

2019 SENATE HUMAN SERVICES

SB 2245

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2245
1/30/2019
#31784 (49:58)

- Subcommittee
 Conference Committee

Committee Clerk: Justin Velez/ Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 1 of section 50-11.1-04, sections 50-11.1-07.2, 50-11.1-09, and 50-11.1-10, and subsection 1 of section 50-11.1-17 of the North Dakota Century Code, relating to early childhood service licensure adverse actions.

Minutes:

2 Attachments

Chair J. Lee opens the hearing on SB 2245.

Kathy Hogan, District 21 Senator, testifies in favor (see attachment #1)

(4:00) Michelle Roeszler, former owner of Curious Kids Childcare, testifies in favor (see attachment #2)

(11:10) Senator K. Roers: When we had the conversation the other day about Senator Kruen's bill, how does this play into that?

Senator Hogan: I missed the hearing so I'm not sure.

Senator Anderson: It seems strange to me that a license wouldn't be renewed when it is under appeal. Did your attorney indicate that that was a hard requirement by the department because you were under investigation, the license couldn't be renewed?

Roeszler: We went to District court, and district court denied our motion for an injunction to be able to make them give me a license in the interim. However, the denial of application was basically word for word the revocation notice. They denied it simply on the same basis of my revocation.

Senator Anderson: I'm used to licensing pharmacists and the courts wouldn't be too nice to us if we denied a renewal while a case was under review, so there must have been something

specific in the law which required that nonrenewal once you were under investigation. We'll find that out.

Roeszler: The district court judge, while we felt he wanted to rule in our favor, he felt that the law didn't support it, but not necessarily Century Code. He said that there's not enough case law to make a determination for us.

Vice Chair O. Larsen: How long had you been doing childcare?

Roeszler: I was initially licensed in my home from 2005 until September of 2011 at which time I went to work in other people's programs until April of 2013. I was licensed in my home until our new license at our separate, nonresidential space was issued July of 2016. Then I operated there until 2018 when our license was revoked.

Vice Chair O. Larsen: You had a licensed, nonresidential facility?

Roeszler: Correct. It was a group nonresidential license. We had a capacity of 30.

Senator K. Roers: What do you envision a peer review process would look like?

Roeszler: If I could design the plan, it would look like a mock trial before the final decision of revocation would be made- instead of the CPS investigator, my licensor, the supervisors, the regional supervisors and others in the room getting their information from the CPS investigator who was literally the only person who investigated. I didn't get any information or rebuttal time; my fate was in the hands of one CPS worker who I felt was manipulating questions with staff to get the answers she wanted to fit the situation that she decided had happened. More checks and balances to balance out the decision making process because I haven't seen all of the team notes from the staffing because they were redacted. We had asked several times for unredacted documents pertaining to that revocation staffing, and still almost a year later have not received any. We don't know everything they talked about in there.

Senator Clemens: What were the circumstances when those three kids got out?

Roeszler: My parent advocates, the clients that I worked for and cared for their children, would tell you the easiest way to describe it is a perfect storm of situation. I was attending an out of state child care conference to further my education in play-based child lead learning. I had a staff that were prepared to take care of the kids that day, but we had an afternoon person who wasn't there that usually would be, so it was a little bit different day. The children had gone outside and they were in the process of coming in which happens in shifts and staff was inside to receive them and start activities. There were only a handful of children still outside at the time and in the course of that, one of my staff in her statement admitted that she went around the side of the building. My single staff person made an error of judgement and for that I lost my entire business.

Vice Chair O. Larsen: From the time that you had your business at a building to the time you lost your license, how many children and staff had you watched and gone through? I know it's difficult to keep staff, my daughter did that for a while as well.

Roeszler: I did not have a problem retaining staff because the child led approach is a lot less stressful. We're not trying to control 30 children and get them to bend to our rule; we're letting them lead their choices and have self-directed play for most of the day. The supervising staff had been there more than a year, almost the entire two years that I had been licensed there. My other staff- one was coming up to a full year, one was my own teenager and my other two teen staff were also coming up close to a year. We had no new staff; my other staff that was gone that day had been with me since before we moved into the building. Children wise- out of all of the children that I had, only four were not carrying over into the year. Most of those families had been with me for more than year, some of them since I opened July of 2016. This was a very heart wrenching decision because some of my parents were cited in newspaper articles and with reporters that I had cultivated a community in my program which isn't always the case in childcare.

Senator Clemens: How did this case get to CPS? Did you voluntarily offer that?

Roeszler: I was in South Dakota at the time, and my staff pulled me out of the training and told me. I contacted the specific parents to make sure they were aware of what happened because I run a transparent program. I had sent an email to my licenser letting her know that there was an incident but didn't have time to do a 960 at that time. It turns out from the date stamp that it didn't go out until Sunday afternoon because of Wi-Fi and data connections. The passer by that brought them to the building also did call and report to CPS.

Senator Anderson: Obviously this wasn't an arbitrary decision, or the judge wouldn't have backed it up. There must have been something in statute or rule or legal precedent when the decision was made not to relicense while this was underway. Please explain that and if this bill fixes that.

(24:25) Jonathan Alm, Attorney with the DHS, neutral party

Alm: In our administrative rules, we have a provision that sets forth that if a decision to revoke is under appeal, that at the time that the license expires, they can no longer provide childcare licensing. If they are currently licensed, they can continue along with that denial notice.

Senator Anderson: Isn't that a little strange in that you're trying to take away someone's right to be in their business and yet you automatically do that just because that arbitrary date of the relicensure comes up. Isn't that strange in licensure law?

Alm: I don't see it as strange. It's the liability of the state to look if the childcare should be closed and revoked and not to say, "now we're going to issue a license during this time period and continue to operate" even though we say in the long run, health and safety wise you should not be operating.

Senator Anderson: Does this bill fix that to change that rule to say if somebody has a license, you can't take that away until the administrative process has been completed?

Alm: The proposed amendments do set forth a very good process that would be in place.

(26:20) Jonathan Alm reads over proposed amendments (see attachment #1 pgs. 2-8)

(32:35) Senator K. Roers: With Senator Kruen's bill, how do these work together?

Alm: They're separate but together. SB 2043 deals with child abuse and neglect complaints relating to where that notice is and when notices have to be provided. It was also addressing some of the defibrillator situations.

Chair J. Lee: In that one when we were talking about notice, it turns out that there were individuals and business that were not given notice when parents were.

Alm: It gave us more ability and didn't make it a requirement that we always have to issue notices, that we had more discretion.

Senator Anderson: In my experience when we have to revoke a license immediately, the Administrative Practice act says we need to hold a hearing within 30 days. Then if the finding is not continued beyond that hearing and the revocation doesn't take effect, they either get their license back or we make the revocation permanent. If they would appeal that, I think we need to look at the rule carefully to consider the date of license renewal; maybe this provisional or temporary license would give you the ability to extend that license until the resolution of the case so that somebody doesn't lose the property right while the case is under appeal unless you already decided it's danger to the kids and you need to revoke the license.

Alm: I don't think this provision and the amendments would allow that to still continue beyond that licensing time frame. There would have to be new statutory language to be inserted to address your concerns. As far as the administrative practices act, I'm not aware of the 30-day requirement that would apply to the early childhood services licensing. Typically, the process is the revocation notice is issued and they're able to file an appeal within 10 days. We get the paperwork ready; we submit that to the office of attorney general; they legally represent the department on that matter and handle it through the office of administrative hearings; the office based on what their time frame, along with the attorney general's office and the other party, determines as to when that hearing would be conducted. It is beyond the 30 days.

Chair J. Lee: Is it worth considering that we might open the opportunity for the department to issue a provisional license if the license expires during a particular period of time? It really is through no fault of the department's if the administrative hearings process takes more days. You can't make them go faster. Is there some way we can enable a short term extension of the license in a provisional way?

Alm: With the proposed amendments, if we now have the option to issue a provisional license during this time period, we've kind of already made that determination that it is acceptable to move forward without revoking and that they will continue to be licensed during that process. If the license expires and they're still on a provisional, we would still consider the reapplication and if they're making great progress with that provisional, I can't see why we wouldn't issue the license. If we made the determination that the situation was bad enough that we had to

revoke, I wouldn't want to have to issue a new license when we've made that conclusion—that the health and safety of children are at risk.

