

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

House Bill 4191

By Delegates Fehrenbacher, Hall, Funkhouser, and

Hott

[Originating in the Committee on Finance, February

26, 2026]

1 A BILL amend and reenact §11-21-97, §§11-24-44 and §49-2-121 of the Code of West Virginia,
2 1931, as amended; and to amend the code by adding two new sections, designated §49-2-
3 113a and §49-2-1101, all relating to providing child care generally; tax credits for
4 employers providing child care for employees; defining “employer sponsored child-care
5 facility”; providing a system for the electronic filing of all days of attendance billed by child
6 care providers; requiring emergency rule; subsidizing child care; providing the Department
7 of Human Services with duties and powers; and requiring reports.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-97. Tax credit for employers providing child care for employees.

1 (a) *Definitions.* — As used in this section, the term:

2 (1) “Commissioner” or “Tax Commissioner” are used interchangeably herein and mean the
3 Tax Commissioner of the State of West Virginia, or his or her delegate;

4 (2) “Cost of operation” means reasonable direct operational costs incurred by an employer
5 as a result of providing employer provided or employer sponsored child-care facilities: *Provided,*
6 That the term cost of operation shall exclude the cost of any property that is qualified child-care
7 property.

8 (3) “Department Division” or “Tax Department Division” means the West Virginia State Tax
9 Department Division.

10 (4) “Employer” means any employer upon whom an income tax is imposed by this article.

11 (5) “Employer provided” refers to child care offered on the premises of the employer.

12 (6) “Employer sponsored child-care facility” refers to a third-party licensed child-care
13 services facility whose operational costs are financially supported by one or more employers
14 through direct payments, contracts, or subsidies. An employer sponsored child-care facility may

15 be located anywhere within the state of West Virginia and shall not be subject to proximity or
16 employee usage thresholds.

17 ~~(6)~~ (7) “Premises of the employer” refers to any location within the State of West Virginia
18 and located on the workplace premises of the employer providing the child care or one of the
19 employers providing the child care in the event that the child care property is owned jointly or
20 severally by the taxpayer and one or more unaffiliated employers: *Provided*, That if such
21 workplace premises are impracticable or otherwise unsuitable for the on-site location of such
22 child-care facility, as determined by the commissioner, such facility may be located within a
23 reasonable distance of the premises of the employer.

24 ~~(7)~~ (8) “Qualified child-care property” means all real property, other than land, and tangible
25 personal property purchased or acquired on or after July 1, 2022, or which property is first placed
26 in service on or after July 1, 2022, for use exclusively in the construction, expansion, improvement,
27 or operation of an employer provided child-care facility, but only if:

28 (A) The children who use the facility are primarily children of employees of:

29 (i) The taxpayer and other employers in the event that the child-care property is owned
30 jointly or severally by the taxpayer and one or more employers; or

31 (ii) A corporation that is a member of the taxpayer’s “affiliated group” within the meaning of
32 section 1504(a) of the Internal Revenue Code; and

33 (B) The taxpayer has not previously claimed any tax credit for the cost of operation for such
34 qualified child-care property placed in service prior to taxable years beginning on or after January
35 1, 2022.

36 Qualified child-care property includes, but is not limited to, amounts expended on building,
37 improvements, and building improvements and furniture, fixtures, and equipment directly related
38 to the operation of child-care property as defined in this section.

39 ~~(8)~~ (9) “Recapture amount” means, with respect to property as to which a recapture event
40 has occurred, an amount equal to the applicable recapture percentage of the aggregate credits

41 claimed under subsection (d) of this section for all taxable years preceding the recapture year,
42 whether or not such credits were used.

43 ~~(9)~~ (10) "Recapture event" means any disposition of qualified child-care property by the
44 taxpayer, or any other event or circumstance under which property ceases to be qualified child-
45 care property with respect to the taxpayer, except for:

- 46 (A) Any transfer by reason of death;
- 47 (B) Any transfer between spouses or incident to divorce;
- 48 (C) Any transaction to which Section 381(a) of the Internal Revenue Code applies;
- 49 (D) Any change in the form of conducting the taxpayer's trade or business so long as the
50 property is retained in such trade or business as qualified child-care property and the taxpayer
51 retains a substantial interest in such trade or business; or
- 52 (E) Any accident or casualty.

