

1 **ENROLLED**

2 **Committee Substitute**

3 **for**

4 **H. B. 2793**

5  
6 (By Delegates Kurcaba, Statler, Ellington, Pasdon, Cooper, Ambler and Kelly)

7 [Passed March 14, 2015; in effect from passage.]

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11 AN ACT to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended, relating  
12 to exemptions from mandatory school attendance; restoring historical exemption  
13 nomenclature; clarifying that parents and guardians of exempt children may not be  
14 prosecuted under §18-8-2; clarifying that exempt children are not status offenders; requiring  
15 leave of court and probable cause before petition may be filed to deny home schooling;  
16 providing for one-time notice of intent to home school and revising notice contents;  
17 removing waiting period; providing for notice of termination; providing for notice when  
18 children move between counties; modifying provision pertaining to satisfactory evidence of  
19 home instructor's diploma; removing requirement to outline a plan of instruction; revising  
20 requirements and standards for annual assessments and acceptable progress; removing  
21 requirement that parents pay costs of assessments not conducted in public schools; requiring  
22 parents to retain copies of assessments; and requiring evaluations for learning disabilities

1 when children fail to make acceptable progress.

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

3 That §18-8-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted  
4 to read as follows:

5 **ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

6 **§18-8-1. Compulsory school attendance; exemptions.**

7 (a) Exemption from the requirements of compulsory public school attendance established in  
8 section one-a of this article shall be made on behalf of any child for the causes or conditions set forth  
9 in this section. Each cause or condition set forth in this section is subject to confirmation by the  
10 attendance authority of the county. A parent or legal guardian of a child who is exempt from  
11 compulsory school attendance under this section is not subject to prosecution under section two of  
12 this article, nor is such a child a status offender as defined by section four, article one, chapter forty-  
13 nine of this code.

14 (b) *Exemption A. Instruction in a private, parochial or other approved school.* -- A child is  
15 exempt from the compulsory school attendance requirement set forth in section one-a of this article  
16 if the requirements of this subsection, relating to instruction in a private, parochial or other approved  
17 school, are met. The instruction shall be in a school approved by the county board and for a time  
18 equal to the instructional term set forth in section forty-five, article five of this chapter. In all private,  
19 parochial or other schools approved pursuant to this subsection it is the duty of the principal or other  
20 person in control, upon the request of the county superintendent, to furnish to the county board such  
21 information and records as may be required with respect to attendance, instruction and progress of  
22 students enrolled.

1           (c) *Exemption B. Instruction in home or other approved place.* -- A child is exempt from the  
2 compulsory school attendance requirement set forth in section one-a of this article if the  
3 requirements of either subdivision (1) or subdivision (2) of this subsection, both relating to home  
4 instruction, are met.

5           (1) The instruction shall be in the home of the child or children or at some other place  
6 approved by the county board and for a time equal to the instructional term set forth in section  
7 forty-five, article five of this chapter. If the request for home instruction is denied by the county  
8 board, good and reasonable justification for the denial shall be furnished in writing to the applicant  
9 by the county board. The instruction shall be conducted by a person or persons who, in the judgment  
10 of the county superintendent and county board, are qualified to give instruction in subjects required  
11 to be taught in public elementary schools in the state. The person or persons providing the  
12 instruction, upon request of the county superintendent, shall furnish to the county board information  
13 and records as may be required periodically with respect to attendance, instruction and progress of  
14 students receiving the instruction. The state board shall develop guidelines for the home schooling  
15 of special education students including alternative assessment measures to assure that satisfactory  
16 academic progress is achieved.

17           (2) The child meets the requirements set forth in this subdivision: *Provided,* That the county  
18 superintendent may, with leave of the circuit court and upon a showing of probable cause, petition  
19 the circuit court of the county for an order denying home instruction of the child. The petition may  
20 be granted upon a showing of clear and convincing evidence that the child will suffer neglect in his  
21 or her education or that there are other compelling reasons to deny home instruction.

22           (A) Upon commencing home instruction under this subdivision, the parent or legal guardian

1 of a child receiving home instruction shall present to the county superintendent or county board a  
2 notice of intent to provide home instruction that includes the name, address and age of any child of  
3 compulsory school age to be instructed and assurance that the child shall receive instruction in  
4 reading, language, mathematics, science and social studies and that the child shall be assessed  
5 annually in accordance with this subdivision. The person providing home instruction shall notify  
6 the county superintendent or county board upon termination of home instruction for a child who is  
7 of compulsory attendance age. Upon establishing residence in a new county, the person providing  
8 home instruction shall notify the previous county superintendent or county board and submit a new  
9 notice of intent to the superintendent or county board of the new county of residence.

10 (B) With the notice required in paragraph (A) of this subdivision, the person or persons  
11 providing home instruction shall submit satisfactory evidence of a high school diploma from a public  
12 school, private school or homeschool or the equivalent.

