



**House  
Legislative  
Analysis  
Section**

Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

**HOME SCHOOLS AMENDMENT**

**House Bill 5803 (Substitute H-3)  
Revised First Analysis (5-14-96)**

**Sponsor: Rep. Kirk A. Profit  
Committee: Education**

***THE APPARENT PROBLEM:***

Section 1561 of the School Code, generally speaking, requires that children of ages 6 through 15 attend public school. There are certain specified exceptions, notably one that allows children to attend a state approved non-public school that "teaches subjects comparable to those taught in the public schools to children of corresponding age and grade, as determined by the course of study for the public schools of the district within which the nonpublic school is located."

The Revised School Code, put in place by Public Act 289 of 1995 (Senate Bill 679), will take effect July 1, 1996. Public Act 289 contains an amendment to the section of the code that lists the various exceptions to the compulsory schooling requirement. The amendment to Section 1561 says a child is not required to attend public school if "the child is being educated by his or her parent or legal guardian at the child's home in an organized educational program that is appropriate given the age, intelligence, ability, and any psychological limitations of the child, in the subject areas of reading, spelling, mathematics, science, history, civics, literature, writing, and English grammar." Without this amendment, neither the School Code nor the Revised School Code refers specifically to home schooling. Parents who educate their children at home do so in a legal environment shaped by three Michigan Supreme Court decisions, all issued on May 25, 1993. In brief, as a result of these decisions, a home school is essentially treated as a non-public school and is subject to Public Act 302 of 1921, which governs private, denominational, and parochial schools. That act specifies that "the sanitary conditions of such schools, the courses of study therein, and the qualifications of the teachers thereof shall be of the same standard as provided by the general school laws of the state." (However, one of the three home schooling court cases -- known as *People v. Dejonge* -- said the requirement that teachers be certified does not apply to home schools when there is a religious objection.) Treating home schools as non-public schools also has the effect of granting home schooled children an exemption from the compulsory public schooling requirement because it puts them under Section 1561(3)(a), which grants an

exemption to children attending non-public schools (as cited earlier).

Even though classifying home schools as non-public schools has been described as hammering a square peg into a round hole, there appears widespread agreement that with these three 1993 court decisions, Michigan has become a state that is relatively friendly to home schooling. The new home schooling language contained in the Revised School Code, which is yet to take effect, has apparently divided the home schooling sector. While the legislation was being developed, an earlier form of the amendment simply said the compulsory schooling exemption would apply to a child "being educated at home by his or her parent or legal guardian at the child's home." This language was later amended before passage of the legislation to include the modifying phrase, "in an organized educational program that is appropriate given the age, intelligence, ability, and any psychological limitations of the child in the subject areas of reading spelling, mathematics, science, history, civics, literature, writing, and English grammar."

The divisions over this new home schooling provision are not easy to categorize without some simplification. Some home school advocates believe the new exemption is unnecessary and potentially harmful, and say the existing state of the law is sufficient to allow them to continue their current educational practices without interference. For them, the requirement that a home school educational program must be "appropriate" raises the question of "who decides?" and contains the risk that local school districts could use the language to harass and intimidate home schooling parents. They also fear that the existence of the new special exemption will mean that they cannot use the non-public school exemption. The political climate around home schooling is now peaceful, they say, and changes in the law, no matter how well-intentioned, may do more harm than good. They argue for removal of the language from the Revised School Code.

On the other hand, others in the home school movement welcome the new exemption on the grounds that it

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provides additional protection for those who are uncomfortable being treated as a non-public school. Being in that category carries with it certain reporting requirements, teacher certification requirements (where no religious objection exists), and the prospect of being inspected or evaluated by state school authorities for compliance with state laws regulating private schools. The state government would not have regulatory authority under the new exemption, which would be enforced as a truancy matter by local and intermediate districts. Its supporters believe that the new provision offers parents a choice of whether to home school their children by claiming the existing non-public school exemption or by claiming the new home school exemption from the compulsory public schooling requirement. (They cite a memorandum expressing the personal views of a school law specialist in the attorney general's office that supports this view.) Among those who prefer having a new home school exemption, some would like the language referring to the "appropriateness" of the educational program removed (because it could lead to interference by local school districts) while others are satisfied with the language as it stands and would prefer that the issue not be opened up for legislative tinkering.

