

**SENATE BILL NO. 2090
with House Amendments
SENATE BILL NO. 2090**

Sixty-fifth
Legislative Assembly
of North Dakota

Introduced by

Senator Bekkedahl

Representatives Damschen, Hogan

1 A BILL for an Act create and enact a new subsection to section 50-11.1-06.2 of the North
2 Dakota Century Code, relating to criminal history record checks; to amend and reenact section
3 50-06-01.9, subsection 25 of section 50-11.1-02, sections 50-11.1-03, 50-11.1-04, and
4 50-11.1-06, subsection 1 of section 50-11.1-06.2, subsection 1 of section 50-11.1-07.2, and
5 sections 50-11.1-12, 50-11.1-16, and 50-11.1-17 of the North Dakota Century Code, relating to
6 early childhood services criminal record checks, licensing, definitions, registration, applications,
7 and fees; and to provide an effective date.

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

9 **SECTION 1. AMENDMENT.** Section 50-06-01.9 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **50-06-01.9. Criminal history record checks.**

12 The department may require criminal history record checks as the department determines
13 appropriate for:

- 14 1. Employees of the department upon hiring;
- 15 2. Providers licensed by the department under chapter 50-12, as well as for any
16 employees of those providers; and
- 17 3. ~~Applicants~~Providers holding, applicants for, and emergency designees and staff
18 members of providers holding and applicants for early childhood services licensure,
19 ~~nonlicensed holders of a self-declaration, and/or in-home providers~~provider registration
20 under chapter 50-11.1. The department also may require criminal history record
21 checks for ~~new staff~~household members of those ~~applicants, providers of an applicant,~~
22 ~~and a provider if the provider is providing a residence out of which early childhood~~
23 services within the provider's home are provided.

1 **SECTION 2. AMENDMENT.** Subsection 25 of section 50-11.1-02 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 25. "Staff member" means ~~operator, caregiver, provider, or any other individual, whether~~
4 ~~paid or volunteer, who provides care, supervision, or guidance to children in an~~
5 individual:

6 a. Who is an employee of an early childhood program or of an early childhood
7 services provider under a self-declaration ~~and includes food preparation,~~
8 ~~transportation, and maintenance personnel; or~~

9 b. Whose activities involve the care, supervision, or guidance of children for or
10 unsupervised access to children under the care, supervision, or guidance of an
11 early childhood program or early childhood services provider under a
12 self-declaration.

13 **SECTION 3. AMENDMENT.** Section 50-11.1-03 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **50-11.1-03. Operation of early childhood services program - License required - Fees.**

16 1. A license for family child care is required if early childhood services are provided for
17 four or more children ages twenty-four months and under, or six or seven children
18 through age eleven at any one time which includes no more than three children under
19 twenty-four months of age.

20 2. A license for group child care is required if early childhood services are provided for at
21 least eight and no more than thirty children at any one time.

22 3. A license for a child care center is required if early childhood services are provided for
23 more than thirty children at any one time.

24 4. ~~A~~Except as provided under subsection 5, a person, partnership, firm, corporation,
25 ~~limited liability company, association, or nongovernmental organization~~ may not
26 establish or operate a family child care, group child care, preschool, school-age child
27 care, or child care center unless licensed to do so by the department.

28 5. A governmental organization may not establish or operate a family child care, group
29 child care, preschool, school-age child care, or child care center without first receiving
30 public approval by certifying, to the department or the department's authorized agent,

1 that it has complied with all rules applicable to family child care, group child care,
2 preschool, or school-age child care, or to child care centers.

3 6. A license is not required for onsite child care services ~~that are~~ located in the actual
4 building in which the child's parent is employed, not to exceed ten children per
5 location.

6 7. An applicant for a license shall submit the following nonrefundable fees with the
7 application:

8 a. The operator of a family child care applying for a license shall pay an annual
9 license fee of twenty dollars or if the license is issued for a two-year period, a fee
10 of thirty-five dollars.

11 b. The operator of a group child care applying for a license shall pay an annual
12 license fee of twenty-five dollars or if the license is issued for a two-year period, a
13 fee of forty-five dollars.

14 c. The operator of a preschool applying for a license shall pay an annual license fee
15 of thirty dollars or if the license is issued for a two-year period, a fee of fifty-five
16 dollars.

17 d. The operator of a child care center applying for a license shall pay an annual
18 license fee of forty dollars or if the license is issued for a two-year period, a fee of
19 seventy-five dollars.

