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Sixty-first
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT
with Conference Committee Amendments

ENGROSSED SENATE BILL NO. 2162

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

A BILL for an Act to create and enact a new section to chapter 50-06 and two new sections to chapter 50-11.1 of the North Dakota Century Code, relating to criminal history record checks and to self-declaration of an individual who provides early childhood services; to amend and reenact subdivision g of subsection 2 of section 12-60-24 and sections 50-11.1-02, 50-11.1-02.1, 50-11.1-03, 50-11.1-04, 50-11.1-06, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3, 50-11.1-07.4, 50-11.1-07.5, 50-11.1-07.6, 50-11.1-07.8, 50-11.1-08, 50-11.1-09, 50-11.1-10, 50-11.1-11, 50-11.1-11.1, 50-11.1-12, and 50-11.1-13.1 of the North Dakota Century Code, relating to criminal history record checks, licensing and registration of early childhood services providers, investigation of early childhood services providers, denial or revocation of request for early childhood services provider licensure or registration, and resource and referral services; to repeal section 50-11.1-03.1 of the North Dakota Century Code, relating to cardiopulmonary resuscitation certification for a family child care home operator; to provide a statement of legislative intent; to provide a penalty; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision g of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

g. The department of human services for ~~carecheck registrations under section 50-11.1-06.2~~ criminal history record checks authorized under section 2 of this Act.

SECTION 2. A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

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 for early childhood services licensure, nonlicensed holders of a self-declaration, and in-home providers under chapter 50-11.1. The department also may require criminal history record checks for new staff members of those applicants, providers of an applicant, and a provider if the provider is providing early childhood services within the provider's home.

SECTION 3. 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 ~~facility where~~ program licensed to provide early childhood services ~~are provided~~ 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 ~~facility~~ program" means any ~~facility~~ program licensed under this chapter where early childhood services are provided~~, whether the facility is known as a child care center, day care home, day care center, day nursery, family child care home, group child care home, preschool educational facility nursery school, kindergarten, child play school, progressive school, child development center, preschool, drop-in care center, or known by any other name~~ 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, ~~unaccompanied by the child's parent, guardian, or custodian,~~ which is provided in exchange for money, goods, or other services ~~and is, or is~~

~~anticipated to be, ongoing for periods of two or more hours per day for a part of three or more days per week~~. 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 1 of section 15.1-06-06.

d. Child care, preschool, and prekindergarten services provided to ~~preschool age handicapped~~ 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, ~~shopping center,~~ business, or ~~other establishment~~ organization where children are cared for during periods of time not exceeding four continuous hours while the child's parent~~, guardian, or custodian~~ is attending church services~~, shopping,~~ or is engaged in other activities, on ~~or near~~ 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 ~~preschool age~~ 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. ~~Headstart~~ Head start and early head start programs that are federally funded and meet federal ~~headstart~~ head start performance standards.

j. Child care provided ~~by a hospital~~ in a medical facility by medical personnel ~~within the physical structure of the hospital~~ to children who are ill.

8. "Family child care ~~home~~" means ~~an occupied~~ a private residence ~~in which~~ licensed to provide early childhood services ~~are provided~~ for no more than seven children at any one time, except that the term includes a residence ~~providing~~ licensed to provide early childhood services to two additional school-age children during the

two hours immediately before and after the schoolday and all day, except Saturday and Sunday, when school is not in session during the official school year.

9. "Group child care ~~home" or "group child care facility~~" means a child care ~~facility where~~ program licensed to provide early childhood services ~~are provided~~ for ~~eight through~~ eighteen or fewer children ~~or a facility, other than an occupied private residence, which serves fewer than eight 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.

~~11.~~ 12. "~~License~~ Licensed" means an early childhood program has the rights, authority, or permission granted by the department to operate ~~a family child care home, group child care facility, child care center, drop-in care center, or preschool educational facility~~ and provide early childhood services.

