

108TH CONGRESS  
1ST SESSION

# S. 1562

To amend selected statutes to clarify existing Federal law as to the treatment of students privately educated at home under State law.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 1 (legislative day, JULY 21), 2003

Mr. CRAIG (for himself and Mr. ALLEN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend selected statutes to clarify existing Federal law as to the treatment of students privately educated at home under State law.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Home School Non-  
5       Discrimination Act of 2003”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds as follows:

8               (1) The right of parents to direct the education  
9       of their children is an established principle and  
10       precedent under the United States Constitution.

1           (2) The Congress, the President, and the Su-  
2           preme Court, in exercising their legislative, execu-  
3           tive, and judicial functions, respectively, have repeat-  
4           edly affirmed the rights of parents.

5           (3) Education by parents at home has proven  
6           to be an effective means for young people to achieve  
7           success on standardized tests and to learn valuable  
8           socialization skills.

9           (4) Young people who have been educated at  
10          home are proving themselves to be competent citi-  
11          zens in post-secondary education and the workplace.

12          (5) The rise of private home education has con-  
13          tributed positively to the education of young people  
14          in the United States.

15          (6) Several laws, written before and during the  
16          rise of private home education, are in need of clari-  
17          fication as to their treatment of students who are  
18          privately educated at home pursuant to State law.

19          (7) The United States Constitution does not  
20          allow Federal control of homeschooling.

21 **SEC. 3. SENSE OF CONGRESS.**

22          It is the sense of the Congress that—

23               (1) private home education, pursuant to State  
24          law, is a positive contribution to the United States;  
25          and

1           (2) parents who choose this alternative edu-  
 2           cation should be encouraged within the framework  
 3           provided by the Constitution.

4 **SEC. 4. CLARIFICATION OF PROVISIONS ON INSTITU-**  
 5 **TIONAL AND STUDENT ELIGIBILITY UNDER**  
 6 **THE HIGHER EDUCATION ACT OF 1965.**

7           (a) CLARIFICATION OF INSTITUTIONAL ELIGI-  
 8 BILITY.—Section 101(a)(1) of the Higher Education Act  
 9 of 1965 (20 U.S.C. 1001(a)(1)) is amended by inserting  
 10 “meeting the requirements of section 484(d)(3) or” after  
 11 “only persons” .

12           (b) CLARIFICATION OF STUDENT ELIGIBILITY.—Sec-  
 13 tion 484(d) of the Higher Education Act of 1965 (20  
 14 U.S.C. 1091(d)) is amended by striking the heading  
 15 “STUDENTS WHO ARE NOT HIGH SCHOOL GRADUATES”  
 16 and inserting “SATISFACTION OF SECONDARY EDUCATION  
 17 STANDARDS”.

18 **SEC. 5. CLARIFICATION OF THE CHILD FIND PROCESS**  
 19 **UNDER THE INDIVIDUALS WITH DISABIL-**  
 20 **ITIES EDUCATION ACT.**

21           Section 614(a)(1) of the Individuals with Disabilities  
 22 Education Act (20 U.S.C. 1414(a)(1)) is amended by add-  
 23 ing at the end the following:

24                           “(D) EFFECT OF ABSENCE OF CONSENT  
 25                           ON AGENCY OBLIGATIONS.—In any case for

1 which there is an absence of consent for an ini-  
 2 tial evaluation under this paragraph or for spe-  
 3 cial education or related services to a child with  
 4 a disability under this part—

5 “(i) the local educational agency shall  
 6 not be required to convene an IEP meeting  
 7 or develop an IEP under this section for  
 8 the child; and

9 “(ii) the local educational agency shall  
 10 not be considered to be in violation of any  
 11 requirement under this part (including the  
 12 requirement to make available a free ap-  
 13 propriate public education to the child)  
 14 with respect to the lack of an initial eval-  
 15 uation of the child, an IEP meeting with  
 16 respect to the child, or the development of  
 17 an IEP under this section for the child.”.

