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H. B. 2793

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

[Introduced February 17, 2015; referred to the
Committee on Education.]

A BILL to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended, relating generally to home schooling; clarifying that a student who is home schooled may not be classified as habitually absent; requiring the parent of a child who is to be home schooled to notify a county superintendent of intent to home school, not the person providing the home schooling along with an assurance that certain subjects will be taught; removing the requirement that the person providing the home schooling instruction have a high school diploma; removing the requirement that the person providing the home schooling instruction have an outline of a plan for the home schooling instruction for the ensuing year; permitting a parent to administer the required nationally normed standardized test; providing that a student has made acceptable academic progress if it is within or above the national average range, or if below that average then the student must show improvement from the previous year; removing the requirement that a certified teacher and the parent of a home schooled child must mutually agree on an alternative academic assessment of proficiency; requiring home schooled students who fail to make acceptable academic progress for two consecutive

1 years be evaluated for learning disabilities; and requiring academic assessments be kept for
2 three years.

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

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

6 **ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

7 **§18-8-1. Compulsory school attendance; exemptions.**

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

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

22 (c) A child is exempt from the compulsory school attendance requirement set forth in section

1 one-a of this article if the requirements of either subdivision (1) or subdivision (2) of this subsection,
2 both relating to home instruction, are met.

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

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

20 (A) ~~Annually, the person or persons providing~~ Upon commencing home instruction under
21 this section the parent of a child receiving home instruction shall present to the county
22 superintendent or county board a notice of intent to provide home instruction ~~and~~ that includes the

1 name, address, and age ~~and grade level~~ of any child of compulsory school age to be instructed
 2 ~~Provided, That if a child is enrolled in a public school, notice of intent to provide home instruction~~
 3 ~~shall be given at least two weeks prior to withdrawing the child from public school; and assurance~~
 4 that the child shall receive instruction in reading, language, mathematics, science and social studies
 5 and that the child shall be assessed annually in accordance with this subdivision. The person
 6 providing home instruction shall notify the county superintendent upon termination of home
 7 instruction for a child who is of compulsory attendance age. Upon establishing residence in a new
 8 county, the person providing home instruction shall notify the previous county superintendent and
 9 submit a new notice of intent to the superintendent of the new county of residence.

10 (B) ~~The person or persons providing home instruction shall submit satisfactory evidence of~~
 11 ~~a high school diploma or equivalent;~~

12 (C) ~~The person or persons providing home instruction shall outline a plan of instruction for~~
 13 ~~the ensuing school year; and~~

14 (D) ~~(B) On or before June 30 annually;~~ Annually, the person or persons providing home
 15 instruction shall obtain an academic assessment of the child for the previous school year ~~and submit~~
 16 ~~the results to the county superintendent. When the academic assessment takes place outside of a~~
 17 ~~public school, the parent or legal guardian shall pay the cost. The requirement of an academic~~
 18 ~~assessment is satisfied~~ in one of the following ways:

19 (i) The child receiving home instruction takes a nationally normed standardized achievement
 20 normed not more than ten years from the date of administration and test to be administered under
 21 standardized the conditions as set forth by the published instructions of the selected test and by a
 22 person qualified in accordance with the test's published guidelines in the subjects of reading,

1 language, mathematics, science and social studies. ~~The child's parent or legal guardian may not~~
2 ~~administer the test in any event. The publication date of the chosen test may not be more than ten~~
3 ~~years from the date the test is administered.~~ The child is considered to have made acceptable
4 progress when the mean of the child's test results in the required subject areas for any single year
5 ~~meets or exceeds the fiftieth percentile or, if below the fiftieth percentile, are within or above the~~
6 average range for that test or, if below the average, shows improvement from the previous year's
7 results;

