption B, the person or persons providing home
48 instruction meet the requirements for Exemption B

49 when the conditions of this subsection are met: *Provided*,
50 That the county superintendent shall have the right to
51 seek from the circuit court of the county an order
52 denying the home instruction, which order may be
53 granted upon a showing of clear and convincing
54 evidence that the child will suffer educational neglect
55 or that there are other compelling reasons to deny home
56 instruction.

57 (1) The person or persons providing home instruction
58 present to the county superintendent or county board of
59 education a notice of intent to provide home instruction
60 and the name and address of any child of compulsory
61 school age to be instructed: *Provided*, That if a child is
62 enrolled in a public school, notice of intent to provide
63 home instruction shall be given at least two weeks prior
64 to withdrawing such child from public school;

65 (2) The person or persons providing home instruction
66 submit satisfactory evidence of (i) a high school diploma
67 or equivalent and (ii) formal education at least four
68 years higher than the most academically advanced child
69 for whom the instruction will be provided.

70 (3) The person or persons providing home instruction
71 outline a plan of instruction for the ensuing school year;
72 and

73 (4) The person or persons providing home instruction
74 shall annually obtain an academic assessment of the
75 child for the previous school year. This shall be satisfied
76 in one of the following ways:

77 (i) Any child receiving home instruction annually
78 takes a standardized test, to be administered at a public
79 school in the county where the child resides, or admin-
80 istered by a licensed psychologist or other person
81 authorized by the publisher of the test, or administered
82 by a person authorized by the county superintendent or
83 county board of education. The child shall be adminis-
84 tered a test which has been normed by the test publisher
85 on that child's age or grade group. In no event may the
86 child's parent or legal guardian administer the test.
87 Where a test is administered outside of a public school,
88 the child's parent or legal guardian shall pay the cost

89 of administering the test. The public school or other
90 qualified person shall administer to children of compul-
91 sory school age the Comprehensive Test of Basic Skills,
92 the California achievement test, the Stanford achieve-
93 ment test, or the Iowa tests of basic skills, achievement
94 and proficiency, or an individual standardized achieve-
95 ment test that is nationally normed and provides
96 statistical results which test will be selected by the
97 public school, or other person administering the test, in
98 the subjects of language, reading, social studies, science
99 and mathematics; and shall be administered under
100 standardized conditions as set forth by the published
101 instructions of the selected test. No test shall be
102 administered if the publication date is more than ten
103 years from the date of the administration of the test.
104 Each child's test results shall be reported as a national
105 percentile for each of the six subjects tested. Each
106 child's test results shall be made available on or before
107 the thirtieth day of June of the school year in which the
108 test is to be administered to the person or persons
109 providing home instruction, the child's parent or legal
110 guardian and the county superintendent. Upon request
111 of a duly authorized representative of the West Virginia
112 department of education, each child's test results shall
113 be furnished by the person or persons providing home
114 instruction, or by the child's parent or legal guardian,
115 to the state superintendent of schools. Upon notification
116 of the mean of the child's test results for any single year
117 has fallen below the fortieth percentile, the county board
118 of education shall notify the parents or legal guardian
119 of said child, in writing, of the services available to
120 assist in the assessment of the child's eligibility for
121 special education services: *Provided*, That the identifi-
122 cation of a disability shall not preclude the continuation
123 of home schooling.

124 If the mean of the child's test results for any single
125 year for language, reading, social studies, science and
126 mathematics fall below the fortieth percentile on the
127 selected tests, then the person or persons providing
128 home instruction shall initiate a remedial program to
129 foster achievement above that level and the student shall
130 show improvement. If, after two calendar years, the

131 mean of the child's test results fall below the fortieth
132 percentile level, home instruction shall no longer satisfy
133 the compulsory school attendance requirement exemp-
134 tion; or

135 (ii) The county superintendent is provided with a
136 written narrative indicating that a portfolio of samples
137 of the child's work has been reviewed and that the
138 child's academic progress for the year is in accordance
139 with the child's abilities. This narrative shall be
140 prepared by a certified teacher or other person mutually
141 agreed upon by the parent or legal guardian and the
142 county superintendent. It shall be submitted on or
143 before the thirtieth day of June of the school year
144 covered by the portfolio. The parent or legal guardian
145 shall be responsible for payment of fees charged for the
146 narrative; or

147 (iii) Evidence of an alternative academic assessment
148 of the child's proficiency mutually agreed upon by the
149 parent or legal guardian and the county superintendent
150 is submitted to the county superintendent by the
151 thirtieth day of June of the school year being assessed.
152 The parent or legal guardian shall be responsible for
153 payment of fees charged for the assessment.

