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
ENROLLED

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.

(a) Compulsory school attendance shall begin with the school year in which the sixth birthday is reached prior to the first day of September 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 causes or conditions set forth in this section. Each cause or condition set forth in this section shall be subject to confirmation by the attendance authority of the county.

(b) A child shall be exempt from the compulsory school attendance requirement set forth in subsection (a) of this section if the requirements of this subsection, relating to instruction in a private, parochial or other approved school, are met. The instruction shall be in a school approved by the county board and for a time equal to the instructional term set forth in section forty-five, article five of this chapter. In all private, parochial or other schools approved pursuant to this subsection it shall be the duty of the principal or other person in control, upon the request of the county superintendent, to furnish to the county board 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.
(c) A child shall be exempt from the compulsory school attendance requirement set forth in subsection (a) of this section if the requirements of either subdivision (1) of this subsection or the requirements of subdivision (2) of this subsection, both relating to home instruction, are met.

(1) The instruction shall be in the home of the child or children or at some other place approved by the county board and for a time equal to the instructional term set forth in section forty-five, article five of this chapter. If the request for home instruction is denied by the county board, good and reasonable justification for the denial shall be furnished in writing to the applicant by the county board. The instruction shall be conducted by a person or persons who, in the judgment of the county superintendent and county board, are qualified to give instruction in subjects required to be taught in public elementary schools in the state. The person or persons providing the instruction, upon request of the county superintendent, shall furnish to the county board 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 the instruction. The state board shall develop guidelines for the homeschooling of special education students including alternative assessment measures to assure that satisfactory academic progress is achieved.

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

(A) Annually, the person or persons providing home instruction present to the county superintendent or county board a notice of intent to provide home instruction and
the name, address, age and grade level 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;

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

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

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

(i) The child receiving home instruction takes a nationally normed standardized achievement test to be administered under standardized conditions as set forth by the published instructions of the selected test in the subjects of reading, language, mathematics, science and social studies: Provided, That in no event may the child's parent or legal guardian administer the test. The publication date of the chosen test shall not be more than ten years from the date of the administration of the test. The child shall be considered to have made acceptable progress when the mean of the child's test results in the required subject areas for any single year meets or exceeds the fiftieth percentile or, if below the fiftieth percentile, shows improvement from the previous year's results;

(ii) The child participates in the testing program currently in use in the state's public schools. The test shall be
administered to the child at a public school in the county of residence. Determination of acceptable progress will be based on current guidelines of the state testing program;

(iii) 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. If the narrative indicates that the child’s academic progress for the year is in accordance with the child’s abilities, the child shall be considered to have made acceptable progress. This narrative shall be prepared by a certified teacher whose certification number shall be provided. The narrative shall include a statement about the child’s progress in the areas of reading, language, mathematics, science and social studies and shall note any areas which, in the professional opinion of the reviewer, show need for improvement or remediation; or

(iv) The child completes an alternative academic assessment of proficiency that is mutually agreed upon by the parent or legal guardian and the county superintendent. Criteria for acceptable progress shall be mutually agreed upon by the same parties; and

(E) When the annual assessment fails to show acceptable progress as defined under the appropriate assessment option set forth in paragraph (D) of this subdivision, the person or persons providing home instruction shall initiate a remedial program to foster acceptable progress and the county board shall notify the parents or legal guardian of the 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. In the event that the child does not achieve acceptable progress as defined under the appropriate assessment option set forth in paragraph (D) of this subdivision for a second consecutive year, the person or persons providing instruction shall submit to the county...
(3) This subdivision applies to both home instruction exemptions set forth in subdivisions (1) and (2) of this subsection. The county 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 exercise the option to attend any class offered by the county board as the person or persons providing home instruction may consider appropriate subject to normal registration and attendance requirements.

(d) A child shall be exempt from the compulsory school attendance requirement set forth in subsection (a) of this section if the requirements of this subsection, relating to physical or mental incapacity, are met. Physical or mental incapacity consists 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.

(e) A child shall be exempt from the compulsory school attendance requirement set forth in subsection (a) of this section if conditions rendering school attendance impossible or hazardous to the life, health or safety of the child exist.