Chair J. Lee: I don't either. Thank you for clarifying it for me.

Senator Clemens: In the case of Michelle, they allowed her to continue with the license in effect. I'm assuming they didn't feel this was a serious enough matter to immediately revoke it. If Michelle's license would have expired 6 months later instead of the time it did, it probably wouldn't have been a problem.

Alm: There is another provision in the law that ties back to Senator Kreun's bill as to whether or not a certain level fits the criteria to automatically suspend a license. There's specific criteria that we have to use in state law that says "hit this criteria, we can suspend; if it doesn't, we cannot suspend" so they have to continue to operate with the license until their license expires, until office of administrative hearings issues a revocation or if they fail to appeal that matter. Sometimes the decision to suspend based on the need to revoke is out of our hands because it's based on statutory requirements that we have to comply with.

Senator Clemens: The way things are currently, it's really dependent on the incident and the date that her license was up for renewal. If there were several months left, it wouldn't have been effected; the process seems like it was quite lengthy and pushed it over the renewal date. That's really the problem with this.

Chair J. Lee: Part of the problem is the problem that caused this revocation issue in the first place. There's more to this and we aren't going to base our legislation on one incident. We only have one side of one incident because of privacy. If there are other statutes that have been a part of this decision, the timing would not be the primary issue; the timing would be a part of the issue, but there's more.

Roeszler: Senator Anderson had asked about why a license couldn't be issued during an appeal situation. Mr. Alm noted that that would be a liability to continue a license in an appeal situation if there was something that they had seen warranting a revocation. Why let me continue for those 6 weeks, 6 months, 1 year that I have on my license if it didn't immediately need to be suspended? Why not continue a new license at least in a provisional basis?

Chair J. Lee: We are addressing that with these new amendments. I'm not trying to be insensitive to your situation, but we cannot address a past issue. Our responsibility here is to look at how we might improve statute and rules that were put in place for good reasons at the time and sometimes there are unintended consequences that result from it.

Roeszler: In speaking about multiple licenses under one owner, currently if there's a revocation on one, it impacts all of their licenses. Mr. Alm said that maybe it's just specific to that site, but with multiple sites there's an absentee owner that can't be in those sites at all times. It's not necessarily just a specific site issue; it could be a global issue within all of those licenses because that owner isn't hands on with the business from day to day.

Chair J. Lee: They have to have managers in those sites to supervise people of a certain age that would be responsible for the activities in that facility.

Roeszler: Yes, but leadership comes from the top. It's difficult when the overseeing owner is out of state and unavailable to answer questions. Not all of them are, but some are.

Chair J. Lee: Yes, and that's what the managers are for.

Roeszler: Yes.

Chair J. Lee closes the hearing on SB 2245.

Chair J. Lee: Let's set this aside so Mr. Alm can make sure that the SB 2043 items are melded in so we're not hurting anything there.

Vice Chair O. Larsen: Is there a push for licensing for all boards to try to do their enforcement the same as Senator Anderson was talking about so everyone knows what to expect as far as the social workers, pharmacy boards, doctors, school, etc. or has everyone developed their own rules?

Chair J. Lee: There is a bill which will be presented that will call for some similarities in the responsibilities of boards in how they are educated in making decisions about how often they will meet and the fact that they can be removed. Right now there's really no provision for removal; in fact, there's one board that can veto the governor's decision about removal.

Senator Anderson: The administrative practice act is very clear and all of the regulatory boards follow this act. However, there may be particular laws related to childcare that govern how they operate. That's one of the downsides of DHS and the Department of Health licensing hospitals and so forth; sometimes they get out of the administrative practice act because they have specific laws relating to them. The rest of us have to follow the act which is very clear about revocation and hearings conducted in a particular time frame.

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2245
1/30/2019
#31830 (16:44)

- Subcommittee
 Conference Committee

Committee Clerk: Justin Velez/ Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 1 of section 50-11.1-04, sections 50-11.1-07.2, 50-11.1-09, and 50-11.1-10, and subsection 1 of section 50-11.1-17 of the North Dakota Century Code, relating to early childhood service licensure adverse actions.

Minutes:

No Attachments

Chair J. Lee begins discussion on SB 2245. Senator Anderson is absent.

Senator K. Roers: I like the proposed changes from Mr. Alm. I think it takes care of the timing issue of allowing that ability for the provisional license if we do ever have that scenario where the time lines up. However, it doesn't open it up so wide that we worry about hamstringing the department's ability to actually deal with an issue that's in front of them.

Chair J. Lee: Do we know for sure now that this syncs with SB 2043?

Senator K. Roers: There was someone else in the audience, I think Amanda, that said there is no conflict.

Senator Hogan moves the adoption of amendment 19.0589.01001.

Vice Chair O. Larsen seconds.

Chair J. Lee: We had some small changes to definitions and a correction in a couple of chapter notations. I don't recall there being resistance to any of those points that were made in those amendments. There wasn't opposition from the gallery either.

A Roll Call Vote was Taken: 5 yeas, 0 nays, 1 absent. Amendment is adopted.

Senator K. Roers: In G and H on page 6, it mentions AEDs in the original bill. We had a previous bill that we had already taken some words out of this part of code.

Chair J. Lee: We may need to wait to vote on the amended bill to make sure. We can further amend.

Senator K. Roers: We need to look up SB 2043 in its most current version.

(11:50) **Alexandra Carthew**, UND Law Intern, neutral party

Carthew: In cross referencing SB 2043, there is an identical provision. They have overstruck the use of an automated external defibrillator, so the committee may be advised to do the same in this bill so there is no conflict.

Chair J. Lee: We'll further amend and take action at a later time.

Chair J. Lee ends discussion on SB 2245.

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2245
1/30/2019
#31832 (3:06)

- Subcommittee
 Conference Committee

Committee Clerk: Justin Velez/ Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 1 of section 50-11.1-04, sections 50-11.1-07.2, 50-11.1-09, and 50-11.1-10, and subsection 1 of section 50-11.1-17 of the North Dakota Century Code, relating to early childhood service licensure adverse actions.

Minutes:

No Attachments

Chair J. Lee begins discussion on SB 2245. Senator Anderson is absent.

Senator K. Roers Moves to further amend to remove references to “automated external defibrillator” to match the intent of 2043.

Vice Chair O. Larsen Seconds.

A Roll Call Vote was Taken: 5 yeas, 0 nays, 1 absent. Amendment is adopted.

Senator K. Roers Moves a Do Pass as Amended.

Vice Chair O. Larsen Seconds.

A Roll Call Vote was Taken: 5 yeas, 0 nays, 1 absent. Motion passes.

Senator Hogan will carry the bill.

January 15, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2245

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 50-11.1-02 and 50-11.1-04, subsection 10 of section 50-11.1-06.2, subsection 1 of section 50-11.1-07.2, sections 50-11.1-07.3 and 50-11.1-07.5, and subsection 3 of section 50-11.1-17 of the North Dakota Century Code, relating to early childhood services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

50-11.1-02. Definitions.

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

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

- d. ~~Child care, preschool, and prekindergarten services~~ Early childhood education program provided to children under six years of age in any educational facility through a program approved by the superintendent of public instruction pursuant to chapter 15.1-37.
 - e. Child care provided in facilities operated in connection with a church, business, or organization where children are cared for during periods of time not exceeding four continuous hours while the child's parent is attending church services or is engaged in other activities, on the premises.
 - f. Schools or classes for religious instruction conducted by religious orders during the summer months for not more than two weeks, Sunday schools, weekly catechism, or other classes for religious instruction.
 - g. Summer resident or day camps for children which serve no children under six years of age for more than two weeks.
 - h. Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
 - i. Head start and early head start programs that are federally funded and meet federal head start performance standards.
 - j. Child care provided in a medical facility by medical personnel to children who are ill.
8. "Educational facility" means a public or nonpublic school.
9. "Family child care" means a private residence licensed to provide early childhood services for no more than seven children at any one time, except that the term includes a residence licensed to provide early childhood services to two additional school-age children.
- ~~9-10.~~ "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.
- ~~11-12.~~ "In-home provider" means any person who provides early childhood services to children in the children's home.
- ~~12-13.~~ "Licensed" means an early childhood program has the rights, authority, or permission granted by the department to operate and provide early childhood services.
- ~~13-14.~~ "Multiple licensed program" means an early childhood program licensed to provide more than one type of early childhood services.
- ~~14-15.~~ "Owner" or "operator" means the person who has legal responsibility for the early childhood program and premises.

