

**Sixty-sixth Legislative Assembly of North Dakota  
In Regular Session Commencing Thursday, January 3, 2019**

SENATE BILL NO. 2245  
(Senators Hogan, Bekkedahl, Kreun)  
(Representatives K. Koppelman, Schneider, Schreiber-Beck)

AN ACT to amend and reenact sections 50-11.1-02 and 50-11.1-04, subsection 10 of section 50-11.1-06.2, subsection 1 of section 50-11.1-07.2, sections 50-11.1-07.3 and 50-11.1-07.5, subsection 3 of section 50-11.1-17, and subsection 13 of section 50-25.1-02 of the North Dakota Century Code, relating to early childhood services and the definition of a neglected child; and to declare an emergency.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 50-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-02. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Authorized agent" means the county social service board, unless another entity is designated by the department.
2. "Child care center" means an early childhood program licensed to provide early childhood services to nineteen or more children.
3. "County agency" means the county social service board in each of the counties of the state.
4. "Department" means the department of human services.
5. "Drop-in care" means the care of children on a one-time, occasional, or unscheduled basis to meet the short-term needs of families.
6. "Early childhood program" means any program licensed under this chapter where early childhood services are provided for at least two hours a day for three or more days a week.
7. "Early childhood services" means the care, supervision, education, or guidance of a child or children, which is provided in exchange for money, goods, or other services. Early childhood services does not include:
  - a. Substitute parental child care provided pursuant to chapter 50-11.
  - b. Child care provided in any educational facility, whether public or private, in grade one or above.
  - c. Child care provided in a kindergarten which has been established pursuant to chapter 15.1-22 or a nonpublic elementary school program approved pursuant to ~~subsection 4 of section 15.1-06-06~~15.1-06-06.1.
  - d. Child care, preschool, and prekindergarten services provided to children under six years of age in any educational facility through a program approved by the superintendent of public instruction.
  - e. Child care provided in facilities operated in connection with a church, business, or organization where children are cared for during periods of time not exceeding four

continuous hours while the child's parent is attending church services or is engaged in other activities, on the premises.

- f. Schools or classes for religious instruction conducted by religious orders during the summer months for not more than two weeks, Sunday schools, weekly catechism, or other classes for religious instruction.
  - g. Summer resident or day camps for children which serve no children under six years of age for more than two weeks.
  - h. Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
  - i. Head start and early head start programs that are federally funded and meet federal head start performance standards.
  - j. Child care provided in a medical facility by medical personnel to children who are ill.
- 8. "Family child care" means a private residence licensed to provide early childhood services for no more than seven children at any one time, except that the term includes a residence licensed to provide early childhood services to two additional school-age children.
  - 9. "Group child care" means a child care program licensed to provide early childhood services for thirty or fewer children.
  - 10. "Household member" means an adult living in the private residence out of which a program is operated, regardless of whether the adult is living there permanently or temporarily.
  - 11. "In-home provider" means any person who provides early childhood services to children in the children's home.
  - 12. "Licensed" means an early childhood program has the rights, authority, or permission granted by the department to operate and provide early childhood services.
  - 13. "Multiple licensed program" means an early childhood program licensed to provide more than one type of early childhood services.
  - 14. "Owner" or "operator" means the person who has legal responsibility for the early childhood program and premises.
  - 15. "Parent" means an individual with the legal relationship of father or mother to a child or an individual who legally stands in place of a father or mother, including a legal guardian or custodian.
  - 16. "Premises" means the indoor and outdoor areas approved for providing early childhood services.
  - 17. "Preschool" means a program licensed to offer early childhood services, which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled and which serves no child for more than three hours per day.
  - 18. "Public approval" means a nonlicensed early childhood program operated by a government entity that has self-certified that the program complies with this chapter.
  - 19. "Registrant" means the holder of an in-home provider registration document issued by the department in accordance with this chapter.

