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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001

ENROLLED

House Bill No. 2595

(By Delegates Harrison, Mathews, Carmichael,
Fahey, Overington, L. Smith and Beach)

Passed April 14, 2001

In Effect Ninety Days from Passage

ENROLLED

H. B. 2595

(BY DELEGATES HARRISON, MATHEWS, CARMICHAEL,
FAHEY, OVERINGTON, L. SMITH AND BEACH)

[Passed April 14, 2001; 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 waiving the requirement that persons providing instruction in the home have at least four years more formal education.

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 school
- 2 year in which the sixth birthday is reached prior to the first day
- 3 of September of such year or upon enrolling in a publicly
- 4 supported kindergarten program and continue to the sixteenth
- 5 birthday.

6 Exemption from the foregoing requirements of compulsory
7 public school attendance shall be made on behalf of any child
8 for the following causes or conditions, each such cause or
9 condition being subject to confirmation by the attendance
10 authority of the county:

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

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

43 (b) Notwithstanding the provisions of subsection (a) of this
44 Exemption B, the person or persons providing home instruction
45 meet the requirements for Exemption B when the conditions of
46 this subsection are met: *Provided*, That the county superinten-
47 dent shall have the right to seek from the circuit court of the
48 county an order denying the home instruction, which order may
49 be granted upon a showing of clear and convincing evidence
50 that the child will suffer educational neglect or that there are
51 other compelling reasons to deny home instruction.

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

60 (2) The person or persons providing home instruction
61 submit satisfactory evidence of: (i) A high school diploma or
62 equivalent; and (ii) formal education at least four years higher
63 than the most academically advanced child for whom the
64 instruction will be provided: *Provided*, That the requirement of
65 a formal education at least four years higher than the most
66 academically advanced child is waived until the first day of
67 July, two thousand three;

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

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

74 (i) Any child receiving home instruction annually takes a
75 standardized test, to be administered at a public school in the
76 county where the child resides, or administered by a licensed
77 psychologist or other person authorized by the publisher of the

78 test, or administered by a person authorized by the county
79 superintendent or county board of education. The child shall be
80 administered a test which has been normed by the test publisher
81 on that child's age or grade group. In no event may the child's
82 parent or legal guardian administer the test. Where a test is
83 administered outside of a public school, the child's parent or
84 legal guardian shall pay the cost of administering the test. The
85 public school or other qualified person shall administer to
86 children of compulsory school age the comprehensive test of
87 basic skills, the California achievement test, the Stanford
88 achievement test or the Iowa tests of basic skills, achievement
89 and proficiency, or an individual standardized achievement test
90 that is nationally normed and provides statistical results which
91 test will be selected by the public school, or other person
92 administering the test, in the subjects of language, reading,
93 social studies, science and mathematics and shall be adminis-
94 tered under standardized conditions as set forth by the pub-
95 lished instructions of the selected test. No test shall be adminis-
96 tered if the publication date is more than ten years from the date
97 of the administration of the test. Each child's test results shall
98 be reported as a national percentile for each of the five subjects
99 tested. Each child's test results shall be made available on or
100 before the thirtieth day of June of the school year in which the
101 test is to be administered to the person or persons providing
102 home instruction, the child's parent or legal guardian and the
103 county superintendent. Upon request of a duly authorized
104 representative of the West Virginia department of education,
105 each child's test results shall be furnished by the person or
106 persons providing home instruction, or by the child's parent or
107 legal guardian, to the state superintendent of schools. Upon
108 notification that the mean of the child's test results for any
109 single year has fallen below the fortieth percentile, the county
110 board of education shall notify the parents or legal guardian of
111 said child, in writing, of the services available to assist in the
112 assessment of the child's eligibility for special education
113 services: *Provided*, That the identification of a disability shall
114 not preclude the continuation of home schooling.

115 If the mean of the child's test results for any single year for
116 language, reading, social studies, science and mathematics fall
117 below the fortieth percentile on the selected tests, then the
118 person or persons providing home instruction shall initiate a
119 remedial program to foster achievement above that level and
120 the student shall show improvement. If, after two calendar
121 years, the mean of the child's test results fall below the fortieth
122 percentile level, home instruction shall no longer satisfy the
123 compulsory school attendance requirement exemption; or

124 (ii) The county superintendent is provided with a written
125 narrative indicating that a portfolio of samples of the child's
126 work has been reviewed and that the child's academic progress
127 for the year is in accordance with the child's abilities. This
128 narrative shall be prepared by a certified teacher or other person
129 mutually agreed upon by the parent or legal guardian and the
130 county superintendent. It shall be submitted on or before the
131 thirtieth day of June of the school year covered by the portfolio.
132 The parent or legal guardian shall be responsible for payment
133 of fees charged for the narrative; or

134 (iii) Evidence of an alternative academic assessment of the
135 child's proficiency mutually agreed upon by the parent or legal
136 guardian and the county superintendent is submitted to the
137 county superintendent by the thirtieth day of June of the school
138 year being assessed. The parent or legal guardian shall be
139 responsible for payment of fees charged for the assessment.