53 ~~(10)~~ (11) "Recapture percentage" refers to the applicable percentage set forth in the
54 following table:

55 If the recapture event occurs within-The recapture percentage is:

56	Five full years after the qualified child-care property is	
57	placed in service	100
58	The sixth full year after the qualified child-care property is	
59	placed in service	90
60	The seventh full year after the qualified child-care property	
61	is placed in service	80
62	The eighth full year after the qualified child-care property is	
63	placed in service	70
64	The ninth full year after the qualified child-care property is	
65	placed in service	60
66	The tenth full year after the qualified child-care property is	

67 placed in service50
68 The eleventh full year after the qualified child-care property
69 is placed in service40
70 The twelfth full year after the qualified child-care property
71 is placed in service30
72 The thirteenth full year after the qualified child-care
73 property is placed in service20
74 The fourteenth full year after the qualified child-care
75 property is placed in service10
76 Any period after the close of the fourteenth full year after
77 the qualified child-care property is placed in service0

78 ~~(14)~~ (12) "Recapture year" means the taxable year in which a recapture event occurs with
79 respect to qualified child-care property.

80 (b) *Credit for capital investment in child-care property.* — A taxpayer shall be allowed a
81 credit against the tax imposed under this article for the taxable year in which the taxpayer first
82 places in service qualified child-care property and for each of the ensuing four taxable years
83 following such taxable year. The aggregate amount of the credit shall equal 50 percent of the cost
84 of all qualified child-care property purchased or acquired by the taxpayer and first placed in service
85 during a taxable year, and such credit may be claimed at a rate of 20 percent per year over a
86 period of five taxable years. In the case of a qualified child-care property jointly owned by two or
87 more unaffiliated employers, each employer's credit is limited to that employer's respective
88 investment in the qualified child-care property.

89 (c) *Limitations on Capital Investment Credit.* — The tax credit allowable under subsection
90 (b) of this section shall be subject to the following conditions and limitations:

91 (1) Any such credit claimed in any taxable year but not used in such taxable year may be
92 carried forward for three years from the close of such taxable year. The sale, merger, acquisition,

93 or bankruptcy of any taxpayer shall not create new eligibility for the credit in any succeeding
94 taxpayer;

95 (2) In no event shall the amount of any such tax credit allowed under subsection (b) of this
96 section, when combined with any such tax credit allowed under subsection (e) of this section,
97 including any carryover of such credits from a prior taxable year, exceed 100 percent of the
98 taxpayer's income tax liability as determined without regard to any other credits; and

99 (3) For every year in which a taxpayer claims such credit, the taxpayer shall attach a
100 schedule to the taxpayer's West Virginia income tax return setting forth the following information
101 with respect to such tax credit:

102 (A) A description of the child-care facility;

103 (B) The amount of qualified child-care property acquired during the taxable year and the
104 cost of such property;

105 (C) The amount of tax credit claimed for the taxable year;

106 (D) The amount of qualified child-care property acquired in prior taxable years and the cost
107 of such property;

108 (E) Any tax credit utilized by the taxpayer in prior taxable years;

109 (F) The amount of tax credit carried over from prior years;

110 (G) The amount of tax credit utilized by the taxpayer in the current taxable year;

111 (H) The amount of tax credit to be carried forward to subsequent tax years; and

112 (I) A description of any recapture event occurring during the taxable year, a calculation of
113 the resulting reduction in tax credits allowable for the recapture year and future taxable years, and
114 a calculation of the resulting increase in tax for the recapture year.

