

109TH CONGRESS  
1ST SESSION

# H. R. 3753

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 HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 2005

Mrs. MUSGRAVE (for herself, Mr. BOEHNER, Mr. ADERHOLT, Mr. AKIN, Mr. BARTLETT of Maryland, Mrs. BLACKBURN, Mr. BRADY of Texas, Mr. BURGESS, Mr. BURTON of Indiana, Mr. CHOCOLA, Mrs. JO ANN DAVIS of Virginia, Mr. DOOLITTLE, Mr. FEENEY, Mr. FLAKE, Ms. FOXX, Mr. FRANKS of Arizona, Mr. GINGREY, Mr. GOODE, Mr. GREEN of Wisconsin, Mr. HAYES, Mr. HAYWORTH, Mr. HOEKSTRA, Mr. HOSTETTLER, Mr. HYDE, Mr. INGLIS of South Carolina, Mr. ISTOOK, Mr. SAM JOHNSON of Texas, Mr. JONES of North Carolina, Mr. KENNEDY of Minnesota, Mr. KING of Iowa, Mr. LAHOOD, Mr. MCCAUL of Texas, Mr. MCCOTTER, Mr. MILLER of Florida, Mrs. MYRICK, Mr. NORWOOD, Mr. NUSSLE, Mr. OTTER, Mr. PAUL, Mr. PENCE, Mr. PITTS, Mr. PLATTS, Mr. RENZI, Mr. ROGERS of Alabama, Mr. RYUN of Kansas, Mr. SHIMKUS, Mr. SIMPSON, Mr. SOUDER, Mr. SULLIVAN, Mr. TANCREDO, Mr. TERRY, Mr. TIAHRT, Mr. WAMP, and Mr. WOLF) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Ways and Means and Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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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 2005”.

6 **SEC. 2. FINDINGS.**

7        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.

11           (2) Congress, the President, and the Supreme  
12           Court, in exercising their legislative, executive, and  
13           judicial functions, respectively, have repeatedly af-  
14           firmed the rights of parents.

15           (3) Education by parents at home has proven  
16           to be an effective means for young people to achieve  
17           success on standardized tests and to learn valuable  
18           socialization skills.

19           (4) Young people who have been educated at  
20           home are proving themselves to be competent citi-  
21           zens in postsecondary education and the workplace.

22           (5) The rise of private home education has con-  
23           tributed positively to the education of young people  
24           in the United States.

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

5           (7) The United States Constitution does not  
6           allow Federal control of homeschooling.

7   **SEC. 3. SENSE OF CONGRESS.**

8           It is the sense of Congress that—

9           (1) private home education, pursuant to State  
10          law, is a positive contribution to the United States;  
11          and

12          (2) parents who choose this alternative edu-  
13          cation should be encouraged within the framework  
14          provided by the United States Constitution.

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

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

23          (b) CLARIFICATION OF STUDENT ELIGIBILITY.—Sec-  
24          tion 484(d) of the Higher Education Act of 1965 (20  
25          U.S.C. 1091(d)) is amended by striking the heading and

1 inserting “SATISFACTION OF SECONDARY EDUCATION  
2 STANDARDS”.

3 **SEC. 5. CLARIFICATION OF ABSENCE OF CONSENT FOR INI-**  
4 **TIAL EVALUATION UNDER THE INDIVIDUALS**  
5 **WITH DISABILITIES EDUCATION ACT.**

6 Section 614(a)(1)(D)(ii)(I) of the Individuals with  
7 Disabilities Education Act (20 U.S.C.  
8 1414(a)(1)(D)(ii)(I)) is amended to read as follows:

9 “(I) FOR INITIAL EVALUATION.—

10 A local educational agency may pur-  
11 sue the initial evaluation of a child by  
12 utilizing the procedures described in  
13 section 615, except to the extent in-  
14 consistent with State law relating to  
15 parental consent for an initial evalua-  
16 tion under clause (i)(I), only if the  
17 child is enrolled in public school or is  
18 seeking to be enrolled in public  
19 school.”.

