

COMMITTEE SUBSTITUTE

for

H. B. 2793

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

[Originating in the Committee on Education.]
(February 25, 2015)

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

56 (A) ~~Annually, the person or persons providing~~ Upon
57 commencing home instruction under this subdivision, the parent
58 or legal guardian of a child receiving home instruction shall
59 present to the county superintendent or county board a notice of
60 intent to provide home instruction ~~and~~ that includes the name,
61 address and age ~~and grade level~~ of any child of compulsory
62 school age to be instructed. ~~*Provided*, That if a child is enrolled~~
63 ~~in a public school, notice of intent to provide home instruction~~
64 ~~shall be given at least two weeks prior to withdrawing the child~~
65 ~~from public school;~~ and assurance that the child shall receive

66 instruction in reading, language, mathematics, science and social
67 studies and that the child shall be assessed annually in
68 accordance with this subdivision. The person providing home
69 instruction shall notify the county superintendent or county
70 board upon termination of home instruction for a child who is of
71 compulsory attendance age. Upon establishing residence in a
72 new county, the person providing home instruction shall notify
73 the previous county superintendent or county board and submit
74 a new notice of intent to the superintendent or county board of
75 the new county of residence.

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

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

81 ~~(D) (B) On or before June 30 annually; Annually,~~ the person
82 or persons providing home instruction shall obtain an academic
83 assessment of the child for the previous school year ~~and submit~~
84 ~~the results to the county superintendent. When the academic~~
85 ~~assessment takes place outside of a public school, the parent or~~

86 ~~legal guardian shall pay the cost. The requirement of an~~
87 ~~academic assessment is satisfied~~ in one of the following ways:

88 (i) The child receiving home instruction takes a nationally
89 normed standardized achievement test normed not more than ten
90 years from the date of administration and to be administered
91 under ~~standardized~~ the conditions ~~as set forth by~~ in the published
92 instructions of the selected test and by a person qualified in
93 accordance with the test's published guidelines in the subjects of
94 reading, language, mathematics, science and social studies. ~~The~~
95 ~~child's parent or legal guardian may not administer the test in~~
96 ~~any event. The publication date of the chosen test may not be~~
97 ~~more than ten years from the date the test is administered. The~~
98 child is considered to have made acceptable progress when the
99 mean of the child's test results in the required subject areas for
100 any single year ~~meets or exceeds the fiftieth percentile or, if~~
101 ~~below the fiftieth percentile,~~ is within or above the average range
102 for that test or, if below that range, shows improvement from the
103 previous year's results;

104 (ii) The child participates in the testing program currently in
105 use in the state's public schools. The test shall be administered

106 to the child at a public school in the county of residence.
107 Determination of acceptable progress shall be based on current
108 guidelines of the state testing program;

109 ~~(iii) The county superintendent is provided with a written~~
110 ~~narrative indicating that a~~ A certified teacher reviews a portfolio
111 ~~of samples of the child's work has been reviewed and~~ determines
112 ~~that the child's academic progress for the year is in accordance~~
113 ~~with the child's abilities. If the narrative indicates that the child's~~
114 ~~academic progress for the year is in accordance with the child's~~
115 ~~abilities, the child is considered to have made acceptable~~
116 ~~progress. This narrative shall be prepared by a certified teacher~~
117 ~~whose certification number shall be provided. The narrative shall~~
118 ~~include a statement~~ The teacher shall provide a written narrative
119 ~~about the child's progress in the areas of reading, language,~~
120 ~~mathematics, science and social studies and shall note any areas~~
121 ~~which, in the professional opinion of the reviewer, show need for~~
122 ~~improvement or remediation; or~~

123 (iv) The child completes an alternative academic assessment
124 of proficiency that is mutually agreed upon by the parent or legal

125 guardian and the county superintendent. ~~Criteria for acceptable~~
126 ~~progress shall be mutually agreed upon by the same parties; and~~
127 ~~(E)~~ (C) When the annual assessment fails to show acceptable
128 progress as defined under the appropriate assessment option set
129 forth in paragraph ~~(D)~~ (B) of this subdivision, the person or
130 persons providing home instruction shall initiate a remedial
131 program to foster acceptable progress. A parent or legal guardian
132 shall maintain copies of each student's academic assessment for
133 three years. A student that fails to make acceptable progress for
134 two consecutive years shall be evaluated for learning disabilities.
135 The county board shall notify the parents or legal guardian of the
136 child, in writing, of the services available to assist in the
137 assessment of the child's eligibility for special education
138 services. Identification of a disability does not preclude the
139 continuation of home schooling. In the event that the child does
140 not achieve acceptable progress as defined under the appropriate
141 assessment option set forth in paragraph ~~(D)~~ (B) of this
142 subdivision for a second consecutive year, the person or persons
143 providing instruction shall submit to the county superintendent

144 additional evidence that appropriate instruction is being
145 provided.