~~12.~~ 13. "Multiple licensed ~~facility~~ program" means an early childhood ~~facility that provides~~ program licensed to provide more than one type of early childhood services.

~~13.~~ 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 ~~educational facility~~" means a ~~facility that offers~~ program licensed to offer early childhood services ~~and~~, which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled ~~in the facility~~ and ~~that~~ 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.

~~14.~~ 19. "Registrant" means the holder of ~~a~~ an in-home provider registration document issued by the department in accordance with this chapter.

~~15.~~ 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.

~~16.~~ 21. "Registration document" ~~is~~ 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. "Self-declaration" means voluntary documentation of an individual providing early childhood services in a private residence for up to three children below the age of twenty-four months or for no more than five children through the age of eleven.

24. "Staff member" means operator, caregiver, provider, or any other individual, whether paid or volunteer, who provides care, supervision, or guidance to children in an early childhood program and includes food preparation, transportation, and maintenance personnel.

SECTION 4. 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. For the purpose of determining the number of children ~~in an~~ receiving early childhood ~~facility~~ services, all children ~~of the operator or employees,~~ present ~~in the facility~~ on the premises and under the age of twelve years~~,~~ must be counted ~~except for purposes of determining fire, safety, or zoning requirements~~. All children present are protected by this chapter regardless of whether money is received or goods or other services are received for their care.

SECTION 5. AMENDMENT. Section 50-11.1-03 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-03. Operation of ~~family child care home, group child care facility, preschool educational facility, and child care center~~ early childhood services program - License required - Fees.

1. A license for ~~a~~ family child care ~~home~~ is required if early childhood services are provided for four or more children ages twenty-four months and under, or six or ~~more~~ seven children through age eleven at any one time which includes no more than three children under twenty-four months of age. ~~Those persons not required by this subsection to hold a family child care license may voluntarily apply for and receive such a license.~~

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

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

4. A person, partnership, firm, corporation, limited liability company, association, or nongovernmental organization may not establish or operate a family child care, group child care ~~facility~~, preschool ~~educational facility~~, school-age child care, or child care center unless licensed to do so by the department. ~~No~~

5. A governmental organization may not establish or operate a family child care, group child care ~~facility~~, preschool ~~educational facility~~ 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 ~~facilities~~, preschool ~~educational facilities~~, or school-age child care, or to child care centers.

~~3.~~ 6. An applicant for a license shall submit the following nonrefundable fees with the application:

   a. The operator of a family child care ~~home~~ 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 ~~home~~ 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 ~~educational facility~~ 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 ~~facility~~ 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.

~~4.~~ 7. In addition to any criminal sanctions or other civil penalties which may be imposed pursuant to law, the operator of an early childhood ~~facility~~ program who, after being given written notice by ~~a representative of~~ 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~~ two hundred dollars per day for each day of operation without ~~such~~ 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.

~~5.~~ 8. All fees collected under subsection ~~3~~ 6 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 6. 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. ~~Applications~~

1. An application for operation of an early childhood ~~facility licenses~~ 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 ~~facilities~~ premises to be used by the early childhood program applying for a

license. The applicant for a license and the ~~applicant's employees~~ staff members, and, if the ~~license~~ application is for ~~an occupied~~ a program that will be located in a private residence, every ~~person~~ individual living ~~or working~~ in that residence~~, may~~ 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 ~~facility~~ program upon a showing that:

~~1.~~ a. The premises to be used are in fit and sanitary condition ~~and~~, are properly equipped to provide for the health and safety for all children ~~who may be received~~, and must be maintained according to rules adopted by the department;

~~2. The persons in charge of the facility and their assistants~~

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 ~~and regulations~~ of the department;

~~3. The facility will be maintained according to the standards prescribed for its conduct by the rules and regulations of the department;~~

c. The application does not include any fraudulent or untrue representations;

