27.0221.01000

Seventieth
Legislative Assembly
of North Dakota

BILL NO.

Introduced by

Senator Davison

A BILL for an Act to amend and reenact sections 50-11.1-02, 50-11.1-02.1, 50-11.1-03, 50-11.1-16, 50-11.1-17, and 50-33-01 of the North Dakota Century Code, relating to child care licensing and child care assistance.

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. "Applicant" means the person applying for a license to operate early childhood services as an owner of an early childhood program~~, self-declaration, or registered in-home provider~~ or as a certified provider.
2. "Certified provider" means a self-declared, department-approved individual providing early childhood services in a private residence for:
   a. Up to five children, of which no more than three may be under twenty-four months of age; or
   b. A child in the child's home when the child has a health condition or disability making it not feasible for the child to receive services outside the child's home due to the unique medical or behavioral needs of the child.
3. "Child care" means the care, supervision, education, or guidance of a child, which is not provided by a parent, legal guardian, or legal custodian.
4. "Child care center" means an early childhood program licensed to provide early childhood services ~~to nineteen or more~~for children from birth through age twelve following appropriate ratios in accordance with the square footage of the center.

~~3.~~5. "Department" means the department of health and human services.

~~4.~~6. "Drop-in care" means the care of children on a one-time, occasional, or unscheduled basis to meet the short-term needs of families.

~~5.~~7. "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.

~~6.~~8. "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 section 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 department.

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.

k. A child care program certified by and in good standing with the United States department of defense family child care certification program, in accordance with department of defense instruction 6060.02, child development programs.

~~7.~~9. "Family and group child care" means a private residence or residentially based facility licensed to provide early childhood services for ~~no more than seven~~up to thirty children at any one time~~, except that the term includes a residence licensed to provide early childhood services to two additional school-age children~~ from birth through age twelve following appropriate ratios in accordance with the square footage of the residence or facility.

~~8.~~10. "Four-year old program" means an approved child care program operated by a public or private educational entity designed to serve children in the year before kindergarten.

~~9. "Group child care" means a child care program licensed to provide early childhood services for thirty or fewer children.~~

~~10.~~11. "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. "Licensee" means the person to which a license has been issued under this chapter.

14. ~~"Multiple licensed program" means an early childhood program licensed to provide more than one type of early childhood services.~~

~~15.~~ "Operator" means the person that has operational responsibility for the early childhood program and premises at which the early childhood service operates.

~~16.~~15. "Owner" means the person who has legal responsibility for the early childhood program and premises at which the early childhood service operates.

~~17.~~16. "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.

~~18.~~17. "Premises" means the indoor and outdoor areas approved for providing early childhood services.

~~19.~~18. "Preschool designation" means a program licensed to offer early childhood services, which employs credentialed staff and 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~~as verified by the department.

~~20.~~19. "Provider" means an early childhood program~~, self-declaration,~~ or ~~registered in-home~~certified provider.

~~21.~~20. "Public approval" means a nonlicensed early childhood program operated by a government entity that has self-certified that the program complies with this chapter.

~~22.~~21. "Registrant" means the holder of ~~an in-home provider registration document~~a certificate issued by the department in accordance with this chapter.

~~23.~~22. "Registration" means the process whereby the department maintains a record of all ~~in-home~~certified providers who have stated that they have complied or will comply with the prescribed standards and adopted rules.

~~24.~~23. "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.

~~25. "School-age child care" means a child care program licensed to provide early childhood services on a regular basis for children aged at least five years through eleven years.~~

~~26. "School-age children" means children aged at least five years but less than twelve years of age.~~

~~27. "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.~~

~~28.~~24. "Staff member" means an individual:

a. Who is an employee or operator of an early childhood provider;

b. Whose activities involve the care, supervision, or guidance of children of an early childhood provider; or

c. Who may have unsupervised access to children under the care, supervision, or guidance of an early childhood provider.

SECTION 2. AMENDMENT. Section 50-11.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-02.1. Number of children in program - How determined.

1. Except as provided under subsection 2, for the purpose of determining the number of children receiving early childhood services, all children present on the premises and under the age of twelve years must be counted for ~~an in-home, self-declaration~~a certified provider, family and group child care, ~~group child care,~~and child care center~~, and preschool~~.
2. ~~An in-home, self-declaration~~A certified provider, family and group child care, and group child care provider's own child, foster child, or grandchild over the age of eleven are exempt for the purpose of determining the number of children receiving early childhood services under this section.
3. ~~For the purpose of determining the number of children receiving early childhood services, all children present on the premises aged at least five years through age eleven must be counted for school-age child care.~~
4. All children present on the premises are protected by this chapter regardless of whether money is received or goods or other services are received for their care.

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 and group 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~~six and no more than thirty children at any one time.

~~3.~~2. A license for a child care center is required if early childhood services are provided for more than thirty children at any one time.

3. A preschool designation is required for a family and group child care or child care center if the early childhood services include a preschool curriculum.

4. Except as provided under subsection 5, a person may not establish or operate a family ~~child care,~~and 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,~~and group child care~~, preschool, school-age child care,~~ or child care center without first receiving public approval by certifying, to the department, that ~~it~~the organization has complied with all rules applicable to a family ~~child care,~~ and group child care~~, preschool, or school-age child care,~~ or to a child care ~~centers~~center.

