WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1987

---

ENROLLED
Com. Sub. for
HOUSE BILL No. 2781

(By Delegates Spencer and Caperton)

---

Passed March 14, 1987

In Effect July 1, 1987
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2781
(By DELEGATES SPENCER and CAPERTON)

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

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.

Compulsory school attendance shall begin with the seventh birthday and continue to the sixteenth birthday.

Exemption from the foregoing requirements of compulsory public school attendance shall be made on behalf of any child for the following causes or conditions, each such cause or condition being subject to confirmation by the attendance authority of the county:

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

Exemption B. Instruction in home or other approved place.

(a) Such instruction shall be in the home of such child or children or at some other place approved by the county board of education and for a time equal to the school term of the county. If such request for home instruction is denied by the county board of education, good and reasonable justification for such denial must be furnished in writing to the applicant by the county board of education. The instruction in such cases shall be conducted by a person or persons who, in the judgment of the county superintendent and county board of education, are qualified to give instruction in subjects required to be taught in the free elementary schools of the state. It shall be the duty of the person or persons providing the instruction, upon request of the county superintendent, to furnish to the county board of education such information and records as may be required from time to time with respect to attendance, instruction and progress of pupils enrolled between the ages of seven and sixteen years receiving such
(b) Notwithstanding the provisions of subsection (a) of this Exemption B, the person or persons providing home instruction meet the requirements for Exemption B when the conditions of this subsection are met: Provided, That the county superintendent shall have the right to seek from the circuit court of the county an order denying the home instruction, which order may be granted upon a showing of clear and convincing evidence that the child will suffer educational neglect or that there are other compelling reasons to deny home instruction.

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

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

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

(4) The child receiving home instruction annually takes a standardized test, to be administered at a public school in the county where the child resides, or administered by a licensed psychologist or other person authorized by the publisher of the test, or administered by a person authorized by the county superintendent or county board of education. In no event may the child's parent or legal guardian administer the test. Where a test is administered outside of a public school, the child's parent or legal guardian shall pay the cost of adminis-
Enr. Com. Sub. for H.B. 2781] 4

60 tering the test. The public school or other qualified
61 person shall administer to children of compulsory school
62 age the Comprehensive Test of Basic Skills, the Califor-
63 nia achievement test or the Stanford achievement test,
64 which test will be selected by the public school, or other
65 person administering the test, in the subjects of English,
66 grammar, reading, social studies, science and mathe-
67 matics; and shall be administered under standardized
68 conditions as set forth by the published instructions of
69 the selected test. Each child's testing results shall be
70 made available to the person or persons providing home
71 instruction, the child's parent or legal guardian and the
72 county superintendent. Upon request of a duly autho-
73 rized representative of the West Virginia department of
74 education, each child's test results shall be furnished by
75 the person or persons providing home instruction, or by
76 the child's parent or legal guardian, to the state
77 superintendent of schools.

78 If the child's composite test results for any single year
79 for English, grammar, reading, social studies, science
80 and mathematics fall below the fortieth percentile on
81 the selected tests, the person or persons providing home
82 instruction shall initiate a remedial program to foster
83 achievement above that level. If, after one calendar year,
84 the child's composite test results are not above the
85 fortieth percentile level, home instruction shall no
86 longer satisfy the compulsory school attendance require-
87 ment exemption.

88 The superintendent or a designee shall offer such
89 assistance, including textbooks, other teaching materials
90 and available resources, as may assist the person or
91 persons providing home instruction subject to their
92 availability. Any child receiving home instruction may,
93 upon approval of the county board of education, exercise
94 the option to attend any class offered by the county
95 board of education as the person or persons providing
96 home instruction may deem appropriate subject to
97 normal registration and attendance requirements;

98 Exemption C. Physical or mental incapacity. —
99 Physical or mental incapacity shall consist of incapacity
100 for school attendance and the performance of school
work. In all cases of prolonged absence from school due
to incapacity of the child to attend, the written state-
ment of a licensed physician or authorized school nurse
shall be required under the provisions of this article:
Provided, That in all cases incapacity shall be narrowly
defined and in no case shall the provisions of this article
allow for the exclusion of the mentally, physically,
emotionally or behaviorally handicapped child otherwise
entitled to a free appropriate education;

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

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

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

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

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

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

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

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

The completion of the eighth grade shall not exempt
any child under sixteen years of age from the compul-
sory attendance provision of this article: Provided, That
there is a public high school or other public school of
advanced grades or a school bus providing free trans-
portation to any such school, the route of which is within
two miles of the child's home by the shortest practicable
route or path as hereinbefore specified under Exemption D of this section.

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

Chairman Senate Committee

Chairman House Committee

Originating in the House.


Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is hereby approved this the 21st day of , 1987.

Governor