154 The superintendent or a designee shall offer such
155 assistance, including textbooks, other teaching materials
156 and available resources, as may assist the person or
157 persons providing home instruction subject to their
158 availability. Any child receiving home instruction may,
159 upon approval of the county board of education, exercise
160 the option to attend any class offered by the county
161 board of education as the person or persons providing
162 home instruction may deem appropriate subject to
163 normal registration and attendance requirements;

164 *Exemption C. Physical or mental incapacity.* —
165 Physical or mental incapacity shall consist of incapacity
166 for school attendance and the performance of school
167 work. In all cases of prolonged absence from school due
168 to incapacity of the child to attend, the written state-
169 ment of a licensed physician or authorized school nurse
170 shall be required under the provisions of this article:

171 *Provided*, That in all cases incapacity shall be narrowly
172 defined and in no case shall the provisions of this article
173 allow for the exclusion of the mentally, physically,
174 emotionally or behaviorally handicapped child otherwise
175 entitled to a free appropriate education;

176 *Exemption D. Residence more than two miles from*
177 *school or school bus route.* — The distance of residence
178 from a school, or school bus route providing free
179 transportation, shall be reckoned by the shortest
180 practicable road or path, which contemplates travel
181 through fields by right of permission from the land-
182 holders or their agents. It shall be the duty of the county
183 board of education, subject to written consent of
184 landholders, or their agents, to provide and maintain
185 safe foot bridges across streams off the public highways
186 where such are required for the safety and welfare of
187 pupils whose mode of travel from home to school or to
188 school bus route must necessarily be other than along
189 the public highway in order for said road or path to be
190 not over two miles from home to school or to school bus
191 providing free transportation;

192 *Exemption E. Hazardous conditions.* — Conditions
193 rendering school attendance impossible or hazardous to
194 the life, health or safety of the child;

195 *Exemption F. High school graduation.* — Such exemp-
196 tion shall consist of regular graduation from a standard
197 senior high school;

198 *Exemption G. Granting work permits.* — The county
199 superintendent may, after due investigation, grant work
200 permits to youths under sixteen years of age, subject to
201 state and federal labor laws and regulations: *Provided*,
202 That a work permit may not be granted on behalf of any
203 youth who has not completed the eighth grade of school;

204 *Exemption H. Serious illness or death in the immediate*
205 *family of the pupil.* — It is expected that the county
206 attendance director will ascertain the facts in all cases
207 of such absences about which information is inadequate
208 and report same to the county superintendent of schools;

209 *Exemption I. Destitution in the home.* — Exemption

210 based on a condition of extreme destitution in the home
211 may be granted only upon the written recommendation
212 of the county attendance director to the county super-
213 intendent following careful investigation of the case. A
214 copy of the report confirming such condition and school
215 exemption shall be placed with the county director of
216 public assistance. This enactment contemplates every
217 reasonable effort that may properly be taken on the part
218 of both school and public assistance authorities for the
219 relief of home conditions officially recognized as being
220 so destitute as to deprive children of the privilege of
221 school attendance. Exemption for this cause shall not be
222 allowed when such destitution is relieved through public
223 or private means;

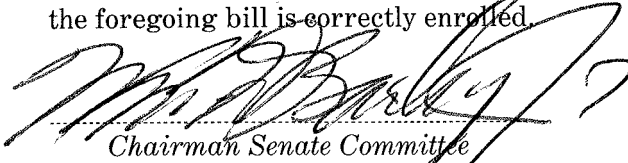
224 *Exemption J. Church ordinances; observances of*
225 *regular church ordinances.* — The county board of
226 education may approve exemption for religious instruc-
227 tion upon written request of the person having legal or
228 actual charge of a child or children: *Provided,* That such
229 exemption shall be subject to the rules prescribed by the
230 county superintendent and approved by the county
231 board of education;

232 *Exemption K. Alternative private, parochial, church or*
233 *religious school instruction.* — In lieu of the provisions
234 of Exemption A hereinabove, exemption shall be made
235 for any child attending any private school, parochial
236 school, church school, school operated by a religious
237 order, or other nonpublic school which elects to comply
238 with the provisions of article twenty-eight, chapter
239 eighteen of the code of West Virginia.

240 The completion of the eighth grade shall not exempt
241 any child under sixteen years of age from the compul-
242 sory attendance provision of this article: *Provided,* That
243 there is a public high school or other public school of
244 advanced grades or a school bus providing free trans-
245 portation to any such school, the route of which is within
246 two miles of the child's home by the shortest practicable
247 route or path as hereinbefore specified under Exemp-
248 tion D of this section.

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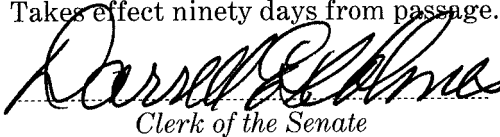
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee

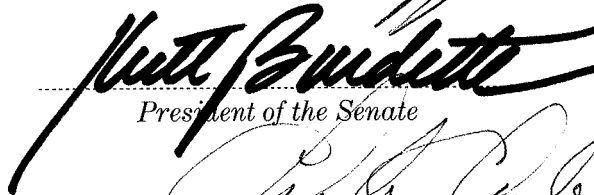

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

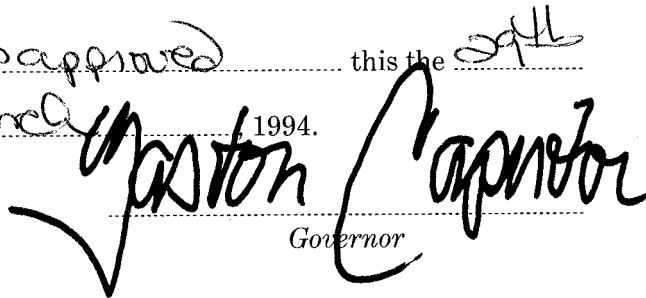

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 27th
day of March 1994.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/94

Time 10:17 AM