

HB 2020

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



# ENROLLED

HOUSE BILL No. 2020

(By Delegate Seach.....)



Passed March 11,..... 1995

In Effect Ninety Days From..... Passage



ENROLLED

# H. B. 2020

(BY DELEGATE LEACH)

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[Passed March 11, 1995; in effect ninety days from passage.]

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AN ACT to amend and reenact section one, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compulsory school attendance and home instruction; and correcting an error made in the last amendment to this section.

*Be it enacted by the Legislature of West Virginia:*

That section one, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

**§18-8-1. Commencement and termination of compulsory school attendance; exemptions.**

1 Compulsory school attendance shall begin with the  
2 school year in which the sixth birthday is reached prior to  
3 the first day of September of such year or upon enrolling  
4 in a publicly supported kindergarten program and  
5 continue to the sixteenth birthday.

6 Exemption from the foregoing requirements of  
7 compulsory public school attendance shall be made on  
8 behalf of any child for the following causes or conditions,  
9 each such cause or condition being subject to

10 confirmation by the attendance authority of the county:

11       *Exemption A. Instruction in a private, parochial or*  
12 *other approved school.* — Such instruction shall be in a  
13 school approved by the county board of education and  
14 for a time equal to the school term of the county for the  
15 year. In all such schools it shall be the duty of the  
16 principal or other person in control, upon the request of  
17 the county superintendent of schools, to furnish to the  
18 county board of education such information and records  
19 as may be required with respect to attendance, instruction  
20 and progress of pupils enrolled between the entrance age  
21 and sixteen years;

22       *Exemption B. Instruction in home or other approved*  
23 *place.* — (a) Such instruction shall be in the home of such  
24 child or children or at some other place approved by the  
25 county board of education and for a time equal to the  
26 school term of the county. If such request for home  
27 instruction is denied by the county board of education,  
28 good and reasonable justification for such denial must be  
29 furnished in writing to the applicant by the county board  
30 of education. The instruction in such cases shall be  
31 conducted by a person or persons who, in the judgment of  
32 the county superintendent and county board of education,  
33 are qualified to give instruction in subjects required to be  
34 taught in the free elementary schools of the state. It shall  
35 be the duty of the person or persons providing the  
36 instruction, upon request of the county superintendent, to  
37 furnish to the county board of education such information  
38 and records as may be required from time to time with  
39 respect to attendance, instruction and progress of pupils  
40 enrolled between the entrance age and sixteen years  
41 receiving such instruction. The state department of  
42 education shall develop guidelines for the homeschooling  
43 of special education students including alternative  
44 assessment measures to assure that satisfactory academic  
45 progress is achieved.

46       (b) Notwithstanding the provisions of subsection (a)  
47 of this Exemption B, the person or persons providing

48 home instruction meet the requirements for Exemption B  
49 when the conditions of this subsection are met: *Provided,*  
50 That the county superintendent shall have the right to seek  
51 from the circuit court of the county an order denying the  
52 home instruction, which order may be granted upon a  
53 showing of clear and convincing evidence that the child  
54 will suffer educational neglect or that there are other  
55 compelling reasons to deny home instruction.

56 (1) The person or persons providing home instruction  
57 present to the county superintendent or county board of  
58 education a notice of intent to provide home instruction  
59 and the name and address of any child of compulsory  
60 school age to be instructed: *Provided,* That if a child is  
61 enrolled in a public school, notice of intent to provide  
62 home instruction shall be given at least two weeks prior to  
63 withdrawing such child from public school;

64 (2) The person or persons providing home instruction  
65 submit satisfactory evidence of: (i) A high school diploma  
66 or equivalent; and (ii) formal education at least four years  
67 higher than the most academically advanced child for  
68 whom the instruction will be provided;

69 (3) The person or persons providing home instruction  
70 outline a plan of instruction for the ensuing school year;  
71 and

72 (4) The person or persons providing home instruction  
73 shall annually obtain an academic assessment of the child  
74 for the previous school year. This shall be satisfied in one  
75 of the following ways:

76 (i) Any child receiving home instruction annually  
77 takes a standardized test, to be administered at a public  
78 school in the county where the child resides, or  
79 administered by a licensed psychologist or other person  
80 authorized by the publisher of the test, or administered by  
81 a person authorized by the county superintendent or  
82 county board of education. The child shall be adminis-  
83 tered a test which has been normed by the test publisher  
84 on that child's age or grade group. In no event may the

85 child's parent or legal guardian administer the test. Where  
86 a test is administered outside of a public school, the child's  
87 parent or legal guardian shall pay the cost of adminis-  
88 tering the test. The public school or other qualified person  
89 shall administer to children of compulsory school age the  
90 Comprehensive Test of Basic Skills, the California  
91 Achievement Test, the Stanford Achievement Test, or the  
92 Iowa Tests of Basic Skills, achievement and proficiency, or  
93 an individual standardized achievement test that is  
94 nationally normed and provides statistical results which  
95 test will be selected by the public school, or other person  
96 administering the test, in the subjects of language, reading,  
97 social studies, science and mathematics; and shall be  
98 administered under standardized conditions as set forth by  
99 the published instructions of the selected test. No test shall  
100 be administered if the publication date is more than ten  
101 years from the date of the administration of the test. Each  
102 child's test results shall be reported as a national percentile  
103 for each of the five subjects tested. Each child's test results  
104 shall be made available on or before the thirtieth day of  
105 June of the school year in which the test is to be  
106 administered to the person or persons providing home  
107 instruction, the child's parent or legal guardian and the  
108 county superintendent. Upon request of a duly authorized  
109 representative of the West Virginia department of edu-  
110 cation, each child's test results shall be furnished by the  
111 person or persons providing home instruction, or by the  
112 child's parent or legal guardian, to the state superintendent  
113 of schools. Upon notification of the mean of the child's  
114 test results for any single year has fallen below the fortieth  
115 percentile, the county board of education shall notify the  
116 parents or legal guardian of said child, in writing, of the  
117 services available to assist in the assessment of the child's  
118 eligibility for special education services: *Provided*, That  
119 the identification of a disability shall not preclude the  
120 continuation of home schooling.

121 If the mean of the child's test results for any single  
122 year for language, reading, social studies, science and  
123 mathematics fall below the fortieth percentile on the

124 selected tests, then the person or persons providing home  
125 instruction shall initiate a remedial program to foster  
126 achievement above that level and the student shall show  
127 improvement. If, after two calendar years, the mean of the  
128 child's test results fall below the fortieth percentile level,  
129 home instruction shall no longer satisfy the compulsory  
130 school attendance requirement exemption; or

131 (ii) The county superintendent is provided with a  
132 written narrative indicating that a portfolio of samples of  
133 the child's work has been reviewed and that the child's  
134 academic progress for the year is in accordance with the  
135 child's abilities. This narrative shall be prepared by a  
136 certified teacher or other person mutually agreed upon by  
137 the parent or legal guardian and the county super-  
138 intendent. It shall be submitted on or before the thirtieth  
139 day of June of the school year covered by the portfolio.  
140 The parent or legal guardian shall be responsible for  
141 payment of fees charged for the narrative; or

142 (iii) Evidence of an alternative academic assessment  
143 of the child's proficiency mutually agreed upon by the  
144 parent or legal guardian and the county superintendent is  
145 submitted to the county superintendent by the thirtieth  
146 day of June of the school year being assessed. The parent  
147 or legal guardian shall be responsible for payment of fees  
148 charged for the assessment.

149 The superintendent or a designee shall offer such  
150 assistance, including textbooks, other teaching materials  
151 and available resources, as may assist the person or  
152 persons providing home instruction subject to their  
153 availability. Any child receiving home instruction may,  
154 upon approval of the county board of education, exercise  
155 the option to attend any class offered by the county board  
156 of education as the person or persons providing home  
157 instruction may deem appropriate subject to normal  
158 registration and attendance requirements;

159 *Exemption C. Physical or mental incapacity.* —  
160 Physical or mental incapacity shall consist of incapacity

