

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Enrolled

Senate Bill 89

BY SENATORS ROBERTS AND RUCKER

[Passed March 18, 2021; in effect 90 days from passage

(June 16, 2021)]

1 AN ACT to amend and reenact §49-2-113 of the Code of West Virginia, 1931, as amended,
2 relating to exempting from licensure requirements certain education programs operated
3 by private schools with accredited preschool classes and certain recognition by
4 Department of Education; adding language clarifying what programs operated by county
5 parks and recreation departments are exempt from licensure requirements; and
6 exempting certain school programs operated under 42 USC §9801 *et seq.*, the federal
7 Head Start Program, from licensure requirements.

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
4 operated 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 West Virginia Department of Education or any other

15 kindergarten, preschool, or school programs which operate with sessions not exceeding four
16 hours per day for 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 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 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 program's primary source of funding is not from fees for service except for
39 programs operated by county parks and recreation commissions, boards, and municipalities;

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

41 (9) Any kindergarten, preschool, or school education program which is operated by a
42 private, parochial, or church school that is recognized by the West Virginia Department of
43 Education under Policy 2330.

44 (10) Any school education program which is operated by a grantee under 42 U.S.C. §
45 9801 *et seq.*, the federal Head Start Program: *Provided*, That these programs are required to
46 continue to perform criminal background checks on all employees in accordance with federal
47 requirements.

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

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

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

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

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

64 (A) A designated relocation site and evacuation;

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

66 (C) Procedures to address the needs of individual children including children with special
67 needs;

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

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

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

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

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2021.

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Governor