

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

Introduced

### Senate Bill 645

FISCAL  
NOTE

BY SENATORS KARNES, MAYNARD, PHILLIPS, AND

HAMILTON

[Introduced February 15, 2022; referred  
to the Committee on Education; and then to the  
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §18-20A-1, §18-20A-2, §18-20A-3, §18-20A-4, §18-20A-5, §18-20A-6, §18-  
3 20A-7, §18-20A-8, §18-20A-9, §18-20A-10, §18-20A-11, §18-20A-12, §18-20A-13, §18-  
4 20A-14, and §18-20A-15, all relating to regulating schools for students with disabilities;  
5 defining terms; limiting application of new article; requiring promulgation of rules for the  
6 management and operation of schools for students with disabilities; prohibiting the  
7 opening, operating, or conducting of any school for students with disabilities without a  
8 license; allowing the state superintendent or his or her authorized agents to make  
9 unannounced inspections of each school for students with disabilities each year; allowing  
10 issuance of provisional or conditional license or certificate in certain instances; requiring  
11 state superintendent to cooperate with other state agencies in fulfilling their respective  
12 licensing and certification responsibilities regarding educational programs offered in group  
13 homes and residential facilities; requiring state board rules authorizing the assistance to  
14 and cooperation with other state agencies for this purpose; requiring application for a  
15 license to be filed with the state superintendent; requiring each school to submit and  
16 maintain a guaranty instrument payable to the State of West Virginia and conditioned to  
17 protect the contractual rights of students and other contracting parties; specifying  
18 commitments that each application must contain; limiting disability categories served to  
19 those on license; allowing state superintendent to establish fees and the methods for  
20 collecting fees for schools; requiring the license of each school to be renewed on or before  
21 the anniversary date set by the state superintendent; specifying causes for which the state  
22 superintendent may refuse to issue or renew a license or may revoke or suspend a license;  
23 allowing the state superintendent to issue a summary order of suspension of the license  
24 of a residential or day school for students with disabilities under certain conditions;  
25 providing that the willful and material failure to comply with the summary order of  
26 suspension or final order of summary suspension is a misdemeanor punishable by fine

27 and confinement; providing for the state superintendent or his or her authorized agents,  
 28 under certain conditions, to investigate the actions of any applicant for or any person or  
 29 persons holding or claiming to hold a license to operate a school for students with  
 30 disabilities; providing that any person who opens, operates, or conducts any school for  
 31 students with disabilities without a license is guilty of a misdemeanor and subject to fine  
 32 and confinement; and requiring the state superintendent to maintain a list of schools for  
 33 students with disabilities holding valid licenses that must be available to the public.

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

**ARTICLE 20A. SCHOOLS FOR STUDENTS WITH DISABILITIES.**

**§18-20A-1. Definitions.**

1 As used in this chapter unless the context requires a different meaning:

2 “Person” means any individual, group of individuals, partnership, association, business  
3 trust, corporation, or other business entity.

4 “School for students with disabilities” or “school” or “schools” means a privately owned  
 5 and operated preschool, school, or educational organization, no matter how titled, maintained or  
 6 conducting classes for the purpose of offering instruction for a consideration, profit, or tuition to  
 7 persons determined to have autism, deaf-blindness, a developmental delay, hearing loss  
 8 including deafness, intellectual disability, multiple disabilities, an orthopedic impairment, other  
 9 health impairment, an emotional disturbance, a severe disability, a specific learning disability, a  
 10 speech or language impairment, a traumatic brain injury, or a visual impairment including  
 11 blindness.

**§18-20A-2. Application.**

1 This article shall only apply to schools for students with disabilities as defined in §18-20A-  
2 1 of this code.

**§18-20A-3. Rules.**

1 The state board shall promulgate rules pursuant to §29A-3B-1 et seq. of this code for the

2 management and operation of schools for students with disabilities. The rules may include  
3 standards for programs offered by the schools. The board shall authorize the state superintendent  
4 to issue licenses to operate schools.

**§18-20A-4. Licenses generally.**

1 (a) No person shall open, operate, or conduct any school for students with disabilities in  
2 this state without a license to operate the school issued by the state superintendent. A license  
3 shall be issued for a school if it is in compliance with the rules of the state board promulgated  
4 pursuant to this article, any fee for such license has been paid, and its facilities are approved by  
5 the state superintendent after an inspection by the state superintendent or his or her authorized  
6 agents. No license shall be transferable. The license shall be prominently displayed on the  
7 premises of the school in a place open for inspection by any interested person during the hours  
8 of operation.