1 **SEC. 6. CLARIFICATION OF THE COVERDELL EDUCATION**  
2 **SAVINGS ACCOUNT AS TO ITS APPLICABILITY**  
3 **FOR EXPENSES ASSOCIATED WITH STUDENTS**  
4 **PRIVATELY EDUCATED AT HOME UNDER**  
5 **STATE LAW.**

6 (a) **IN GENERAL.**—Paragraph (4) of section 530(b)  
7 of the Internal Revenue Code of 1986 (relating to quali-  
8 fied elementary and secondary education expenses) is  
9 amended by adding at the end the following new subpara-  
10 graph:

11 “(C) **SPECIAL RULE FOR HOME**  
12 **SCHOOLS.**—For purposes of clauses (i) and (iii)  
13 of subparagraph (A), the terms ‘public, private,  
14 or religious school’ and ‘school’ shall include  
15 any home school which provides elementary or  
16 secondary education if such school is treated as  
17 a home school or private school under State  
18 law.”.

19 (b) **EFFECTIVE DATE.**—The amendment made by  
20 subsection (a) shall apply to taxable years beginning after  
21 the date of the enactment of this Act.

1 **SEC. 7. CLARIFICATION OF SECTION 444 OF THE GENERAL**  
2 **EDUCATION PROVISIONS ACT AS TO PUB-**  
3 **LICLY HELD RECORDS OF STUDENTS PRI-**  
4 **VATELY EDUCATED AT HOME UNDER STATE**  
5 **LAW.**

6 Section 444 of the General Education Provisions Act  
7 (20 U.S.C. 1232g; also referred to as the Family Edu-  
8 cational Rights and Privacy Act of 1974) is amended—

9 (1) in subsection (a)(5), by adding at the end  
10 the following:

11 “(C) For students in non-public education (including  
12 any student educated at home or in a private school in  
13 accordance with State law), directory information may not  
14 be released without the written consent of the parents of  
15 such student.”;

16 (2) in subsection (a)(6), by striking “, but does  
17 not include a person who has not been in attendance  
18 at such agency or institution.” and inserting “, in-  
19 cluding any non-public school student (including any  
20 student educated at home or in a private school as  
21 provided under State law). This paragraph shall not  
22 be construed as requiring an educational agency or  
23 institution to maintain education records or person-  
24 ally identifiable information for any non-public  
25 school student.”; and

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

3           “(F) organizations conducting studies for,  
4 or on behalf of, educational agencies or institu-  
5 tions for the purpose of developing, validating,  
6 or administering predictive tests, administering  
7 student aid programs, and improving instruc-  
8 tion, if—

9           “(i) such studies are conducted in  
10 such a manner as will not permit the per-  
11 sonal identification of students and their  
12 parents by persons other than representa-  
13 tives of such organizations and such infor-  
14 mation will be destroyed when no longer  
15 needed for the purpose for which it is con-  
16 ducted; and

17           “(ii) for students in non-public edu-  
18 cation, education records or personally  
19 identifiable information may not be re-  
20 leased without the written consent of the  
21 parents of such student.”.

1 **SEC. 8. CLARIFICATION OF ELIGIBILITY FOR STUDENTS**  
2 **PRIVATELY EDUCATED AT HOME UNDER**  
3 **STATE LAW FOR THE ROBERT C. BYRD HON-**  
4 **ORS SCHOLARSHIP PROGRAM.**

5 Section 419F(a) of the Higher Education Act of  
6 1965 (20 U.S.C. 1070d–36(a)) is amended by inserting  
7 “(or a home school, whether treated as a home school or  
8 a private school under State law)” after “public or private  
9 secondary school”.