6. A license is not required for onsite child care services 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 owner 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 owner of a~~and 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 owner 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.~~b. The owner 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 owner 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.~~

c. The owner of a family and group child care or child care center applying for a preschool designation 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.

8. An applicant for a license who currently holds a license, designation, or ~~self-declaration~~certification 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, designation, or ~~self-declaration~~certification. If the nonrefundable fees and application are submitted less than sixty days before the expiration date of the applicant's current license, designation, or ~~self-declaration~~certification, 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 that may be imposed pursuant to law, the owner of an early childhood program who, after being given written notice by the department, 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.

10. All fees collected under subsections 7 and 8 must be paid to the department and must be used to defray the cost, to the department, of investigating, inspecting, and evaluating the applications or to provide training to providers.

11. Any hours of department-approved training related to child care which an applicant or staff member completes after submitting the fees and application as required under subsection 8 must be counted toward the licensing annual requirements for the following year.

SECTION 4. AMENDMENT. Section 50-11.1-16 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-16. ~~Self-declaration~~Certified provider - Approved application required - Fees.

1. a. An application for self-declaration as a certified provider is voluntary. If an individual applies for ~~self-declaration~~certification from the department, the department shall determine whether the standards for self-declaration as a

certified provider have been met and shall approve or deny a ~~self-declaration~~certification based upon that determination.

b. An applicant for self-declaration as a certified provider shall pay a nonrefundable fee of fifteen dollars at the time the application is filed.

c. An applicant for self-declaration as a certified provider, who currently holds a license or ~~self-declaration~~certification, 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~~certification. If the nonrefundable fees and application are submitted less than sixty days before expiration of the applicant's current license or ~~self-declaration~~certification, 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 and must be used to defray the cost of investigating, inspecting, and evaluating applications for self-declarations or to provide training to providers.

SECTION 5. 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~~certification - Prerequisites for approval - Approval - Term.

1. Applications for self-declarations as a certified provider must be made on forms provided and in the manner prescribed by the department. The department shall investigate the applicant and every individual living in the private residence and shall conduct a background check. The department 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 confirmed decision for child abuse or neglect. 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:

   a. The premises to be used are in fit and sanitary condition to provide for the health and safety of all children and are 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 the rules of the department;

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 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 holder of a self-declaration 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, including 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, including 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

j. The application 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. 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.

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 6. AMENDMENT. Section 50-33-01 of the North Dakota Century Code is amended and reenacted as follows:

50-33-01. Definitions.

For the purposes of this chapter:

1. "Allowable activities" means paid work, job search, attending job training or an education program, any activity in the job opportunity and basic skills program, transportation time related to the activities, temporary illness or incapacity of a current recipient, and temporary illness of the child.
2. "Approved relative" means an individual provider related to a child in that provider's care by marriage, blood, or court decree as a grandparent, step-grandparent, great grandparent, step-great grandparent, aunt, step-aunt, uncle, step-uncle, sibling, or step-sibling, who has been approved to care for specific children in the provider's own home, but does not mean a sibling provider who resides in the home of a child in that provider's care.
3. "Caretaker" means a child's biological or adoptive parent, the spouse of the child's biological or adoptive parent, or an individual acting in the stead of a child's parent at the request of the parent or another with authority to make the request, but does not mean a provider.

4. "Certified provider" has the meaning provided in section 50-11.1-02.

5. "Child care assistance unit" means all members of the caretaker's immediate household, including a child through the month of that child's nineteenth birthday, and any parent or stepparent of a child, including an acknowledged or adjudicated father of one or more children in the household, but does not mean any other person who is not acting in the stead of a parent, a child who is nineteen years of age or older, a child for whom the household receives foster care payments, or a minor parent of a child in the household unless the minor parent also requires child care or is incapable of caring for the child.

~~5.~~6. "Child care center" has the meaning provided in ~~chapter 50-11.1~~section 50-11.1-02.

~~6.~~7. "Department" means the department of health and human services.

~~7. "Family child care" has the meaning provided in chapter 50-11.1.~~

8. ~~"Group"~~"Family and group child care" has the meaning provided in ~~chapter 50-11.1~~section 50-11.1-02.

9. "Human service zone" has the meaning provided in section 50-35-01.

10. ~~"In-home provider" has the meaning provided in section 50-11.1-02.~~

~~11.~~ "Provider" means an individual ~~who is~~ eighteen years of age or older~~, licensed~~ who is:

a. Licensed as a provider in a family ~~child care,~~and group child care~~,~~ or child care center~~, with a self-declaration as a provider of early childhood services who requires no license, registered~~;

b. A certified provider;

c. Licensed as a child care provider by a tribal entity~~,~~; or ~~an~~

d. An approved relative, who meets criteria established by the jurisdiction with authority to regulate child care services.

~~12.~~11. "Recipient" means an individual who is receiving child care assistance.

~~13.~~12. "Tribal entity" means an organization authorized by the government of an Indian tribe within North Dakota to license, register, or otherwise recognize a child care provider operating within the jurisdiction of that Indian tribe.

~~14.~~13. "Work":

a. Means any paid employment and any self-employment providing commensurate income; and

b. Does not mean any unpaid activity except:

(1) With respect to a caretaker who is involved in job opportunity and basic skills or tribal native employment works required by temporary assistance for needy families, any approved activity for the program; and

(2) When a state has been determined to have a major disaster, activity by an individual who is residing in the disaster area and involved in unpaid work activities, including the cleaning, repair, restoration, and rebuilding of homes, businesses, and schools.