

No. 2781

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987

— ● —

# ENROLLED

Com. SUB. FOR

HOUSE BILL No. 2781

(By Delegates Spencer + Caperton)

— ● —

Passed MARCH 14, 1987

In Effect July 1, 1987 ~~Passage~~

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 2781**  
(By DELEGATES SPENCER and CAPERTON)

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[Passed March 14, 1987; in effect July 1, 1987.]

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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 exemption; requiring county boards to furnish written justification for request denials; providing an additional home instruction exemption; mandating certain qualifications and requirements of persons providing such instruction and performance levels of students so instructed; allowing the denial of home instruction by court order upon certain clear and convincing evidence; prohibiting such instruction upon failure to meet performance levels; requiring the county superintendent to provide available assistance; and permitting a child receiving home instruction to attend public school classes subject to certain conditions.

*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 seventh birthday and continue to the sixteenth birthday.

3 Exemption from the foregoing requirements of  
4 compulsory public school attendance shall be made on  
5 behalf of any child for the following causes or conditions,  
6 each such cause or condition being subject to confirma-  
7 tion by the attendance authority of the county:

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

19 *Exemption B. Instruction in home or other approved*  
20 *place.*

21 (a) Such instruction shall be in the home of such child  
22 or children or at some other place approved by the  
23 county board of education and for a time equal to the  
24 school term of the county. If such request for home  
25 instruction is denied by the county board of education,  
26 good and reasonable justification for such denial must  
27 be furnished in writing to the applicant by the county  
28 board of education. The instruction in such cases shall  
29 be conducted by a person or persons who, in the  
30 judgment of the county superintendent and county  
31 board of education, are qualified to give instruction in  
32 subjects required to be taught in the free elementary  
33 schools of the state. It shall be the duty of the person  
34 or persons providing the instruction, upon request of the  
35 county superintendent, to furnish to the county board of  
36 education such information and records as may be  
37 required from time to time with respect to attendance,  
38 instruction and progress of pupils enrolled between the  
39 ages of seven and sixteen years receiving such

40 instruction.

41 (b) Notwithstanding the provisions of subsection (a) of  
 42 this Exemption B, the person or persons providing home  
 43 instruction meet the requirements for Exemption B  
 44 when the conditions of this subsection are met: *Provided*,  
 45 That the county superintendent shall have the right to  
 46 seek from the circuit court of the county an order  
 47 denying the home instruction, which order may be  
 48 granted upon a showing of clear and convincing  
 49 evidence that the child will suffer educational neglect  
 50 or that there are other compelling reasons to deny home  
 51 instruction.

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

60 (2) The person or persons providing home instruction  
 61 submit satisfactory evidence of (i) a high school diploma  
 62 or equivalent and (ii) formal education at least four  
 63 years higher than the most academically advanced child  
 64 for whom the instruction will be provided or achieve-  
 65 ment of a score on the National Teachers Examination  
 66 sufficient for teacher certification in this state;

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

70 (4) The child receiving home instruction annually  
 71 takes a standardized test, to be administered at a public  
 72 school in the county where the child resides, or admin-  
 73 istered by a licensed psychologist or other person  
 74 authorized by the publisher of the test, or administered  
 75 by a person authorized by the county superintendent or  
 76 county board of education. In no event may the child's  
 77 parent or legal guardian administer the test. Where a  
 78 test is administered outside of a public school, the child's  
 79 parent or legal guardian shall pay the cost of adminis-

80     tering the test. The public school or other qualified  
81     person shall administer to children of compulsory school  
82     age the Comprehensive Test of Basic Skills, the Califor-  
83     nia achievement test or the Stanford achievement test,  
84     which test will be selected by the public school, or other  
85     person administering the test, in the subjects of English,  
86     grammar, reading, social studies, science and mathe-  
87     matics; and shall be administered under standardized  
88     conditions as set forth by the published instructions of  
89     the selected test. Each child's testing results shall be  
90     made available to the person or persons providing home  
91     instruction, the child's parent or legal guardian and the  
92     county superintendent. Upon request of a duly autho-  
93     rized representative of the West Virginia department of  
94     education, each child's test results shall be furnished by  
95     the person or persons providing home instruction, or by  
96     the child's parent or legal guardian, to the state  
97     superintendent of schools.

98     If the child's composite test results for any single year  
99     for English, grammar, reading, social studies, science  
100    and mathematics fall below the fortieth percentile on  
101    the selected tests, the person or persons providing home  
102    instruction shall initiate a remedial program to foster  
103    achievement above that level. If, after one calendar year,  
104    the child's composite test results are not above the  
105    fortieth percentile level, home instruction shall no  
106    longer satisfy the compulsory school attendance require-  
107    ment exemption.