~~4.~~ d. The ~~facility~~ owner or operator, or applicant has not had a previous license or self-declaration denied or revoked within the ~~one hundred eighty days~~ twelve months prior to 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 have occurred within the five years immediately preceding the application date;

~~5.~~ f. The ~~facility~~ program has paid its license fees and any penalties assessed against the ~~facility~~ program as required by section 50-11.1-03;

g. The family child care owner or operator has received training and is currently certified in cardiopulmonary resuscitation by the American heart association,

American red cross, or other similar cardiopulmonary resuscitation training programs that are approved by the department, and is currently certified in first aid by a program approved by the department; and

~~6.~~ h. The group child care, preschool, school-age child care, or child care center ~~facility~~ maintains, at all times during which early childhood services ~~is~~ are provided, at least one person who has received training and is currently certified in ~~rescuer~~ cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation 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 ~~facility must~~ services program may not be ~~in force and effect~~ effective for ~~a period of not more~~ longer than two years.

3. The department may consider the applicant's prior 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.

SECTION 7. 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 ~~certificate~~ document - Term. ~~In-home providers~~ An in-home provider may apply for a registration ~~certificate~~ document from the department. The department or the department's authorized agent shall determine whether the applicant meets the standards ~~have been met~~ and shall issue or deny a registration ~~certificate~~ document based upon that determination. ~~Registration certificates~~ A registration document for an in-home ~~providers must be in force and effect~~ provider may not be effective for ~~not more~~ longer than one year. The application does 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 8. A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

Self-declaration - Approved application required - Fees.

1. a. An application for self-declaration is voluntary. An individual may apply for self-declaration from the department. 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.

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 9. A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

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 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 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 assessed against the program required by section 50-11.1-03;

g. The applicant is currently certified in cardiopulmonary resuscitation by the American heart association, the American red cross, or a similar cardiopulmonary resuscitation training program approved by the department;

h. The applicant is currently certified in first aid through a training program approved by the department; and

i. The application does 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.

SECTION 10. AMENDMENT. Section 50-11.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-06.1. Conviction not bar to licensure, self-declaration, or registration - Exceptions. Conviction of an offense does not disqualify ~~a person~~ an individual from licensure, self-declaration, or registration under this chapter unless the department determines ~~that the~~:

1. The offense has a direct bearing upon ~~a person's~~ the individual's ability to serve the public as the owner or ~~proprietor~~ operator of an early childhood ~~facility~~ program, holder of a self-declaration, or ~~as~~ an in-home provider~~,~~; or ~~that, following~~

2. Following conviction of any offense, the ~~person~~ individual is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 11. AMENDMENT. Section 50-11.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-06.2. ~~Carecheck registry - Child care providers -~~ Background investigations - Fees. ~~Placement in the carecheck registry is voluntary. To apply for placement in the carecheck registry, an in-home provider, a family child care home exempt from licensure, or a licensed~~

1. Upon a determination by the department that a criminal history record check is appropriate, a provider holding or an applicant for early childhood services ~~provider~~ licensure, self-declaration, or in-home provider, as well as new staff members of early childhood services programs and new household members of a residence out of which early childhood services are provided, shall obtain two sets of ~~that person's own~~ the individual's fingerprints from a law enforcement agency or other local agency authorized to take fingerprints ~~and~~.

2. The individual shall request the agency to submit the fingerprints and a completed fingerprint card for each set to the division of children and family services of the department or to ~~any division as determined appropriate by~~ the ~~department~~ department's authorized agent.

3. If the division has no record of a determination of services required for child abuse or neglect, the division shall submit the fingerprints to the bureau of criminal investigation to determine if there is any criminal history record information regarding the applicant ~~for carecheck~~, household members, or staff members in accordance with section 12-60-24.