20 e. The operator of a multiple licensed program applying for a license shall pay an
21 annual license fee of fifty dollars or if the license is issued for a two-year period, a
22 fee of ninety-five dollars.

23 8. An applicant for a license who currently holds a license or self-declaration shall submit
24 the nonrefundable fees set forth in subsection 7 with the application at least sixty days
25 and no more than ninety days before the expiration date of the applicant's current
26 license or self-declaration. If the nonrefundable fees and application are submitted
27 less than sixty days before the expiration date of the applicant's current license or
28 self-declaration, the applicant shall submit with the application two times the
29 nonrefundable fees set forth in subsection 7.

30 9. In addition to any criminal sanctions or other civil penalties ~~which~~that may be imposed
31 pursuant to law, the operator of an early childhood program who, after being given

1 written notice by the department or the department's authorized agent, continues to
2 provide early childhood services without a license as required by this section is subject
3 to a civil penalty of fifty dollars per day for each day of operation without the required
4 license. The civil penalty may be imposed by the courts or by the department through
5 an administrative hearing pursuant to chapter 28-32.

6 ~~9-10.~~ All fees collected under ~~subsection 6~~ subsections 7 and 8 must be paid to the
7 department or the department's authorized agent and must be used to defray the cost,
8 to the department or the department's authorized agent, of investigating, inspecting,
9 and evaluating the applications or to provide training to providers of early childhood
10 services.

11 **SECTION 4. AMENDMENT.** Section 50-11.1-04 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **50-11.1-04. Application for license - Prerequisites for issuance - License granted -**
14 **Term.**

- 15 1. An application for operation of an early childhood program must be made on forms
16 provided, in the manner prescribed, by the department. The department or the
17 department's authorized agent shall investigate the applicant's activities and proposed
18 standards of care and shall make an inspection of all premises to be used by the early
19 childhood program applying for a license. The applicant for a license and the staff
20 members, and, if the application is for a program that will be located in a private
21 residence, every individual living in that residence must be investigated in accordance
22 with the rules adopted by the department to determine whether any of them has a
23 criminal record or has had a finding of services required for child abuse or neglect filed
24 against them. The department may use the findings of the investigation to determine
25 licensure. Except as otherwise provided, the department shall grant a license for the
26 operation of an early childhood program within thirty days of receipt of a completed
27 application and all supporting documents by the department and upon a showing that:
28 a. The premises to be used are in fit and sanitary condition, are properly equipped
29 to provide for the health and safety for all children, and ~~must be~~ are maintained
30 according to rules adopted by the department;

- 1 b. Staff members are qualified to fulfill the duties required of them according to the
2 provisions of this chapter and standards prescribed for their qualifications by the
3 rules of the department;
- 4 c. The application ~~does~~ and supporting documents do not include any fraudulent or
5 untrue representations;
- 6 d. The owner ~~or~~ operator, or applicant has not had a previous license or
7 self-declaration denied or revoked within the twelve months ~~prior to~~ before the
8 date of the current application;
- 9 e. The owner ~~or~~ operator, or applicant has not had three or more previous licenses
10 or self-declarations denied or revoked. The most recent revocation or denial
11 ~~cannot~~ may not have occurred within the five years immediately preceding the
12 application date;
- 13 f. The program ~~has~~ paid its license fees and any penalties and sanctions assessed
14 against the program as required by sections 50-11.1-03 and 50-11.1-07.4;
- 15 g. The family child care owner or operator ~~has~~ and staff members have received
16 training and ~~is~~ are currently certified in infant and pediatric cardiopulmonary
17 resuscitation and the use of an automated external defibrillator by the American
18 heart association, American red cross, or other similar cardiopulmonary
19 resuscitation and automated external defibrillator training programs that are
20 approved by the department, and ~~is~~ are currently certified in first aid by a program
21 approved by the department; and
- 22 h. The group child care, preschool, school-age child care, or child care center
23 maintains, at all times during which early childhood services are provided, ~~at-~~
24 ~~least one person who has~~ staff members have received training and ~~is~~ are
25 currently certified in infant and pediatric cardiopulmonary resuscitation and the
26 use of an automated external defibrillator by the American heart association,
27 American red cross, or other similar cardiopulmonary resuscitation and
28 automated external defibrillator training programs that are approved by the
29 department, and ~~at least one person who is~~ currently certified in first aid by a
30 program approved by the department.