9 (b) Any license issued to a residential school for students with disabilities, except a  
10 provisional or conditional license issued pursuant to §18-20A-5 of this code, may, upon written  
11 notification to the school, expire on a date subsequent to its stated expiration date and determined  
12 at the discretion of the state superintendent, but in no case later than three years from the effective  
13 date of the license. Licenses issued to residential schools for students with disabilities may be  
14 issued for periods of up to three successive years. Licenses may be issued to private day special  
15 education schools for periods of up to three successive years.

16 (c) The state superintendent or his or her authorized agents may make unannounced  
17 inspections of each school for students with disabilities each year.

**§18-20A-5. Provisional and conditional licenses.**

1 (a) Upon completion of the investigation for renewal of a license or certificate, the state  
2 superintendent may issue a provisional license or certificate to any residential school for students  
3 with disabilities if the school is temporarily unable to comply with all of the requirements of this  
4 article and state board rules promulgated pursuant to this article. A provisional license or

5 certificate may be renewed, but the issuance of a provisional license or certificate and any renewal  
6 thereof shall be for no longer a period than six successive months.

7 (b) At the discretion of the state superintendent, a conditional license or certificate may be  
8 issued to operate a new residential school for students with disabilities in order to permit the  
9 school to demonstrate compliance with all of the requirements of this article. A conditional license  
10 or certificate may be renewed, but the issuance of a conditional license or certificate and any  
11 renewals thereof shall be for no longer a period than six successive months.

**§18-20A-6. Licensure of services delivered in group homes and residential facilities for children.**

1 (a) The state superintendent shall cooperate with other state agencies in fulfilling their  
2 respective licensing and certification responsibilities regarding educational programs offered in  
3 group homes and residential facilities in the state. The state board shall promulgate rules pursuant  
4 to §29A-3B-1 et seq. of this code authorizing the assistance to and cooperation with other state  
5 agencies for this purpose.

6 (b) The state board's rules shall address the educational services required to be provided  
7 in such group homes and residential facilities as it may consider appropriate to ensure the  
8 education and safety of the students.

**§18-20A-7. Application for license; information required; student guaranty provisions.**

1 (a) To obtain a license to operate a school, an application, certified as true and correct,  
2 shall be filed with the state superintendent upon forms prepared and furnished by him or her  
3 setting forth information deemed necessary by the state superintendent.

4 (b) Each school shall submit and maintain a guaranty instrument payable to the State of  
5 West Virginia and conditioned to protect the contractual rights of students and other contracting  
6 parties. The amount of the bond shall be established in the state board's rules. The minimum  
7 guaranty instrument for any school shall be \$1,000. The word "students" as used in this subsection  
8 means all enrolled students.

**§18-20A-8. Application to contain certain commitments.**

1 Each application for a license to operate a school shall contain the following commitments:

2 (1) To conduct the school in accordance with all applicable rules of the state board;

3 (2) To permit the state superintendent or his or her authorized agents to inspect the school

4 or classes being conducted therein at any time and to make available to the state superintendent,

5 when requested to do so, all information pertaining to the activities of the school required for the

6 administration of this article, including its financial condition;

7 (3) To advertise the school at all times in a form and manner that will be free from

8 misrepresentation, deception, or fraud and to conform to rules of the state board governing such

9 advertising;

10 (4) To see that all representations made by an agent of the school shall be free from

11 misrepresentation, deception, or fraud and shall conform to rules of the state board governing

12 such misrepresentations;

13 (5) To display the current license prominently where it may be inspected by students,

14 visitors and the state superintendent and his or her authorized agents; and

15 (6) To maintain all premises, equipment and facilities of the school in an adequate, safe

16 and sanitary condition.

**§18-20A-9. License restricted to specific disability categories; supplementary application.**

1 A school may offer education programs serving the disability categories specifically

2 indicated on its license only. A supplementary application for additional programs of instruction or

3 disability categories may be submitted in such form as the state superintendent may prescribe.

**§18-20A-10. Fees.**

1 The state superintendent may establish fees and the methods for collecting such fees for

2 schools as he or she deems necessary to carry out the provisions of this article. All fees shall be

3 nonrefundable.

**§18-20A-11. Renewal of licenses.**

1       The license of each school that continues to operate as such shall be renewed on or  
2 before the anniversary date set by the state superintendent. Every license that has not been  
3 renewed in accordance with these provisions shall expire and a new license shall be obtained  
4 from the state superintendent before such school may continue to operate, for which an original  
5 application must be submitted. The application shall be accompanied by such information deemed  
6 necessary by the state superintendent.

