

# **E N R O L L E D**

COMMITTEE SUBSTITUTE

for

## **H. B. 2793**

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(BY DELEGATE(S) KURCABA, STATLER,  
ELLINGTON, PASDON, COOPER, AMBLER AND KELLY)

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

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AN ACT to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended, relating to exemptions from mandatory school attendance; restoring historical exemption nomenclature; clarifying that parents and guardians of exempt children may not be prosecuted under §18-8-2; clarifying that exempt children are not status offenders; requiring leave of court and probable cause before petition may be filed to deny home schooling; providing for one-time notice of intent to home school and revising notice contents; removing waiting period; providing for notice of termination;

providing for notice when children move between counties; modifying provision pertaining to satisfactory evidence of home instructor's diploma; removing requirement to outline a plan of instruction; revising requirements and standards for annual assessments and acceptable progress; removing requirement that parents pay costs of assessments not conducted in public schools; requiring parents to retain copies of assessments; and requiring evaluations for learning disabilities when children fail to make acceptable progress.

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

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

**ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

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

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

11           (b) *Exemption A. Instruction in a private, parochial or other*  
12 *approved school.* — A child is exempt from the compulsory  
13 school attendance requirement set forth in section one-a of this  
14 article if the requirements of this subsection, relating to  
15 instruction in a private, parochial or other approved school, are  
16 met. The instruction shall be in a school approved by the county  
17 board and for a time equal to the instructional term set forth in

18 section forty-five, article five of this chapter. In all private,  
19 parochial or other schools approved pursuant to this subsection  
20 it is the duty of the principal or other person in control, upon the  
21 request of the county superintendent, to furnish to the county  
22 board such information and records as may be required with  
23 respect to attendance, instruction and progress of students  
24 enrolled.

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

30 (1) The instruction shall be in the home of the child or  
31 children or at some other place approved by the county board  
32 and for a time equal to the instructional term set forth in section  
33 forty-five, article five of this chapter. If the request for home  
34 instruction is denied by the county board, good and reasonable  
35 justification for the denial shall be furnished in writing to the  
36 applicant by the county board. The instruction shall be conducted  
37 by a person or persons who, in the judgment of the county  
38 superintendent and county board, are qualified to give instruction  
39 in subjects required to be taught in public elementary schools in  
40 the state. The person or persons providing the instruction, upon  
41 request of the county superintendent, shall furnish to the county  
42 board information and records as may be required periodically  
43 with respect to attendance, instruction and progress of students  
44 receiving the instruction. The state board shall develop  
45 guidelines for the home schooling of special education students  
46 including alternative assessment measures to assure that  
47 satisfactory academic progress is achieved.

48 (2) The child meets the requirements set forth in this  
49 subdivision: *Provided*, That the county superintendent may, with  
50 leave of the circuit court and upon a showing of probable cause,

51 petition the circuit court of the county for an order denying home  
52 instruction of the child. The petition may be granted upon a  
53 showing of clear and convincing evidence that the child will  
54 suffer neglect in his or her education or that there are other  
55 compelling reasons to deny home instruction.

56 (A) Upon commencing home instruction under this  
57 subdivision, the parent or legal guardian of a child receiving  
58 home instruction shall present to the county superintendent or  
59 county board a notice of intent to provide home instruction that  
60 includes the name, address and age of any child of compulsory  
61 school age to be instructed and assurance that the child shall  
62 receive instruction in reading, language, mathematics, science  
63 and social studies and that the child shall be assessed annually in  
64 accordance with this subdivision. The person providing home  
65 instruction shall notify the county superintendent or county  
66 board upon termination of home instruction for a child who is of  
67 compulsory attendance age. Upon establishing residence in a  
68 new county, the person providing home instruction shall notify  
69 the previous county superintendent or county board and submit  
70 a new notice of intent to the superintendent or county board of  
71 the new county of residence.

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

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

80 (i) The child receiving home instruction takes a nationally  
81 normed standardized achievement test normed not more than ten  
82 years from the date of administration and administered under the

83 conditions set forth in the published instructions of the selected  
84 test and by a person qualified in accordance with the test's  
85 published guidelines in the subjects of reading, language,  
86 mathematics, science and social studies. The child is considered  
87 to have made acceptable progress when the mean of the child's  
88 test results in the required subject areas for any single year is  
89 within or above the average range for that test or, if below that  
90 range, shows improvement from the previous year's results;

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

96 (iii) A certified teacher reviews a portfolio of samples of the  
97 child's work and determines that the child's academic progress  
98 for the year is in accordance with the child's abilities. The  
99 teacher shall provide a written narrative about the child's  
100 progress in the areas of reading, language, mathematics, science  
101 and social studies and shall note any areas which, in the  
102 professional opinion of the reviewer, show need for  
103 improvement or remediation; or

104 (iv) The child completes an alternative academic assessment  
105 of proficiency that is mutually agreed upon by the parent or legal  
106 guardian and the county superintendent.