4. The results of the investigations must be forwarded to the division of children and family services of the department or to ~~any other division as determined appropriate by the department. The applicant for placement in the carecheck registry, after satisfying requirements imposed by the department, must be placed~~

~~in the carecheck registry if no relevant criminal history record information is found and no report of a determination of services required for child abuse or neglect filed pursuant to section 50-25.1-05.2 is found which would disqualify~~ the ~~person~~ department's authorized agent.

5. The division may charge ~~the applicant~~ a fee not to exceed thirty dollars for the purpose of processing the application.

6. The division is not subject to the fee imposed under section 12-60-16.9 when requesting criminal history record information from the bureau of criminal investigation. ~~The division, within one hundred eighty days after July 1, 1991, shall provide, through a toll-free telephone line maintained by the department, a means to allow interested parents or guardians, employment agencies, or child care referral groups to determine if a person has met the requirements for placement in the carecheck registry. The division shall undertake a public awareness effort to explain the existence and purpose of the carecheck toll-free telephone line.~~

7. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.

8. The department may use background investigation findings to determine approval, denial, or revocation of an early childhood services license, self-declaration, or in-home registration.

9. Any individual who is providing early childhood services solely for the provider's own children, grandchildren, nieces, nephews, and cousins as a licensed provider, a nonlicensed holder of a self-declaration, or an in-home provider may not be required to submit to a criminal history record check authorized under section 2 of this Act.

SECTION 12. AMENDMENT. Section 50-11.1-07 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07. Investigation of ~~applicants, licensees, and registrants~~, applicant, licensee, holder of self-declaration or registration document, and staff members - Inspection of programs and premises - Maintenance of records - Confidentiality of records.

1. The department ~~and~~ or its authorized agent at any time may investigate and inspect an early childhood program, or a holder of a self-declaration or registration document and the conditions of ~~the facility~~ their premises, the qualifications of ~~the providers~~ a provider of early childhood services ~~in any early childhood facility, and the qualifications~~, of current and prospective staff members, of any in-home provider or applicant seeking or holding a license, self-declaration, or registration document under this chapter.

2. Upon request of the department or its authorized agent, the state department of health or the state fire marshal, or the fire marshal's designee, shall inspect ~~any facility~~ the premises for which a license or self-declaration is applied ~~for~~ or issued and shall report the findings to the department or the department's authorized agent.

~~2. Licensees and registrants~~

3. A licensee, holder of a self-declaration, or registrant shall:

a. Maintain ~~such~~ records as the department ~~may prescribe~~ prescribes regarding each child in ~~their~~ the licensee's, holder's, or registrant's care and control, and shall report to the department or the department's authorized agent, when requested, ~~such~~ upon forms furnished by the department, facts ~~as~~ the department may require with reference to ~~the children upon forms furnished by the department~~ each child;

b. Admit for inspection ~~authorized agents of~~ the department or the department's authorized agent and open for examination all records, books, and reports ~~of the home or facility~~; and

c. Notify the parent~~, guardian, or custodian~~ of each child receiving ~~care at the facility~~ early childhood services and ~~each employee of the facility~~ all staff members of the process for reporting a complaint or a suspected licensing violation.

~~3.~~ 4. Except as provided in subsection ~~4~~ 5, all records and information maintained with respect to ~~children~~ any child receiving early childhood services are confidential and must be properly safeguarded and may not be disclosed except:

a. In a judicial proceeding;

b. To officers of the law or other legally constituted boards or agencies; or

c. To persons having a definite interest in the well-being of the child ~~or children~~ concerned and who, in the judgment of the department, are in a position to serve ~~their~~ the child's interests should that be necessary.

~~4.~~ 5. A provider of early childhood services, upon the request of the parent ~~or guardian~~ of a child for whom the provider provides such services, shall make available to the parent ~~or guardian~~ a list of the names, telephone numbers, and addresses of the parents ~~or guardians~~ of children for whom early childhood services are provided. The list may ~~only~~ include only the names, telephone numbers, ~~or~~ electronic mail addresses, and addresses of parents ~~or guardians~~ who grant the provider permission to disclose that information.