(f) A child shall be exempt from the compulsory school attendance requirement set forth in subsection (a) of this
section upon regular graduation from a standard senior high school.

(g) A child shall be exempt from the compulsory school attendance requirement set forth in subsection (a) of this section if the child is granted a work permit pursuant to this subsection. 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.

(h) A child shall be exempt from the compulsory school attendance requirement set forth in subsection (a) of this section if a serious illness or death in the immediate family of the pupil has occurred. 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 the facts to the county superintendent.

(i) A child shall be exempt from the compulsory school attendance requirement set forth in subsection (a) of this section if the requirements of this subsection, relating to destitution in the home, are met. 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 the 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 the destitution is relieved through public or private means.
(j) A child shall be exempt from the compulsory school attendance requirement set forth in subsection (a) of this section if the requirements of this subsection, relating to church ordinances and observances of regular church ordinances, are met. The county board may approve exemption for religious instruction upon written request of the person having legal or actual charge of a child or children: Provided, That the exemption shall be subject to the rules prescribed by the county superintendent and approved by the county board.

(k) A child shall be exempt from the compulsory school attendance requirement set forth in subsection (a) of this section if the requirements of this subsection, relating to alternative private, parochial, church or religious school instruction, are met. 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 of this chapter.

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

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

(a) In accordance with the provisions of sections three and five, article two, chapter seventeen-b of this code, the division of motor vehicles shall deny a license or instruction permit for the operation of a motor vehicle to any person under the age of eighteen who does not at the time of application present a diploma or other certificate of graduation issued to the person from a secondary high school of this state or any other state or documentation that the person: (1) Is enrolled and making satisfactory progress in a course leading to a general educational development certificate (GED) from a state-approved institution or organization or has obtained the certificate;
(2) is enrolled in a secondary school of this state or any other state; (3) is excused from the requirement due to circumstances beyond his or her control; or (4) is enrolled in an institution of higher education as a full-time student in this state or any other state.

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

(c) For the purposes of this section:

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

(2) Suspension or expulsion from school or imprisonment in a jail or a West Virginia correctional facility is not a circumstance beyond the control of the person.
(d) Whenever the withdrawal from school of the student, or the student's failure to enroll in a course leading to or to obtain a GED or high school diploma, is beyond the control of the student, or is for the purpose of transfer to another school as confirmed in writing by the student's parent or guardian, no notice shall be sent to the division of motor vehicles to suspend the student's motor vehicle operator's license and if the student is applying for a license, the attendance director or chief administrator shall provide the student with documentation to present to the division of motor vehicles to excuse the student from the provisions of this section. The school district superintendent (or the appropriate school official of any private secondary school) with the assistance of the county attendance director and any other staff or school personnel shall be the sole judge of whether withdrawal is due to 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.

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

(b) The authority provided for in subsection (a) of this section may not extend to suspending or expelling any pupil, participating in the administration of corporal punishment or performing instructional duties as a teacher or substitute teacher. However, the authority shall extend
to supervising students undergoing in-school suspension if
the instructional duties required by the supervision are
limited solely to handing out class work and collecting
class work. The authority to supervise students undergo-
ing in-school suspension may not include actual instruc-
tion.

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

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

(e) For the purposes of this section, aide means any aide
class title as defined in section eight, article four of this
chapter regardless of numeric classification.
(f) An aide may transfer to another position of employment one time only during any one half of a school term, unless otherwise mutually agreed upon by the aide and the county superintendent, or the superintendent's designee, subject to board approval: *Provided,* That during the first year of employment as an aide, an aide may not transfer to another position of employment during the first one-half school term of employment unless mutually agreed upon by the aide and county superintendent, subject to board approval.

(g) Regular service personnel employed in a category of employment other than aide who seek employment as an aide shall hold a high school diploma or shall have received a general educational development certificate and shall have the opportunity to receive appropriate training pursuant to subsection (10), section thirteen, article five, chapter eighteen of this code and section two, article twenty of said chapter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated 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 is approved this the 2nd Day of April, 2003.

Governor