20. "Registration" means the process whereby the department maintains a record of all in-home providers who have stated that they have complied or will comply with the prescribed standards and adopted rules.
21. "Registration document" means a written instrument issued by the department to publicly document that the registrant has complied with this chapter and the applicable rules and standards as prescribed by the department.
22. "School-age child care" means a child care program licensed to provide early childhood services on a regular basis for nineteen or more children aged five years through eleven years.
23. "School-age children" means children served under this chapter who are at least five years but less than twelve years of age.
24. "Self-declaration" means voluntary documentation of an individual providing early childhood services in a private residence for up to five children through the age of eleven, of which no more than three may be under the age of twenty-four months.
25. "Staff member" means an individual:
  - a. Who is an employee of an early childhood program or of an early childhood services provider under a self-declaration; ~~or~~
  - b. Whose activities involve the care, supervision, or guidance of children ~~for~~of an early childhood program; or
  - c. Who may have unsupervised access to children under the care, supervision, or guidance of an early childhood program or early childhood services provider under a self-declaration.

**SECTION 2. AMENDMENT.** Section 50-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-04. Application for license - Prerequisites for issuance - License granted - Term.**

1. An application for operation of an early childhood program must be made on forms provided, in the manner prescribed, by the department. The department or the department's authorized agent shall investigate the applicant's activities and proposed standards of care and shall make an inspection of all premises to be used by the early childhood program applying for a license. The applicant for a license and the staff members, and, if the application is for a program that will be located in a private residence, every individual living in that residence must be investigated in accordance with the rules adopted by the department to determine whether any of them has a criminal record or has had a finding of services required for child abuse or neglect filed against them. The department may use the findings of the investigation to determine licensure. Except as otherwise provided, the department shall grant a license for the operation of an early childhood program within thirty days of receipt of a completed application and all supporting documents by the department and upon a showing:
  - a. The premises to be used are in fit and sanitary condition, are properly equipped to provide for the health and safety for all children, and are maintained according to rules adopted by the department;
  - b. Staff members are qualified to fulfill the duties required of them according to the provisions of this chapter and standards prescribed for their qualifications by the rules of the department;
  - c. The application and supporting documents do not include any fraudulent or untrue representations;

- d. The owner, operator, or applicant has not had a previous license or self-declaration denied or revoked within the twelve months before the date of the current application, unless waived by the department after the department considers the health and safety of children and the licensing history of the owner, operator, or applicant;
  - e. The owner, operator, or applicant has not had three or more previous licenses or self-declarations denied or revoked. The most recent revocation or denial may not have occurred within the five years immediately preceding the application date;
  - f. The program paid its license fees and any penalties and sanctions assessed against the program as required by sections 50-11.1-03 and 50-11.1-07.4;
  - g. The family child care owner or operator and staff members have received training and are currently certified in infant and pediatric cardiopulmonary resuscitation and, including the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department, and are currently certified in first aid by a program approved by the department; and
  - h. The group child care, preschool, school-age child care, or child care center, at all times during which early childhood services are provided, staff members have received training and are currently certified in infant and pediatric cardiopulmonary resuscitation and, including the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department, and currently certified in first aid by a program approved by the department.
2. The license issued to the owner or operator of an early childhood program may not be effective for longer than two years.
  3. The department may consider the applicant's past licensing, self-declaration, and registration history in determining whether to issue a license.
  4. The department may issue a provisional or restricted license in accordance with the rules of the department. The department shall consider issuing a provisional or restricted license before revoking a license. The department may require the owner or operator of an early childhood program to provide a compliance plan to address compliance issues with this chapter and rules of the department. The department shall review the compliance plan before issuing a provisional or restricted license. The department shall approve the provisional license if the department approves the compliance plan. The department may revoke a license if the owner and operator fail to comply with the department approved compliance plan or for any additional violations of this chapter or rules of the department.
  5. The department shall notify the owner or operator that the owner or operator is required to post a notice of late application at the early childhood program premises if the department has not received a completed application and all supporting documents for licensure or self-declaration renewal at least thirty days before the expiration date of the early childhood program's license.

**SECTION 3. AMENDMENT.** Subsection 10 of section 50-11.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

10. AUnless an individual was separated from childcare employment for more than one hundred eighty days, a criminal history record check conducted under this section and subsection 3 of section 50-06-01.9 is valid for five years, after which the department shall require another criminal history record check.

