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
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.

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.

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 home schooling 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: Provided, That
during the school year two thousand - two thousand one
only, the requirement of a formal education at least four
years higher than the most academically advanced child is
waived;

(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 autho-
rized 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 administering 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 Stan-
ford achievement test or the Iowa tests of basic skills,
achievement and proficiency, or an individual standard-
ized 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 stan-
dardized conditions as set forth by the published instruc-
tions 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 education, 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.

(c) 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.

(d) The legislative oversight commission on education accountability shall conduct a study on the effects of the home instruction exemption on the students being instructed in the home. The study shall include, but is not limited to, the effects that a home instructor's education attainment level has on the academic abilities of the child instructed. As part of the study, the legislative oversight commission on education accountability shall collect data relating to students who are instructed under the home school exception, including, but not limited to, assessment
test scores or performance on other assessment mechanisms, the number of students who are instructed under the home school exemption, the grade level at which the students are being instructed and the age of the students:

Provided, That the names of the students shall not be collected. The legislative oversight commission shall collect the data and complete the study on or before the first day of December, two thousand.

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 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 superintendent following careful investigation of the case. A copy of the report confirming such condition and school exemp-
tion 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 superinten-
dent 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 herein above, 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 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 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........................................this the 23rd
Day of.............................................2000

Governor