

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Second Enrolled**

**Senate Bill 89**

BY SENATORS ROBERTS AND RUCKER

[Repassed April 5, 2021; in effect 90 days from passage

(July 4, 2021)]



1 AN ACT to amend and reenact §49-2-113 of the Code of West Virginia, 1931, as amended,  
2 relating to clarifying what programs operated by a county parks and recreation  
3 commission, boards, and municipalities can be exempt from licensure requirements; and  
4 exempting from licensure requirements certain education programs operated by nonpublic  
5 schools recognized as accredited by the West Virginia Department of Education.

*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 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;

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; and

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

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

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

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

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

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

60 (A) A designated relocation site and evacuation;

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

62 (C) Procedures to address the needs of individual children including children with special  
63 needs;

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

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

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

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

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

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

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

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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The within ..... this the.....  
Day of ....., 2021.

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*Governor*