

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)

[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.

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.

MS *Amended*
John A. ...

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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. Wells

Clerk of the Senate

Donald L. Kopp

Clerk of the House of Delegates

Sam Tenenbaum

President of the Senate

Robert C. Bell

Speaker of the House of Delegates

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

Archie A. Moore, Jr.

Governor

PRESENTED TO THE

GOVERNOR

Date 9/25/87

Time 4:55 p.m.