

**Sixty-fifth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 3, 2017**

SENATE BILL NO. 2090  
(Senator Bekkedahl)  
(Representatives Damschen, Hogan)

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

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

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

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

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

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

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

25. "Staff member" means ~~operator, caregiver, provider, or any other individual, whether paid or volunteer, who provides care, supervision, or guidance to children in~~an individual:
  - a. Who is an employee of an early childhood program or of an early childhood services provider under a self-declaration and includes food preparation, transportation, and maintenance personnel; or
  - b. Whose activities involve the care, supervision, or guidance of children for or 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 3. AMENDMENT.** Section 50-11.1-03 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A license for family child care is required if early childhood services are provided for four or more children ages twenty-four months and under, or six or seven children through age eleven at any one time which includes no more than three children under twenty-four months of age.
2. A license for group child care is required if early childhood services are provided for at least eight and no more than thirty children at any one time.
3. A license for a child care center is required if early childhood services are provided for more than thirty children at any one time.
4. ~~A~~Except as provided under subsection 5, a person, partnership, firm, corporation, limited liability company, association, or nongovernmental organization may not establish or operate a family child care, group child care, preschool, school-age child care, or child care center unless licensed to do so by the department.
5. A governmental organization may not establish or operate a family child care, group child care, preschool, school-age child care, or child care center without first receiving public approval by certifying, to the department or the department's authorized agent, that it has complied with all rules applicable to family child care, group child care, preschool, or school-age child care, or to child care centers.
6. A license is not required for onsite child care services that are located in the actual building in which the child's parent is employed, not to exceed ten children per location.
7. An applicant for a license shall submit the following nonrefundable fees with the application:
  - a. The operator of a family child care applying for a license shall pay an annual license fee of twenty dollars or if the license is issued for a two-year period, a fee of thirty-five dollars.
  - b. The operator of a group child care applying for a license shall pay an annual license fee of twenty-five dollars or if the license is issued for a two-year period, a fee of forty-five dollars.
  - c. The operator of a preschool applying for a license shall pay an annual license fee of thirty dollars or if the license is issued for a two-year period, a fee of fifty-five dollars.
  - d. The operator of a child care center applying for a license shall pay an annual license fee of forty dollars or if the license is issued for a two-year period, a fee of seventy-five dollars.
  - e. The operator of a multiple licensed program applying for a license shall pay an annual license fee of fifty dollars or if the license is issued for a two-year period, a fee of ninety-five dollars.
8. An applicant for a license who currently holds a license or self-declaration shall submit the nonrefundable fees set forth in subsection 7 with the application at least sixty days and no more than ninety days before the expiration date of the applicant's current license or self-declaration. If the nonrefundable fees and application are submitted less than sixty days before the expiration date of the applicant's current license or self-declaration, the applicant shall submit with the application two times the nonrefundable fees set forth in subsection 7.
9. In addition to any criminal sanctions or other civil penalties which~~that~~ may be imposed pursuant to law, the operator of an early childhood program who, after being given written notice by the department or the department's authorized agent, continues to provide early childhood services without a license as required by this section is subject to a civil penalty of fifty dollars per day for each day of operation without the required license. The civil penalty

may be imposed by the courts or by the department through an administrative hearing pursuant to chapter 28-32.

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

**SECTION 4. 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 that:
  - 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 ~~must be~~ 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 ~~does~~ and supporting documents do not include any fraudulent or untrue representations;
  - d. The owner ~~or~~ operator, or applicant has not had a previous license or self-declaration denied or revoked ~~within the twelve months prior to~~ before the date of the current application;
  - e. The owner ~~or~~ operator, or applicant has not had three or more previous licenses or self-declarations denied or revoked. The most recent revocation or denial ~~cannot~~ may not have occurred within the five years immediately preceding the application date;
  - f. The program ~~has~~ 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 ~~has~~ and staff members have received training and ~~is~~ are currently certified in infant and pediatric cardiopulmonary resuscitation and 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 ~~is~~ 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 ~~maintains~~, at all times during which early childhood services are provided, ~~at least one person who~~ has staff members have received training and ~~is~~ are currently certified in infant and

pediatric cardiopulmonary resuscitation and 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 ~~at least one person who is~~ 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 ~~services~~ program may not be effective for longer than two years.
3. The department may consider the applicant's ~~prior~~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.
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 5. AMENDMENT.** Section 50-11.1-06 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

1. Upon a determination by the department ~~that~~ a criminal history record check is appropriate, at the following individuals are to obtain two sets of the individual's fingerprints from a law enforcement agency or other local agency authorized to take fingerprints:
  - a. A provider holding or an applicant for early childhood services licensure, self-declaration, or in-home provider, ~~as well as new staff members of early childhood services programs and new household~~ registration;
  - b. Emergency designees and staff members of providers holding and applicants for early childhood services licensure, self-declaration, or in-home provider registration; and
  - c. Household members of a residence out of which early childhood services are provided, ~~shall obtain two sets of the individual's fingerprints from a law enforcement agency or other local agency authorized to take fingerprints.~~

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

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

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

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

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

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

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

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

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

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

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

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

1. Applications for self-declarations must be made on forms provided and in the manner prescribed by the department. The department or the department's authorized agent shall investigate the applicant and every individual living in the private residence and shall conduct a background check. The department or the department's authorized agent shall conduct the investigation in accordance with the rules adopted by the department and shall 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. Except as otherwise provided, the department shall approve a self-declaration within thirty days of receipt of a completed application and all supporting documents by the department and upon the applicant's declaration that:
  - a. The premises to be used are in fit and sanitary condition to provide for the health and safety of all children and ~~shall be~~ maintained according to the standards prescribed by the rules of the department;
  - b. The applicant is able to provide for the health and safety of each child receiving early childhood services from the applicant according to this chapter and standards prescribed by the department as set forth in its rules;
  - c. The applicant has not had a previous license or self-declaration denied or revoked within the twelve months before the date of the current application;
  - d. The applicant has not had three or more previous licenses or self-declarations denied or revoked. The most recent revocation or denial ~~cannot~~ may not have occurred within five years of the application date;
  - e. The applicant has paid the required application fees;
  - f. The applicant has paid any penalties and sanctions assessed against the program required by sections 50-11.1-03 and 50-11.1-07.4;
  - g. The applicant is currently certified in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, the American red cross, or a similar cardiopulmonary resuscitation and automated external defibrillator training program approved by the department;
  - h. The emergency designee used by the applicant, if any, is currently certified in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, the American red cross, or a similar cardiopulmonary resuscitation and automated external defibrillator training program approved by the department;
  - i. The applicant is currently certified in first aid through a training program approved by the department; and
  - i.j. The application ~~does~~ and supporting documents do not include any fraudulent or untrue representations.
2. The department may consider the early childhood services history of the applicant in determining issuance of a self-declaration document.

3. The department may issue a provisional self-declaration document in accordance with the rules of the department.
4. The department shall notify the holder of a self-declaration that the holder of a self-declaration is required to post a notice of late application at the self-declaration 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 a self-declaration.

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

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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-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2090.

Senate Vote:    Yeas 46            Nays 0            Absent 1

House Vote:    Yeas 73            Nays 19          Absent 2

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Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2017.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2017,

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

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