- ~~45-16.~~ "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.
- ~~46-17.~~ "Premises" means the indoor and outdoor areas approved for providing early childhood services.
- ~~47-18.~~ "Preschool" means a program licensed to offer early childhood services, which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled ~~and which serves no child for more than three hours per day.~~
- ~~48-19.~~ "Public approval" means a nonlicensed early childhood program operated by a government entity that has self-certified that the program complies with this chapter.
- ~~49-20.~~ "Registrant" means the holder of an in-home provider registration document issued by the department in accordance with this chapter.
- ~~20-21.~~ "Registration" means the process whereby the department maintains a record of all in-home providers who have stated that they have complied or will comply with the prescribed standards and adopted rules.
- ~~21-22.~~ "Registration document" means a written instrument issued by the department to publicly document that the registrant has complied with this chapter and the applicable rules and standards as prescribed by the department.
- ~~22-23.~~ "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.
- ~~23-24.~~ "School-age children" means children served under this chapter who are at least five years but less than twelve years of age.
- ~~24-25.~~ "Self-declaration" means voluntary documentation of an individual providing early childhood services in a private residence for up to five children through the age of eleven, of which no more than three may be under the age of twenty-four months.
- ~~25-26.~~ "Staff member" means an individual:
- a. Who is an employee of an early childhood program or of an early childhood services provider under a self-declaration; ~~or~~
 - b. Whose activities involve the care, supervision, or guidance of children ~~for of an early childhood program;~~ or
 - c. Who may have unsupervised access to children under the care, supervision, or guidance of an early childhood program or early childhood services provider under a self-declaration.

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

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

1. An application for operation of an early childhood program must be made on forms provided, in the manner prescribed, by the department. The department or the department's authorized agent shall investigate the applicant's activities and proposed standards of care and shall make an inspection of all premises to be used by the early childhood program applying for a license. The applicant for a license and the staff members, and, if the application is for a program that will be located in a private residence, every individual living in that residence must be investigated in accordance with the rules adopted by the department to determine whether any of them has a criminal record or has had a finding of services required for child abuse or neglect filed against them. The department may use the findings of the investigation to determine licensure. Except as otherwise provided, the department shall grant a license for the operation of an early childhood program within thirty days of receipt of a completed application and all supporting documents by the department and upon a showing:
 - a. The premises to be used are in fit and sanitary condition, are properly equipped to provide for the health and safety for all children, and are maintained according to rules adopted by the department;
 - b. Staff members are qualified to fulfill the duties required of them according to the provisions of this chapter and standards prescribed for their qualifications by the rules of the department;
 - c. The application and supporting documents do not include any fraudulent or untrue representations;
 - d. The owner, operator, or applicant has not had a previous license or self-declaration denied or revoked within the twelve months before the date of the current application, unless waived by the department after the department considers the health and safety of children and the licensing history of the owner, operator, or applicant;
 - e. The owner, operator, or applicant has not had three or more previous licenses or self-declarations denied or revoked. The most recent revocation or denial may not have occurred within the five~~three~~ years immediately preceding the application date;
 - f. The program paid its license fees and any penalties and sanctions assessed against the program as required by sections 50-11.1-03 and 50-11.1-07.4;
 - g. The family child care owner or operator and staff members have received training and are currently certified in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department, and are currently certified in first aid by a program approved by the department; and

- h. The group child care, preschool, school-age child care, or child care center, at all times during which early childhood services are provided, staff members have received training and are currently certified in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department, and currently certified in first aid by a program approved by the department.
- 2. The license issued to the owner or operator of an early childhood program may not be effective for longer than two years.
- 3. The department may consider the applicant's past licensing, self-declaration, and registration history in determining whether to issue a license.
- 4. The department may issue a provisional or restricted license in accordance with the rules of the department. The department shall consider issuing a provisional or restricted license before revoking a license. The department may require the owner or operator of an early childhood program to provide a compliance plan to address compliance issues with this chapter and rules of the department. The department shall review the compliance plan before issuing a provisional or restricted license. The department shall approve the provisional license if the department approves the compliance plan. The department may revoke a license if the owner and operator fail to comply with the department approved compliance plan or for any additional violations of this chapter or rules of the department.
- 5. The department shall notify the owner or operator that the owner or operator is required to post a notice of late application at the early childhood program premises if the department has not received a completed application and all supporting documents for licensure or self-declaration renewal at least thirty days before the expiration date of the early childhood program's license.

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

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

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

- 1. If the department or the department's authorized agent finds, upon inspection, ~~that~~ the program, self-declaration, or premises is not in compliance with this chapter or the rules adopted under this chapter, the department or the department's authorized agent ~~shall~~may issue a correction order to the program or self-declaration, provided the department does not revoke the license or self-declaration as a result of the noncompliance. The correction order must cite the specific statute or

rule violated, state the factual basis of the violation, state the suggested method of correction, and specify the time allowed for correction. The correction order must also specify the amount of any fiscal sanction to be assessed if the program or self-declaration fails to comply with the correction order in a timely fashion. This section does not apply to an applicant's failure to comply with subsection 8 of section 50-11.1-03 or subdivision c of subsection 1 of section 50-11.1-16.

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

50-11.1-07.3. Reinspections.

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

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

50-11.1-07.5. Accumulation of fiscal sanctions.

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

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

3. The department may issue a provisional self-declaration document in accordance with the rules of the department. The department shall consider issuing a provisional or restricted license 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 license. The department shall approve the provisional self-declaration document if the department approves the compliance plan. The department may revoke a license 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."

Renumber accordingly

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January 30, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2245

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 50-11.1-02 and 50-11.1-04, subsection 10 of section 50-11.1-06.2, subsection 1 of section 50-11.1-07.2, sections 50-11.1-07.3 and 50-11.1-07.5, and subsection 3 of section 50-11.1-17 of the North Dakota Century Code, relating to early childhood services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

50-11.1-02. Definitions.

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

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

- d. ~~Child care, preschool, and prekindergarten services~~ Early childhood education program provided to ~~children under six years of age~~ in any educational facility through a program approved by the superintendent of public instruction pursuant to chapter 15.1-37.
 - e. Child care provided in facilities operated in connection with a church, business, or organization where children are cared for during periods of time not exceeding four continuous hours while the child's parent is attending church services or is engaged in other activities, on the premises.
 - f. Schools or classes for religious instruction conducted by religious orders during the summer months for not more than two weeks, Sunday schools, weekly catechism, or other classes for religious instruction.
 - g. Summer resident or day camps for children which serve no children under six years of age for more than two weeks.
 - h. Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
 - i. Head start and early head start programs that are federally funded and meet federal head start performance standards.
 - j. Child care provided in a medical facility by medical personnel to children who are ill.
- 8. "Educational facility" means a public or nonpublic school.
 - 9. "Family child care" means a private residence licensed to provide early childhood services for no more than seven children at any one time, except that the term includes a residence licensed to provide early childhood services to two additional school-age children.
 - ~~9-10.~~ "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.
 - ~~11-12.~~ "In-home provider" means any person who provides early childhood services to children in the children's home.
 - ~~12-13.~~ "Licensed" means an early childhood program has the rights, authority, or permission granted by the department to operate and provide early childhood services.
 - ~~13-14.~~ "Multiple licensed program" means an early childhood program licensed to provide more than one type of early childhood services.
 - ~~14-15.~~ "Owner" or "operator" means the person who has legal responsibility for the early childhood program and premises.

