ENROLLED

House Bill No. 2595

(By Delegates Harrison, Mathews, Carmichael, Fahey, Overington, L. Smith and Beach)

Passed April 14, 2001

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 waiving the requirement that persons providing instruction in the home have at least four years more formal education.

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 the requirement of a formal education at least four years higher than the most academically advanced child is waived until the first day of July, two thousand three;

(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 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 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 adminis-
tered under standardized conditions as set forth by the pub-
lished instructions of the selected test. No test shall be adminis-
tered 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 that 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.

Exemption C. Physical or mental incapacity. — Physical or mental incapacity shall consist of incapacity for school atten-
dance 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 autho-
rized 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 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In 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 was approved this the

day of April 2001.

Governor