WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3543

By Delegates Hornby, Hanna, Hite, Horst, Ellington, Clark, Smith, Willis, and Tully

[Introduced February 14, 2023; referred  
to the Committee on Education then the Judiciary]

A BILL to amend and reenact §18-2-25 of the Code of West Virginia, 1931, as amended, relating to providing that the West Virginia Secondary School Activities Commission promulgate legislative rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-25. Authority of county boards to regulate athletic and other extracurricular activities of secondary schools; delegation of authority to West Virginia Secondary School Activities Commission; authority of commission; approval of rules by state board; incorporation; funds; participation by private and parochial schools and by home-schooled students.

(a) The county boards of education shall exercise the control, supervision, and regulation of all interscholastic athletic events, and other extracurricular activities of the students in public secondary schools, and of those schools of their respective counties. The county board of education may delegate control, supervision, and regulation of interscholastic athletic events and band activities to the West Virginia Secondary School Activities Commission.

(b) The West Virginia Secondary School Activities Commission is composed of the principals, or their representatives, of those secondary schools whose county boards of education have certified in writing to the State Superintendent of Schools that they have elected to delegate the control, supervision, and regulation of their interscholastic athletic events and band activities of the students in the public secondary schools in their respective counties to the commission. The West Virginia Secondary School Activities Commission may exercise the control, supervision, and regulation of interscholastic athletic events and band activities of secondary schools, delegated to it pursuant to this section. The rules of the West Virginia Secondary School Activities Commission shall contain a provision for a proper review procedure and review board and be promulgated in accordance with the provisions of chapter 29A of this code, but shall, in all instances, be subject to the prior approval of the state board. The West Virginia Secondary School Activities Commission, may, with the consent of the State Board of Education, incorporate under the name of West Virginia Secondary School Activities Commission, Inc., as a nonprofit, nonstock corporation under the provisions of chapter 31 of this code. County boards of education may expend moneys for and pay dues to the West Virginia Secondary School Activities Commission, and all moneys paid to the commission, as well as moneys derived from any contest or other event sponsored by the commission, are quasi-public funds as defined in §18-5-1 *et seq.* of this code, and the funds of the commission are subject to an annual audit by the State Tax Commissioner.

(c) The West Virginia Secondary School Activities Commission shall promulgate ~~reasonable~~ legislative rules, in accordance with the provisions of §29A-3-1 *et seq*. of this code, providing for the control, supervision, and regulation of the interscholastic athletic events and other extracurricular activities of private and parochial secondary schools as elect to delegate to the commission control, supervision, and regulation, upon the same terms and conditions, subject to the same rules and requirements and upon the payment of the same fees and charges as those provided for public secondary schools. Any such private or parochial secondary school shall receive any monetary or other benefits in the same manner and in the same proportion as any public secondary school: *Provided*, That each rule promulgated on or before December 1, 2022, is deemed to have been validly promulgated, notwithstanding any failure to comply with any requirement of §29A-3-1 *et seq.* of this code.

(d) Notwithstanding any other provision of this section, or the commission’s rules, the commission shall consider eligible for participation in interscholastic athletic events and other extracurricular activities of secondary schools a student who is receiving home instruction pursuant to §18-8-1(c) of this code and who:

(1) Has demonstrated satisfactory evidence of academic progress for one year in compliance with the provisions of that subsection: *Provided,* That the student’s average test results are within or above the fourth stanine in all subject areas;

(2) Is enrolled in at least one virtual instructional course per semester, consistent with the

applicable virtual instruction policy of the county board in which the home-schooled student lives and the State Board;

(3) Has not reached the age of 19 by August 1 of the current school year;

(4) Is an amateur who receives no compensation but participates solely for the educational, physical, mental and social benefits of the activity;

(5) Agrees to comply with all disciplinary rules of the West Virginia Secondary School Activities Commission and the county board in which the home-schooled student lives; and

(6) Agrees to obey all rules of the West Virginia Secondary School Activities Commission governing awards, all-star games, parental consents, physical examinations, and vaccinations applicable to all high school athletes.

Eligibility is limited to participation in interscholastic athletic events and other extracurricular activities at the public secondary school serving the attendance zone in which the student lives: *Provided,* That home-schooled students who leave a member school during the school year are subject to the same transfer protocols that apply to member-to-member transfers. Reasonable fees may be charged to the student to cover the costs of participation in interscholastic athletic events and other extracurricular activities.

(e) The West Virginia Secondary School Activities Commission shall recognize preparatory athletic programs, whose participants attend a secondary school in West Virginia for academic instruction, as nonparticipating members of the commission solely for the purpose of competing on the national level: *Provided*, That the preparatory athletic program shall pay the same fees as member schools. Such recognition does not entitle the preparatory athletic program to compete against a member school during the regular season or in any commission state championship events. The commission may promulgate an emergency rule pursuant to subsection (b) of this section, if necessary, to carry out the intent of this subsection.

NOTE: The purpose of this bill is to require the West Virginia Secondary School Activities Commission to promulgate legislative rules.

West Virginia Code §18-2-25 was amended by two bills passed during the 2020 Regular Session of the Legislature, by the House. House Bill 4925 (passed last on March 4, 2020); House Bill 3127 (passed first on March 2, 2020). The two versions of this section have been merged into this bill. The addition of subsection designations and Subsection (e) were in one of the versions of this section and represent the only substantive differences between the two versions.

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