

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4440

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BARRETT, HILL, BATES, SHOTT, HORNBUCKLE AND
STAGGERS

[Introduced January 21, 2020; Referred to the
Committee on Education then the Judiciary]

1 A BILL to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended, relating
2 to prohibiting the home schooling of children in certain circumstances; and prohibiting
3 home schooling when a custodial parent or the person instructing the child is suspected
4 or convicted of child abuse or neglect; and when either custodial parent or a person
5 instructing the child has been convicted of domestic violence.

Be it enacted by the Legislature of West Virginia:

PREAMBLE: THIS ACT SHALL BE KNOWN AS “RAYLEE’S LAW.”

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 §18-8-1a of this code shall be made on behalf of any child for the causes or conditions set forth
3 in this section. Each cause or condition set forth in this section is subject to confirmation by the
4 attendance authority of the county. A child who is exempt from compulsory school attendance
5 under this section is not subject to prosecution under §18-8-2 of this code, nor is such a child a
6 status offender as defined by §49-1-202 of this code.

7 (b) A child is exempt from the compulsory school attendance requirement set forth in §18-
8 8-1a of this code if the requirements of this subsection, relating to instruction in a private, parochial
9 or other approved school, are met. The instruction shall be in a school approved by the county
10 board and for a time equal to the instructional term set forth in §18-5-45 of this code. In all private,
11 parochial or other schools approved pursuant to this subsection it is the duty of the principal or
12 other person in control, upon the request of the county superintendent, to furnish to the county
13 board such information and records as may be required with respect to attendance, instruction
14 and progress of students enrolled.

15 (c) A child is exempt from the compulsory school attendance requirement set forth in §18-
16 8-1a of this code if the requirements of either subdivision (1) or subdivision (2) of this subsection,

17 both relating to home instruction, are met.

18 (1) The instruction shall be in the home of the child or children or at some other place
19 approved by the county board and for a time equal to the instructional term set forth in §18-5-45
20 of this code: Provided, That the county board may not authorize instruction in the home if there is
21 a pending child abuse or neglect investigation pursuant to §49-2-801 et seq. of this code against
22 either custodial parent or a person instructing the child, or if either custodial parent or a person
23 instructing the child has ever been convicted of domestic violence pursuant to §48-27-101 et seq
24 of this code or child abuse or neglect pursuant to §61-8D-1 et seq. of this code. If the request for
25 home instruction is denied by the county board, good and reasonable justification for the denial
26 shall be furnished in writing to the applicant by the county board. The instruction shall be
27 conducted by a person or persons who, in the judgment of the county superintendent and county
28 board, are qualified to give instruction in subjects required to be taught in public elementary
29 schools in the state. The person or persons providing the instruction, upon request of the county
30 superintendent, shall furnish to the county board information and records as may be required
31 periodically with respect to attendance, instruction and progress of students receiving the
32 instruction. The state board shall develop guidelines for the home schooling of special education
33 students including alternative assessment measures to assure that satisfactory academic
34 progress is achieved.

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

40 (A) Upon commencing home instruction under this section the parent of a child receiving
41 home instruction shall present to the county superintendent or county board a notice of intent to
42 provide home instruction that includes the name, address, and age of any child of compulsory

43 school age to be instructed and assurance that the child shall receive instruction in reading,
44 language, mathematics, science and social studies and that the child shall be assessed annually
45 in accordance with this subdivision. The person providing home instruction shall notify the county
46 superintendent upon termination of home instruction for a child who is of compulsory attendance
47 age. Upon establishing residence in a new county, the person providing home instruction shall
48 notify the previous county superintendent and submit a new notice of intent to the superintendent
49 of the new county of residence: *Provided*, That if a child is enrolled in a public school, notice of
50 intent to provide home instruction shall be given on or before the date home instruction is to begin.

51 (B) The person or persons providing home instruction shall submit satisfactory evidence
52 of a high school diploma or equivalent, or a post-secondary degree or certificate from a regionally
53 accredited institution or from an institution of higher education that has been authorized to confer
54 a post-secondary degree or certificate in West Virginia by the West Virginia Council for
55 Community and Technical College Education or by the West Virginia Higher Education Policy
56 Commission.

57 (C) Annually, the person or persons providing home instruction shall obtain an academic
58 assessment of the child for the previous school year in one of the following ways:

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

67 (ii) The child participates in the testing program currently in use in the state's public
68 schools. The test shall be administered to the child at a public school in the county of residence.