- 1 2. The license issued to the owner or operator of an early childhood services program
- 2 may not be effective for longer than two years.
- 3 3. The department may consider the applicant's ~~prior~~past licensing, self-declaration, and
- 4 registration history in determining whether to issue a license.
- 5 4. The department may issue a provisional or restricted license in accordance with the
- 6 rules of the department.
- 7 5. The department shall notify the owner or operator that the owner or operator is
- 8 required to post a notice of late application at the early childhood program premises if
- 9 the department has not received a completed application and all supporting
- 10 documents for licensure or self-declaration renewal at least thirty days before the
- 11 expiration date of the early childhood program's license.

12 **SECTION 5. AMENDMENT.** Section 50-11.1-06 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **50-11.1-06. In-home provider - Registration voluntary - Prerequisites for approval -**
15 **Issuance of registration document - Term.**

16 An in-home provider may apply for a registration document from the department. The
17 department or the department's authorized agent shall determine whether the applicant meets
18 the standards and shall issue or deny a registration document based upon that determination. A
19 registration document for an in-home provider may not be effective for longer than one year.
20 The application ~~does~~and supporting documents may not include any fraudulent or untrue
21 representations. The department may consider the early childhood services history of the
22 applicant in determining issuance of a registration document. The department may investigate
23 an applicant according to rules adopted by the department to determine whether the applicant
24 has a criminal record or has been the subject of a finding of services required for child abuse
25 and neglect. The department may issue a provisional in-home provider registration document in
26 accordance with the rules of the department.

27 **SECTION 6. AMENDMENT.** Subsection 1 of section 50-11.1-06.2 of the North Dakota
28 Century Code is amended and reenacted as follows:

- 29 1. Upon a determination by the department ~~that~~ a criminal history record check is
- 30 appropriate, athe following individuals are to obtain two sets of the individual's

1 fingerprints from a law enforcement agency or other local agency authorized to take
2 fingerprints:

3 a. A provider holding or an applicant for early childhood services licensure,
4 self-declaration, or in-home provider, as well as new staff members of early
5 childhood services programs and new household registration:

6 b. Emergency designees and staff members of providers holding and applicants for
7 early childhood services licensure, self-declaration, or in-home provider
8 registration; and

9 c. Household members of a residence out of which early childhood services are
10 provided, shall obtain two sets of the individual's fingerprints from a law-
11 enforcement agency or other local agency authorized to take fingerprints.

12 **SECTION 7.** A new subsection to section 50-11.1-06.2 of the North Dakota Century Code is
13 created and enacted as follows:

14 A criminal history record check conducted under this section and subsection 3 of
15 section 50-06-01.9 is valid for five years, after which the department shall require
16 another criminal history record check.

17 **SECTION 8. AMENDMENT.** Subsection 1 of section 50-11.1-07.2 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 1. ~~Whenever~~if the department or the department's authorized agent finds, upon
20 inspection, that the program, self-declaration, or premises is not in compliance with
21 this chapter, or the rules adopted under this chapter, the department or the
22 department's authorized agent shall issue a correction order to the program or
23 self-declaration, provided the department does not revoke the license or
24 self-declaration as a result of the noncompliance. The correction order must cite the
25 specific statute or rule violated, state the factual basis of the violation, state the
26 suggested method of correction, and specify the time allowed for correction. The
27 correction order must also specify the amount of any fiscal sanction to be assessed if
28 the program or self-declaration fails to comply with the correction order in a timely
29 fashion. This section does not apply to an applicant's failure to comply with
30 subsection 8 of section 50-11.1-03 or subdivision c of subsection 1 of section
31 50-11.1-16.

1 **SECTION 9. AMENDMENT.** Section 50-11.1-12 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **50-11.1-12. Violation of chapter or rules - Injunction.**

4 The department or the department's authorized agent may seek injunctive action against an
5 individual who provides early childhood services for which licensure is required, an early
6 childhood program, ~~or~~ holder of a self-declaration, or in-home ~~registration document~~provider in
7 the district court through proceedings instituted by the attorney general on behalf of the
8 department or by a state's attorney on behalf of the authorized agent, if:

- 9 1. There is a violation of this chapter or a rule adopted under this chapter; or
- 10 2. An early childhood program ~~or~~, holder of a self-declaration, or in-home ~~registration-~~
11 ~~document~~provider, after notice and opportunity for hearing on the notice of
12 noncompliance, ~~or~~ on the resumption of the fiscal sanction, or after administrative
13 hearing confirming and upholding the fiscal sanction does not pay a properly assessed
14 fiscal sanction in accordance with section 50-11.1-07.6.

