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WEST VIRGINIA LEGISLATURE

Regular Session, 2003

ENROLLED

Committee Substitute for

SENATE BILL NO. 206

(By Senators Caldwell and Rowe)

PASSED March 8, 2003

In Effect ninety days from Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 206

(SENATORS CALDWELL AND ROWE, *original sponsors*)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact sections one and eleven, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section eight, article five, chapter eighteen-a of said code, all relating to compulsory school attendance; technical amendments; home school exemption; amending requirements to qualify for home school exemption; amending assessment requirements of home school exemption; eliminating exemption relating to residence more than two miles from school or school bus route; driver's license privilege; conditions for obtaining license; denial and revocation; limitation on reinstatement; and authorizing aides to supervise students who are undergoing in-school suspension.

Be it enacted by the Legislature of West Virginia:

That sections one and eleven, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section eight, article five, chapter eighteen-a of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1. Commencement and termination of compulsory school attendance; exemptions.

1 (a) 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 or upon enrolling in a publicly
4 supported kindergarten program and continue to the
5 sixteenth birthday. Exemption from the foregoing re-
6 quirements of compulsory public school attendance shall
7 be made on behalf of any child for the causes or conditions
8 set forth in this section. Each cause or condition set forth
9 in this section shall be subject to confirmation by the
10 attendance authority of the county.

11 (b) A child shall be exempt from the compulsory school
12 attendance requirement set forth in subsection (a) of this
13 section if the requirements of this subsection, relating to
14 instruction in a private, parochial or other approved
15 school, are met. The instruction shall be in a school
16 approved by the county board and for a time equal to the
17 instructional term set forth in section forty-five, article
18 five of this chapter. In all private, parochial or other
19 schools approved pursuant to this subsection it shall be the
20 duty of the principal or other person in control, upon the
21 request of the county superintendent, to furnish to the
22 county board such information and records as may be
23 required with respect to attendance, instruction and
24 progress of pupils enrolled between the entrance age and
25 sixteen years.

26 (c) A child shall be exempt from the compulsory school
27 attendance requirement set forth in subsection (a) of this
28 section if the requirements of either subdivision (1) of this
29 subsection or the requirements of subdivision (2) of this
30 subsection, both relating to home instruction, are met.

31 (1) The instruction shall be in the home of the child or
32 children or at some other place approved by the county
33 board and for a time equal to the instructional term set
34 forth in section forty-five, article five of this chapter. If
35 the request for home instruction is denied by the county
36 board, good and reasonable justification for the denial
37 shall be furnished in writing to the applicant by the county
38 board. The instruction shall be conducted by a person or
39 persons who, in the judgment of the county superintendent
40 and county board, are qualified to give instruction in
41 subjects required to be taught in public elementary schools
42 in the state. The person or persons providing the instruc-
43 tion, upon request of the county superintendent, shall
44 furnish to the county board information and records as
45 may be required, from time to time, with respect to
46 attendance, instruction and progress of pupils enrolled
47 between the entrance age and sixteen years receiving the
48 instruction. The state board shall develop guidelines for
49 the home schooling of special education students including
50 alternative assessment measures to assure that satisfactory
51 academic progress is achieved.

52 (2) The child meets the requirements set forth in this
53 subdivision: *Provided*, That the county superintendent
54 may seek from the circuit court of the county an order
55 denying home instruction of the child. The order may be
56 granted upon a showing of clear and convincing evidence
57 that the child will suffer neglect in the child's education or
58 that there are other compelling reasons to deny home
59 instruction.

60 (A) Annually, the person or persons providing home
61 instruction present to the county superintendent or county
62 board a notice of intent to provide home instruction and

63 the name, address, age and grade level of any child of
64 compulsory school age to be instructed: *Provided*, That if
65 a child is enrolled in a public school, notice of intent to
66 provide home instruction shall be given at least two weeks
67 prior to withdrawing such child from public school;

68 (B) The person or persons providing home instruction
69 submit satisfactory evidence of a high school diploma or
70 equivalent;

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

74 (D) On or before the thirtieth day of June of each year
75 the person or persons providing home instruction shall
76 obtain an academic assessment of the child for the previ-
77 ous school year and submit the results to the county
78 superintendent. When the academic assessment takes
79 place outside of a public school, the parent or legal
80 guardian shall pay the cost. The requirement of an
81 academic assessment shall be satisfied in one of the
82 following ways:

83 (i) The child receiving home instruction takes a nation-
84 ally normed standardized achievement test to be adminis-
85 tered under standardized conditions as set forth by the
86 published instructions of the selected test in the subjects
87 of reading, language, mathematics, science and social
88 studies: *Provided*, That in no event may the child's parent
89 or legal guardian administer the test. The publication date
90 of the chosen test shall not be more than ten years from the
91 date of the administration of the test. The child shall be
92 considered to have made acceptable progress when the
93 mean of the child's test results in the required subject
94 areas for any single year meets or exceeds the fiftieth
95 percentile or, if below the fiftieth percentile, shows
96 improvement from the previous year's results;

97 (ii) The child participates in the testing program cur-
98 rently in use in the state's public schools. The test shall be

99 administered to the child at a public school in the county
100 of residence. Determination of acceptable progress will be
101 based on current guidelines of the state testing program;

102 (iii) The county superintendent is provided with a
103 written narrative indicating that a portfolio of samples of
104 the child's work has been reviewed and that the child's
105 academic progress for the year is in accordance with the
106 child's abilities. If the narrative indicates that the child's
107 academic progress for the year is in accordance with the
108 child's abilities, the child shall be considered to have made
109 acceptable progress. This narrative shall be prepared by
110 a certified teacher whose certification number shall be
111 provided. The narrative shall include a statement about
112 the child's progress in the areas of reading, language,
113 mathematics, science and social studies and shall note any
114 areas which, in the professional opinion of the reviewer,
115 show need for improvement or remediation; or

116 (iv) The child completes an alternative academic assess-
117 ment of proficiency that is mutually agreed upon by the
118 parent or legal guardian and the county superintendent.
119 Criteria for acceptable progress shall be mutually agreed
120 upon by the same parties; and

121 (E) When the annual assessment fails to show acceptable
122 progress as defined under the appropriate assessment
123 option set forth in paragraph (D) of this subdivision, the
124 person or persons providing home instruction shall initiate
125 a remedial program to foster acceptable progress and the
126 county board shall notify the parents or legal guardian of
127 the child, in writing, of the services available to assist in
128 the assessment of the child's eligibility for special educa-
129 tion services: *Provided*, That the identification of a
130 disability shall not preclude the continuation of home
131 schooling. In the event that the child does not achieve
132 acceptable progress as defined under the appropriate
133 assessment option set forth in paragraph (D) of this
134 subdivision for a second consecutive year, the person or
135 persons providing instruction shall submit to the county

136 superintendent additional evidence that appropriate
137 instruction is being provided.

138 (3) This subdivision applies to both home instruction
139 exemptions set forth in subdivisions (1) and (2) of this
140 subsection. The county superintendent or a designee shall
141 offer such assistance, including textbooks, other teaching
142 materials and available resources, as may assist the person
143 or persons providing home instruction subject to their
144 availability. Any child receiving home instruction may
145 upon approval of the county board exercise the option to
146 attend any class offered by the county board as the person
147 or persons providing home instruction may consider
148 appropriate subject to normal registration and attendance
149 requirements.

150 (d) A child shall be exempt from the compulsory school
151 attendance requirement set forth in subsection (a) of this
152 section if the requirements of this subsection, relating to
153 physical or mental incapacity, are met. Physical or mental
154 incapacity consists of incapacity for school attendance and
155 the performance of school work. In all cases of prolonged
156 absence from school due to incapacity of the child to
157 attend, the written statement of a licensed physician or
158 authorized school nurse shall be required under the
159 provisions of this article: *Provided*, That in all cases,
160 incapacity shall be narrowly defined and in no case shall
161 the provisions of this article allow for the exclusion of the
162 mentally, physically, emotionally or behaviorally handi-
163 capped child otherwise entitled to a free appropriate
164 education.

165 (e) A child shall be exempt from the compulsory school
166 attendance requirement set forth in subsection (a) of this
167 section if conditions rendering school attendance impossi-
168 ble or hazardous to the life, health or safety of the child
169 exist.

170 (f) A child shall be exempt from the compulsory school
171 attendance requirement set forth in subsection (a) of this

172 section upon regular graduation from a standard senior
173 high school.

174 (g) A child shall be exempt from the compulsory school
175 attendance requirement set forth in subsection (a) of this
176 section if the child is granted a work permit pursuant to
177 this subsection. The county superintendent may, after due
178 investigation, grant work permits to youths under sixteen
179 years of age, subject to state and federal labor laws and
180 regulations: *Provided*, That a work permit may not be
181 granted on behalf of any youth who has not completed the
182 eighth grade of school.