140 (c) The superintendent or a designee shall offer such
141 assistance, including textbooks, other teaching materials and
142 available resources, as may assist the person or persons
143 providing home instruction subject to their availability. Any
144 child receiving home instruction may, upon approval of the
145 county board of education, exercise the option to attend any
146 class offered by the county board of education as the person or
147 persons providing home instruction may deem appropriate
148 subject to normal registration and attendance requirements.

149 *Exemption C. Physical or mental incapacity.* — Physical or
150 mental incapacity shall consist of incapacity for school atten-

151 dance and the performance of school work. In all cases of
152 prolonged absence from school due to incapacity of the child to
153 attend, the written statement of a licensed physician or autho-
154 rized school nurse shall be required under the provisions of this
155 article: *Provided*, That in all cases incapacity shall be narrowly
156 defined and in no case shall the provisions of this article allow
157 for the exclusion of the mentally, physically, emotionally or
158 behaviorally handicapped child otherwise entitled to a free
159 appropriate education;

160 *Exemption D. Residence more than two miles from school*
161 *or school bus route.* — The distance of residence from a school,
162 or school bus route providing free transportation, shall be
163 reckoned by the shortest practicable road or path, which
164 contemplates travel through fields by right of permission from
165 the landholders or their agents. It shall be the duty of the county
166 board of education, subject to written consent of landholders, or
167 their agents, to provide and maintain safe foot bridges across
168 streams off the public highways where such are required for the
169 safety and welfare of pupils whose mode of travel from home
170 to school or to school bus route must necessarily be other than
171 along the public highway in order for said road or path to be not
172 over two miles from home to school or to school bus providing
173 free transportation;

174 *Exemption E. Hazardous conditions.* — Conditions
175 rendering school attendance impossible or hazardous to the life,
176 health or safety of the child;

177 *Exemption F. High school graduation.* — Such exemption
178 shall consist of regular graduation from a standard senior high
179 school;

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

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

191 *Exemption I. Destitution in the home.* — Exemption based
192 on a condition of extreme destitution in the home may be
193 granted only upon the written recommendation of the county
194 attendance director to the county superintendent following
195 careful investigation of the case. A copy of the report confirm-
196 ing such condition and school exemption shall be placed with
197 the county director of public assistance. This enactment
198 contemplates every reasonable effort that may properly be taken
199 on the part of both school and public assistance authorities for
200 the relief of home conditions officially recognized as being so
201 destitute as to deprive children of the privilege of school
202 attendance. Exemption for this cause shall not be allowed when
203 such destitution is relieved through public or private means;

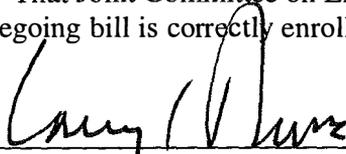
204 *Exemption J. Church ordinances; observances of regular*
205 *church ordinances.* — The county board of education may
206 approve exemption for religious instruction upon written
207 request of the person having legal or actual charge of a child or
208 children: *Provided*, That such exemption shall be subject to the
209 rules prescribed by the county superintendent and approved by
210 the county board of education;

211 *Exemption K. Alternative private, parochial, church or*
212 *religious school instruction.* — In lieu of the provisions of
213 Exemption A herein above, exemption shall be made for any
214 child attending any private school, parochial school, church
215 school, school operated by a religious order or other nonpublic
216 school which elects to comply with the provisions of article
217 twenty-eight, chapter eighteen of the code of West Virginia.

218 The completion of the eighth grade shall not exempt any
219 child under sixteen years of age from the compulsory atten-
220 dance provision of this article: *Provided*, That there is a public
221 high school or other public school of advanced grades or a

222 school bus providing free transportation to any such school, the
223 route of which is within two miles of the child's home by the
224 shortest practicable route or path as hereinbefore specified
225 under Exemption D of this section.

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



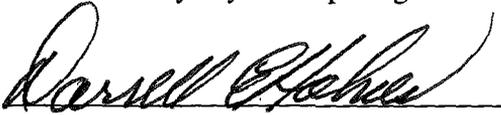
Chairman Senate Committee



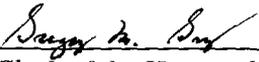
Chairman House Committee

Originating in the House.

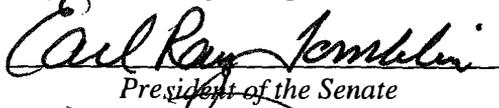
In effect ninety days from passage.



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 36
day of April 2001.



Governor

PRESENTED TO THE

GOVERNOR

Date 4/26/01

Time 5:20 pm