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SENATE BILL NO. 170

Offered January 10, 2024

Prefiled January 7, 2024

A BILL to amend and reenact §§ 22.1-289.02 and 22.1-289.030 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 22.1-289.032:1, relating to Board of Education; out-of-school time programs; exemptions from licensure; conditions and requirements.

Patron—Craig

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-289.02 and 22.1-289.030 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 22.1-289.032:1 as follows:

§ 22.1-289.02. Definitions.

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

"Child day center" means a child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period. "Child day program" includes an out-of-school time program.

"Early childhood care and education entity" means a child day center, family day home, or family day system serving children under the age of five.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving five through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all related to the provider by blood or marriage shall not be required to be licensed.

"Family day system" means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Head Start provider" means a public or private, nonprofit or for-profit organization or agency, including any community-based organization, as such term is defined in 20 U.S.C. § 7801, to which a grantee has delegated all or part of the responsibility of the grantee for operating a Head Start program.

"Publicly funded provider" means any (i) educational program provided by a school division or local government to children between birth and age five or (ii) child day program that receives state or federal funds in support of its operations that serves three or more unrelated children. "Publicly funded provider" does not include any program for which the sole source of public funding is the federal Child and Adult Care Food Program (CACFP) administered by the U.S. Department of Agriculture Food and Nutrition Service.

"Registered family day home" means any family day home that has met the standards for voluntary registration for such homes pursuant to regulations adopted by the Board and that has obtained a certificate of registration from the Superintendent.

§ 22.1-289.030. Exemptions from licensure.

A. The following programs are not child day programs and shall not be required to be licensed:

1. A program of instructional experience in a single focus, such as, but not limited to, computer science, archaeology, sport clinics, or music, if children under the age of six do not attend at all and if no child is allowed to attend for more than 25 days in any three-month period commencing with enrollment. This exemption does not apply if children merely change their enrollment to a different focus area at a site offering a variety of activities and such children's attendance exceeds 25 days in a three-month period.

2. Programs of instructional or recreational activities wherein no child under age six attends for more than

59 six hours weekly with no class or activity period to exceed one and one-half hours, and no child six years of
60 age or above attends for more than six hours weekly when school is in session or 12 hours weekly when
61 school is not in session. Competition, performances, and exhibitions related to the instructional or
62 recreational activity shall be excluded when determining the hours of program operation.

63 3. Instructional programs offered by private schools that serve school-age children and that satisfy
64 compulsory attendance laws or provide services under the Individuals with Disabilities Education Act, as
65 amended, and programs of school-sponsored extracurricular activities that are focused on single interests
66 such as, but not limited to, music, sports, drama, civic service, or foreign language.

67 4. Instructional programs offered by public schools that serve preschool-age children, satisfy compulsory
68 attendance laws, or provide services under the Individuals with Disabilities Education Act (20 U.S.C. § 1400
69 et seq.), as amended, and programs of school-sponsored extracurricular activities that are focused on single
70 interests such as, but not limited to, music, sports, drama, civic service, or foreign language.

71 5. Early intervention programs for children eligible under Part C of the Individuals with Disabilities
72 Education Act (20 U.S.C. § 1431 et seq.), as amended, wherein no child attends for more than a total of six
73 hours per week.

74 6. Practice or competition in organized competitive sports leagues.

75 7. Programs of religious instruction, such as Sunday schools, vacation Bible schools, Bar Mitzvah or Bat
76 Mitzvah classes, and nurseries offered by religious institutions and provided for the duration of specified
77 religious services or related activities to allow parents or guardians or their designees who are on site to
78 attend such religious services and activities.

79 8. A program of instructional or athletic experience operated during the summer months by, and as an
80 extension of, an accredited private elementary, middle, or high school program as set forth in § 22.1-19 and
81 administered by the Virginia Council for Private Education.

82 B. The following child day programs shall not be required to be licensed:

83 1. A child day center that has obtained an exemption pursuant to § 22.1-289.031.

84 2. A program where, by written policy given to and signed by a parent or guardian, school-age children
85 are free to enter and leave the premises without permission. A program that would qualify for this exemption
86 except that it assumes responsibility for the supervision, protection, and well-being of several children with
87 disabilities who are mainstreamed shall not be subject to licensure.

88 3. A program that operates no more than a total of 20 program days in the course of a calendar year,
89 provided that programs serving children under age six operate no more than two consecutive weeks without a
90 break of at least a week.

91 4. Child-minding services that are not available for more than three hours per day for any individual child
92 offered on site in commercial or recreational establishments if the parent or guardian (i) can be contacted and
93 can resume responsibility for the child's supervision within 30 minutes and (ii) is receiving or providing
94 services or participating in activities offered by the establishment.

95 5. A certified preschool or nursery school program operated by an accredited private school as set forth in
96 § 22.1-19 and administered by the Virginia Council for Private Education that complies with the provisions
97 of § 22.1-289.032.