161 for school attendance and the performance of school  
162 work. In all cases of prolonged absence from school due  
163 to incapacity of the child to attend, the written statement of  
164 a licensed physician or authorized school nurse shall be  
165 required under the provisions of this article: *Provided,*  
166 That in all cases incapacity shall be narrowly defined and  
167 in no case shall the provisions of this article allow for the  
168 exclusion of the mentally, physically, emotionally or  
169 behaviorally handicapped child otherwise entitled to a free  
170 appropriate education;

171 *Exemption D. Residence more than two miles from*  
172 *school or school bus route.* — The distance of residence  
173 from a school, or school bus route providing free  
174 transportation, shall be reckoned by the shortest  
175 practicable road or path, which contemplates travel  
176 through fields by right of permission from the  
177 landholders or their agents. It shall be the duty of the  
178 county board of education, subject to written consent of  
179 landholders, or their agents, to provide and maintain safe  
180 foot bridges across streams off the public highways where  
181 such are required for the safety and welfare of pupils  
182 whose mode of travel from home to school or to school  
183 bus route must necessarily be other than along the public  
184 highway in order for said road or path to be not over two  
185 miles from home to school or to school bus providing free  
186 transportation;

187 *Exemption E. Hazardous conditions.* — Conditions  
188 rendering school attendance impossible or hazardous to  
189 the life, health or safety of the child;

190 *Exemption F. High school graduation.* — Such  
191 exemption shall consist of regular graduation from a  
192 standard senior high school;

193 *Exemption G. Granting work permits.* — The county  
194 superintendent may, after due investigation, grant work  
195 permits to youths under sixteen years of age, subject to  
196 state and federal labor laws and regulations: *Provided,*  
197 That a work permit may not be granted on behalf of any

198 youth who has not completed the eighth grade of school;

199 *Exemption H. Serious illness or death in the*  
200 *immediate family of the pupil.* — It is expected that the  
201 county attendance director will ascertain the facts in all  
202 cases of such absences about which information is  
203 inadequate and report same to the county superintendent  
204 of schools;

205 *Exemption I. Destitution in the home.* — Exemption  
206 based on a condition of extreme destitution in the home  
207 may be granted only upon the written recommendation of  
208 the county attendance director to the county superin-  
209 tendent following careful investigation of the case. A copy  
210 of the report confirming such condition and school  
211 exemption shall be placed with the county director of  
212 public assistance. This enactment contemplates every  
213 reasonable effort that may properly be taken on the part  
214 of both school and public assistance authorities for the  
215 relief of home conditions officially recognized as being so  
216 destitute as to deprive children of the privilege of school  
217 attendance. Exemption for this cause shall not be allowed  
218 when such destitution is relieved through public or private  
219 means;

220 *Exemption J. Church ordinances; observances of*  
221 *regular church ordinances.* — The county board of  
222 education may approve exemption for religious  
223 instruction upon written request of the person having legal  
224 or actual charge of a child or children: *Provided,* That  
225 such exemption shall be subject to the rules prescribed by  
226 the county superintendent and approved by the county  
227 board of education;

228 *Exemption K. Alternative private, parochial, church*  
229 *or religious school instruction.* — In lieu of the provisions  
230 of Exemption A hereinabove, exemption shall be made  
231 for any child attending any private school, parochial  
232 school, church school, school operated by a religious  
233 order, or other nonpublic school which elects to comply  
234 with the provisions of article twenty-eight, chapter



235 eighteen of the code of West Virginia.

236       The completion of the eighth grade shall not exempt  
237 any child under sixteen years of age from the compulsory  
238 attendance provision of this article: *Provided*, That there  
239 is a public high school or other public school of advanced  
240 grades or a school bus providing free transportation to  
241 any such school, the route of which is within two miles of  
242 the child's home by the shortest practicable route or path  
243 as hereinbefore specified under Exemption D of this  
244 section.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Randy Schoover*  
Chairman Senate Committee

*Ernest C. Moore*  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Carroll E. Holmes*  
Clerk of the Senate

*Donald L. Kepp*  
Clerk of the House of Delegates

*Earl Ray Tomblin*  
President of the Senate

*Robert C. Byrd*  
Speaker of the House of Delegates

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 1995.

\_\_\_\_\_  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/24/25

Time 3:29 pm