15 **SECTION 10. AMENDMENT.** Section 50-11.1-16 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **50-11.1-16. Self-declaration - Approved application required - Fees.**

- 18 1. a. An application for self-declaration is voluntary. ~~An~~if an individual ~~may~~
19 ~~apply~~applies for self-declaration from the department. ~~The,~~ the department or the
20 department's authorized agent shall determine whether the standards for
21 self-declaration have been met and shall approve or deny a self-declaration
22 based upon that determination.
- 23 b. An applicant for self-declaration shall pay a nonrefundable fee of fifteen dollars at
24 the time the application is filed.
- 25 c. An applicant for self-declaration, who currently holds a license or self-declaration,
26 shall submit the nonrefundable fees with the application at least sixty days and
27 no more than ninety days before the expiration date of the applicant's current
28 license or self-declaration. If the nonrefundable fees and application are
29 submitted less than sixty days before expiration of the applicant's current license
30 or self-declaration, the applicant shall submit with the application two times the
31 regular nonrefundable fees.

- 1 2. All fees collected under this section must be paid to the department or the
2 department's authorized agent and must be used to defray the cost of investigating,
3 inspecting, and evaluating applications for self-declarations or to provide training to
4 providers of early childhood services.

5 **SECTION 11. AMENDMENT.** Section 50-11.1-17 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **50-11.1-17. Application for self-declaration - Prerequisites for approval - Approval -**
8 **Term.**

- 9 1. Applications for self-declarations must be made on forms provided and in the manner
10 prescribed by the department. The department or the department's authorized agent
11 shall investigate the applicant and every individual living in the private residence and
12 shall conduct a background check. The department or the department's authorized
13 agent shall conduct the investigation in accordance with the rules adopted by the
14 department and shall determine whether any of them has a criminal record or has had
15 a finding of services required for child abuse or neglect filed against them. Except as
16 otherwise provided, the department shall approve a self-declaration within thirty days
17 of receipt of a completed application and all supporting documents by the department
18 and upon the applicant's declaration that:
- 19 a. The premises to be used are in fit and sanitary condition to provide for the health
20 and safety of all children and ~~shall be~~ are maintained according to the standards
21 prescribed by the rules of the department;
 - 22 b. The applicant is able to provide for the health and safety of each child receiving
23 early childhood services from the applicant according to this chapter and
24 standards prescribed by the department as set forth in its rules;
 - 25 c. The applicant has not had a previous license or self-declaration denied or
26 revoked within the twelve months before the date of the current application;
 - 27 d. The applicant has not had three or more previous licenses or self-declarations
28 denied or revoked. The most recent revocation or denial ~~cannot~~ may not have
29 occurred within five years of the application date;
 - 30 e. The applicant has paid the required application fees;

- 1 f. The applicant has paid any penalties and sanctions assessed against the
2 program required by sections 50-11.1-03 and 50-11.1-07.4;
- 3 g. The applicant is currently certified in infant and pediatric cardiopulmonary
4 resuscitation and the use of an automated external defibrillator by the American
5 heart association, the American red cross, or a similar cardiopulmonary
6 resuscitation and automated external defibrillator training program approved by
7 the department;
- 8 h. The emergency designee used by the applicant, if any, is currently certified in
9 infant and pediatric cardiopulmonary resuscitation and the use of an automated
10 external defibrillator by the American heart association, the American red cross,
11 or a similar cardiopulmonary resuscitation and automated external defibrillator
12 training program approved by the department;
- 13 i. The applicant is currently certified in first aid through a training program approved
14 by the department; and
- 15 ~~i.j.~~ The application does and supporting documents do not include any fraudulent or
16 untrue representations.
- 17 2. The department may consider the early childhood services history of the applicant in
18 determining issuance of a self-declaration document.
- 19 3. The department may issue a provisional self-declaration document in accordance with
20 the rules of the department.
- 21 4. The department shall notify the holder of a self-declaration that the holder of a
22 self-declaration is required to post a notice of late application at the self-declaration
23 premises if the department has not received a completed application and all
24 supporting documents for licensure or self-declaration renewal at least thirty days
25 before the expiration date of a self-declaration.

26 **SECTION 12. EFFECTIVE DATE.** Sections 3, 4, 10, and 11 of this Act become effective on
27 January 1, 2018.