- ~~15-16.~~ "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.
- ~~16-17.~~ "Premises" means the indoor and outdoor areas approved for providing early childhood services.
- ~~17-18.~~ "Preschool" means a program licensed to offer early childhood services, which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled ~~and which serves no child for more than three hours per day.~~
- ~~18-19.~~ "Public approval" means a nonlicensed early childhood program operated by a government entity that has self-certified that the program complies with this chapter.
- ~~19-20.~~ "Registrant" means the holder of an in-home provider registration document issued by the department in accordance with this chapter.
- ~~20-21.~~ "Registration" means the process whereby the department maintains a record of all in-home providers who have stated that they have complied or will comply with the prescribed standards and adopted rules.
- ~~21-22.~~ "Registration document" means a written instrument issued by the department to publicly document that the registrant has complied with this chapter and the applicable rules and standards as prescribed by the department.
- ~~22-23.~~ "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.
- ~~23-24.~~ "School-age children" means children served under this chapter who are at least five years but less than twelve years of age.
- ~~24-25.~~ "Self-declaration" means voluntary documentation of an individual providing early childhood services in a private residence for up to five children through the age of eleven, of which no more than three may be under the age of twenty-four months.
- ~~25-26.~~ "Staff member" means an individual:
 - a. Who is an employee of an early childhood program or of an early childhood services provider under a self-declaration;~~or~~
 - b. Whose activities involve the care, supervision, or guidance of children ~~for~~of an early childhood program; or
 - c. Who may have unsupervised access to children under the care, supervision, or guidance of an early childhood program or early childhood services provider under a self-declaration.

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

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

1. An application for operation of an early childhood program must be made on forms provided, in the manner prescribed, by the department. The department or the department's authorized agent shall investigate the applicant's activities and proposed standards of care and shall make an inspection of all premises to be used by the early childhood program applying for a license. The applicant for a license and the staff members, and, if the application is for a program that will be located in a private residence, every individual living in that residence must be investigated in accordance with the rules adopted by the department to determine whether any of them has a criminal record or has had a finding of services required for child abuse or neglect filed against them. The department may use the findings of the investigation to determine licensure. Except as otherwise provided, the department shall grant a license for the operation of an early childhood program within thirty days of receipt of a completed application and all supporting documents by the department and upon a showing:
 - a. The premises to be used are in fit and sanitary condition, are properly equipped to provide for the health and safety for all children, and are maintained according to rules adopted by the department;
 - b. Staff members are qualified to fulfill the duties required of them according to the provisions of this chapter and standards prescribed for their qualifications by the rules of the department;
 - c. The application and supporting documents do not include any fraudulent or untrue representations;
 - d. The owner, operator, or applicant has not had a previous license or self-declaration denied or revoked within the twelve months before the date of the current application, unless waived by the department after the department considers the health and safety of children and the licensing history of the owner, operator, or applicant;
 - e. The owner, operator, or applicant has not had three or more previous licenses or self-declarations denied or revoked. The most recent revocation or denial may not have occurred within the ~~five~~three years immediately preceding the application date;
 - f. The program paid its license fees and any penalties and sanctions assessed against the program as required by sections 50-11.1-03 and 50-11.1-07.4;
 - g. The family child care owner or operator and staff members have received training and are currently certified in infant and pediatric cardiopulmonary resuscitation ~~and the use of an automated external defibrillator~~ by the American heart association, American red cross, or other similar cardiopulmonary resuscitation ~~and automated external defibrillator~~ training programs that are approved by the department, and are currently certified in first aid by a program approved by the department; and

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- h. The group child care, preschool, school-age child care, or child care center, at all times during which early childhood services are provided, staff members have received training and are currently certified in infant and pediatric cardiopulmonary resuscitation ~~and the use of an automated external defibrillator~~ by the American heart association, American red cross, or other similar cardiopulmonary resuscitation ~~and automated external defibrillator~~ training programs that are approved by the department, and currently certified in first aid by a program approved by the department.
- 2. The license issued to the owner or operator of an early childhood program may not be effective for longer than two years.
- 3. The department may consider the applicant's past licensing, self-declaration, and registration history in determining whether to issue a license.
- 4. The department may issue a provisional or restricted license in accordance with the rules of the department. The department shall consider issuing a provisional or restricted license before revoking a license. The department may require the owner or operator of an early childhood program to provide a compliance plan to address compliance issues with this chapter and rules of the department. The department shall review the compliance plan before issuing a provisional or restricted license. The department shall approve the provisional license if the department approves the compliance plan. The department may revoke a license if the owner and operator fail to comply with the department approved compliance plan or for any additional violations of this chapter or rules of the department.
- 5. The department shall notify the owner or operator that the owner or operator is required to post a notice of late application at the early childhood program premises if the department has not received a completed application and all supporting documents for licensure or self-declaration renewal at least thirty days before the expiration date of the early childhood program's license.

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

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

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

- 1. If the department or the department's authorized agent finds, upon inspection, ~~that~~ the program, self-declaration, or premises is not in compliance with this chapter or the rules adopted under this chapter, the department or the department's authorized agent ~~shall~~may issue a correction order to the program or self-declaration, provided the department does not revoke the license or self-declaration as a result of the noncompliance. The correction order must cite the specific statute or

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rule violated, state the factual basis of the violation, state the suggested method of correction, and specify the time allowed for correction. The correction order must also specify the amount of any fiscal sanction to be assessed if the program or self-declaration fails to comply with the correction order in a timely fashion. This section does not apply to an applicant's failure to comply with subsection 8 of section 50-11.1-03 or subdivision c of subsection 1 of section 50-11.1-16.

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

50-11.1-07.3. Reinspections.

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

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

50-11.1-07.5. Accumulation of fiscal sanctions.

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

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

3. The department may issue a provisional self-declaration document in accordance with the rules of the department. The department shall consider issuing a provisional or restricted license 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

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with this chapter and rules of the department. The department shall review the compliance plan before issuing a provisional or restricted license. The department shall approve the provisional self-declaration document if the department approves the compliance plan. The department may revoke a license 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."

Renumber accordingly

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2245**

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: Remove references of "AED's" to make in compliance with SB 2043

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. K. Roers Seconded By Sen. O. Larsen

Senators	Yes	No	Senators	Yes	No
Chair Lee	X		Senator Hogan	X	
Vice Chair Larsen	X				
Senator Anderson					
Senator Clemens	X				
Senator Roers	X				

Total (Yes) 5 No 0

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 1/30/19
 Roll Call Vote #: 3

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2245**

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Sen K. Roers Seconded By Sen O. Larsen

Senators	Yes	No	Senators	Yes	No
Chair Lee	X		Senator Hogan	X	
Vice Chair Larsen	X				
Senator Anderson					
Senator Clemens	X				
Senator Roers	X				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Sen. Hogan

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2245: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2245 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 50-11.1-02 and 50-11.1-04, subsection 10 of section 50-11.1-06.2, subsection 1 of section 50-11.1-07.2, sections 50-11.1-07.3 and 50-11.1-07.5, and subsection 3 of section 50-11.1-17 of the North Dakota Century Code, relating to early childhood services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

50-11.1-02. Definitions.

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

1. "Authorized agent" means the county social service board, unless another entity is designated by the department.
2. "Child care center" means an early childhood program licensed to provide early childhood services to nineteen or more children.
3. "County agency" means the county social service board in each of the counties of the state.
4. "Department" means the department of human services.
5. "Drop-in care" means the care of children on a one-time, occasional, or unscheduled basis to meet the short-term needs of families.
6. "Early childhood program" means any program licensed under this chapter where early childhood services are provided for at least two hours a day for three or more days a week.
7. "Early childhood services" means the care, supervision, education, or guidance of a child or children, which is provided in exchange for money, goods, or other services. Early childhood services does not include:
 - a. Substitute parental child care provided pursuant to chapter 50-11.
 - b. Child care provided in any educational facility, ~~whether public or private,~~ in grade one or above.
 - c. Child care provided in a kindergarten which has been established pursuant to chapter 15.1-22 or a nonpublic elementary school program approved pursuant to ~~subsection 1 of section 15.1-06-06~~ 15.1-06-06.1.
 - d. ~~Child care, preschool, and prekindergarten services~~ Early childhood education program provided to children under six years of age in any educational facility through a program approved by the superintendent of public instruction pursuant to chapter 15.1-37.
 - e. Child care provided in facilities operated in connection with a church, business, or organization where children are cared for during periods

- of time not exceeding four continuous hours while the child's parent is attending church services or is engaged in other activities, on the premises.
- f. Schools or classes for religious instruction conducted by religious orders during the summer months for not more than two weeks, Sunday schools, weekly catechism, or other classes for religious instruction.
 - g. Summer resident or day camps for children which serve no children under six years of age for more than two weeks.
 - h. Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
 - i. Head start and early head start programs that are federally funded and meet federal head start performance standards.
 - j. Child care provided in a medical facility by medical personnel to children who are ill.
8. "Educational facility" means a public or nonpublic school.
9. "Family child care" means a private residence licensed to provide early childhood services for no more than seven children at any one time, except that the term includes a residence licensed to provide early childhood services to two additional school-age children.
- ~~9-10.~~ "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.
- ~~11-12.~~ "In-home provider" means any person who provides early childhood services to children in the children's home.
- ~~12-13.~~ "Licensed" means an early childhood program has the rights, authority, or permission granted by the department to operate and provide early childhood services.
- ~~13-14.~~ "Multiple licensed program" means an early childhood program licensed to provide more than one type of early childhood services.
- ~~14-15.~~ "Owner" or "operator" means the person who has legal responsibility for the early childhood program and premises.
- ~~15-16.~~ "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.
- ~~16-17.~~ "Premises" means the indoor and outdoor areas approved for providing early childhood services.
- ~~17-18.~~ "Preschool" means a program licensed to offer early childhood services, which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled and which serves no child for more than three hours per day.

