

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 4175

(BY DELEGATES KURCABA, FAIRCLOTH, STATLER,
ESPINOSA, MCGEEHAN, AZINGER,
UPSON, KELLY AND TRECOST)

[Originating in the Committee on Education,
January 27, 2016.]

1 A BILL to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended, relating
2 generally to home schooling; clarifying that student who is home schooled may not be
3 classified as habitually absent; requiring superintendent to show probable cause when
4 seeking order to deny home instruction; changing requirement that parent of child who is
5 to be home schooled notify county superintendent annually of intent to home school to a
6 one time notification; requiring notice upon change in county of residence; requiring notice
7 of intent to home school to include certain assurances; removing requirement for notice of
8 intent two weeks prior to withdrawal from school; removing requirement that person
9 providing home instruction have a high school diploma or equivalent; removing
10 requirement that person providing home instruction outline plan of instruction for ensuing
11 year; removing requirement to submit results of required student assessments to
12 superintendent annually; removing requirement for parent or legal guardian to pay
13 assessment cost when given outside public school; requiring use of test normed within ten
14 years; permitting parent to administer required nationally normed standardized test;
15 providing that student has made acceptable academic progress if it is within or above the
16 fourth stanine rather than fiftieth percentile, or if below that stanine then the student must
17 show improvement from the previous year; removing requirement to provide written
18 narrative of portfolio assessment to superintendent annually; requiring certified teacher to
19 review a student's progress and provide written narrative; removing requirement to provide
20 certification number of the certified teacher; requiring parent or legal guardian to keep
21 academic assessments for three years; providing that county board may only notify parent
22 or legal guardian of availability of certain special education assistance and services if
23 parent or legal guardian requests it; and requiring parent or legal guardian to submit to
24 superintendent results of required assessments at grade levels three, five, eight and
25 eleven by certain date,

Be it enacted by the Legislature of West Virginia:

1 That §18-8-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted
2 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 school attendance established
2 in section one-a of this article shall be made on behalf of any child for the causes or conditions
3 set forth in this section. Each cause or condition set forth in this section is subject to confirmation
4 by the attendance authority of the county. A child who is exempt from compulsory school
5 attendance under this section is not subject to prosecution under section two of this article, nor is
6 such a child a status offender as defined by section two hundred two, article one, chapter forty-
7 nine of this code.

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

16 (c) A child is exempt from the compulsory school attendance requirement set forth in
17 section one-a of this article if the requirements of either subdivision (1) or subdivision (2) of this
18 subsection, both relating to home instruction, are met.

19 (1) The instruction shall be in the home of the child or children or at some other place
20 approved by the county board and for a time equal to the instructional term set forth in section
21 forty-five, article five of this chapter. If the request for home instruction is denied by the county
22 board, good and reasonable justification for the denial shall be furnished in writing to the applicant

23 by the county board. The instruction shall be conducted by a person or persons who, in the
24 judgment of the county superintendent and county board, are qualified to give instruction in
25 subjects required to be taught in public elementary schools in the state. The person or persons
26 providing the instruction, upon request of the county superintendent, shall furnish to the county
27 board information and records as may be required periodically with respect to attendance,
28 instruction and progress of students receiving the instruction. The state board shall develop
29 guidelines for the home schooling of special education students including alternative assessment
30 measures to assure that satisfactory academic progress is achieved.

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

36 (A) ~~Annually, the person or persons providing~~ Upon commencing home instruction under
37 this section the parent of a child receiving home instruction shall present to the county
38 superintendent or county board a notice of intent to provide home instruction ~~and~~ that includes
39 the name, address, and age and grade level of any child of compulsory school age to be instructed
40 and assurance that the child shall receive instruction in reading, language, mathematics, science
41 and social studies and that the child shall be assessed annually in accordance with this
42 subdivision. The person providing home instruction shall notify the county superintendent upon
43 termination of home instruction for a child who is of compulsory attendance age. Upon
44 establishing residence in a new county, the person providing home instruction shall notify the
45 previous county superintendent and submit a new notice of intent to the superintendent of the
46 new county of residence: *Provided*, That if a child is enrolled in a public school, notice of intent to
47 provide home instruction shall be given at ~~least two weeks prior to withdrawing the child from~~
48 ~~public school~~ on or before the date home instruction is to begin.

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

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

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

58 (i) The child receiving home instruction takes a nationally normed standardized
59 achievement test published or normed not more than ten years from the date of administration
60 and to be administered under standardized the conditions as set forth by the published
61 instructions of the selected test and by a person qualified in accordance with the test's published
62 guidelines in the subjects of reading, language, mathematics, science and social studies. ~~The~~
63 ~~child's parent or legal guardian may not administer the test in any event. The publication date of~~
64 ~~the chosen test may not be more than ten years from the date the test is administered. The child~~
65 ~~is considered to have made acceptable progress when the mean of the child's test results in the~~
66 ~~required subject areas for any single year meets or exceeds the fiftieth percentile or, if below~~
67 ~~the fiftieth percentile, is within or above the fourth stanine or, if below the fourth stanine, shows~~
68 improvement from the previous year's results;

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

73 (iii) ~~The county superintendent is provided with a written narrative indicating that a A~~
74 ~~portfolio of samples of the child's work has been~~ is reviewed and by a certified teacher who

75 determines that the child's academic progress for the year is in accordance with the child's
76 abilities. If the narrative indicates that the child's academic progress for the year is in accordance
77 with the child's abilities, the child is considered to have made acceptable progress. ~~This narrative~~
78 ~~shall be prepared by a certified teacher whose certification number shall be provided. The~~
79 ~~narrative shall include a statement~~ The teacher shall provide a written narrative about the child's
80 progress in the areas of reading, language, mathematics, science and social studies and shall
81 note any areas which, in the professional opinion of the reviewer, show need for improvement or
82 remediation; or

83 (iv) The child completes an alternative academic assessment of proficiency that is
84 mutually agreed upon by the parent or legal guardian and the county superintendent; ~~Criteria for~~
85 ~~acceptable progress shall be mutually agreed upon by the same parties; and~~

86 ~~(E)~~ (C) A parent or legal guardian shall maintain copies of each student's Academic
87 Assessment for three years. When the annual assessment fails to show acceptable progress as
88 defined under the appropriate assessment option set forth in paragraph ~~(D)~~ (B) of this subdivision,
89 the person or persons providing home instruction shall initiate a remedial program to foster
90 acceptable progress. The county board upon request shall notify the parents or legal guardian of
91 the child, in writing, of the services available to assist in the assessment of the child's eligibility
92 for special education services. Identification of a disability does not preclude the continuation of
93 home schooling. In the event that the child does not achieve acceptable progress as defined
94 under the appropriate assessment option set forth in paragraph ~~(D)~~ (B) of this subdivision for a
95 second consecutive year, the person or persons providing instruction shall submit to the county
96 superintendent additional evidence that appropriate instruction is being provided; and

97 (D) The parent or legal guardian shall submit to the county superintendent the results of
98 the academic assessment of the child at grade levels three, five, eight and eleven, as applicable,
99 by June 30 of the year in which the assessment was administered.

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

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

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

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

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

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

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

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

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

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

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