115 (d) *Recapture of credit.* — If a recapture event occurs with respect to qualified child-care
116 property:

117 (1) The credit otherwise allowable under subsection (b) of this section with respect to such
118 property for the recapture year and all subsequent taxable years shall be reduced by the

119 applicable recapture percentage; and

120 (2) All credits previously claimed with respect to such property under subsection (b) of this
121 section shall be recaptured as follows:

122 (A) Any carryover attributable to such credits pursuant to subdivision (1), subsection (c) of
123 this section shall be reduced, but not below zero, by the recapture amount;

124 (B) The tax credit otherwise allowable pursuant to subsection (b) of this section for the
125 recapture year, if any, as reduced pursuant to subdivision (1) of this subsection, shall be further
126 reduced, but not below zero, by the excess of the recapture amount over the amount taken into
127 account pursuant to paragraph (A) of this subdivision; and

128 (C) The tax imposed pursuant to this article for the recapture year shall be increased by the
129 excess of the recapture amount over the amounts taken into account pursuant to paragraphs (A)
130 and (B) of this subdivision, as applicable.

131 (e) *Credit for operating costs.* — In addition to the tax credit provided under subsection (b)
132 of this section, a tax credit against the tax imposed under this article shall be granted to an
133 employer who provides or sponsors child care for employees. The amount of the tax credit shall be
134 equal to 50 percent of the cost of operation to the employer less any amounts paid for by
135 employees during a taxable year.

136 (f) *Limitations on credit for operating costs.*— The tax credit allowed under subsection (e)
137 of this section shall be subject to the following conditions and limitations:

138 (1) Such credit shall when combined with the credit allowed under subsection (b) of this
139 section shall not exceed 100 percent of the amount of the taxpayer's income tax liability for the
140 taxable year as determined without regard to any other credits;

141 (2) Any such credit claimed but not used in any taxable year may be carried forward for five
142 years from the close of the taxable year in which the cost of operation was incurred; and

143 (3) The employer shall certify to the ~~department~~ division the names of the employees, the
144 name of the child-care provider, and such other information as may be required by the ~~department~~

145 division to ensure that credits are granted only to employers who provide or sponsor approved
146 child care pursuant to this section.

147 (g) *Rules.* — The Tax Commissioner may promulgate such interpretive, legislative and
148 procedural rules as the commissioner deems to be useful or necessary to carry out the purpose of
149 this section and to implement the intent of the Legislature. The Tax Commissioner may promulgate
150 emergency rules pursuant to the provisions of §29A-3-15 of this code.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-44. Tax credit for employers providing child care for employees.

1 (a) *Definition.* — As used in this section, the term:

2 (1) “Commissioner” or “Tax Commissioner” are used interchangeably herein and mean the
3 Tax Commissioner of the State of West Virginia, or his or her delegate;

4 (2) “Cost of operation” means reasonable direct operational costs incurred by an employer
5 as a result of providing employer provided or employer sponsored child-care facilities; provided,
6 however, that the term cost of operation shall exclude the cost of any property that is qualified
7 child-care property.

8 (3) “Department Division” or “Tax Department Division” means the West Virginia State Tax
9 Department Division.

10 (4) “Employer” means any employer upon whom an income tax is imposed by this article or
11 any employer organized as a nonprofit corporation under Internal Revenue Code § 501(c)(3) or §
12 501(c)(6) that is exempt from the tax imposed by this article pursuant to §11-24-5 of this code.

13 (5) “Employer provided” refers to child care offered on the premises of the employer.

14 (6) “Employer sponsored child-care facility” refers to a third-party licensed child-care
15 services facility whose operational costs are financially supported by one or more employers
16 through direct payments, contracts, or subsidies. An employer sponsored child-care facility may
17 be located anywhere within the state of West Virginia and shall not be subject to proximity or
18 employee usage thresholds.

19 ~~(6)~~ (7) “Premises of the employer” refers to any location within the State of West Virginia
20 and located on the workplace premises of the employer providing the child care or one of the
21 employers providing the child care in the event that the child-care property is owned jointly or
22 severally by the taxpayer and one or more unaffiliated employers: *Provided*, That if such
23 workplace premises are impracticable or otherwise unsuitable for the on-site location of such
24 child-care facility, as determined by the commissioner, such facility may be located within a
25 reasonable distance of the premises of the employer.