**§18-20A-12. Denial, revocation, or suspension of license; grounds; summary suspension**  
**under certain circumstances; penalty.**

1       (a) The state superintendent may refuse to issue or renew a license or may revoke or  
2 suspend the license of any school issued pursuant to this chapter for the following causes:

3       (1) Violation of any provision of this article or any rule of the state board;

4       (2) Furnishing false, misleading, or incomplete information to the state superintendent or  
5 his or her authorized agents or failure to furnish any information requested by the state  
6 superintendent;

7       (3) Violation of any commitment made in an application for a license;

8       (4) Presenting, either by the school or by any agent of the school, to prospective students  
9 information relating to the school which is false, misleading, or fraudulent;

10       (5) Failing to provide or maintain premises or equipment in a safe and sanitary condition  
11 as required by law;

12       (6) Making any false promises through agents or by advertising or otherwise of a character  
13 likely to influence, persuade or induce enrollments;

14       (7) Paying commission or valuable consideration to any person for any act of service  
15 performed in willful violation of this article;

16       (8) Failing to maintain financial resources adequate for the satisfactory conduct of courses  
17 of instruction offered or to retain a sufficient or qualified instructional staff;

18       (9) Demonstrating unworthiness or incompetency to conduct the school in a manner

19 calculated to safeguard the interests of the public;

20 (10) Failing within a reasonable time to provide information requested by the state  
21 superintendent as a result of a formal or informal complaint to or by the state superintendent or  
22 his or her authorized agents which would indicate a violation of this article or state board rules  
23 promulgated pursuant to this article;

24 (11) Attempting to use or employ any enrolled students in any commercial activity whereby  
25 the school receives any compensation whatsoever without reasonable remuneration to the  
26 student, except to the extent that employment of students in such activities is necessary or  
27 essential to their training and is permitted and authorized by the state superintendent; or

28 (12) Engaging in or authorizing any other conduct whether of the same or of a different  
29 character from that herein specified which constitutes fraudulent or dishonest dealings.

30 (b) Pursuant to the procedures set forth in subsection (c) of this section and in addition to  
31 the authority for other disciplinary actions provided in this article, the state superintendent may  
32 issue a summary order of suspension of the license of a residential or day school for students  
33 with disabilities, in conjunction with any proceeding for revocation, denial, or other action, when  
34 conditions or practices exist in the school that pose an immediate and substantial threat to the  
35 health, safety, and welfare of the students who are residing or attending the school and the state  
36 superintendent believes the operation of the school should be suspended during the pendency of  
37 such proceeding.

38 (c) The summary order of suspension shall take effect upon its issuance and shall be  
39 served on the licensee or its designee as soon as practicable thereafter by personal service and  
40 certified mail, return receipt requested, to the address of record of the licensee. The order shall  
41 state the time, date, and location of a hearing to determine whether the suspension is appropriate.  
42 Such hearing shall be held no later than three business days after the issuance of the summary  
43 order of suspension and shall be convened by the state superintendent or his or her designee.  
44 After such hearing, the state superintendent may issue a final order of summary suspension or



45 may find that such summary suspension is not warranted by the facts and circumstances  
46 presented. A final order of summary suspension shall include notice that the licensee may appeal  
47 the state superintendent's decision to the appropriate circuit court no later than 10 days following  
48 issuance of the order. The sole issue before the court shall be whether the state superintendent  
49 had reasonable grounds to require the licensee to cease operations during the pendency of the  
50 concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other  
51 proceeding shall not be affected by the outcome of any hearing on the appropriateness of the  
52 summary suspension. Any person who willfully and materially fails to comply with the summary  
53 order of suspension or final order of summary suspension shall be guilty of a misdemeanor and,  
54 upon conviction thereof, shall be fined up to \$1,000, or be confined in jail for not more than six  
55 months, or both fined and confined. The state superintendent may require the cooperation of any  
56 other agency or subdivision of the state in the relocation of students who are residents of a home  
57 or facility whose license has been summarily suspended pursuant to this section and in any other  
58 actions necessary to reduce the risk of further harm to students.

**§18-20A-13. Same; investigation; time within which to correct unsatisfactory conditions.**

1 The state superintendent or his or her authorized agents may, upon his or her own motion,  
2 and shall, upon the verified complaint in writing of any person setting forth facts which, if proved,  
3 would constitute grounds for refusal, suspension, or revocation of a license, investigate the  
4 actions of any applicant for or any person or persons holding or claiming to hold a license to  
5 operate a school. Before refusing to renew, revoking or suspending any license, the state  
6 superintendent may grant such period of time as it deems reasonable to correct any unsatisfactory  
7 condition.

**§18-20A-14. Violations.**

1 Any person who opens, operates, or conducts any school without a license required by  
2 this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined up to  
3 \$1,000, or be confined in jail for not more than six months, or both fined and confined. Each day

4 such person permits the school to be open and operate without such a license shall constitute a  
5 separate offense.

**§18-20A-15. List of schools holding valid licenses.**

1 The state superintendent shall maintain a list of schools holding valid licenses under the  
2 provisions of this article that shall be available for the information of the public.

NOTE: The purpose of this bill is to regulate private schools for students with disabilities.

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