10 **SEC. 9. CLARIFICATION OF THE FAIR LABOR STANDARDS**  
11 **ACT AS APPLIED TO STUDENTS PRIVATELY**  
12 **EDUCATED AT HOME UNDER STATE LAW.**

13 Section 3(l) of the Fair Labor Standards Act of 1938  
14 (29 U.S.C. 203(l)) is amended by adding at the end the  
15 following: “The Secretary shall extend the hours and peri-  
16 ods of permissible employment applicable to employees be-  
17 tween the ages of 14 and 16 years of age who are privately  
18 educated at a home school (whether the home school is  
19 treated as a home school or a private school under State  
20 law) beyond such hours and periods applicable to employ-  
21 ees between the ages of 14 and 16 years of age who are  
22 educated in traditional public schools.”.

1 **SEC. 10. RECRUITMENT AND ENLISTMENT OF HOME-**  
2 **SCHOOLED STUDENTS IN THE ARMED**  
3 **FORCES.**

4 (a) HOME-SCHOOLED STUDENTS.—Chapter 31 of  
5 title 10, United States Code, is amended by inserting after  
6 section 503 the following new section:

7 **“§ 503a. Recruitment and enlistment of home-**  
8 **schooled students**

9 “(a) POLICY ON RECRUITMENT AND ENLISTMENT.—  
10 The Secretary concerned shall prescribe a policy for the  
11 recruitment and enlistment of home-schooled students.  
12 The Secretary of Defense shall ensure that the policies pre-  
13 scribed under this section apply, to the extent practicable,  
14 uniformly across the armed forces

15 “(b) ELEMENTS.—The policy prescribed by the Sec-  
16 retary concerned under subsection (a) shall include the fol-  
17 lowing:

18 “(1) Identification of qualified graduates of  
19 home schooling for purposes of recruitment and en-  
20 listment in the armed forces that is in accordance  
21 with the requirements described in subsection (c).

22 “(2) Provision for the treatment, within the De-  
23 partment of Defense classification system of edu-  
24 cational credentials for recruitment purposes, of  
25 graduates of home schooling within the same tier

1 status as regular high school graduates, with no  
2 practical limit with regard to enlistment.

3 “(3) Exemption of graduates of home schooling  
4 from any requirement for a secondary school di-  
5 ploma or a General Education Development (GED)  
6 certificate of high school equivalency as a pre-  
7 condition for enlistment in the armed forces.

8 “(c) QUALIFIED HOME-SCHOOL GRADUATES.—In  
9 identifying a graduate of home schooling for purposes of  
10 subsection (b), the Secretary concerned shall ensure that  
11 the graduate meets each of the following requirements:

12 “(1) The graduate has taken the Armed Forces  
13 Qualification Test and scored at the 50th percentile  
14 or above.

15 “(2) The graduate has provided the Secretary  
16 concerned with—

17 “(A) a signed home-school notice of intent  
18 form that conforms with the State law of the  
19 State where the graduate resided when the  
20 graduate was in home school; or

21 “(B) a home-school certificate or diploma  
22 from the parent or guardian of the graduate or  
23 a national curriculum provider.

1           “(3) The graduate has provided the Secretary  
2 concerned with a copy of the graduate’s transcript  
3 for all secondary school grades completed which—

4                   “(A) includes the enrollment date, gradua-  
5 tion date, and type of curriculum; and

6                   “(B) reflects successful completion of the  
7 last full academic year of schooling from the  
8 home-school national curriculum provider, par-  
9 ent, or guardian issuing the home-school certifi-  
10 cate or diploma or home-school notice of intent  
11 form.

12           “(4) The home-school curriculum used by the  
13 graduate involved parental instruction and super-  
14 vision and closely patterned the normal credit hours  
15 per subject as used in a traditional secondary school.

16           “(5) The graduate has provided the Secretary  
17 concerned with a third-party verification letter of the  
18 graduate’s home-school status by the Home School  
19 Legal Defense Association or a State or county  
20 home-school association or organization.”.

21           (b) CLERICAL AMENDMENT.—The table of sections  
22 at the beginning of such chapter is amended by inserting  
23 after the item relating to section 503 the following new  
24 item:

“503a. Recruitment and enlistment of home-schooled students.”.

