

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2939**

BY DELEGATES ESPINOSA, BARRETT, HARDY, HORST,

REED, MILLER, CLARK, FORSHT AND HOUSEHOLDER

[Introduced March 05, 2021; Referred to the  
Committee on Education]

1 A BILL to amend and reenact §49-1-113 of the Code of West Virginia, 1931, as amended, relating  
2 to clarifying “out-of-school” time programs.

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

**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 30 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 Corrections and Rehabilitation for the secure housing or holding of  
27 juveniles 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 12th  
30 grade students when the program is monitored by the West Virginia Department of Education; or

31 (8) Any out-of-school time program serving children six years of age or older and meets  
32 all of the following requirements, or is an out-of-school time program that is affiliated and in good  
33 standing with a national congressionally chartered organization or is an out-of-school time,  
34 summer recreation camp or day camp program operated by a county parks and recreation  
35 commission, boards and municipalities and meets all of the following requirements:

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

37 (B) The program performs state and federal background checks on all volunteers and staff;

38 (C) The programs' primary source of funding is not from fees for service except for  
39 programs operated by county parks and recreation commissions, boards and municipalities; and

40 (D) The program has a formalized monitoring system in place.

41 (f) The secretary is authorized to issue an emergency rule relating to conducting a survey  
42 of existing facilities in this state in which children reside on a temporary basis in order to ascertain  
43 whether they should be subject to licensing under this article or applicable licensing provisions  
44 relating to behavioral health treatment providers.

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

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

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

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

58 (A) A designated relocation site and evacuation;

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

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

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

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

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

66 (2) A child-care service shall update the evacuation plan by December 31 of each year. If  
67 a child-care service fails to update the plan, no action shall be taken against the child-care  
68 services license or registration until notice is provided and the child-care service is given 30 days  
69 after the receipt of notice to provide an updated plan.

70 (3) A child-care service shall retain an updated copy of the plan for evacuation and shall  
71 provide notice of the plan and notification that a copy of the plan will be provided upon request to  
72 any parent, custodian or guardian of each child at the time of the child's enrollment in the child-

73 care service and when the plan is updated.

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

77 (j) A residential child care center which has entered into a contract with the department to  
78 provide services to a certain number of foster children, shall accept any foster child who meets  
79 the residential child care center's program criteria, if the residential child care center has not met  
80 its maximum capacity as provided for in the contract. Any residential child-care center who has  
81 entered into a contract with the department may not discharge any child in its program, except as  
82 provided in the contract, including that if the youth does not meet the residential treatment level  
83 and target population, the provider shall request a MDT and work toward an alternative  
84 placement.

NOTE: The purpose of this bill is to clarify "out-of-school" time programs.

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