26 ~~(7)~~ (8) “Qualified child-care property” means all real property, other than land, and tangible
27 personal property purchased or acquired on or after July 1, 2022, or which property is first placed
28 in service on or after July 1, 2022, for use exclusively in the construction, expansion, improvement,
29 or operation of an employer provided child-care facility, but only if:

30 (A) The children who use the facility are primarily children of employees of:

31 (i) The taxpayer and other employers in the event that the child-care property is owned
32 jointly or severally by the taxpayer and one or more employers; or

33 (ii) A corporation that is a member of the taxpayer’s “affiliated group” within the meaning of
34 Section 1504(a) of the Internal Revenue Code; and

35 (B) The taxpayer has not previously claimed any tax credit for the cost of operation for such
36 qualified child-care property placed in service prior to taxable years beginning on or after January
37 1, 2022.

38 Qualified child-care property includes, but is not limited to, amounts expended on building,
39 improvements, and building improvements and furniture, fixtures, and equipment directly related
40 to the operation of child-care property as defined in this section.

41 ~~(8)~~ (9) “Recapture amount” means, with respect to property as to which a recapture event
42 has occurred, an amount equal to the applicable recapture percentage of the aggregate credits
43 claimed under subsection (d) of this section for all taxable years preceding the recapture year,
44 whether or not such credits were used.

45 ~~(9)~~ (10) "Recapture event" refers to any disposition of qualified child-care property by the
46 taxpayer, or any other event or circumstance under which property ceases to be qualified child-
47 care property with respect to the taxpayer, except for:

48 (A) Any transfer by reason of death;

49 (B) Any transfer between spouses or incident to divorce;

50 (C) Any transaction to which Section 381(a) of the Internal Revenue Code applies;

51 (D) Any change in the form of conducting the taxpayer's trade or business so long as the
52 property is retained in such trade or business as qualified child-care property and the taxpayer
53 retains a substantial interest in such trade or business; or

54 (E) Any accident or casualty.

55 ~~(40)~~ (11) "Recapture percentage" refers to the applicable percentage set forth in the
56 following table:

57 If the recapture event occurs within-The recapture percentage is:

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59 placed in service100

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61 placed in service90

62 The seventh full year after the qualified child-care property
63 is placed in service80

64 The eighth full year after the qualified child-care property is
65 placed in service70

66 The ninth full year after the qualified child-care property is
67 placed in service60

68 The tenth full year after the qualified child-care property is
69 placed in service50

70 The eleventh full year after the qualified child-care property

71 is placed in service40
72 The twelfth full year after the qualified child-care property
73 is placed in service30
74 The thirteenth full year after the qualified child-care
75 property is placed in service20
76 The fourteenth full year after the qualified child-care
77 property is placed in service10
78 Any period after the close of the fourteenth full year after
79 the qualified child-care property is placed in service0

80 ~~(11)~~ (12) "Recapture year" means the taxable year in which a recapture event occurs with
81 respect to qualified child-care property.

82 (b) *Credit for capital investment in child-care property.* — A taxpayer shall be allowed a
83 credit against the tax imposed under this article for the taxable year in which the taxpayer first
84 places in service qualified child-care property and for each of the ensuing four taxable years
85 following such taxable year. The aggregate amount of the credit shall equal 50 percent of the cost
86 of all qualified child-care property purchased or acquired by the taxpayer and first placed in service
87 during a taxable year, and such credit may be claimed at a rate of 20 percent per year over a
88 period of five taxable years. In the case of a qualified child-care property jointly owned by two or
89 more unaffiliated employers, each employer's credit is limited to that employer's respective
90 investment in the qualified child-care property.