18 **SEC. 6. CLARIFICATION OF THE COVERDELL EDUCATION**  
 19 **SAVINGS ACCOUNT AS TO ITS APPLICABILITY**  
 20 **FOR EXPENSES ASSOCIATED WITH STUDENTS**  
 21 **PRIVATELY EDUCATED AT HOME UNDER**  
 22 **STATE LAW.**

23 (a) IN GENERAL.—Paragraph (4) of section 530(b)  
 24 of the Internal Revenue Code of 1986 (relating to quali-  
 25 fied elementary and secondary education expenses) is

1 amended by adding at the end the following new subpara-  
 2 graph:

3           “(C) SPECIAL RULE FOR HOME  
 4 SCHOOLS.—For purposes of clauses (i) and (iii)  
 5 of subparagraph (A), the terms ‘public, private,  
 6 or religious school’ and ‘school’ shall include  
 7 any home school which provides elementary or  
 8 secondary education if such school is treated as  
 9 a home school or private school under State  
 10 law.”.

11       (b) EFFECTIVE DATE.—The amendment made by  
 12 subsection (a) shall apply to taxable years beginning after  
 13 the date of the enactment of this Act.

14 **SEC. 7. CLARIFICATION OF SECTION 444 OF THE GENERAL**  
 15 **EDUCATION PROVISIONS ACT AS TO PUB-**  
 16 **LICLY HELD RECORDS OF STUDENTS PRI-**  
 17 **VATELY EDUCATED AT HOME UNDER STATE**  
 18 **LAW.**

19       Section 444 of the General Education Provisions Act  
 20 (20 U.S.C. 1232g; also referred to as the Family Edu-  
 21 cational Rights and Privacy Act of 1974) is amended—

22           (1) in subsection (a)(5), by adding at the end  
 23 the following:

24       “(C) For students in non-public education (including  
 25 any student educated at home or in a private school in

1 accordance with State law), directory information may not  
 2 be released without the written consent of the parents of  
 3 such student.”;

4           (2) in subsection (a)(6), by striking “, but does  
 5 not include a person who has not been in attendance  
 6 at such agency or institution.” and inserting “, in-  
 7 cluding any non-public school student (including any  
 8 student educated at home or in a private school as  
 9 provided under State law). This paragraph shall not  
 10 be construed as requiring an educational agency or  
 11 institution to maintain education records or person-  
 12 ally identifiable information for any non-public  
 13 school student.”; and

14           (3) in subsection (b)(1), by striking subpara-  
 15 graph (F) and inserting the following:

16           “(F) organizations conducting studies for,  
 17 or on behalf of, educational agencies or institu-  
 18 tions for the purpose of developing, validating,  
 19 or administering predictive tests, administering  
 20 student aid programs, and improving instruc-  
 21 tion, provided—

22           “(i) such studies are conducted in  
 23 such a manner as will not permit the per-  
 24 sonal identification of students and their  
 25 parents by persons other than representa-

1           tives of such organizations and such infor-  
 2           mation will be destroyed when no longer  
 3           needed for the purpose for which it is con-  
 4           ducted; and

5                   “(ii) for students in non-public edu-  
 6           cation, education records or personally  
 7           identifiable information may not be re-  
 8           leased without the written consent of the  
 9           parents of such student.”.

10 **SEC. 8. CLARIFICATION OF ELIGIBILITY FOR STUDENTS**  
 11 **PRIVATELY EDUCATED AT HOME UNDER**  
 12 **STATE LAW FOR THE ROBERT C. BYRD HON-**  
 13 **ORS SCHOLARSHIP PROGRAM.**

14       Section 419F(a) of the Higher Education Act of  
 15 1965 (20 U.S.C. §1070d–36(a)) is amended by inserting  
 16 “(or a home school, whether treated as a home school or  
 17 a private school under State law)” after “public or private  
 18 secondary school”.

19 **SEC. 9. CLARIFICATION OF THE FAIR LABOR STANDARDS**  
 20 **ACT AS APPLIED TO STUDENTS PRIVATELY**  
 21 **EDUCATED AT HOME UNDER STATE LAW.**

22       Subsection (l) of section 3 of the Fair Labor Stand-  
 23 ards Act of 1938 (29 U.S.C. 203) is amended by adding  
 24 at the end the following: “The Secretary shall extend the  
 25 hours and periods of permissible employment applicable

1 to employees between the ages of fourteen and sixteen  
2 years who are privately educated at a home school (wheth-  
3 er the home school is treated as a home school or a private  
4 school under State Law) beyond such hours and periods  
5 applicable to employees between the ages of fourteen and  
6 sixteen years who are educated in traditional public  
7 schools.”.

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