6. The following information for early childhood services licensees, self-declarations, in-home providers, staff members, and adults residing in a home out of which early childhood services are provided is not confidential:

a. Name;

b. Address;

c. Telephone number; and

d. Electronic mail address.

SECTION 13. AMENDMENT. Section 50-11.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07.1. Notice. After each inspection or reinspection, the department or the department's authorized agent ~~shall~~, by certified mail, shall send copies of any correction order or notice of noncompliance, to the early childhood ~~facility~~ program or holder of a self-declaration.

SECTION 14. AMENDMENT. Section 50-11.1-07.2 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07.2. Correction orders.

1. Whenever the department or the department's authorized agent finds, upon inspection ~~of an early childhood facility~~, that the ~~facility~~ program, self-declaration, or premises is not in compliance with ~~the provisions of~~ this chapter, or the rules ~~and regulations promulgated thereunder~~ adopted under this chapter, the

department or the department's authorized agent shall issue a correction order ~~must be issued~~ to the ~~facility~~ 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 ~~regulation~~ 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 ~~is not complied with~~ in a timely fashion. ~~The department shall, by rule promulgated pursuant to subsection 2 of section 50-11.1-08, establish a schedule of allowable time periods for correction of deficiencies.~~

2. Within three business days of the receipt of the correction order, the licensee of the early childhood ~~facility~~ program or the holder of a self-declaration shall notify the parent~~, guardian, or custodian~~ of each child receiving ~~care at the facility~~ early childhood services that a correction order has been issued. In addition to providing notice to the parent~~, guardian, or custodian~~ of each child, the licensee or holder of a self-declaration shall post the correction order in a conspicuous location ~~within~~ upon the ~~facility~~ early childhood premises until the violation has been corrected or for five days, whichever is longer.

SECTION 15. 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. ~~An~~ The department or the department's authorized agent shall reinspect an early childhood ~~facility~~ program or holder of a self-declaration issued a correction order under section 50-11.1-07.2 ~~must be reinspected~~, at the end of the period allowed for correction. If, upon reinspection, ~~it is determined~~ the department determines that the ~~facility~~ 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 ~~must be mailed by certified mail to the facility~~. The notice must specify the violations not corrected and the penalties assessed in accordance with section 50-11.1-07.5.

SECTION 16. AMENDMENT. Section 50-11.1-07.4 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07.4. Fiscal sanctions. ~~An~~ If the department or the department's authorized agent issues a notice of noncompliance with a correction order to an early childhood ~~facility, if issued a notice of noncompliance with a correction order, must be assessed~~ program or holder of a self-declaration, the department shall assess fiscal sanctions in accordance with a schedule of fiscal sanctions established by rules ~~promulgated pursuant to~~ adopted by the department under subsection 2 of section 50-11.1-08. The department shall assess a fiscal sanction ~~must be assessed~~ for each day the ~~facility~~ early childhood program or holder of a self-declaration remains in noncompliance after the allowable time period for the correction of ~~deficiencies~~ violations ends and the sanction must continue as set forth in section 50-11.1-07.6 until ~~a~~ the department receives notice ~~of correction is received by the department or the department's authorized agent in accordance with section 50-11.1-07.6. No~~ indicating the violations are corrected. The fiscal sanction for a specific violation may not exceed ~~twenty-five~~ one hundred dollars per day of noncompliance.

SECTION 17. 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 ~~facility~~ program or holder of a self-declaration shall promptly notify the department or the department's authorized agent in writing when 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 ~~deficiency~~ violation must stop accruing. The ~~facility must be reinspected~~ department or the department's authorized agent shall reinspect 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, ~~it is determined~~ the department determines that a ~~deficiency~~ violation has not been corrected, the department shall resume the daily assessment of fiscal sanction ~~must resume~~ and shall add the amount of fiscal sanction which otherwise would have accrued during the period prior to resumption ~~must be added~~ to the total assessment due from the ~~facility~~ 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 written request for the hearing is made to the department within ten days of the notice of resumption.

