

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4937

BY DELEGATE ANGELUCCI

[Introduced February 11, 2020; Referred to the
Committee on Education]

1 A BILL to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended, relating
2 to home school students; requiring an affidavit by the person or persons to be filed
3 annually with the county superintendent an affirmation that all adult family members living
4 in the home are the parents or legal guardians of the child or children, that the person, or
5 person providing home instruction, have not committed child abuse or other crimes;
6 providing that the person, or persons providing home instruction, are required to report
7 any suspected child abuse to the county superintendent; and that academic assessments
8 of home school students be submitted annually by their parent or guardian.

Be it enacted by the Legislature of West Virginia:

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 §49-1-202 of this code.

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

15 (c) A child is exempt from the compulsory school attendance requirement set forth in

16 section one-a of this article if the requirements of ~~either subdivision~~ subdivision (1), (2) or (3) of
17 ~~subdivision (2)~~ of this subsection ~~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 §18-5-14
20 of this code. If the request for home instruction is denied by the county board, good and
21 reasonable justification for the denial shall be furnished in writing to the applicant by the county
22 board. The instruction shall be conducted by a person or persons who, in the judgment of the
23 county superintendent and county board, are qualified to give instruction in subjects required to
24 be taught in public elementary schools in the state. The person or persons providing the
25 instruction, upon request of the county superintendent, shall furnish to the county board
26 information and records as may be required periodically with respect to attendance, instruction
27 and progress of students receiving the instruction. The state board shall develop guidelines for
28 the home schooling of special education students including alternative assessment measures to
29 assure that satisfactory academic progress is achieved.

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

35 (A) Upon commencing home instruction under this section the parent of a child receiving
36 home instruction shall present to the county superintendent or county board a notice of intent to
37 provide home instruction that includes the name, address, and age of any child of compulsory
38 school age to be instructed and assurance that the child shall receive instruction in reading,
39 language, mathematics, science, and social studies and that the child shall be assessed annually
40 in accordance with this subdivision. The person providing home instruction shall notify the county
41 superintendent upon termination of home instruction for a child who is of compulsory attendance

42 age. Upon establishing residence in a new county, the person providing home instruction shall
43 notify the previous county superintendent and submit a new notice of intent to the superintendent
44 of the new county of residence: *Provided*, That if a child is enrolled in a public school, notice of
45 intent to provide home instruction shall be given on or before the date home instruction is to begin.

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

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

54 (C) The parent or legal guardian of a child receiving home instruction shall send to the
55 county superintendent an academic assessment report of the child for the previous school
56 year. The academic assessment report shall be provided in one of the following ways:

57 (i) The child receiving home instruction takes a nationally normed standardized
58 achievement test published or normed not more than 10 years from the date of administration
59 and administered under the conditions as set forth by the published instructions of the selected
60 test and by a person qualified in accordance with the test's published guidelines in the subjects
61 of reading, language, mathematics, science, and social studies. The child is considered to have
62 made acceptable progress when the mean of the child's test results in the required subject areas
63 for any single year is within or above the fourth stanine or, if below the fourth stanine, shows
64 improvement from the previous year's results;

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

68 program;

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

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

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

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

90 (3) The person or persons providing home instruction shall submit a notarized affidavit to
91 the parent or guardian or other person having legal custody of the child or children, filed prior to
92 the commencement of the home education program and annually thereafter by August 1st of each
93 year, with the county superintendent and which shall contain a certification to be signed by the

94 person or persons providing home instruction: (1) Affirming that all adults living in the home are
95 the parents or guardian having legal custody of a child or children in a home instruction program;
96 (2) the person or persons providing home instruction have not been convicted of child abuse
97 under §61-8D-1 et seq, of this code, or a comparable statute in any other state; (3) the person or
98 persons providing home instruction have not been convicted of any criminal offense that requires
99 the person or persons providing home instruction to register as a sex offender; or, (4) the person
100 or persons providing home instruction have not been convicted of any criminal offense which has
101 as an element of delivery or distribution of a controlled substance within 10 years immediately
102 preceding the date of the affidavit. If the person or persons providing home instruction have a
103 reasonable belief that the parents or guardians having legal custody of a child or children receiving
104 home instruction are abusing a child or children, the person or persons providing home instruction
105 must report the suspected abuse to the county superintendent.

106 ~~(3)~~(4) This subdivision applies to both home instruction exemptions set forth in
107 subdivisions (1), ~~and~~ (2) and (3) of this subsection. The county superintendent or a designee shall
108 offer such assistance, including textbooks, other teaching materials and available resources, all
109 subject to availability, as may assist the person or persons providing home instruction. Any child
110 receiving home instruction may, upon approval of the county board, exercise the option to attend
111 any class offered by the county board as the person or persons providing home instruction may
112 consider appropriate, subject to normal registration and attendance requirements.

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

120 handicapped child otherwise entitled to a free appropriate education.

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

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

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

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

138 (i) A child is exempt from the compulsory school attendance requirement set forth in
139 section one-a of this article if the requirements of this subsection, relating to destitution in the
140 home, are met. Exemption based on a condition of extreme destitution in the home may be
141 granted only upon the written recommendation of the county attendance director to the county
142 superintendent following careful investigation of the case. A copy of the report confirming the
143 condition and school exemption shall be placed with the county director of public assistance. This
144 enactment contemplates every reasonable effort that may properly be taken on the part of both
145 school and public assistance authorities for the relief of home conditions officially recognized as

146 being so destitute as to deprive children of the privilege of school attendance. Exemption for this
147 cause is not allowed when the destitution is relieved through public or private means.

148 (j) 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 church ordinances
150 and observances of regular church ordinances, are met. The county board may approve
151 exemption for religious instruction upon written request of the person having legal or actual charge
152 of a child or children. This exemption is subject to the rules prescribed by the county
153 superintendent and approved by the county board.

154 (k) A child is exempt from the compulsory school attendance requirement set forth in
155 section one-a of this article if the requirements of this subsection, relating to alternative private,
156 parochial, church, or religious school instruction, are met. Exemption shall be made for any child
157 attending any private school, parochial school, church school, school operated by a religious
158 order, or other nonpublic school which elects to comply with the provisions of article 28 of this
159 chapter.

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

NOTE: The purpose of this bill is to establish requirements for home school students that will enhance student safety and that parents submit an annual assessment of student progress to assure that home schooled students are meeting academic benchmarks.

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