91 (c) *Limitations on capital investment credit.* — The tax credit allowable under subsection
92 (b) of this section shall be subject to the following conditions and limitations:

93 (1) Any such credit claimed in any taxable year but not used in such taxable year may be
94 carried forward for three years from the close of such taxable year. The sale, merger, acquisition,
95 or bankruptcy of any taxpayer shall not create new eligibility for the credit in any succeeding
96 taxpayer;

97 (2) In no event shall the amount of any such tax credit allowed under subsection (b) of this
98 section, when combined with any such tax credit allowed under subsection (e) of this section,
99 including any carryover of such credits from a prior taxable year, exceed 100 percent of the
100 taxpayer's income tax liability as determined without regard to any other credits; and

101 (3) For every year in which a taxpayer claims such credit, the taxpayer shall attach a
102 schedule to the taxpayer's West Virginia income tax return setting forth the following information
103 with respect to such tax credit:

104 (A) A description of the child-care facility;

105 (B) The amount of qualified child-care property acquired during the taxable year and the
106 cost of such property;

107 (C) The amount of tax credit claimed for the taxable year;

108 (D) The amount of qualified child-care property acquired in prior taxable years and the cost
109 of such property;

110 (E) Any tax credit utilized by the taxpayer in prior taxable years;

111 (F) The amount of tax credit carried over from prior years;

112 (G) The amount of tax credit utilized by the taxpayer in the current taxable year;

113 (H) The amount of tax credit to be carried forward to subsequent tax years; and

114 (I) A description of any recapture event occurring during the taxable year, a calculation of
115 the resulting reduction in tax credits allowable for the recapture year and future taxable years, and
116 a calculation of the resulting increase in tax for the recapture year.

117 (d) *Recapture of credit.* — If a recapture event occurs with respect to qualified child-care
118 property:

119 (1) The credit otherwise allowable under subsection (b) of this section with respect to such
120 property for the recapture year and all subsequent taxable years shall be reduced by the
121 applicable recapture percentage; and

122 (2) All credits previously claimed with respect to such property under subsection (b) of this

123 section shall be recaptured as follows:

124 (A) Any carryover attributable to such credits pursuant to subdivision (1) of subsection (c)
125 of this section shall be reduced, but not below zero, by the recapture amount;

126 (B) The tax credit otherwise allowable pursuant to subsection (b) of this section for the
127 recapture year, if any, as reduced pursuant to subdivision (1) of this subsection, shall be further
128 reduced, but not below zero, by the excess of the recapture amount over the amount taken into
129 account pursuant to paragraph (A) of this subdivision; and

130 (C) The tax imposed pursuant to this article for the recapture year shall be increased by the
131 excess of the recapture amount over the amounts taken into account pursuant to paragraphs (A)
132 and (B) of this subdivision, as applicable.

133 (e) *Credit for operating costs.* — In addition to the tax credit provided under subsection (b)
134 of this section, a tax credit against the tax imposed under this article shall be granted to an
135 employer who provides or sponsors child care for employees. The amount of the tax credit shall be
136 equal to 50 percent of the cost of operation to the employer less any amounts paid for by
137 employees during a taxable year.

138 (f) *Limitations on credit for operating costs.* — The tax credit allowed under subsection (e)
139 of this section shall be subject to the following conditions and limitations:

140 (1) Such credit shall when combined with the credit allowed under subsection (b) of this
141 section shall not exceed 100 percent of the amount of the taxpayer's income tax liability for the
142 taxable year as determined without regard to any other credits;

143 (2) Any such credit claimed but not used in any taxable year may be carried forward for five
144 years from the close of the taxable year in which the cost of operation was incurred; and

145 (3) The employer shall certify to the ~~department~~ division the names of the employees, the
146 name of the child-care provider, and such other information as may be required by the ~~department~~
147 division to ensure that credits are granted only to employers who provide or sponsor approved
148 child care pursuant to this section.

149 (g) *Transferrable credit available to non-profit corporations.* — In the case of non-profit
150 corporations organized under Internal Revenue Code §501(c)(3) or §501(c)(6), which are exempt
151 from tax under this article pursuant to §11-24-5 of this code, a credit in the amount calculated
152 under the provisions of this section shall be available as a transferrable credit that may be
153 transferred, sold, or assigned to any other taxpayer to be applied against the tax owed under this
154 article. Pursuant to rules promulgated by the Tax Department Division, a non-profit corporation
155 applicant shall provide a schedule to the Tax Department Division with all information required
156 under §11-24-44(c)(3) of this code. The Tax Department Division shall within 90 days certify the
157 amount of transferrable credit available to be transferred, sold, or assigned to another taxpayer.
158 Any transferee, purchaser, or assignee of non-profit corporation credits certified to a non-profit
159 corporation under this section takes the transferred, purchased, or assigned credits subject to any
160 limitations placed on the amount of credit taken in a given year by §11-24-44(b), §11-24-44(c),
161 §11-24-44(e), and §11-24-44(f) of this code.