**SECTION 4. AMENDMENT.** Subsection 1 of section 50-11.1-07.2 of the North Dakota Century Code is amended and reenacted as follows:

1. If the department or the department's authorized agent finds, upon inspection, ~~that~~ the program, self-declaration, or premises is not in compliance with this chapter or the rules adopted under this chapter, the department or the department's authorized agent ~~shall~~may issue a correction order to the program or self-declaration, provided the department does not revoke the license or self-declaration as a result of the noncompliance. The correction order must cite the specific statute or rule violated, state the factual basis of the violation, state the suggested method of correction, and specify the time allowed for correction. The correction order must also specify the amount of any fiscal sanction to be assessed if the program or self-declaration fails to comply with the correction order in a timely fashion. This section does not apply to an applicant's failure to comply with subsection 8 of section 50-11.1-03 or subdivision c of subsection 1 of section 50-11.1-16.

**SECTION 5. AMENDMENT.** Section 50-11.1-07.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-07.3. Reinspections.**

The department or the department's authorized agent shall reinspect or review an early childhood program or holder of a self-declaration ~~that was~~ issued a correction order under section 50-11.1-07.2, at the end of the period allowed for correction. If, upon reinspection or review, the department determines ~~that~~ the program or holder of a self-declaration has not corrected a violation identified in the correction order, the department shall mail to the program or the holder of a self-declaration, by certified mail, a notice of noncompliance with the correction order. The notice must specify the violations not corrected and the penalties assessed in accordance with section 50-11.1-07.5.

**SECTION 6. AMENDMENT.** Section 50-11.1-07.5 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-07.5. Accumulation of fiscal sanctions.**

An early childhood program or holder of a self-declaration promptly shall ~~promptly~~ notify the department or the department's authorized agent in writing ~~when~~if a violation noted in a notice of noncompliance is corrected. Upon receipt of written notice by the department or the department's authorized agent, the daily fiscal sanction assessed for the violation must stop accruing. The department or the department's authorized agent shall reinspect or review the early childhood program or premises out of which the holder of the self-declaration is operating within three working days after receipt of the notification. If, upon reinspection or review, the department determines ~~that~~ a violation has not been corrected, the department shall resume the daily assessment of fiscal sanction and shall add the amount of fiscal sanction which otherwise would have accrued during the period ~~prior to~~before resumption to the total assessment due from the program or holder of the self-declaration. The department or the department's authorized agent shall notify the facility of the resumption by certified mail. Recovery of the resumed fiscal sanction must be stayed if the operator of the facility makes a written request for an administrative hearing in the manner provided in chapter 28-32; ~~provided, that, if~~ written request for the hearing is made to the department within ten days of the notice of resumption.

**SECTION 7. AMENDMENT.** Subsection 3 of section 50-11.1-17 of the North Dakota Century Code is amended and reenacted as follows:

3. The department may issue a provisional self-declaration document in accordance with the rules of the department. The department shall consider issuing a provisional or restricted self-declaration document before revoking a self-declaration document. The department may require the holder of a self-declaration to provide a compliance plan to address compliance issues with this chapter and rules of the department. The department shall review the compliance plan before issuing a provisional or restricted self-declaration document. The department shall approve the provisional self-declaration document if the department

approves the compliance plan. The department may revoke a self-declaration document if the holder of a self-declaration fails to comply with the department approved compliance plan or for any additional violations of this chapter or rules of the department.

**SECTION 8. AMENDMENT.** Subsection 13 of section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

13. "Neglected child" means a deprived child as defined in chapter 27-20 who, due to the action or inaction of a person responsible for the child's welfare:
  - a. Is without proper care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and is not due primarily to the lack of financial means of a person responsible for the child's welfare;
  - b. Has been placed for care or adoption in violation of law;
  - c. Has been abandoned;
  - d. Is without proper care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of a person responsible for the child's welfare, and that such lack of care is not due to a willful act of commission or act of omission, and care is requested by a person responsible for the child's welfare;
  - e. Is in need of treatment and a person responsible for the child's welfare has refused to participate in treatment as ordered by the juvenile court;
  - f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner;
  - g. Is present in an environment subjecting the child to exposure of a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2; or
  - h. Is a victim of human trafficking as defined in title 12.1.

**SECTION 9. EMERGENCY.** Section 8 of this Act is declared to be an emergency measure.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2245 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote:        Yeas 46                      Nays 1                      Absent 0

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote:        Yeas 89                      Nays 1                      Absent 4

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2019.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2019.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2019,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State