- ~~18-19.~~ "Public approval" means a nonlicensed early childhood program operated by a government entity that has self-certified that the program complies with this chapter.
- ~~19-20.~~ "Registrant" means the holder of an in-home provider registration document issued by the department in accordance with this chapter.
- ~~20-21.~~ "Registration" means the process whereby the department maintains a record of all in-home providers who have stated that they have complied or will comply with the prescribed standards and adopted rules.
- ~~21-22.~~ "Registration document" means a written instrument issued by the department to publicly document that the registrant has complied with this chapter and the applicable rules and standards as prescribed by the department.
- ~~22-23.~~ "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.
- ~~23-24.~~ "School-age children" means children served under this chapter who are at least five years but less than twelve years of age.
- ~~24-25.~~ "Self-declaration" means voluntary documentation of an individual providing early childhood services in a private residence for up to five children through the age of eleven, of which no more than three may be under the age of twenty-four months.
- ~~25-26.~~ "Staff member" means an individual:
- a. Who is an employee of an early childhood program or of an early childhood services provider under a self-declaration; ~~or~~
 - b. Whose activities involve the care, supervision, or guidance of children ~~for~~ of an early childhood program; or
 - c. Who may have unsupervised access to children under the care, supervision, or guidance of an early childhood program or early childhood services provider under a self-declaration.

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

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

1. An application for operation of an early childhood program must be made on forms provided, in the manner prescribed, by the department. The department or the department's authorized agent shall investigate the applicant's activities and proposed standards of care and shall make an inspection of all premises to be used by the early childhood program applying for a license. The applicant for a license and the staff members, and, if the application is for a program that will be located in a private residence, every individual living in that residence must be investigated in accordance with the rules adopted by the department to determine whether any of them has a criminal record or has had a finding of services required for child abuse or neglect filed against them. The department may use the findings of the investigation to determine licensure. Except as otherwise provided, the department shall grant a license for the operation of an early childhood program within thirty days

of receipt of a completed application and all supporting documents by the department and upon a showing:

- a. The premises to be used are in fit and sanitary condition, are properly equipped to provide for the health and safety for all children, and are maintained according to rules adopted by the department;
 - b. Staff members are qualified to fulfill the duties required of them according to the provisions of this chapter and standards prescribed for their qualifications by the rules of the department;
 - c. The application and supporting documents do not include any fraudulent or untrue representations;
 - d. The owner, operator, or applicant has not had a previous license or self-declaration denied or revoked within the twelve months before the date of the current application, unless waived by the department after the department considers the health and safety of children and the licensing history of the owner, operator, or applicant;
 - e. The owner, operator, or applicant has not had three or more previous licenses or self-declarations denied or revoked. The most recent revocation or denial may not have occurred within the ~~five~~three years immediately preceding the application date;
 - f. The program paid its license fees and any penalties and sanctions assessed against the program as required by sections 50-11.1-03 and 50-11.1-07.4;
 - g. The family child care owner or operator and staff members have received training and are currently certified in infant and pediatric cardiopulmonary resuscitation ~~and the use of an automated external defibrillator~~ by the American heart association, American red cross, or other similar cardiopulmonary resuscitation ~~and automated external defibrillator~~ training programs that are approved by the department, and are currently certified in first aid by a program approved by the department; and
 - h. The group child care, preschool, school-age child care, or child care center, at all times during which early childhood services are provided, staff members have received training and are currently certified in infant and pediatric cardiopulmonary resuscitation ~~and the use of an automated external defibrillator~~ by the American heart association, American red cross, or other similar cardiopulmonary resuscitation ~~and automated external defibrillator~~ training programs that are approved by the department, and currently certified in first aid by a program approved by the department.
2. The license issued to the owner or operator of an early childhood program may not be effective for longer than two years.
 3. The department may consider the applicant's past licensing, self-declaration, and registration history in determining whether to issue a license.
 4. The department may issue a provisional or restricted license in accordance with the rules of the department. The department shall consider issuing a provisional or restricted license before revoking a license. The department may require the owner or operator of an early childhood program to provide a compliance plan to address compliance issues with this chapter and rules of the department. The department

shall review the compliance plan before issuing a provisional or restricted license. The department shall approve the provisional license if the department approves the compliance plan. The department may revoke a license if the owner and operator fail to comply with the department approved compliance plan or for any additional violations of this chapter or rules of the department.

5. The department shall notify the owner or operator that the owner or operator is required to post a notice of late application at the early childhood program premises if the department has not received a completed application and all supporting documents for licensure or self-declaration renewal at least thirty days before the expiration date of the early childhood program's license.

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

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

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

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

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

50-11.1-07.3. Reinspections.

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

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

50-11.1-07.5. Accumulation of fiscal sanctions.

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

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

3. The department may issue a provisional self-declaration document in accordance with the rules of the department. The department shall consider issuing a provisional or restricted license 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 license. The department shall approve the provisional self-declaration document if the department approves the compliance plan. The department may revoke a license 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."

Renumber accordingly

2019 HOUSE HUMAN SERVICES

SB 2245

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2245
3/4/2019
33126

- Subcommittee
 Conference Committee

Committee Clerk: Nicole Klamann

Explanation or reason for introduction of bill/resolution:

Relating to early childhood services

Minutes:

2

(0:01:42)

Senator Kathy Hogan, District 21: Introduced SB 2245, written testimony provided see **attachment 1**.

This bill is in response to the closure of a child care facility. There was a child abuse allegation which triggered a full investigation. At the time of the investigation and due to the severity of the abuse allegation, it was suggested the provider's license be revoked. The provider appealed that decision and was in the process of the appeal. At this time, the annual licensing renewal occurred. The renewal was not approved because of the pending revocation. The question is about due process.

Representative Bill Tveit: The change in line 7 and 8 is not a result of the closure of the facility you were discussing?

Senator Hogan: It is not.

(0:06:15)

Jonathan Alm: Attorney with the Department of Human Services: In support, written testimony provided, see **attachment 2**. Discussed amendments.

(0:015:30)

Representative M. Ruby: I want to clarify a definition on page 2. The current definition now doesn't include daycares, right? If we change this it is using the same language DPI is using so it wouldn't be bringing in home providers and daycare providers under the new language would it?

Jonathan Alm: The definition doesn't change anything as far as providers falling into a new category. It's trying to clear up the confusion surrounding DPIs licensing requirements and the Departments licensing requirements, since they are 2 different facilities and different processes.

Representative Chuck Damschen Would changes on page 8, lines 20-28 potentially eliminate self declared?

(0:16:35)

Jonathan Alm: Absolutely not. Self-declared providers would still be able to continue. This is not an attempt to remove self-declared as the house defeated that bill earlier.

Rep. Damschen: Looking at some of the requirements they can demand, I'm wondering if the potentials are there

Jonathan Alm: Right now if there is a violation of the law or rule the Department looks at issuing a revocation notice. They would have to provide self-declared status care.

Chairman Weisz: Self-declared aren't licensed, but yet the language says you are going to issue them a license. Shouldn't that language be updated?

Jonathan Alm: Yes, I agree that should be updated to self-declaration documentation.

Representative Bill Tveit: Jonathan I'm still troubled page 2, line 8. Clarify striking out under age of 6 years of age, in this or any other document. Are we creating a state public facility with our education system? Which will be in direct competition with our child care.