### ***THE CONTENT OF THE BILL:***

The bill would amend the Revised School Code to rewrite the new exemption from the compulsory public education requirement due to take effect on July 1, 1996. Under the bill, the exemption would apply to a child being educated in the home by his or her parent, legal guardian, or other person in the state having control and charge of the child in an organized program in the subject areas of reading, spelling, mathematics, science, history, civics, literature, writing, and English grammar. The bill would delete the phrase requiring the program to be "appropriate given the age, intelligence, ability, and any psychological limitations of the child."

The bill also would specify that, for a child being educated at home, the exemption from the requirement to attend public school could exist under Subsection (3)(a), which refers to non-public schools, or under Subsection (3)(f), the new provision for children educated at home.

As now, the provision would take effect with the Revised School Code on July 1, 1996.

MCL 380.1561

### ***FISCAL IMPLICATIONS:***

There is no information at present.

### ***ARGUMENTS:***

#### ***For:***

The bill is a compromise that retains much of the provision in the Revised School Code exempting children being educated at home from the requirement that they attend public schools, while removing the most objectionable feature (for some home schoolers): that the educational program at home be "appropriate" to the child, given his or her age, intelligence, ability, and psychological limitations, if any. This language is feared as an invitation for regulation by school districts. Further, the bill would make it clear a home school exemption from the compulsory schooling requirement exists under either the non-public school exemption (as it does now) or under the new home school language. While a home school is already considered a non-public school under current law, being placed in that category exposes parents to reporting requirements and other scrutiny by the state. It also could expose them to teacher certification requirements, because the court decision lifting that requirement for home schools applies when there are religious objections to certification. Having an additional exemption to choose from, one that treats home schools as a separate category, allows home schoolers to escape being regulated under the non-public schools act and to choose to be under the truancy laws enforced by local school districts, prosecutors, and district courts.

#### ***Response:***

Where is the accountability if the "appropriateness" language is removed from the home school provision? That would remove criteria useful in protecting children from parents whose "home schooling" is a sham. There may not be many such cases, but local authorities need the tools to make sure that children are being educated and not simply kept home. If the home schooling exemption is to remain law, the "appropriateness" language should remain.

#### ***Rebuttal:***

Remedies exist for cases where children are being neglected, say home school supporters. Actions can be brought in probate court. Despite removal of the "appropriateness" language, there is still an implicit requirement that a home schooling educational program be reasonable.

***For:***

The Revised School Code contains a new section that specifies that "it is the natural, fundamental right of parents and legal guardians to determine and direct the care, teaching, and education of their children." This bill in its current form honors the spirit of that declaration.

***Against:***

The better approach would be to delete this new provision entirely, as the bill would have done in its original form. The current state of the law in Michigan is considered friendly to home schooling parents. There is no need for additional provisions on the subject. Indeed, it invites trouble. Currently, home schools are treated as non-public schools and regulated as such by the state. While there may be some complaints about report filing requirements, and while there may be some fears that the state could shift gears and become more meddlesome, home schoolers appear to be able to conduct their affairs satisfactorily as things are now. Recent court cases have created a favorable climate for home schools. The new provision could lead to new litigation and to unfavorable rulings. It could lead to greater supervision by local and intermediate school districts, because the new exemption would be enforced by local districts, prosecutors, and judges. In areas hostile to home schooling, this could lead to more, not less, interference in the lives of home schooling parents. Some school districts may see this provision as imposing on them new responsibilities for the policing of home schools (which is now primarily a state responsibility under the non-public school act) and may fear being liable if they do not take it seriously. All in all, removing the new provision entirely can do no harm, whereas leaving it in, even in a modified form, could be harmful.

***Against:***

Some people object to changing the home schooling exemption provision to apply not only to parents and legal guardians, but also to other persons "having control and charge of the child." This is an unnecessary addition and an invitation to mischief.

***Response:***

The language is technical in nature, say its supporters, and is parallel to that found at the beginning of Section 1561, which imposes the compulsory education requirement on parents, guardians, and others "having control and charge of a child from the age of 6 to the child's 16th birthday."

***Against:***

Some people believe the issue is a larger one: compulsory public schooling should simply be repealed

because parents have the God-given right to raise and educate their children as they see fit without government interference.

***POSITIONS:***

There are no positions at present.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.