

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 528

BY SENATORS MANN, STOLLINGS, ROMANO AND MULLINS

[Introduced March 7, 2017; Referred
to the Committee on Education]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §18-8-1b, relating to establishing process for providing that a student is not
 3 eligible for either home instruction exemption after the complaint required after ten total
 4 unexcused absences from school is filed, for the duration of legal proceedings relating to
 5 failing to cause a certain child under eighteen to attend school and at any point after
 6 conviction of the same offense; allowing investigation to determine whether the child is a
 7 neglected child due to refusal, failure or inability to supply the child with necessary
 8 education; requiring report to Department of Health and Human Resources if investigation
 9 reveals reasonable cause to suspect that the child is an abused child or a neglected child
 10 or reveals conditions that are likely to result in abuse or neglect; requiring that if the
 11 investigation reveals reasonable cause to suspect that the child is a neglected child due
 12 to refusal, failure or inability to supply the child with necessary education the county board
 13 of education shall hold a hearing to determine whether the home instruction would result
 14 in the child not being provided with an adequate education; and excluding application of
 15 these provisions to certain children.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 section, designated §18-8-1b, to read as follows:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1b. Ineligibility for home instruction exemptions in certain truancy related instances.

1 (a) Once a complaint is filed pursuant to section four of this article against a parent,
 2 guardian or custodian, for the duration of any legal proceedings pursuant to sections two or four
 3 of this article in which the parent, guardian or custodian is the defendant and at any point after a
 4 conviction of a parent, guardian or custodian pursuant to sections two or four of this article, if a
 5 request for home instruction for the child of the parent, guardian or custodian or a sibling of that
 6 child is made or if a notice of intent to provide home instruction to the child of the parent, guardian

7 or custodian or a sibling of that child is presented pursuant to section one of this article, the
8 superintendent or county board may cause an investigation to be made to determine whether the
9 child is a neglected child, as defined in section two hundred one, article one, chapter forty-nine of
10 this code, due to refusal, failure or inability to supply the child with necessary education.

11 (b) If the investigation reveals reasonable cause to suspect that the child is an abused
12 child or a neglected child as those terms are defined in section two hundred one, article one,
13 chapter forty-nine of this code or if the investigation reveals conditions that are likely to result in
14 abuse or neglect, the abuse, neglect or conditions shall be reported immediately, and not more
15 than forty-eight hours after suspecting this abuse or neglect, to the Department of Health and
16 Human Resources pursuant to section eight hundred three, article two, chapter forty-nine of this
17 code. If the investigation reveals reasonable cause to suspect that the child is a neglected child
18 due to refusal, failure or inability to supply the child with necessary education, the county board
19 also shall hold a hearing to determine whether the home instruction would result in the child not
20 being provided with an adequate education.

21 (c) Prior to the hearing, the county board shall cause a written notice to be served upon
22 the parent(s), guardian(s) or custodians(s), as applicable. The notice shall set forth the purpose
23 of the hearing and a date and time at which the hearing shall be held. The parent(s), guardian(s)
24 or guardian(s) may be represented by counsel, may call their own witnesses and may confront
25 and cross examine witnesses. The superintendent may apply to a circuit judge or magistrate for
26 authority to subpoena witnesses and documents, upon his or her own initiative. Upon the written
27 request of any other party, the superintendent shall apply to a circuit judge or magistrate for the
28 authority to subpoena witnesses, documents or both on behalf of the other party in a determination
29 before a county board. If the authority to subpoena is granted, the superintendent shall subpoena
30 the witnesses, documents or both requested by the other party. If the authority to subpoena is
31 granted, it shall be exercised in accordance with section one, article five, chapter twenty-nine-a
32 of this code. The hearing shall be recorded by mechanical means unless recorded by a certified

33 court reporter. The state board may adopt other supplementary rules of procedure to be followed
34 in these hearings.

35 (d) If during or after the hearing the county board determines that home instruction would
36 result in the child not being provided with an adequate education, notwithstanding any provisions
37 of section one of this article to the contrary, the student is not eligible for either home instruction
38 exemption set forth in that section.

39 (e) This section does not apply to any child if the parent(s), guardian(s) or custodian(s)
40 referred to in this section no longer have custody of the child and does not apply to the sibling(s)
41 of the child if the parent(s), guardian(s) or custodian(s) referred to in this section never or no
42 longer have custody of the sibling.

NOTE: The purpose of this bill is to establish a process for providing that a student is not eligible for either home instruction exemption once certain truancy related legal proceedings begin or after a conviction.

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