108    The superintendent or a designee shall offer such  
109    assistance, including textbooks, other teaching materials  
110    and available resources, as may assist the person or  
111    persons providing home instruction subject to their  
112    availability. Any child receiving home instruction may,  
113    upon approval of the county board of education, exercise  
114    the option to attend any class offered by the county  
115    board of education as the person or persons providing  
116    home instruction may deem appropriate subject to  
117    normal registration and attendance requirements;

118    *Exemption C. Physical or mental incapacity.* —  
119    Physical or mental incapacity shall consist of incapacity  
120    for school attendance and the performance of school

121 work. In all cases of prolonged absence from school due  
122 to incapacity of the child to attend, the written state-  
123 ment of a licensed physician or authorized school nurse  
124 shall be required under the provisions of this article:  
125 *Provided*, That in all cases incapacity shall be narrowly  
126 defined and in no case shall the provisions of this article  
127 allow for the exclusion of the mentally, physically,  
128 emotionally or behaviorally handicapped child otherwise  
129 entitled to a free appropriate education;

130 *Exemption D. Residence more than two miles from*  
131 *school or school bus route.* — The distance of residence  
132 from a school, or school bus route providing free  
133 transportation, shall be reckoned by the shortest  
134 practicable road or path, which contemplates travel  
135 through fields by right of permission from the land-  
136 holders or their agents. It shall be the duty of the county  
137 board of education, subject to written consent of  
138 landholders, or their agents, to provide and maintain  
139 safe foot bridges across streams off the public highways  
140 where such are required for the safety and welfare of  
141 pupils whose mode of travel from home to school or to  
142 school bus route must necessarily be other than along  
143 the public highway in order for said road or path to be  
144 not over two miles from home to school or to school bus  
145 providing free transportation;

146 *Exemption E. Hazardous conditions.* — Conditions  
147 rendering school attendance impossible or hazardous to  
148 the life, health or safety of the child;

149 *Exemption F. High school graduation.* — Such exemp-  
150 tion shall consist of regular graduation from a standard  
151 senior high school;

152 *Exemption G. Granting work permits.* — The county  
153 superintendent may, after due investigation, grant work  
154 permits to youths under sixteen years of age, subject to  
155 state and federal labor laws and regulations: *Provided*,  
156 That a work permit may not be granted on behalf of any  
157 youth who has not completed the eighth grade of school;

158 *Exemption H. Serious illness or death in the immediate*  
159 *family of the pupil.* — It is expected that the county  
160 attendance director will ascertain the facts in all cases

161 of such absences about which information is inadequate  
162 and report same to the county superintendent of schools;

163 *Exemption I. Destitution in the home.* — Exemption  
164 based on a condition of extreme destitution in the home  
165 may be granted only upon the written recommendation  
166 of the county attendance director to the county super-  
167 intendent following careful investigation of the case. A  
168 copy of the report confirming such condition and school  
169 exemption shall be placed with the county director of  
170 public assistance. This enactment contemplates every  
171 reasonable effort that may properly be taken on the part  
172 of both school and public assistance authorities for the  
173 relief of home conditions officially recognized as being  
174 so destitute as to deprive children of the privilege of  
175 school attendance. Exemption for this cause shall not be  
176 allowed when such destitution is relieved through public  
177 or private means;

178 *Exemption J. Church ordinances; observances of*  
179 *regular church ordinances.* — The county board of  
180 education may approve exemption for religious instruc-  
181 tion upon written request of the person having legal or  
182 actual charge of a child or children: *Provided*, That such  
183 exemption shall be subject to the rules and regulations  
184 prescribed by the county superintendent and approved  
185 by the county board of education;

186 *Exemption K. Alternative private, parochial, church or*  
187 *religious school instruction.* — In lieu of the provisions  
188 of Exemption A hereinabove, exemption shall be made  
189 for any child attending any private school, parochial  
190 school, church school, school operated by a religious  
191 order, or other nonpublic school which elects to comply  
192 with the provisions of article twenty-eight, chapter  
193 eighteen of the code of West Virginia.

194 The completion of the eighth grade shall not exempt  
195 any child under sixteen years of age from the compul-  
196 sory attendance provision of this article: *Provided*, That  
197 there is a public high school or other public school of  
198 advanced grades or a school bus providing free trans-  
199 portation to any such school, the route of which is within  
200 two miles of the child's home by the shortest practicable

201 route or path as hereinbefore specified under Exemp-  
202 tion D of this section.

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

*Bruce O. Williams*  
Chairman Senate Committee

*Lyle Latta*  
Chairman House Committee  
Member

Originating in the House.

Takes effect July 1, 1987.

*Todd C. Wick*  
Clerk of the Senate

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

*Sam Tankin*  
President of the Senate

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

The within *appeared* this the *28th*  
day of *March*, 1987.

*Arthur A. Shaffer, Jr.*  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/87

Time 4:55 p.m.