98 6. A program of recreational activities offered by local governments, staffed by local government
99 employees, and attended by school-age children. Such programs shall be subject to safety and supervisory
100 standards established by the local government offering the program.

101 7. A program offered by a local school division, operated for no more than four hours per day on full
102 instructional days or for more than four hours per day on shortened instructional days or noninstructional
103 days, staffed by local school division employees, and attended by children who are at least three years of age
104 and are enrolled in public school or a preschool program within such school division. Such programs shall be
105 subject to safety and supervisory standards established by the local school division offering the program.

106 8. Child-minding services offered by a business on the premises of the business to no more than four
107 children under the age of 13 at any given time and for no more than eight hours per day, provided that the
108 parent or guardian of every child receiving care is an employee of the business who is on the premises of the
109 business and can resume responsibility for the child's supervision within 30 minutes upon request.

110 9. A program offered by a private school accredited by and in good standing with the Virginia Council for
111 Private Education, operated for no more than four hours per day, staffed by the accredited private school's
112 employees, and attended by school-age children who are enrolled in the accredited private school. Such
113 programs shall be subject to safety and supervisory standards established by the Virginia Council for Private
114 Education.

115 10. *An out-of-school time program that (i) serves only school-age children; (ii) operates primarily after or*
116 *before regular school hours, during the summer, or at times when school is not normally in session; (iii) is*
117 *offered for the purpose of promoting expanded childhood learning and enrichment, child and youth*
118 *development, or educational, recreational, or character-building activities; and (iv) receives and maintains*
119 *Board certification in accordance with the provisions of § 22.1-289.032:1.*

120 C. Child day programs that are exempt from licensure pursuant to subsection B, except for child day

121 programs that are exempt from licensure pursuant to subdivision B 1 ~~or~~, 5, or 10, shall:

122 1. File with the Superintendent annually and prior to beginning operation of a child day program a
123 statement indicating the intent to operate a child day program, identifying the specific provision of this
124 section relied upon for exemption from licensure, and certifying that the child day program has disclosed in
125 writing to the parents or guardians of the children in the program the fact that it is exempt from licensure;

126 2. Report to the Superintendent all incidents involving serious physical injury to or death of children
127 attending the child day program. Reports of serious physical injuries, which shall include any physical
128 injuries that require an emergency referral to an offsite health care professional or treatment in a hospital,
129 shall be submitted annually. Reports of deaths shall be submitted no later than one business day after the
130 death occurred; and

131 3. Post in a visible location on the premises notice that the child day program is operating as a program
132 exempt from licensure with basic health and safety requirements but has no direct oversight by the
133 Department.

134 D. Child day programs that are exempt from licensure pursuant to subsection B, except for child day
135 programs that are exempt from licensure pursuant to subdivision B 1, 5, 6, ~~or~~ 7, or 10 shall:

136 1. Have a person trained and certified in first aid and cardiopulmonary resuscitation present at the child
137 day program whenever children are present or at any other location in which children attending the child day
138 program are present;

139 2. Maintain daily attendance records that document the arrival and departure of all children;

140 3. Have an emergency preparedness plan in place;

141 4. Comply with all applicable laws and regulations governing transportation of children; and

142 5. Comply with all safe sleep guidelines recommended by the American Academy of Pediatrics.

143 E. The Superintendent shall inspect child day programs that are exempt from licensure pursuant to
144 subsection B to determine compliance with the provisions of this section only upon receipt of a complaint,
145 except as otherwise provided by law.

146 F. Family day homes that are members of a licensed family day system shall not be required to obtain a
147 license from the Superintendent.

148 **§ 22.1-289.032:1. Certification of exempt out-of-school time programs; conditions.**

149 A. Any out-of-school time program that is exempt from licensure pursuant to subdivision B 10 of § 22.1-
150 289.030 shall be required to receive and maintain certification of the Board for so long as it chooses to
151 remain unlicensed.

152 B. Any out-of-school time program described in subsection A shall comply with the following provisions
153 in order to receive and maintain Board certification:

154 1. Is affiliated with a national or statewide organization with established health and safety requirements;

155 2. Is in compliance with any health and safety requirements established by the governing board or state
156 affiliate described in subdivision 1. If there is a conflict with any applicable health and safety standards
157 established pursuant to the Board's regulations, the Board shall conduct an internal review process and
158 consult with the out-of-school time program provider to ensure substantial compliance with the Board's
159 health and safety standards;

160 3. Has adopted standards relating to staff training and qualifications developed in accordance with Board
161 regulations relating to training requirements and qualifications;

162 4. Requires all applicants for employment, employees, applicants to serve as volunteers, and volunteers to
163 undergo a background check in accordance with § 22.1-289.039 and, if applicable, in accordance with the
164 provisions of § 22.1-289.040;

165 5. Meets the following staffing requirements:

166 a. There shall be at least one staff member who is at least 18 years of age per 20 children;

167 b. No staff member shall be younger than 16 years of age, and any staff member younger than 18 years of
168 age shall at all times be under the supervision of an adult staff member. Any adult staff member shall
169 supervise no more than two staff members younger than 18 years of age at any given time;

170 c. At least one person trained and certified in first aid and cardiopulmonary resuscitation shall be present
171 at such program whenever children are present or at any other location in which children attending the
172 program are present;

173 d. A director shall be responsible for overseeing the day-to-day operation of the program and shall be at
174 least 21 years of age and shall (i) possess an associate degree or higher from an accredited institution of
175 higher education, (ii) have successfully completed at least 12 credit hours of coursework in child
176 development, education, or a related field offered by an institution of higher education, or (iii) possess
177 equivalent skills acquired through alternative experiences, such as relevant job training, military service, or
178 an apprenticeship; and

179 e. An individual who is at least 21 years of age and has the ability and authority to act as the director's
180 designee in the event that the director is not present during the program's operating hours;

181 6. Has adopted policies and procedures for assessing and enforcing compliance with any applicable local

182 *and state health and safety standards;*

183 7. *Has adopted policies, and posts in a conspicuous location in such program's facility notice of such*
184 *policies as well as the Virginia Department of Social Services' toll-free child abuse and neglect hotline,*
185 *providing that any employee of such program (i) who has reason to suspect that a child is an abused or*
186 *neglected child, including any child who may be abandoned, is required to report such suspected case of*
187 *child abuse or neglect to a local or state social services agency or the person in charge of the program and*
188 *(ii) shall be immune from civil or criminal liability or administrative penalty or sanction on account of*
189 *making any report of suspected child abuse or neglect unless such employee acted in bad faith or with*
190 *malicious purpose;*

191 8. *Has adopted policies and procedures relating to:*

192 a. *An emergency preparedness and response plan;*

193 b. *A child abuse prevention and response plan;*

194 c. *Acceptable uses of technology, including prohibiting inappropriate technology-based interactions*
195 *between children and staff or volunteers during and after program hours;*

196 d. *Internal incident reporting and investigation;*

197 e. *Maintaining an alcohol and drug free workplace and learning environment;*

198 f. *Required behavioral interventions; and*

199 g. *Procurement and maintenance of records that include for each child participating in the program (i)*
200 *first name, last name, and date of birth; (ii) the name, address, phone number, and any additional contact*
201 *information of each custodial parent; (iii) emergency contact information; (iv) written authorization for*
202 *medical care; and (v) daily attendance records that document the attendance and departure of children;*

203 9. *Maintains records of and reports to the Superintendent any incident involving serious physical injury to*
204 *or death of children. Reports of serious physical injuries, including any physical injuries that require an*
205 *emergency referral to an offsite health care professional or treatment in a hospital, shall be submitted*
206 *annually. Reports of deaths shall be submitted no later than one business day after the death occurred;*

207 10. *Has not had a license to operate such program denied in the preceding 12 months or revoked in the*
208 *preceding five years;*

209 11. *Posts in a visible location on the premises notice that the program is operating as a program exempt*
210 *from licensure;*

211 12. *Complies with all applicable laws and regulations governing the transportation of children;*

212 13. *Consents to an inspection by the Superintendent at least once each year of the premises during its*
213 *hours of operation to determine if such program is in compliance with the provisions of this section, the*
214 *Board's regulations, and any other applicable health and safety requirements established by applicable law.*
215 *The Superintendent may perform additional on-site inspections of the premises more frequently than once*
216 *each year in accordance with the provisions of § 22.1-289.033; and*

217 14. *Files with the Superintendent prior to the beginning of the school year or calendar year, as the case*
218 *may be, and thereafter annually a statement that includes (i) its intent to operate as an out-of-school time*
219 *program as described in subdivision B 10 of § 22.1-289.030, (ii) the most current health and safety standards*
220 *established by the applicable national governing board or state affiliate described in subdivision 1, (iii)*
221 *documentation that the school has disclosed in writing to the parents of each child participating in the*
222 *program and has posted in a visible location on the premises notice of the program's exemption from*
223 *licensure, (iv) acknowledgement of the continued obligation to comply with the requirements and conditions*
224 *set forth in this section in order to maintain Board certification to operate without a license, and (v) any*
225 *documentation necessary to establish compliance with the requirements and conditions set forth in this*
226 *section.*

227 C. *Any out-of-school time program described in subsection A that fails to comply with the provisions of*
228 *this section shall receive from the Superintendent a notice of such noncompliance with an explanation that if*
229 *it does not resolve such noncompliance within such reasonable period of time as determined by the Board,*
230 *the program will be subject to such action as the Superintendent determines appropriate, including denial,*
231 *suspension, or revocation of the certification required pursuant to subsection A and subsequently requiring*
232 *such program to be licensed.*