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

12 (iii) ~~The county superintendent is provided with a written narrative indicating that a~~ A review
13 of a portfolio of samples of the child's work has been is reviewed and by a certified teacher who
14 determines that the child's academic progress for the year is in accordance with the child's abilities.
15 ~~If the narrative indicates that the child's academic progress for the year is in accordance with the~~
16 ~~child's abilities, the child is considered to have made acceptable progress. This narrative shall be~~
17 ~~prepared by a certified teacher whose certification number shall be provided. The narrative shall~~
18 ~~include a statement~~ The teacher shall provide a written narrative about the child's progress in the
19 areas of reading, language, mathematics, science and social studies and shall note any areas which,
20 in the professional opinion of the reviewer, show need for improvement or remediation; or

21 (iv) The child completes an alternative academic assessment of proficiency that is mutually
22 agreed upon by the parent or legal guardian and the county superintendent; ~~Criteria for acceptable~~

1 progress shall be mutually agreed upon by the same parties; and

2 ~~(E)~~ (C) When the annual assessment fails to show acceptable progress as defined under the
3 appropriate assessment option set forth in paragraph ~~(D)~~ (B) of this subdivision, the person or
4 persons providing home instruction shall initiate a remedial program to foster acceptable progress.
5 A parent shall maintain copies of each student's academic assessment for three years. A student that
6 fails to make acceptable progress for two consecutive years shall be evaluated for learning
7 disabilities. The county board shall notify the parents or legal guardian of the child, in writing, of
8 the services available to assist in the assessment of the child's eligibility for special education
9 services. Identification of a disability does not preclude the continuation of home schooling. In the
10 event that the child does not achieve acceptable progress as defined under the appropriate assessment
11 option set forth in paragraph ~~(D)~~ (B) of this subdivision for a second consecutive year, the person
12 or persons providing instruction shall submit to the county superintendent additional evidence that
13 appropriate instruction is being provided.

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

21 (d) A child is exempt from the compulsory school attendance requirement set forth in section
22 one-a of this article if the requirements of this subsection, relating to physical or mental incapacity,

1 are met. Physical or mental incapacity consists of incapacity for school attendance and the
2 performance of school work. In all cases of prolonged absence from school due to incapacity of the
3 child to attend, the written statement of a licensed physician or authorized school nurse is required.
4 Incapacity shall be narrowly defined and in any case the provisions of this article may not allow for
5 the exclusion of the mentally, physically, emotionally or behaviorally handicapped child otherwise
6 entitled to a free appropriate education.

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

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

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

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

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

11 (j) A child is exempt from the compulsory school attendance requirement set forth in section
12 one-a of this article if the requirements of this subsection, relating to church ordinances and
13 observances of regular church ordinances, are met. The county board may approve exemption for
14 religious instruction upon written request of the person having legal or actual charge of a child or
15 children. This exemption is subject to the rules prescribed by the county superintendent and
16 approved by the county board.

17 (k) A child is exempt from the compulsory school attendance requirement set forth in section
18 one-a of this article if the requirements of this subsection, relating to alternative private, parochial,
19 church or religious school instruction, are met. Exemption shall be made for any child attending any
20 private school, parochial school, church school, school operated by a religious order or other
21 nonpublic school which elects to comply with the provisions of article twenty-eight of this chapter.

22 (l) Completion of the eighth grade does not exempt any child under the termination age

1 designated in section one-a of this article from the compulsory attendance provision of this article.

NOTE: The purpose of this bill is to clarify that a student who is home schooled may not be classified as habitually absent. The bill requires the parent of a child who is to be home schooled to notify a county superintendent of intent to home school, not the person who provides the home schooling along with an assurance that certain subjects will be taught. The bill removes the requirement that the person who provides the home schooling instruction have a high school diploma. The bill removes the requirement that the person who provides the home schooling instruction have an outline of a plan for the home schooling instruction for the ensuing year. The bill permits a parent to administer the required nationally normed standardized test. The bill provides that a student has made acceptable academic progress if it is within or above the national average range, or if below that average then the student must show improvement from the previous year. The bill removes the requirement that a certified teacher and the parent of a home schooled child must mutually agree on an alternative academic assessment of proficiency. The bill requires home schooled students who fail to make acceptable academic progress for two consecutive years be evaluated for learning disabilities. The bill requires academic assessments be kept for three years.

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