69 Determination of acceptable progress shall be based on current guidelines of the state testing
70 program;

71 (iii) A portfolio of samples of the child's work is reviewed by a certified teacher who
72 determines whether the child's academic progress for the year is in accordance with the child's
73 abilities. The teacher shall provide a written narrative about the child's progress in the areas of
74 reading, language, mathematics, science and social studies and shall note any areas which, in
75 the professional opinion of the reviewer, show need for improvement or remediation. If the
76 narrative indicates that the child's academic progress for the year is in accordance with the child's
77 abilities, the child is considered to have made acceptable progress; or

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

80 (D) A parent or legal guardian shall maintain copies of each student's Academic
81 Assessment for three years. When the annual assessment fails to show acceptable progress, the
82 person or persons providing home instruction shall initiate a remedial program to foster
83 acceptable progress. The county board upon request shall notify the parents or legal guardian of
84 the child, in writing, of the services available to assist in the assessment of the child's eligibility
85 for special education services. Identification of a disability does not preclude the continuation of
86 home schooling. In the event that the child does not achieve acceptable progress for a second
87 consecutive year, the person or persons providing instruction shall submit to the county
88 superintendent additional evidence that appropriate instruction is being provided.

89 (E) The parent or legal guardian shall submit to the county superintendent the results of
90 the academic assessment of the child at grade levels three, five, eight and 11, as applicable, by
91 June 30 of the year in which the assessment was administered.

92 (3) This subdivision applies to both home instruction exemptions set forth in subdivisions
93 (1) and (2) of this subsection. The county superintendent or a designee shall offer such
94 assistance, including textbooks, other teaching materials and available resources, all subject to

95 availability, as may assist the person or persons providing home instruction. Any child receiving
96 home instruction may upon approval of the county board exercise the option to attend any class
97 offered by the county board as the person or persons providing home instruction may consider
98 appropriate subject to normal registration and attendance requirements.

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

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

110 (f) A child is exempt from the compulsory school attendance requirement set forth in §18-
111 8-1a of this code upon regular graduation from a standard senior high school or alternate
112 secondary program completion as determined by the state board.

113 (g) A child is exempt from the compulsory school attendance requirement set forth in §18-
114 8-1a of this code if the child is granted a work permit pursuant to the subsection. After due
115 investigation the county superintendent may grant work permits to youths under the termination
116 age designated in §18-8-1a of this code, subject to state and federal labor laws and regulations. A
117 work permit may not be granted on behalf of any youth who has not completed the eighth grade
118 of school.

119 (h) A child is exempt from the compulsory school attendance requirement set forth in §18-
120 8-1a of this code if a serious illness or death in the immediate family of the child has occurred. It

121 is expected that the county attendance director will ascertain the facts in all cases of such
122 absences about which information is inadequate and report the facts to the county superintendent.

123 (i) A child is exempt from the compulsory school attendance requirement set forth in §18-
124 8-1a of this code if the requirements of this subsection, relating to destitution in the home, are
125 met. Exemption based on a condition of extreme destitution in the home may be granted only
126 upon the written recommendation of the county attendance director to the county superintendent
127 following careful investigation of the case. A copy of the report confirming the condition and school
128 exemption shall be placed with the county director of public assistance. This enactment
129 contemplates every reasonable effort that may properly be taken on the part of both school and
130 public assistance authorities for the relief of home conditions officially recognized as being so
131 destitute as to deprive children of the privilege of school attendance. Exemption for this cause is
132 not allowed when the destitution is relieved through public or private means.

133 (j) A child is exempt from the compulsory school attendance requirement set forth in §18-
134 8-1a of this code if the requirements of this subsection, relating to church ordinances and
135 observances of regular church ordinances, are met. The county board may approve exemption
136 for religious instruction upon written request of the person having legal or actual charge of a child
137 or children. This exemption is subject to the rules prescribed by the county superintendent and
138 approved by the county board.

139 (k) A child is exempt from the compulsory school attendance requirement set forth in §18-
140 8-1a of this code if the requirements of this subsection, relating to alternative private, parochial,
141 church or religious school instruction, are met. Exemption shall be made for any child attending
142 any private school, parochial school, church school, school operated by a religious order or other
143 nonpublic school which elects to comply with the provisions of §18-28-1 *et seq.* of this code.

144 (l) Completion of the eighth grade does not exempt any child under the termination age
145 designated in §18-8-1a of this code from the compulsory attendance provision of this article.

NOTE: The purpose of this bill is to prohibit home schooling of any child in homes where

there is suspected or known child abuse or neglect, or domestic violence by a parent or person instructing the child.

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