

SB 189

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GOVERNMENT SERVICE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000



## ENROLLED

Committee Substitute for  
SENATE BILL NO. 189

(By Senator MITCHELL, ET AL )



PASSED March 9, 2000  
In Effect ninety days from Passage

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SENATE CLERK

## ENROLLED

COMMITTEE SUBSTITUTE

FOR

## Senate Bill No. 189

(SENATORS MITCHELL, HUNTER AND BALL, *original sponsors*)

[Passed March 9, 2000; in effect ninety days 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 requirements for home school instruction; study on home school instruction; and collecting data on home school instruction.

*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 con-  
5 tinue to the sixteenth birthday.

6 Exemption from the foregoing requirements of compul-  
7 sory public school attendance shall be made on behalf of  
8 any child for the following causes or conditions, each such  
9 cause or condition being subject to confirmation by the  
10 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 for  
14 a time equal to the school term of the county for the year.  
15 In all such schools it shall be the duty of the principal or  
16 other person in control, upon the request of the county  
17 superintendent of schools, to furnish to the county board  
18 of education such information and records as may be  
19 required with respect to attendance, instruction and  
20 progress of pupils enrolled between the entrance age and  
21 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 instruc-  
36 tion, upon request of the county superintendent, to furnish  
37 to the county board of education such information and  
38 records as may be required from time to time with respect  
39 to attendance, instruction and progress of pupils enrolled  
40 between the entrance age and sixteen years receiving such  
41 instruction. The state department of education shall  
42 develop guidelines for the home schooling of special  
43 education students including alternative assessment  
44 measures to assure that satisfactory academic progress is  
45 achieved.

46 (b) Notwithstanding the provisions of subsection (a) of  
47 this Exemption B, the person or persons providing home  
48 instruction meet the requirements for Exemption B when  
49 the conditions of this subsection are met: *Provided*, That  
50 the county superintendent shall have the right to seek from  
51 the circuit court of the county an order denying the home  
52 instruction, which order may be granted upon a showing  
53 of clear and convincing evidence that the child will suffer  
54 educational neglect or that there are other compelling  
55 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: *Provided*, That  
69 during the school year two thousand - two thousand one  
70 only, the requirement of a formal education at least four  
71 years higher than the most academically advanced child is  
72 waived;

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

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

80 (i) Any child receiving home instruction annually takes  
81 a standardized test, to be administered at a public school  
82 in the county where the child resides, or administered by  
83 a licensed psychologist or other person authorized by the  
84 publisher of the test, or administered by a person autho-  
85 rized by the county superintendent or county board of  
86 education. The child shall be administered a test which  
87 has been normed by the test publisher on that child's age  
88 or grade group. In no event may the child's parent or legal  
89 guardian administer the test. Where a test is administered  
90 outside of a public school, the child's parent or legal  
91 guardian shall pay the cost of administering the test. The  
92 public school or other qualified person shall administer to  
93 children of compulsory school age the comprehensive test  
94 of basic skills, the California achievement test, the Stan-  
95 ford achievement test or the Iowa tests of basic skills,  
96 achievement and proficiency, or an individual standard-  
97 ized achievement test that is nationally normed and  
98 provides statistical results which test will be selected by  
99 the public school, or other person administering the test,  
100 in the subjects of language, reading, social studies, science  
101 and mathematics and shall be administered under stan-  
102 dardized conditions as set forth by the published instruc-

103 tions of the selected test. No test shall be administered if  
104 the publication date is more than ten years from the date  
105 of the administration of the test. Each child's test results  
106 shall be reported as a national percentile for each of the  
107 five subjects tested. Each child's test results shall be made  
108 available on or before the thirtieth day of June of the  
109 school year in which the test is to be administered to the  
110 person or persons providing home instruction, the child's  
111 parent or legal guardian and the county superintendent.  
112 Upon request of a duly authorized representative of the  
113 West Virginia department of education, each child's test  
114 results shall be furnished by the person or persons provid-  
115 ing home instruction, or by the child's parent or legal  
116 guardian, to the state superintendent of schools. Upon  
117 notification of the mean of the child's test results for any  
118 single year has fallen below the fortieth percentile, the  
119 county board of education shall notify the parents or legal  
120 guardian of said child, in writing, of the services available  
121 to assist in the assessment of the child's eligibility for  
122 special education services: *Provided*, That the identifica-  
123 tion of a disability shall not preclude the continuation of  
124 home schooling.

125 If the mean of the child's test results for any single year  
126 for language, reading, social studies, science and mathe-  
127 matics fall below the fortieth percentile on the selected  
128 tests, then the person or persons providing home instruc-  
129 tion shall initiate a remedial program to foster achieve-  
130 ment above that level and the student shall show improve-  
131 ment. If, after two calendar years, the mean of the child's  
132 test results fall below the fortieth percentile level, home  
133 instruction shall no longer satisfy the compulsory school  
134 attendance requirement exemption; or

135 (ii) The county superintendent is provided with a written  
136 narrative indicating that a portfolio of samples of the  
137 child's work has been reviewed and that the child's

138 academic progress for the year is in accordance with the  
139 child's abilities. This narrative shall be prepared by a  
140 certified teacher or other person mutually agreed upon by  
141 the parent or legal guardian and the county superinten-  
142 dent. It shall be submitted on or before the thirtieth day  
143 of June of the school year covered by the portfolio. The  
144 parent or legal guardian shall be responsible for payment  
145 of fees charged for the narrative; or

146 (iii) Evidence of an alternative academic assessment of  
147 the child's proficiency mutually agreed upon by the parent  
148 or legal guardian and the county superintendent is submit-  
149 ted to the county superintendent by the thirtieth day of  
150 June of the school year being assessed. The parent or legal  
151 guardian shall be responsible for payment of fees charged  
152 for the assessment.