13 (C) Annually, the person or persons providing home instruction shall obtain an academic  
14 assessment of the child for the previous school year and submit the results to the county  
15 superintendent in one of the following ways:

16 (i) The child receiving home instruction takes a nationally normed standardized achievement  
17 test normed not more than ten years from the date of administration and administered under the  
18 conditions set forth in the published instructions of the selected test and by a person qualified in  
19 accordance with the test's published guidelines in the subjects of reading, language, mathematics,  
20 science and social studies. The child is considered to have made acceptable progress when the mean  
21 of the child's test results in the required subject areas for any single year is within or above the  
22 average range for that test or, if below that range, shows improvement from the previous year's

1 results;

2 (ii) The child participates in the testing program currently in use in the state's public schools.

3 The test shall be administered to the child at a public school in the county of residence.

4 Determination of acceptable progress shall be based on current guidelines of the state testing

5 program;

6 (iii) A certified teacher reviews a portfolio of samples of the child's work and determines that

7 the child's academic progress for the year is in accordance with the child's abilities. The teacher shall

8 provide a written narrative about the child's progress in the areas of reading, language, mathematics,

9 science and social studies and shall note any areas which, in the professional opinion of the reviewer,

10 show need for improvement or remediation; or

11 (iv) The child completes an alternative academic assessment of proficiency that is mutually

12 agreed upon by the parent or legal guardian and the county superintendent.

13 (D) When the annual assessment fails to show acceptable progress as defined under the

14 appropriate assessment option set forth in paragraph (C) of this subdivision, the person or persons

15 providing home instruction shall initiate a remedial program to foster acceptable progress. A parent

16 or legal guardian shall maintain copies of each student's academic assessment for three years. A

17 student that fails to make acceptable progress for two consecutive years shall be evaluated for

18 learning disabilities. The county board shall notify the parents or legal guardian of the child, in

19 writing, of the services available to assist in the assessment of the child's eligibility for special

20 education services. Identification of a disability does not preclude the continuation of home

21 schooling. In the event that the child does not achieve acceptable progress as defined under the

22 appropriate assessment option set forth in paragraph (C) of this subdivision for a second consecutive

1 year, the person or persons providing instruction shall submit to the county superintendent additional  
2 evidence that appropriate instruction is being provided.

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

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

18 (e) *Exemption D.* – Repealed.

19 (f) *Exemption E Hazardous conditions.* -- A child is exempt from the compulsory school  
20 attendance requirement set forth in section one-a of this article if conditions rendering school  
21 attendance impossible or hazardous to the life, health or safety of the child exist.

22 (g) *Exemption F. High school graduation.* -- A child is exempt from the compulsory school

1 attendance requirement set forth in section one-a of this article upon regular graduation from a  
2 standard senior high school or alternate secondary program completion as determined by the state  
3 board.

4 (h) *Exemption G. Granting work permits.* -- A child is exempt from the compulsory school  
5 attendance requirement set forth in section one-a of this article if the child is granted a work permit  
6 pursuant to the subsection. After due investigation the county superintendent may grant work  
7 permits to youths under the termination age designated in section one-a of this article, subject to state  
8 and federal labor laws and regulations. A work permit may not be granted on behalf of any youth  
9 who has not completed the eighth grade of school.

10 (i) *Exemption H. Serious illness or death in the immediately family of the child.* -- A child  
11 is exempt from the compulsory school attendance requirement set forth in section one-a of this  
12 article if a serious illness or death in the immediate family of the child has occurred. It is expected  
13 that the county attendance director will ascertain the facts in all cases of such absences about which  
14 information is inadequate and report the facts to the county superintendent.

15 (j) *Exemption I. Destitution in the home.* -- A child is exempt from the compulsory school  
16 attendance requirement set forth in section one-a of this article if the requirements of this subsection,  
17 relating to destitution in the home, are met. Exemption based on a condition of extreme destitution  
18 in the home may be granted only upon the written recommendation of the county attendance director  
19 to the county superintendent following careful investigation of the case. A copy of the report  
20 confirming the condition and school exemption shall be placed with the county director of public  
21 assistance. This enactment contemplates every reasonable effort that may properly be taken on the  
22 part of both school and public assistance authorities for the relief of home conditions officially

1 recognized as being so destitute as to deprive children of the privilege of school attendance.  
2 Exemption for this cause is not allowed when the destitution is relieved through public or private  
3 means.

4           (k) *Exemption J. Church ordinances; observances of regular church ordinances.* -- A child  
5 is exempt from the compulsory school attendance requirement set forth in section one-a of this  
6 article if the requirements of this subsection, relating to church ordinances and observances of  
7 regular church ordinances, are met. The county board may approve exemption for religious  
8 instruction upon written request of the person having legal or actual charge of a child or children.  
9 This exemption is subject to the rules prescribed by the county superintendent and approved by the  
10 county board.

11           (l) *Exemption K. Alternative private, parochial, church or religious school instruction.* -- A  
12 child is exempt from the compulsory school attendance requirement set forth in section one-a of this  
13 article if the requirements of this subsection, relating to alternative private, parochial, church or  
14 religious school instruction, are met. Exemption shall be made for any child attending any private  
15 school, parochial school, church school, school operated by a religious order or other nonpublic  
16 school which elects to comply with the provisions of article twenty-eight of this chapter.

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