183 (h) A child shall be exempt from the compulsory school
184 attendance requirement set forth in subsection (a) of this
185 section if a serious illness or death in the immediate family
186 of the pupil has occurred. It is expected that the county
187 attendance director will ascertain the facts in all cases of
188 such absences about which information is inadequate and
189 report the facts to the county superintendent.

190 (i) A child shall be exempt from the compulsory school
191 attendance requirement set forth in subsection (a) of this
192 section if the requirements of this subsection, relating to
193 destitution in the home, are met. Exemption based on a
194 condition of extreme destitution in the home may be
195 granted only upon the written recommendation of the
196 county attendance director to the county superintendent
197 following careful investigation of the case. A copy of the
198 report confirming the condition and school exemption
199 shall be placed with the county director of public assis-
200 tance. This enactment contemplates every reasonable
201 effort that may properly be taken on the part of both
202 school and public assistance authorities for the relief of
203 home conditions officially recognized as being so destitute
204 as to deprive children of the privilege of school attendance.
205 Exemption for this cause shall not be allowed when the
206 destitution is relieved through public or private means.

207 (j) A child shall be exempt from the compulsory school
208 attendance requirement set forth in subsection (a) of this
209 section if the requirements of this subsection, relating to
210 church ordinances and observances of regular church
211 ordinances, are met. The county board may approve
212 exemption for religious instruction upon written request
213 of the person having legal or actual charge of a child or
214 children: *Provided*, That the exemption shall be subject to
215 the rules prescribed by the county superintendent and
216 approved by the county board.

217 (k) A child shall be exempt from the compulsory school
218 attendance requirement set forth in subsection (a) of this
219 section if the requirements of this subsection, relating to
220 alternative private, parochial, church or religious school
221 instruction, are met. Exemption shall be made for any
222 child attending any private school, parochial school,
223 church school, school operated by a religious order or
224 other nonpublic school which elects to comply with the
225 provisions of article twenty-eight of this chapter.

226 (l) The completion of the eighth grade shall not exempt
227 any child under sixteen years of age from the compulsory
228 attendance provision of this article.

§18-8-11. School attendance as condition of licensing for privilege of operation of motor vehicle.

1 (a) In accordance with the provisions of sections three
2 and five, article two, chapter seventeen-b of this code, the
3 division of motor vehicles shall deny a license or instruction
4 permit for the operation of a motor vehicle to any
5 person under the age of eighteen who does not at the time
6 of application present a diploma or other certificate of
7 graduation issued to the person from a secondary high
8 school of this state or any other state or documentation
9 that the person: (1) Is enrolled and making satisfactory
10 progress in a course leading to a general educational
11 development certificate (GED) from a state-approved
12 institution or organization or has obtained the certificate;

13 (2) is enrolled in a secondary school of this state or any
14 other state; (3) is excused from the requirement due to
15 circumstances beyond his or her control; or (4) is enrolled
16 in an institution of higher education as a full-time student
17 in this state or any other state.

18 (b) The attendance director or chief administrator shall
19 provide documentation of enrollment status on a form
20 approved by the department of education to any student at
21 least fifteen but less than eighteen years of age upon
22 request who is properly enrolled in a school under the
23 jurisdiction of the official for presentation to the division
24 of motor vehicles on application for or reinstatement of an
25 instruction permit or license to operate a motor vehicle.
26 Whenever a student at least fifteen but less than eighteen
27 years of age withdraws from school, except as provided in
28 subsection (d) of this section, the attendance director or
29 chief administrator shall notify the division of motor
30 vehicles of the withdrawal not later than five days from
31 the withdrawal date. Within five days of receipt of the
32 notice, the division of motor vehicles shall send notice to
33 the licensee that the license will be suspended under the
34 provisions of section three, article two, chapter seventeen-
35 b of this code on the thirtieth day following the date the
36 notice was sent unless documentation of compliance with
37 the provisions of this section is received by the division of
38 motor vehicles before that time. If suspended, the division
39 may not reinstate a license before the end of the semester
40 following that in which the withdrawal occurred.

41 (c) For the purposes of this section:

42 (1) Withdrawal is defined as more than ten consecutive
43 or fifteen total days unexcused absences during a school
44 year;

45 (2) Suspension or expulsion from school or imprisonment
46 in a jail or a West Virginia correctional facility is not a
47 circumstance beyond the control of the person.