(0:19:23)

Jonathan Alm: No

Representative Kathy Skroch: Could you define educational facility, line 8 page 2?

Jonathan Alm: Defined on line 26

Rep. Skroch: By removing an age limit, line 8, aren't you allowing children to enter into these early childhood education for age 0-5.

Jonathan Alm: Lines 7-10, while we removed 6 years of age, that age is set forth already Chapter 15.137.

(0:21:00)

Rep. Skroch: Would it be a problem if we the included the age limit in the bill?

Jonathan Alm: It is not an issue to reinsert that language.

Chairman Weisz: Any further questions? Seeing none, Opposition?

Opposition: None

Chairman Weisz: Closed hearing

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2245
3/18/2019
33901

- Subcommittee
 Conference Committee

Committee Clerk: Nicole Klaman

Explanation or reason for introduction of bill/resolution:

Relating to early childhood service licensure adverse actions.

Minutes:

Chairman Weisz: Opened hearing

Chairman Weisz: Senator Kreun is adamant and thinks the AED should come out.

Rep. Anderson: Instead of training every provider in daycare facilities would it be possible to train 1, a few or a percentage?

Rep. Porter: Say for instance we took that wording out. 1. There is not a course offered by the 2 listed agencies that is offered without the training of AED. 2. In the past 2 weeks, there have been 2 cardiac arrests because of citizen CPR and use of AED. I go back to the cardiac ready mode. I don't understand given the two people that survived this week why training someone for 15-20 minutes on the use of an AED is a problem. I have a hard time thinking that the AED training is the make or break inside a child care facility.

Senator Kruen made an assumption by stating they do not use AEDs on kids. This statement is not true. All AEDs have pediatric and infant settings and pads. If success was measured per age group, children would lead.

Chairman Weisz: I believe there was a suggestion of amendment.

Rep. Tveit: Page 5 lines 27

Chairman Weisz: You were just going to say "currently certified including the use of" Instead of "and the use".

Rep. Porter: Either way

Chairman Weisz: Some of the interpretation that meant separate course. So we need to be comfortable with the language saying "including the use of an AED".

Rep. Anderson: I've used one twice, it probably took 5 minutes of training to learn how to use it. I think once you get it out of the box, it's self-explanatory, isn't it?

Rep. Porter: Yes it is. The big difference, like anything else, if you are introduced to it in a controlled setting where you can ask questions about it. Then if you do need it, it's not a panic and freezing. You understand that the basic function is the same.

Rep. Anderson: The training expense and the time is minute?

Rep. Porter: It's almost none existent. The class is 4 hours and includes it. To me, it isn't even anything that should be considered.

Rep. Porter: Mr. Chairman, on page 5 line 27, I would move that we remove the overstruck language, then replace the word "and" with "including", beginning on line 27. Line 29, remove the overstruck language and replace "and" with "including".

Rep. M. Ruby: Second

Chairman Weisz: Is that the only reference in here?

Rep. Porter: Page 6.

Chairman Weisz: Yes, line 4 and 6.

Rep. Porter: I would include in my motion anyplace where the words "Automatic External Defibrillator" is in this bill that the language is not overstruck and the word "and" is replaced with "including".

Chairman Weisz: Okay. Committee is there any further discussion on the amendment? Seeing none.

Rep. Porter: It's on page 7 too.

Voice Vote: Motion Carries to adopt Amendment

Chairman Weisz: The intern just pointed out the department hasn't page 6 regarding licensing gotten the suggestion amendment to address the self-declared operators. There are a few more suggested amendments, which you have copies of. I need to get that clarification from the department before we can vote.

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2245
3/19/2019
33964

- Subcommittee
 Conference Committee

Committee Clerk: Nicole Klamann

Explanation or reason for introduction of bill/resolution:

Relating to early childhood services

Minutes:

See Attachment 1

Chairman Weisz: Opened meeting on SB 2245.

Chairman Weisz: Set up a process for allowing a provisional license while there is an investigation going on instead of just pulling the license, like now. This would allow for a restricted or provisional license. As this is, the same leniency doesn't apply to the self-declared because they are not licensed as a declaration. The amendment would put the same provisions in for self-declared.

The other language change was to change the age which was in HB 1104, I believe. This removes the reference in the education section takes it back to current law.

Finally, when we did SB 2043, that language fixed the AEDs. **(See Attachment 1)**

Rep. Tveit: Page 3 line 22. Three hours was overstruck and changed it to 4 hours and I'm not comfortable with that.

Chairman Weisz: And that goes away on the amendment.

Rep. Tveit: No it doesn't, it puts it to 4.

Chairman Weisz: Which we had adopted in HB 1104.

Rep. Tveit: I thought we went back to HB 1104?

Chairman Weisz: No we passed out HB 1104 at 4 hours.

Rep. Skroch: I would move to amend the bill, outside of the proposed, page 3 remove the overstrike on lines 21 and 22. That would allow it to remain at 3 hours.

Chairman Weisz: To make it simpler, lets adopt these amendments then we can further amend if you wish.

Rep. Skroch: I rescind my motion.

(0:05:49)

Rep. M. Ruby: I would move the proposed amendments allowing a provisional license while there is an investigation going, removes the reference in the education section takes it back to current law and would put the same provisions in for self-declared. to SB 2245.

Rep. Schneider: Second

Chairman Weisz: Brings all the old language back, outside the hours, that is in current law. It adds the self-declaration portion for provisional licensure.

Voice Vote: Motion Carries

Chairman Weisz: Further amendments

Rep. Skroch: Further amend page 3 lines 21 and 22, to restore the original language of the bill. "And which serve no child for more than 3 hours per day". Removing the overstrike.

Rep. Tveit: Second

Chairman Weisz: Line 22, to change four hours back to three hours. We've already removed the overstrike.
And the reason why?

Rep. Skroch: Because of concerns raised by childcare providers that we are having too long of a time of structured learning for that age group. By moving it to 4 it provides early education providers a chance to extend the hours they can have those children in the school setting, rather than have them being in a licensed, private or undeclared daycares.

Chairman Weisz: Further discussion?

Rep. Schneider: I don't believe we had any testimony about negative effects on children and I know a lot of positive programs. My biggest issue for leaving this 4 hours is a work force one. There are very few part time jobs that are 3 hours and a lot of them are half day programs. Besides not being a negative influence, and most of the preschool stuff says the opposite it makes it difficult for parents to work half a day.

Chairman Weisz: Many private operators offer preschool so you are limiting their ability to offer those services for four hours. Which doesn't allow them to compete either. Correct?

Rep. Skroch My understanding from private licensed and undeclared child care providers is they want to see that free time which allows children explore. Rather than having to have 4 hours of structured learning time.

Chairman Weisz: Wouldn't that be up to the parent? If they don't want to enroll them into a preschool program that is 4 hours they wouldn't have to. Unless I'm missing something. I'm curious as to why we are saying they can't. If the parent says, yes I want my child in preschool for four hours, we are saying they can't do it. It's strictly up to the parent, as the state has no requirement for preschool.

Rep. Skroch: I think it's reflective of what is currently being offered now and this expands the amount of time at which they can place children in a structured learning program. That was the objection from emails I received. They want the children to have free time to explore and this makes it a more structured requirement for a longer period of time. Parents have also shared this concern with me, I'm reflecting that with my proposed amendment.

Rep. Tveit: I concur with Rep. Skroch. 2 of the 30 member care units in my district that have come out adamantly against this. Even in most school programs, their schooling starts at 9 am and they are done by noon. That is a 3 not a 4 hour day. I just hesitate to expand that learning process throughout the day. I think the opportunity, at that age, to learn through interaction is much more conducive.

(0:13:37)

Chairman Weisz: I don't disagree with the theory. My point is none of this is mandatory. We, the government, is telling the parent that they can't do this. Nothing says the school or private preschool has to do it 2 hours a day. We are now saying the parent wouldn't have the choice. That we know better than the parent, what is good for their child. I do not disagree with the structure, kids should be able to play. I'm curious to why we think the government should prohibit if that's their choice.

Rep. M. Ruby: I'd like to point out, kindergarten is not required either. The more we have opened it up, almost everybody goes into an all-day kindergarten then we have the demand for the state to pay for it. The more we open it up, the more demand is for the state to pay for preschool.