SECTION 18. AMENDMENT. Section 50-11.1-07.6 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07.6. Recovery of fiscal sanctions - Hearing. Fiscal sanctions assessed pursuant to this chapter are payable fifteen days after receipt of the notice of noncompliance and at fifteen-day intervals thereafter, as the fiscal sanctions accrue. Recovery of an assessed fiscal sanction must be stayed if the ~~operator~~ program or holder of a self-declaration makes written request to the department for an administrative hearing within ten days after the ~~facility's receipt of~~ early childhood program or the holder of the self-declaration receives the notice. If the appeal is unsuccessful or withdrawn, the daily assessment of fiscal sanctions must resume and the department shall add the amount of fiscal sanctions which otherwise would have accrued during the period prior to resumption to the total assessment due from the early childhood program or the holder of a self-declaration. The department or the department's authorized agent shall notify the early childhood program or the holder of a self-declaration of the resumption by certified mail.

SECTION 19. AMENDMENT. Section 50-11.1-07.8 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07.8. Suspension of license, self-declaration, or registration document - Notification to parent~~, guardian, or custodian~~.

1. The department may suspend ~~the~~ a license ~~of any early childhood facility~~,self-declaration, or registration document during an investigation of a report of child abuse or neglect at the ~~facility conducted pursuant to section 50-25.1-05~~ premises of the licensed program, holder of the self-declaration, or registration, or of a staff member.
2. Notwithstanding sections 50-11.1-07 and 50-25.1-11, the department shall notify the parent~~, guardian, or custodian~~ of any child receiving ~~care at the facility~~ early childhood services when ~~the~~ that program's license ~~of the facility~~, self-declaration, or registration document is suspended.

3. Upon the conclusion and disposition of the investigation of the ~~facility~~ program, the department shall notify the parent~~, guardian, or custodian~~ of ~~the~~ each child receiving early childhood services of the disposition.

SECTION 20. AMENDMENT. Section 50-11.1-08 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-08. Minimum standards - Rules ~~and regulations~~ - Inspection by a governmental unit. The department may:

1. Establish reasonable minimum standards for the operation of early childhood ~~facilities~~ programs, self-declaration, and the registration of in-home providers. In appropriate circumstances and upon good cause shown, specific minimum standards may be substituted by alternate, equivalent standards, approved by the department.
2. Take such action and make ~~such~~ reasonable rules ~~and regulations~~ for the regulation of early childhood services ~~as may be~~ necessary to carry out the purposes of this chapter and entitle the state to receive aid from the federal government.
3. Authorize a governmental unit to:
   a. Inspect ~~any home or facility~~ the premises for which a license, self-declaration, or registration document is applied ~~for~~ or issued under this chapter; and
   b. Certify to the department that the ~~home or facility~~ premises of a program, holder of self-declaration, or registration document meets the requirements of this chapter and the minimum standards prescribed by the department.

SECTION 21. AMENDMENT. Section 50-11.1-09 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-09. Revocation of license, self-declaration, or registration document.

1. The department may revoke the license, self-declaration, or registration document of any early childhood ~~facility or the registration document of any in-home~~ services provider upon proper showing of any of the following:
   a. Any of the applicable conditions set forth in ~~section~~ sections 50-11.1-04, 50-11.1-06, and section 9 of this Act as prerequisites for the issuance of the license, self-declaration, or registration document no longer exist.

b. The licensee, holder of a self-declaration, or registrant is no longer in compliance with the minimum standards prescribed by the department.

c. The license, self-declaration, or registration document was issued upon fraudulent or untrue representation.

d. The licensee, holder of a self-declaration, or registrant has violated any rules of the department.

