

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2315

By Delegate Fluharty

[Introduced January 11, 2023; 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 to
 2 prohibiting the home schooling of children in certain circumstances; and prohibiting home
 3 schooling when a custodial parent or the person instructing the child is suspected or
 4 convicted of child abuse or neglect; and when either custodial parent or a person
 5 instructing the child has been convicted of domestic violence. This act shall be known as
 6 "Raylee's Law."

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 §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 and
 14 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 of
20 this code: Provided, That the county board may not authorize instruction in the home if there is a
21 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 county
36 superintendent may, after a showing of probable cause, seek from the circuit court of the county an
37 order denying home instruction of the child. The order may be granted upon a showing of clear and
38 convincing evidence that the child will suffer neglect in his or her education or that there are other
39 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 of
52 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 a
54 post-secondary degree or certificate in West Virginia by the West Virginia Council for Community
55 and Technical College Education or by the West Virginia Higher Education Policy Commission.

56 (C) Annually, the person or persons providing home instruction shall obtain an academic
57 assessment of the child for the previous school year 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 and
60 administered under the conditions as set forth by the published instructions of the selected test
61 and by a person qualified in accordance with the test's published guidelines in the subjects of
62 reading, language, mathematics, science and social studies. The child is considered to have
63 made acceptable progress when the mean of the child's test results in the required subject areas
64 for any single year is within or above the fourth stanine or, if below the fourth stanine, shows
65 improvement from the previous year's results;

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

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

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

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

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

91 (3) This subdivision applies to both home instruction exemptions set forth in subdivisions
92 (1) and (2) of this subsection. The county superintendent or a designee shall offer such
93 assistance, including textbooks, other teaching materials and available resources, all subject to
94 availability, as may assist the person or persons providing home instruction. Any child receiving
95 home instruction may upon approval of the county board exercise the option to attend any class

96 offered by the county board as the person or persons providing home instruction may consider
97 appropriate subject to normal registration and attendance requirements.

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

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

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

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

118 (h) A child is exempt from the compulsory school attendance requirement set forth in §18-
119 8-1a of this code if a serious illness or death in the immediate family of the child has occurred. It is
120 expected that the county attendance director will ascertain the facts in all cases of such absences
121 about which information is inadequate and report the facts to the county superintendent.

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

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

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

143 (l) Completion of the eighth grade does not exempt any child under the termination age
144 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. This shall be known as "Raylee's Law."

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