Rep. Skroch: I think when talking about the three hours per day, that was already in existing code. There is a reason why we limit that structured time for these young ages. They have limited focus ability, this lightens their load so they have more play opportunity. If it's set at a cap of four hours in the public facility daycares they will drive towards that in efforts to have that more excelled learning program. I think we need to back away from that and leave it as is, in existing law.

Rep. Schneider: I would feel more comfortable if we had testimony on this. Structured learning for preschool kids is adapted to preschool age. It's play learning and movement. We are substituting our judgement, which has not been informed by testimony, to have it four hours does no harm when there is a choice about leaving a child in for a period of time at the

parent's discretion. I think this provides flexibility and opportunities that we think are important to kids. In addition it provides parent choice and opportunities for economic development and workforce options.

Rep. Porter: As the carrier of the bill, in the first period. I do not disagree with what Rep. Schneider said at all. I think that what we as a committee we have to look at is; Is there anything else in this bill that is important? I don't believe we are going to get an increase in time off the floor based on how it was received, in the first period. I'm not unwilling to do it or try it, I just ask those in support understand that chances aren't good that this bill survives.

Chairman Weisz: I do not disagree with you but I find it interesting we want parental control unless we disagree with the choices of parents, then we want to mandate it.

Rep. Damschen: We could make the argument, from the parents perspective, and have no limit. I don't think I would want that. We've heard testimony in the past that preschool learning helps the child until 3rd or 4th grade. I support the amendment.

Chairman Weisz: This amendment would change the four hours back to three hours.

Voice Vote: Undetermined

Roll Call Vote Yes 9 No 4 Absent 1
Motion carries

Rep. M. Ruby Do pass as amended

Rep. Porter Second

Roll Call Vote Yes 13 No 0 Absent 1
Do Pass As Amended

Rep. Schneider Carrier

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2245

Page 2, line 2, remove the overstrike over “~~whether public or private,~~”

Page 2, line 6, remove the overstrike over “~~subsection 1 of~~”

Page 2, line 6, remove the overstrike over “~~15.1-06-06~~”

Page 2, line 6, remove “15.1-06-06.1”

Page 2, line 7, remove the overstrike over “~~Child care, preschool, and prekindergarten services~~”

Page 2, line 7, remove “Early childhood education”

Page 2, line 8, remove “program”

Page 2, line 8, remove the overstrike over “~~to children under six years of age~~”

Page 2, line 9, remove the overstrike over “~~by the superintendent of public instruction~~”

Page 2, line 9, remove “pursuant”

Page 2, line 10, remove “to chapter 15.1-37”

Page 2, line 26, remove ““Educational facility” means a public or nonpublic school.”

Page 2, line 27, remove “9.”

Page 3, line 1, remove the overstrike over “~~9.~~”

Page 3, line 1, remove “10.”

Page 3, line 3, remove the overstrike over “~~10.~~”

Page 3, line 3, remove “11.”

Page 3, line 6, remove the overstrike over “~~11.~~”

Page 3, line 6, remove “12.”

Page 3, line 8, remove the overstrike over “~~12.~~”

Page 3, line 8, remove “13.”

Page 3, line 10, remove the overstrike over “~~13.~~”

Page 3, line 10, remove “14.”

Page 3, line 12, remove the overstrike over “~~14.~~”

Page 3, line 12, remove "15."

Page 3, line 14, remove the overstrike over "~~15.~~"

Page 3, line 14, remove "16."

Page 3, line 17, remove the overstrike over "~~16.~~"

Page 3, line 17, remove "17."

Page 3, line 19, remove the overstrike over "~~17.~~"

Page 3, line 19, remove "18."

Page 3, line 21, remove the overstrike over "~~and which serves no child for more~~"

Page 3, line 22, remove the overstrike over "~~than~~"

Page 3, line 22, after "~~three~~" insert "four"

Page 3, line 22, remove the overstrike over "~~hours per day~~"

Page 3, line 23, remove the overstrike over "~~18.~~"

Page 3, line 23, remove "19."

Page 3, line 25, remove the overstrike over "~~19.~~"

Page 3, line 25, remove "20."

Page 3, line 27, remove the overstrike over "~~20.~~"

Page 3, line 27, remove "21."

Page 4, line 1, remove the overstrike over "~~21.~~"

Page 4, line 1, remove "22."

Page 4, line 4, remove the overstrike over "~~22.~~"

Page 4, line 4, remove "23."

Page 4, line 7, remove the overstrike over "~~23.~~"

Page 4, line 7, remove "24."

Page 4, line 9, remove the overstrike over "~~24.~~"

Page 4, line 9, remove "25."

Page 4, line 12, remove the overstrike over “~~25.~~”

Page 4, line 12, remove “26.”

Page 5, line 27, remove the overstrike over “~~and the use of an automated external defibrillator~~”

Page 5, line 29, remove the overstrike over “~~and automated external defibrillator~~”

Page 6, line 4, remove the overstrike over “~~and the use of an automated external defibrillator~~”

Page 6, line 6, remove the overstrike over “~~and automated external defibrillator~~”

Page 8, line 21, replace “license” with “self-declaration document”

Page 8, line 24, replace “license” with “self-declaration document”

Page 8, line 26, replace “license” with “self-declaration document”

Renumber accordingly

March 19, 2019

DA 3/19/19
1082

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2245

- Page 2, line 2, remove the overstrike over "~~whether public or private,~~"
- Page 2, line 6, remove the overstrike over "~~subsection 1 of~~"
- Page 2, line 6, remove the overstrike over "~~15.1-06-06~~"
- Page 2, line 6, remove "15.1-06-06.1"
- Page 2, line 7, remove the overstrike over "~~Child care, preschool, and prekindergarten services~~"
- Page 2, line 7, remove "Early childhood education"
- Page 2, line 8, remove "program"
- Page 2, line 8, remove the overstrike over "~~to children under six years of age~~"
- Page 2, line 9, remove the overstrike over "~~by the superintendent of public instruction~~"
- Page 2, line 9, remove "pursuant"
- Page 2, line 10, remove "to chapter 15.1-37"
- Page 2, line 26, remove "\"Educational facility\" means a public or nonpublic school."
- Page 2, line 27, remove "9."
- Page 3, line 1, remove the overstrike over "~~9.~~"
- Page 3, line 1, remove "10."
- Page 3, line 3, remove the overstrike over "~~10.~~"
- Page 3, line 3, remove "11."
- Page 3, line 6, remove the overstrike over "~~11.~~"
- Page 3, line 6, remove "12."
- Page 3, line 8, remove the overstrike over "~~12.~~"
- Page 3, line 8, remove "13."
- Page 3, line 10, remove the overstrike over "~~13.~~"
- Page 3, line 10, remove "14."
- Page 3, line 12, remove the overstrike over "~~14.~~"
- Page 3, line 12, remove "15."
- Page 3, line 14, remove the overstrike over "~~15.~~"
- Page 3, line 14, remove "16."
- Page 3, line 17, remove the overstrike over "~~16.~~"

DP 3/19/14
2 of 2

- Page 3, line 17, remove "17."
 - Page 3, line 19, remove the overstrike over "17."
 - Page 3, line 19, remove "18."
 - Page 3, line 21, remove the overstrike over "~~and which serves no child for more~~"
 - Page 3, remove the overstrike over line 22
 - Page 3, line 23, remove the overstrike over "18."
 - Page 3, line 23, remove "19."
 - Page 3, line 25, remove the overstrike over "19."
 - Page 3, line 25, remove "20."
 - Page 3, line 27, remove the overstrike over "20."
 - Page 3, line 27, remove "21."
 - Page 4, line 1, remove the overstrike over "21."
 - Page 4, line 1, remove "22."
 - Page 4, line 4, remove the overstrike over "22."
 - Page 4, line 4, remove "23."
 - Page 4, line 7, remove the overstrike over "23."
 - Page 4, line 7, remove "24."
 - Page 4, line 9, remove the overstrike over "24."
 - Page 4, line 9, remove "25."
 - Page 4, line 12, remove the overstrike over "25."
 - Page 4, line 12, remove "26."
 - Page 5, line 27, after "and" insert ", including"
 - Page 5, line 27, remove the overstrike over "~~the use of an automated external defibrillator~~"
 - Page 5, line 29, remove the overstrike over "~~and automated external defibrillator~~"
 - Page 6, line 4, after "and" insert ", including"
 - Page 6, line 4, remove the overstrike over "~~the use of an automated external defibrillator~~"
 - Page 6, line 6, remove the overstrike over "~~and automated external defibrillator~~"
 - Page 8, line 21, replace "license" with "self-declaration document"
 - Page 8, line 24, replace "license" with "self-declaration document"
 - Page 8, line 26, replace "license" with "self-declaration document"
- Renumber accordingly