162 (h) *Rules.* — The Tax Commissioner may promulgate such interpretive, legislative and
163 procedural rules as the commissioner deems to be useful or necessary to carry out the purpose of
164 this section and to implement the intent of the Legislature. The Tax Commissioner may promulgate
165 emergency rules pursuant to the provisions of §29A-3-15 of this code.

CHAPTER 49. CHILD WELFARE.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

Part 1. General Authority and Duties of the Department of ~~Health and Human~~
Resources Services

§49-2-113a. Child care support.

1 (a) (1) A licensed child care program shall be paid subsidy payments based on monthly

2 enrollment.

3 (2) The Department of Human Services shall review quarterly, and make ineligible for the
4 subsidy a parent whose child does not attend a child care program on average of at least 8 days
5 per month.

6 (3) For the purposes of this subsection, "day" means a child has attended a child care
7 program for 4 hours, or an out of school time program for 2.5 hours.

8 (b) The department shall use a cost of care modeling tool to determine the amount the
9 subsidy, and report to the Joint Committee on Health by December 1, 2026.

§49-2-121.

Rule-making.

1 (a) The secretary shall ~~promulgate~~ propose for legislative approval rules in accordance
2 with §29A-3-1 *et seq.* of this code regarding the licensure, approval, certification, and registration
3 of child care facilities and the implementation of this article.

4 (b) The secretary shall review the rules promulgated pursuant to this article at least once
5 every five years, making revisions when necessary or convenient.

6 (c) The rules shall incorporate, by reference, the requirements of the Integrated Pest
7 Management Program established by legislative rule by the Department of Agriculture under
8 §19-16A-4 of this code.

9 (d) The rules shall provide a system for the electronic filing of all days of attendance billed
10 by child care providers to the department. The department shall have the system in place no later
11 than July 1, 2026, after which any child care provider seeking reimbursement from the department
12 for child care services provided shall submit any and all supporting documents for the
13 department's review electronically. The department shall promulgate emergency rules for this
14 purpose.

Part XI. Child Care Subsidies

§49-2-1101. Mitigation of child care subsidy cliff effect.

1 (a) The Legislature finds that abrupt loss of child care assistance due to modest increases

2 in family income creates a benefits cliff that discourages wage growth, limits workforce
3 participation, and destabilizes child care arrangements for children and families.

4 (b) The Department of Human Services may adopt policies that reduce the child care
5 subsidy cliff effect by gradually phasing out assistance as family income increases. To implement
6 the provisions of this section, the department may propose rules, consistent with state and federal
7 law and with available funding, for legislative approval consistent with the provisions of §29A-3-1
8 et seq.

9 (c) In carrying out this section, the department may:

10 (1) Expand the sliding fee scale for family copayments so that contributions increase
11 progressively with income;

12 (2) Establish higher exit eligibility thresholds that allow families to maintain access to
13 assistance while transitioning toward self-sufficiency;

14 (3) Implement graduated phase-out structures that prevent sudden loss of benefits;

15 (4) Adjust copayment amounts based on household income as a percentage of income;

16 and

17 (5) Establish transitional eligibility periods or other mechanisms to support continuity of
18 care.

19 (d) Policies adopted pursuant to this section shall be designed to encourage employment,
20 wage growth, and career advancement while promoting stability for children and child care
21 providers.

22 (e) The department shall implement cliff mitigation policies pursuant to this section no later
23 than January 1, 2027.

24 (f) The department shall submit an annual written report, in electronic format, to the Joint
25 Committee on Government and Finance on or before the first day of each regular session of the
26 Legislature regarding the implementation and impact of cliff mitigation strategies implemented
27 under the provisions of this statute.