107 (D) When the annual assessment fails to show acceptable  
108 progress as defined under the appropriate assessment option set  
109 forth in paragraph (C) of this subdivision, the person or persons  
110 providing home instruction shall initiate a remedial program to  
111 foster acceptable progress. A parent or legal guardian shall  
112 maintain copies of each student's academic assessment for three  
113 years. A student that fails to make acceptable progress for two  
114 consecutive years shall be evaluated for learning disabilities. The

115 county board shall notify the parents or legal guardian of the  
116 child, in writing, of the services available to assist in the  
117 assessment of the child's eligibility for special education  
118 services. Identification of a disability does not preclude the  
119 continuation of home schooling. In the event that the child does  
120 not achieve acceptable progress as defined under the appropriate  
121 assessment option set forth in paragraph (C) of this subdivision  
122 for a second consecutive year, the person or persons providing  
123 instruction shall submit to the county superintendent additional  
124 evidence that appropriate instruction is being provided.

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

136 (d) *Exemption C. Physical or mental incapacity.* — A child  
137 is exempt from the compulsory school attendance requirement  
138 set forth in section one-a of this article if the requirements of this  
139 subsection, relating to physical or mental incapacity, are met.  
140 Physical or mental incapacity consists of incapacity for school  
141 attendance and the performance of school work. In all cases of  
142 prolonged absence from school due to incapacity of the child to  
143 attend, the written statement of a licensed physician or  
144 authorized school nurse is required. Incapacity shall be narrowly  
145 defined and in any case the provisions of this article may not  
146 allow for the exclusion of the mentally, physically, emotionally  
147 or behaviorally handicapped child otherwise entitled to a free  
148 appropriate education.

149       (e) *Exemption D.* – Repealed.

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

155       (g) *Exemption F. High school graduation.* — A child is  
156 exempt from the compulsory school attendance requirement set  
157 forth in section one-a of this article upon regular graduation from  
158 a standard senior high school or alternate secondary program  
159 completion as determined by the state board.

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

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

177       (j) *Exemption I. Destitution in the home.* — A child is  
178 exempt from the compulsory school attendance requirement set  
179 forth in section one-a of this article if the requirements of this

180 subsection, relating to destitution in the home, are met.  
181 Exemption based on a condition of extreme destitution in the  
182 home may be granted only upon the written recommendation of  
183 the county attendance director to the county superintendent  
184 following careful investigation of the case. A copy of the report  
185 confirming the condition and school exemption shall be placed  
186 with the county director of public assistance. This enactment  
187 contemplates every reasonable effort that may properly be taken  
188 on the part of both school and public assistance authorities for  
189 the relief of home conditions officially recognized as being so  
190 destitute as to deprive children of the privilege of school  
191 attendance. Exemption for this cause is not allowed when the  
192 destitution is relieved through public or private means.

193       (k) *Exemption J. Church ordinances; observances of regular*  
194 *church ordinances.* — A child is exempt from the compulsory  
195 school attendance requirement set forth in section one-a of this  
196 article if the requirements of this subsection, relating to church  
197 ordinances and observances of regular church ordinances, are  
198 met. The county board may approve exemption for religious  
199 instruction upon written request of the person having legal or  
200 actual charge of a child or children. This exemption is subject to  
201 the rules prescribed by the county superintendent and approved  
202 by the county board.

203       (l) *Exemption K. Alternative private, parochial, church or*  
204 *religious school instruction.* — A child is exempt from the  
205 compulsory school attendance requirement set forth in section  
206 one-a of this article if the requirements of this subsection,  
207 relating to alternative private, parochial, church or religious  
208 school instruction, are met. Exemption shall be made for any  
209 child attending any private school, parochial school, church  
210 school, school operated by a religious order or other nonpublic  
211 school which elects to comply with the provisions of article  
212 twenty-eight of this chapter.



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



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

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2015.

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*Governor*