e. The licensee ~~or~~, holder of a self-declaration, registrant, or a household member of a home out of which early childhood services are provided has been found guilty of, or pled guilty to, an offense ~~determined by~~ the department ~~to have~~ determines has a direct bearing upon ~~a person's~~ an individual's ability to serve the public as a licensee, a holder of a self-declaration, or a registrant.

f. The licensee, holder of a self-declaration, or registrant has been convicted of any offense and the department, acting pursuant to section 12.1-33-02.1, has determined that the ~~licensee~~ individual has not been sufficiently rehabilitated.

g. The department may consider the early childhood services history of the licensee, holder of a self-declaration, or registrant in determining revocation of a license, self-declaration, or in-home registration document.

2. The department shall notify, in writing, the parent~~, guardian, or custodian~~ of each child receiving ~~care in~~ early childhood services from the ~~facility~~ early childhood services provider that is the subject of the ~~issuance of a~~ revocation notice.

SECTION 22. AMENDMENT. Section 50-11.1-10 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-10. Denial or revocation of license, self-declaration, or registration ~~certificate~~ document - Administrative hearing. Before the department may deny any application for a license, self-declaration, or registration ~~certificate~~ document under ~~the provisions of~~ this chapter ~~may be denied~~ or before ~~revocation of~~ the department may revoke any license, self-declaration, or registration ~~certificate may take place, written charges as to~~ document, the department shall provide a written notice to the applicant, licensee, or holder of the self-declaration or registration document of the reasons ~~therefor must be served upon the applicant, licensee, or registrant~~ for the denial or revocation. The applicant, licensee, holder of

a self-declaration, or registrant ~~has the right to~~ may request an administrative hearing appealing the denial or revocation in the manner provided in chapter 28-32 ~~if written~~. The applicant, licensee, holder of a self-declaration, or registrant shall make a request for ~~the~~ hearing ~~is made~~ to the department within ten days after ~~service~~ receipt of the ~~written charges~~ notice of denial or revocation from the department.

SECTION 23. AMENDMENT. Section 50-11.1-11 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-11. Public agency purchase of early childhood services. No agency of state or local government may purchase early childhood services, including care provided by or in the home of a relative, unless the early childhood ~~facility or early childhood services attendant~~ program is licensed, registered, or approved by the department.

SECTION 24. AMENDMENT. Section 50-11.1-11.1 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-11.1. Resource and referral ~~program~~ services - Authority of department to make grants - Federal funds - ~~Program components~~ Components.

1. The department may make grants to public and private nonprofit entities for the planning, establishment, expansion, improvement, or operation of early childhood services. Public or private entities may apply to the department for funding. Applicants shall apply for ~~such~~ grants on forms provided by the department. Applications for grants using funds received by the state under subsection 2 must include assurances that federal requirements have been met.
2. The department shall submit an application annually to the United States secretary of health and human services for the purpose of obtaining the state's allotment of funds authorized under chapter 8 of title VI of the Omnibus Budget Reconciliation Act of 1981 [42 U.S.C. 9871-9877] or under any subsequent federal law providing funding for child care and development programs.
3. Each ~~program must~~ entity providing early childhood resource and referral services shall identify all existing related early childhood services through information provided by all relevant public and private entities in the areas of service and must develop a resource file of ~~the~~ these services which must be maintained and

updated at least quarterly. The services must include early childhood services ~~and service providers as defined~~ as identified in section 50-11.1-02.

4. Each ~~program~~ entity providing early childhood resource and referral services ~~must~~ shall establish a referral process that responds to parental needs for information, fully ensures the confidentiality of records and information as required under subsection ~~3~~ 4 of section 50-11.1-07, affords parents maximum access to all referral information, and includes telephone referral available for no less than twenty hours per week and access via the internet. Each ~~program~~ entity shall publicize its services through popular media sources, agencies, employers, and other appropriate methods.