48 (d) Whenever the withdrawal from school of the student,
49 or the student's failure to enroll in a course leading to or
50 to obtain a GED or high school diploma, is beyond the
51 control of the student, or is for the purpose of transfer to
52 another school as confirmed in writing by the student's
53 parent or guardian, no notice shall be sent to the division
54 of motor vehicles to suspend the student's motor vehicle
55 operator's license and if the student is applying for a
56 license, the attendance director or chief administrator
57 shall provide the student with documentation to present to
58 the division of motor vehicles to excuse the student from
59 the provisions of this section. The school district superin-
60 tendent (or the appropriate school official of any private
61 secondary school) with the assistance of the county
62 attendance director and any other staff or school personnel
63 shall be the sole judge of whether withdrawal is due to
64 circumstances beyond the control of the person.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-8. Authority of certain aides to exercise control over pupils; compensation; transfers.

1 (a) Within the limitations provided in this section, any
2 aide who agrees to do so shall stand in the place of the
3 parent or guardian and shall exercise such authority and
4 control over pupils as is required of a teacher as provided
5 in section one of this article. The principal shall designate
6 aides in the school who agree to exercise that authority on
7 the basis of seniority as an aide and shall enumerate the
8 instances in which the authority shall be exercised by an
9 aide when requested by the principal, assistant principal
10 or professional employee to whom the aide is assigned.

11 (b) The authority provided for in subsection (a) of this
12 section may not extend to suspending or expelling any
13 pupil, participating in the administration of corporal
14 punishment or performing instructional duties as a teacher
15 or substitute teacher. However, the authority shall extend

16 to supervising students undergoing in-school suspension if
17 the instructional duties required by the supervision are
18 limited solely to handing out class work and collecting
19 class work. The authority to supervise students undergo-
20 ing in-school suspension may not include actual instruc-
21 tion.

22 (c) An aide designated by the principal under subsection
23 (a) of this section shall receive a salary not less than one
24 pay grade above the highest pay grade held by the em-
25 ployee under section eight-a, article four of this chapter
26 and any county salary schedule in excess of the minimum
27 requirements of this article.

28 (d) An aide may not be required by the operation of this
29 section to perform noninstructional duties for an amount
30 of time which exceeds that required under the aide's
31 contract of employment or that required of other aides in
32 the same school unless the assignment of the duties is
33 mutually agreed upon by the aide and the county superin-
34 tendent, or the superintendent's designated representative,
35 subject to board approval. The terms and conditions of the
36 agreement shall be in writing, signed by both parties, and
37 may include additional benefits. The agreement shall be
38 uniform as to aides assigned similar duties for similar
39 amounts of time within the same school. Aides shall have
40 the option of agreeing to supervise students and of renew-
41 ing related assignments annually. If an aide elects not to
42 renew the previous agreement to supervise students, the
43 minimum salary of the aide shall revert to the pay grade
44 specified in section eight-a, article four of this chapter for
45 the classification title held by the aide and any county
46 salary schedule in excess of the minimum requirements of
47 this article.

48 (e) For the purposes of this section, aide means any aide
49 class title as defined in section eight, article four of this
50 chapter regardless of numeric classification.

51 (f) An aide may transfer to another position of employ-
52 ment one time only during any one half of a school term,
53 unless otherwise mutually agreed upon by the aide and the
54 county superintendent, or the superintendent's designee,
55 subject to board approval: *Provided*, That during the first
56 year of employment as an aide, an aide may not transfer to
57 another position of employment during the first one-half
58 school term of employment unless mutually agreed upon
59 by the aide and county superintendent, subject to board
60 approval.

61 (g) Regular service personnel employed in a category of
62 employment other than aide who seek employment as an
63 aide shall hold a high school diploma or shall have re-
64 ceived a general educational development certificate and
65 shall have the opportunity to receive appropriate training
66 pursuant to subsection (10), section thirteen, article five,
67 chapter eighteen of this code and section two, article
68 twenty of said chapter.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Carly Fiorino
.....
Chairman Senate Committee

Shawn Spivey
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

David G. Thomas
.....
Clerk of the Senate

Gregg M. Sawyer
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Robert B. Bliss
.....
Speaker House of Delegates

The within is approved this the 2nd
Day of April, 2003.
Bob Wise
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/27/03

Time 10:10am