WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

ENROLLED

HOUSE BILL No. 2020

(By Delegate ____________________________ )

Passed _______________ March 11, 1995

In Effect ____________________________

(From Passage)
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 school year in which the sixth birthday is reached prior to the first day of September of such year or upon enrolling in a publicly supported kindergarten program and continue to the sixteenth birthday.

6 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 entrance age 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 entrance age and sixteen years receiving such instruction. The state department of education shall develop guidelines for the homeschooling of special education students including alternative assessment measures to assure that satisfactory academic progress is achieved.

(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;

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

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

(i) Any 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. The child shall be administered a test which has been normed by the test publisher on that child's age or grade group. 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-
tering the test. The public school or other qualified person
shall administer to children of compulsory school age the
Comprehensive Test of Basic Skills, the California
Achievement Test, the Stanford Achievement Test, or the
Iowa Tests of Basic Skills, achievement and proficiency, or
an individual standardized achievement test that is
nationally normed and provides statistical results which
test will be selected by the public school, or other person
administering the test, in the subjects of language, reading,
social studies, science and mathematics; and shall be
administered under standardized conditions as set forth by
the published instructions of the selected test. No test shall
be administered if the publication date is more than ten
years from the date of the administration of the test. Each
child's test results shall be reported as a national percentile
for each of the five subjects tested. Each child's test results
shall be made available on or before the thirtieth day of
June of the school year in which the test is to be
administered to the person or persons providing home
instruction, the child's parent or legal guardian and the
county superintendent. Upon request of a duly authorized
representative of the West Virginia department of edu-
cation, each child's test results shall be furnished by the
person or persons providing home instruction, or by the
child's parent or legal guardian, to the state superintendent
of schools. Upon notification of the mean of the child's
test results for any single year has fallen below the fortieth
percentile, the county board of education shall notify the
parents or legal guardian of said child, in writing, of the
services available to assist in the assessment of the child's
eligibility for special education services: Provided, That
the identification of a disability shall not preclude the
continuation of home schooling.

If the mean of the child’s test results for any single
year for language, reading, social studies, science and
mathematics fall below the fortieth percentile on the
selected tests, then the person or persons providing home instruction shall initiate a remedial program to foster achievement above that level and the student shall show improvement. If, after two calendar years, the mean of the child's test results fall below the fortieth percentile level, home instruction shall no longer satisfy the compulsory school attendance requirement exemption; or

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

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

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

Exemption C. Physical or mental incapacity. — Physical or mental incapacity shall consist of incapacity
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 statement 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 landholders 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 exemption 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 superintendent 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 instruction 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 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
The completion of the eighth grade shall not exempt any child under sixteen years of age from the compulsory 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 transportation 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.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within _______________ this the __________

day of ______________________, 1995.

Governor