5. All early childhood services resource and referral ~~programs must~~ entities shall maintain documentation of the number of calls and contacts ~~to the program. A program~~ received and may collect and maintain the following information:

   a. Ages of children served.

   b. Time category of child care request for each child.

   c. Special time category, such as nights, weekends, or swing shift.

   d. The reason ~~that the~~ child care is needed.

6. Each ~~program must~~ early childhood services resource and referral entity shall have available, as an educational aid to parents, information on available parent, early childhood, and family education programs in the community and information on aspects of evaluating the quality and suitability of early childhood services, including licensing regulation, financial assistance availability, child abuse reporting procedures, and appropriate child development information.

7. A ~~program may~~ child care resource and referral entity shall provide technical assistance to existing and potential providers of all types of early childhood services and to employers. This assistance must include:

   a. Information on all aspects of initiating new early childhood services, including licensing, zoning, program and budget development, and assistance in finding information from other sources~~.~~;

b. Information and resources which help existing early childhood service providers to maximize their ability to serve the children and parents of their community~~.~~;

c. Dissemination of information on current public issues affecting the local and statewide delivery of early childhood services~~.~~;

d. Facilitation of communication between existing early childhood service providers and child-related services in the community served~~.~~;

e. Recruitment of licensed providers~~.~~ ; and

f. Options, and the benefits available to employers utilizing the various options, to expand child care services to employees.

8. Services prescribed by this section must be designed to maximize parental choice in the selection of early childhood services and to facilitate the maintenance and development of such services and resources.

SECTION 25. 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 ~~regulations~~ rules - Injunction. The department may seek injunctive action against an early childhood ~~facility~~ program, or holder of a self-declaration, or in-home registration document in the district court through proceedings instituted by the attorney general on behalf of the department if:

1. There is a violation of this chapter or a rule adopted ~~thereunder~~ under this chapter; or

2. An early childhood ~~facility~~ program or holder of a self-declaration, or in-home registration document, 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 26. AMENDMENT. Section 50-11.1-13.1 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-13.1. Penalty for provision of services - When applicable. ~~A person~~ An individual who provides early childhood services to any child, other than a child who is a member of that ~~person's~~ individual's household, is guilty of a class B misdemeanor if:

1. Those services are provided after that ~~person~~ individual is required to register ~~under section 12.1-32-15~~ as a sexual offender;
2. The department has denied that ~~person's~~ individual's application for licensure, or self-declaration, or registration to provide early childhood services or has revoked that ~~person's~~ individual's license, self-declaration, or ~~certificate of~~ registration document to provide early childhood services following a finding that services are required under chapter 50-25.1 and that finding has become final or has not been contested by that ~~person~~ individual; or
3. The ~~person~~ individual allows another ~~person~~ individual to be in the presence of the child receiving ~~the~~ early childhood services if that other ~~person~~ individual is required to register ~~under section 12.1-32-15~~ as a sexual offender or has had an application for licensure, self-declaration, or registration to provide early childhood ~~service~~ services denied or revoked by the department following a finding that services are required under chapter 50-25.1 and that finding has become final or has not been contested by that other ~~person~~ individual.

SECTION 27. REPEAL. Section 50-11.1-03.1 of the North Dakota Century Code is repealed.

SECTION 28. LEGISLATIVE INTENT - FULL-TIME EQUIVALENT POSTIONS - BACKGROUND CHECKS. It is the intent of the sixty-first legislative assembly that of the new 2.0 full-time equivalent positions authorized for the attorney general to assist with conducting background checks under this Act, the attorney general may fill the positions only as necessary to meet workload demands for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 29. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $210,856, or so much of the sum as may be necessary, and $82,904 in special funds, to the attorney general for the purpose of conducting background checks under this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 30. EXPIRATION DATE. The increase in the penalty identified in subsection 7 of section 5 of this Act is effective through July 31, 2011, and after that date is ineffective.