

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4397**

BY DELEGATES DEEM, KELLY, AZINGER, BORDER AND

ANDERSON

[Introduced February 4, 2016; Referred  
to the Committee on Health and Human Resources then  
the Judiciary.]

1 A BILL to amend and reenact §49-2-113 of the Code of West Virginia, 1931, as amended, relating  
 2 to exempting certain child care facilities from licensure, certification, approval and  
 3 registration requirements.

*Be it enacted by the Legislature of West Virginia:*

1 That §49-2-113 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted to read as follows:

**ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.**

**§49-2-113. Residential child care centers; licensure, certification, approval and registration; requirements.**

1 (a) Any person, corporation or child welfare agency, other than a state agency, which  
 2 operates a residential child care center shall obtain a license from the department.

3 (b) Any residential child care facility, day care center or any child-placing agency operated  
 4 by the state shall obtain approval of its operations from the secretary.

5 (c) Any family day care facility which operates in this state, including family day care  
 6 facilities approved by the department for receipt of funding, shall obtain a statement of certification  
 7 from the department.

8 (d) Every family day care home which operates in this state, including family day care  
 9 homes approved by the department for receipt of funding, shall obtain a certificate of registration  
 10 from the department. The facilities and placing agencies shall maintain the same standards of  
 11 care applicable to licensed facilities, centers or placing agencies of the same category.

12 (e) This section does not apply to:

13 (1) A kindergarten, preschool or school education program which is operated by a public  
 14 school or which is accredited by the State Department of Education, or any other kindergarten,  
 15 preschool or school programs which operate with sessions not exceeding four hours per day for  
 16 any child;

17 (2) An individual or facility which offers occasional care of children for brief periods while

18 parents are shopping, engaging in recreational activities, attending religious services or engaging  
19 in other business or personal affairs;

20 (3) Summer recreation camps operated for children attending sessions for periods not  
21 exceeding thirty days;

22 (4) Hospitals or other medical facilities which are primarily used for temporary residential  
23 care of children for treatment, convalescence or testing;

24 (5) Persons providing family day care solely for children related to them;

25 (6) Any juvenile detention facility or juvenile correctional facility operated by or under  
26 contract with the Division of Juvenile Services for the secure housing or holding of juveniles  
27 committed to its custody;

28 (7) Any out-of-school time program that has been awarded a grant by the West Virginia  
29 Department of Education to provide out-of-school time programs to kindergarten through twelfth  
30 grade students when the program is monitored by the West Virginia Department of Education; or

31 (8) Any ~~out-of-school time program~~ child care service serving children six years of age or  
32 older and which meets all of the following requirements, or is ~~an out-of-school time program a~~  
33 child care service that is affiliated and in good standing with a national congressionally chartered  
34 organization and meets all of the following requirements:

35 (A) The program is located in a facility that meets all fire and health codes;

36 (B) The program performs background checks on all volunteers and staff;

37 (C) The program's primary source of funding is not from fees for service; ~~and~~

38 (D) The program has a formalized monitoring system in place; and

39 (E) The program is a child care service which offers activities to children before and after  
40 school, on school holidays, when school is closed due to emergencies, on school calendar days  
41 set aside for teacher activities, and when schools are closed during summer breaks.

42 (f) The secretary is authorized to issue an emergency rule relating to conducting a survey  
43 of existing facilities in this state in which children reside on a temporary basis in order to ascertain

44 whether they should be subject to licensing under this article or applicable licensing provisions  
45 relating to behavioral health treatment providers.

46 (g) Any informal family child care home or relative family child care home may voluntarily  
47 register and obtain a certificate of registration from the department.

48 (h) All facilities or programs that provide out-of-school time care shall register with the  
49 department upon commencement of operations and on an annual basis thereafter. The  
50 department shall obtain information, such as the name of the facility or program, the description  
51 of the services provided and any other information relevant to the determination by the department  
52 as to whether the facility or program meets the criteria for exemption under this section.

53 (i) Any child care service that is licensed or receives a certificate of registration shall have  
54 a written plan for evacuation in the event of fire, natural disaster or other threatening situation that  
55 may pose a health or safety hazard to the children in the child care service.

56 (1) The plan shall include, but not be limited to:

57 (A) A designated relocation site and evacuation;

58 (B) Procedures for notifying parents of the relocation and ensuring family reunification;

59 (C) Procedures to address the needs of individual children including children with special  
60 needs;

61 (D) Instructions relating to the training of staff or the reassignment of staff duties, as  
62 appropriate;

63 (E) Coordination with local emergency management officials; and

64 (F) A program to ensure that appropriate staff are familiar with the components of the plan.

65 (2) A child care service shall update the evacuation plan by December 31, of each year.

66 If a child care service fails to update the plan, no action shall be taken against the child care  
67 service's license or registration until notice is provided and the child care service is given thirty  
68 days after the receipt of notice to provide an updated plan.

69 (3) A child care service shall retain an updated copy of the plan for evacuation and shall

70 provide notice of the plan and notification that a copy of the plan will be provided upon request to  
71 any parent, custodian or guardian of each child at the time of the child's enrollment in the child  
72 care service and when the plan is updated.

73 (4) All child care centers and family child care facilities shall provide the plan and each  
74 updated copy of the plan to the Director of the Office of Emergency Services in the county where  
75 the center or facility is located.

NOTE: The purpose of this bill is to exempt certain child care service programs from licensure, certification, approval and registration requirements.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.