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

163 (d) The legislative oversight commission on education  
164 accountability shall conduct a study on the effects of the  
165 home instruction exemption on the students being in-  
166 structed in the home. The study shall include, but is not  
167 limited to, the effects that a home instructor's education  
168 attainment level has on the academic abilities of the child  
169 instructed. As part of the study, the legislative oversight  
170 commission on education accountability shall collect data  
171 relating to students who are instructed under the home  
172 school exception, including, but not limited to, assessment

173 test scores or performance on other assessment mecha-  
174 nisms, the number of students who are instructed under  
175 the home school exemption, the grade level at which the  
176 students are being instructed and the age of the students:  
177 *Provided*, That the names of the students shall not be  
178 collected. The legislative oversight commission shall  
179 collect the data and complete the study on or before the  
180 first day of December, two thousand.

181 *Exemption C. Physical or mental incapacity.* – Physical  
182 or mental incapacity shall consist of incapacity for school  
183 attendance and the performance of school work. In all  
184 cases of prolonged absence from school due to incapacity  
185 of the child to attend, the written statement of a licensed  
186 physician or authorized school nurse shall be required  
187 under the provisions of this article: *Provided*, That in all  
188 cases incapacity shall be narrowly defined and in no case  
189 shall the provisions of this article allow for the exclusion  
190 of the mentally, physically, emotionally or behaviorally  
191 handicapped child otherwise entitled to a free appropriate  
192 education;

193 *Exemption D. Residence more than two miles from*  
194 *school or school bus route.* – The distance of residence  
195 from a school, or school bus route providing free transpor-  
196 tation, shall be reckoned by the shortest practicable road  
197 or path, which contemplates travel through fields by right  
198 of permission from the landholders or their agents. It shall  
199 be the duty of the county board of education, subject to  
200 written consent of landholders, or their agents, to provide  
201 and maintain safe foot bridges across streams off the  
202 public highways where such are required for the safety  
203 and welfare of pupils whose mode of travel from home to  
204 school or to school bus route must necessarily be other  
205 than along the public highway in order for said road or  
206 path to be not over two miles from home to school or to  
207 school bus providing free transportation;

208 *Exemption E. Hazardous conditions.* – Conditions  
209 rendering school attendance impossible or hazardous to  
210 the life, health or safety of the child;

211 *Exemption F. High school graduation.* – Such exemp-  
212 tion shall consist of regular graduation from a standard  
213 senior high school;

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

220 *Exemption H. Serious illness or death in the immediate*  
221 *family of the pupil.* – It is expected that the county atten-  
222 dance director will ascertain the facts in all cases of such  
223 absences about which information is inadequate and  
224 report same to the county superintendent of schools;

225 *Exemption I. Destitution in the home.* – Exemption  
226 based on a condition of extreme destitution in the home  
227 may be granted only upon the written recommendation of  
228 the county attendance director to the county superinten-  
229 dent following careful investigation of the case. A copy of  
230 the report confirming such condition and school exemp-  
231 tion shall be placed with the county director of public  
232 assistance. This enactment contemplates every reasonable  
233 effort that may properly be taken on the part of both  
234 school and public assistance authorities for the relief of  
235 home conditions officially recognized as being so destitute  
236 as to deprive children of the privilege of school attendance.  
237 Exemption for this cause shall not be allowed when such  
238 destitution is relieved through public or private means;

239 *Exemption J. Church ordinances; observances of regular*  
240 *church ordinances.* – The county board of education may  
241 approve exemption for religious instruction upon written

242 request of the person having legal or actual charge of a  
243 child or children: *Provided*, That such exemption shall be  
244 subject to the rules prescribed by the county superinten-  
245 dent and approved by the county board of education;

246 *Exemption K. Alternative private, parochial, church or*  
247 *religious school instruction.* – In lieu of the provisions of  
248 Exemption A herein above, exemption shall be made for  
249 any child attending any private school, parochial school,  
250 church school, school operated by a religious order or  
251 other nonpublic school which elects to comply with the  
252 provisions of article twenty-eight, chapter eighteen of the  
253 code of West Virginia.

254 The completion of the eighth grade shall not exempt any  
255 child under sixteen years of age from the compulsory  
256 attendance provision of this article: *Provided*, That there  
257 is a public high school or other public school of advanced  
258 grades or a school bus providing free transportation to any  
259 such school, the route of which is within two miles of the  
260 child's home by the shortest practicable route or path as  
261 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 Senate.

In effect ninety days from passage.

Clerk of the Senate

  
Clerk of the House of Delegates  
President of the Senate  
Speaker House of Delegates

The within..... *approved* ..... this the *22nd*  
Day of..... *March* ....., 2000

Governor

PRESENTED TO THE

GOVERNOR

Date

3/18/07

Time

12:18 pm