

25106099D

SENATE BILL NO. 1084

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on January 30, 2025)

(Patron Prior to Substitute—Senator Craig)

A BILL to amend and reenact §§ 22.1-289.02 and 22.1-289.030 of the Code of Virginia, relating to Board of Education; out-of-school time programs; exemptions from licensure.

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 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.

"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.

"Out-of-school time program" means a program that (i) serves only school-age children; (ii) operates primarily before or after regular school hours, during the summer, or at times when school is not normally in session; and (iii) is offered for the purpose of promoting expanded childhood learning and enrichment, child and youth development, or educational, recreational, or character-building activities.

"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~~ five attends for more than six hours weekly with no class or activity period to exceed one and one-half hours, and no child ~~six~~ five years of age or above attends for more than six hours weekly when school is in session or 12 hours weekly

60 when school is not in session. Competition, performances, and exhibitions related to the instructional or
61 recreational activity shall be excluded when determining the hours of program operation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

114 10. A child day program that (i) serves only dependent children of military personnel and (ii) (a) is located
115 on a military base or federal property or (b) is certified as a family child care provider by a branch of the
116 Armed Forces of the United States. Any branch of the Armed Forces of the United States or its agent,
117 including an installation commander of a military base on which a child day program is located, may assume
118 responsibility for approving or determining which children may be served by the program that is so exempted
119 from licensure.

120 11. An out-of-school time program pursuant to § 22.1-289.02 that (i) is affiliated with a national or

121 *statewide organization with established health and safety requirements; (ii) is in compliance with any health*
122 *and safety requirements established by the national or statewide organization described in clause (i); (iii) has*
123 *adopted standards and requirements relating to staff training and qualifications that are consistent with the*
124 *Board's regulations relating to staff training requirements and qualifications; (iv) requires all applicants for*
125 *employment, employees, applicants to serve as volunteers, and volunteers to undergo a background check in*
126 *accordance with § 22.1-289.039 and, if applicable, in accordance with the provisions of § 22.1-289.040; and*
127 *(v) has policies and procedures relating to emergency preparedness and response, child abuse prevention*
128 *and response, and internal incident reporting and investigation. If there is a conflict between any of the*
129 *health and safety requirements established by the national or statewide organization or any other standards,*
130 *requirements, policies, or procedures adopted by the out-of-school time program and the Board's*
131 *regulations, the Board shall conduct an internal review process and consult with the out-of-school time*
132 *program provider to ensure substantial compliance with the Board's regulations.*

133 C. Child day programs that are exempt from licensure pursuant to subsection B, except for child day
134 programs that are exempt from licensure pursuant to subdivision B 1 ~~or~~, 5, *or 11*, shall:

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

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

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

147 D. Child day programs that are exempt from licensure pursuant to subsection B, except for child day
148 programs that are exempt from licensure pursuant to subdivision B 1, 5, 6, ~~or~~ 7, *or 11* shall:

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

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

153 3. Have an emergency preparedness plan in place;

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

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

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

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