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

157 (d) Exemption C. Physical or mental incapacity. — A child
158 is exempt from the compulsory school attendance requirement
159 set forth in section one-a of this article if the requirements of this
160 subsection, relating to physical or mental incapacity, are met.
161 Physical or mental incapacity consists of incapacity for school
162 attendance and the performance of school work. In all cases of
163 prolonged absence from school due to incapacity of the child to

164 attend, the written statement of a licensed physician or
165 authorized school nurse is required. Incapacity shall be narrowly
166 defined and in any case the provisions of this article may not
167 allow for the exclusion of the mentally, physically, emotionally
168 or behaviorally handicapped child otherwise entitled to a free
169 appropriate education.

170 (e) Exemption D. – Repealed.

171 (f) Exemption E. Hazardous conditions. — A child is exempt
172 from the compulsory school attendance requirement set forth in
173 section one-a of this article if conditions rendering school
174 attendance impossible or hazardous to the life, health or safety
175 of the child exist.

176 (f) (g) Exemption F. High school graduation. — A child is
177 exempt from the compulsory school attendance requirement set
178 forth in section one-a of this article upon regular graduation from
179 a standard senior high school or alternate secondary program
180 completion as determined by the state board.

181 (g) (h) Exemption G. Granting work permits. — A child is
182 exempt from the compulsory school attendance requirement set
183 forth in section one-a of this article if the child is granted a work

184 permit pursuant to the subsection. After due investigation the
185 county superintendent may grant work permits to youths under
186 the termination age designated in section one-a of this article,
187 subject to state and federal labor laws and regulations. A work
188 permit may not be granted on behalf of any youth who has not
189 completed the eighth grade of school.

190 (†) (i) Exemption H. Serious illness or death in the
191 immediately family of the child. — A child is exempt from the
192 compulsory school attendance requirement set forth in section
193 one-a of this article if a serious illness or death in the immediate
194 family of the child has occurred. It is expected that the county
195 attendance director will ascertain the facts in all cases of such
196 absences about which information is inadequate and report the
197 facts to the county superintendent.

198 (†) (j) Exemption I. Destitution in the home. — A child is
199 exempt from the compulsory school attendance requirement set
200 forth in section one-a of this article if the requirements of this
201 subsection, relating to destitution in the home, are met.
202 Exemption based on a condition of extreme destitution in the
203 home may be granted only upon the written recommendation of

204 the county attendance director to the county superintendent
205 following careful investigation of the case. A copy of the report
206 confirming the condition and school exemption shall be placed
207 with the county director of public assistance. This enactment
208 contemplates every reasonable effort that may properly be taken
209 on the part of both school and public assistance authorities for
210 the relief of home conditions officially recognized as being so
211 destitute as to deprive children of the privilege of school
212 attendance. Exemption for this cause is not allowed when the
213 destitution is relieved through public or private means.

214 (†) (k) Exemption J. Church ordinances; observances of
215 regular church ordinances. — A child is exempt from the
216 compulsory school attendance requirement set forth in section
217 one-a of this article if the requirements of this subsection,
218 relating to church ordinances and observances of regular church
219 ordinances, are met. The county board may approve exemption
220 for religious instruction upon written request of the person
221 having legal or actual charge of a child or children. This
222 exemption is subject to the rules prescribed by the county
223 superintendent and approved by the county board.

224 ~~(k)~~ (l) Exemption K. Alternative private, parochial, church
225 or religious school instruction. — A child is exempt from the
226 compulsory school attendance requirement set forth in section
227 one-a of this article if the requirements of this subsection,
228 relating to alternative private, parochial, church or religious
229 school instruction, are met. Exemption shall be made for any
230 child attending any private school, parochial school, church
231 school, school operated by a religious order or other nonpublic
232 school which elects to comply with the provisions of article
233 twenty-eight of this chapter.

234 ~~(j)~~ (m) Completion of the eighth grade does not exempt any
235 child under the termination age designated in section one-a of
236 this article from the compulsory attendance provision of this
237 article.

NOTE: The purpose of this bill is to clarify that parents and guardians of exempt children may not be prosecuted under §18-8-2; to clarify that exempt children are not status offenders; to restore historical nomenclature relating to exemptions; to require superintendents to obtain leave of court and show probable cause before seeking orders denying home schooling; to provide for notices to county superintendents or county boards; to require assurances regarding the schooling to be provided; to remove a waiting period for parents who wish to withdraw their children from public schools; to remove requirements for instructor qualifications and instruction plan outlines; to remove requirements that assessment results be submitted to the county superintendent and that parents pay the cost of any assessment that occurs outside of a public school; to change requirements regarding assessments and their administration; to change the

standard of acceptable progress on assessment tests from the mean to the average range; to remove a requirement that parents and county superintendents agree on the standard of acceptable progress when alternative assessments are used; to require parents to retain copies of academic assessments for three years; and to require that children be evaluated for learning disabilities if they fail to make satisfactory progress for two consecutive years.

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