Date: 3-18-19
Vote # 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2245

House Human Services Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Porter Seconded By Rep. M. Ruby

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman			Gretchen Dovervich		
Karen M. Rohr - Vice Chairman			Mary Schneider		
Dick Anderson					
Chuck Damschen					
Bill Devlin					
Clayton Fegley					
Dwight Kiefert					
Todd Porter					
Matthew Ruby					
Bill Tveit					
Greg Westlind					
Kathy Skroch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

P.5 / Remove overstruck AED language and replace
P.6 / "and" with "including".
P.7 /

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL SB 2245**

House Human Services Committee

Subcommittee

Amendment LC# or Description: Allowing a provisional license while there is an investigation going, removes the reference in the education section takes it back to current law and would put the same provisions in for self-declared.

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. M. Ruby Seconded By Rep. Schneider

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman			Gretchen Dobervich		
Karen M. Rohr – Vice Chairman			Mary Schneider		
Dick Anderson					
Chuck Damschen					
Bill Devlin					
Clayton Fegley					
Dwight Kiefert					
Todd Porter					
Matthew Ruby					
Bill Tveit					
Greg Westlind					
Kathy Skroch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote: Motion carries.

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL SB 2245**

House Human Services Committee

Subcommittee

Amendment LC# or Description: Page 3 Line 22 change "4" to "3"

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Skroch Seconded By Rep. Tveit

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman			Gretchen Dobervich		
Karen M. Rohr – Vice Chairman			Mary Schneider		
Dick Anderson					
Chuck Damschen					
Bill Devlin					
Clayton Fegley					
Dwight Kiefert					
Todd Porter					
Matthew Ruby					
Bill Tveit					
Greg Westlind					
Kathy Skroch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote: Undetermined. See Roll Call #3.

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL SB 2245**

House Human Services Committee

Subcommittee

Amendment LC# or Description: Page 3 Line 22 change "4" to "3"

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Skroch Seconded By Rep. Tveit

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman		X	Gretchen Dobervich	A	
Karen M. Rohr – Vice Chairman	X		Mary Schneider		X
Dick Anderson	X				
Chuck Damschen	X				
Bill Devlin	X				
Clayton Fegley		X			
Dwight Kiefert	X				
Todd Porter		X			
Matthew Ruby	X				
Bill Tveit	X				
Greg Westlind	X				
Kathy Skroch	X				

Total (Yes) 9 No 4

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Motion carries.

Date: 319-19
 Roll Call Vote #: 4

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2245**

House Human Services Committee

Subcommittee

Amendment LC# or Description: 19.0589.02001 Title 03000

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. M. Ruby Seconded By Rep. Porter

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	X		Gretchen Dobervich	X	
Karen M. Rohr - Vice Chairman	X		Mary Schneider	X	
Dick Anderson	X				
Chuck Damschen	X				
Bill Devlin	X				
Clayton Fegley	X				
Dwight Kiefert	X				
Todd Porter	X				
Matthew Ruby	X				
Bill Tveit	X				
Greg Westlind	X				
Kathy Skroch	X				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Schneider

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2245, as engrossed: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2245 was placed on the Sixth order on the calendar.

Page 2, line 2, remove the overstrike over "~~whether public or private,~~"

Page 2, line 6, remove the overstrike over "~~subsection 1 of~~"

Page 2, line 6, remove the overstrike over "~~15.1-06-06~~"

Page 2, line 6, remove "15.1-06-06.1"

Page 2, line 7, remove the overstrike over "~~Child care, preschool, and prekindergarten services~~"

Page 2, line 7, remove "Early childhood education"

Page 2, line 8, remove "program"

Page 2, line 8, remove the overstrike over "~~to children under six years of age~~"

Page 2, line 9, remove the overstrike over "~~by the superintendent of public instruction~~"

Page 2, line 9, remove "pursuant"

Page 2, line 10, remove "to chapter 15.1-37"

Page 2, line 26, remove "\"Educational facility\" means a public or nonpublic school."

Page 2, line 27, remove "9."

Page 3, line 1, remove the overstrike over "~~9.~~"

Page 3, line 1, remove "10."

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Page 3, line 12, remove "15."

Page 3, line 14, remove the overstrike over "~~15.~~"

Page 3, line 14, remove "16."

Page 3, line 17, remove the overstrike over " 16."

Page 3, line 17, remove "17."

Page 3, line 19, remove the overstrike over " 17."

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Page 3, remove the overstrike over line 22

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Page 4, line 1, remove "22."

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Page 4, line 4, remove "23."

Page 4, line 7, remove the overstrike over "~~23.~~"

Page 4, line 7, remove "24."

Page 4, line 9, remove the overstrike over "~~24.~~"

Page 4, line 9, remove "25."

Page 4, line 12, remove the overstrike over " 25."

Page 4, line 12, remove "26."

Page 5, line 27, after "~~and~~" insert ", including"

Page 5, line 27, remove the overstrike over "~~the use of an automated external defibrillator~~"

Page 5, line 29, remove the overstrike over "~~and automated external defibrillator~~"

Page 6, line 4, after "~~and~~" insert ", including"

Page 6, line 4, remove the overstrike over "~~the use of an automated external defibrillator~~"

Page 6, line 6, remove the overstrike over "~~and automated external defibrillator~~"

Page 8, line 21, replace "license" with "self-declaration document"

Page 8, line 24, replace "license" with "self-declaration document"

Page 8, line 26, replace "license" with "self-declaration document"

Renumber accordingly

2019 CONFERENCE COMMITTEE

SB 2245

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2245
4/2/2019
Job # 34433

- Subcommittee
 Conference Committee

Committee Clerk: Justin Velez

Explanation or reason for introduction of bill/resolution:

Relating to early childhood service licensure adverse actions.

Minutes:

No Attachments

Jonathan Alm, Attorney with the Department of Human Services: I've come to let you know on SB 2245 and what the house did. I prepared those amendments in case you were wondering because I know you did a do not concur with them.

Madam Chair Lee: It wasn't because I thought they were awful it was because there were several. I view it as a one meeting opportunity to have it explained but it is very helpful to know that you drafted them.

Jonathan Alm: Kind of what the questions and concerns were from that committee was; anything touching DPI was not going to pass through that committee. While we were amending the language to and clarifying and cleaning it up, it was clear that bill would not pass through without some of those amendments. We did catch a couple of things that we just needed to clean up towards the end, we talked about license when it should have been self-declared, so we amended that to make it clear. I think there was the AED discussion too that was cleaned up.

Madam Chair Lee: Representative Porter is a big fan of having that and we weren't going to the wall on that one either.

Jonathan Alm: That was amended to coincide and work with SB 2043, which was Senator Kruen's bill.

Madam Chair Lee: Any questions for Mr. Alm? I would rather have one meeting and let them tell us why they want to do. Are we going to have a lot of heartburn on the other side do you think? If you think we are going to have resistance in the conference committee, I can withdraw that slip and I could re-run it through as do concur.

Jonathan Alm: To me, they would have heartburn if you touched the DPI language that was amended in.

Madam Chair Lee: Representative Devlin said that he was okay with everything except the part that preceded shared or something like that, or maybe that was another bill he didn't want the Governor doing something.

Jonathan Alm: Yes, that was SB 2124.

Madam Chair Lee: He was very tasteful in the way he had presented his concern and they addressed it.

Jonathan Alm: Like I said the other two amendments were really clean up that we found that needed to be done. I also didn't know if the committee wanted any feedback or update of SB 2113, which is the long-term care bill regarding the video monitoring.

Madam Chair Lee: Yes, and actually Shelly Peterson is coming in this morning when she is don't across the hall but I would love to hear what you may have to say about SB 2113 as well.

Madam Chair Lee and the committee move on to discuss SB 2113.

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2245
4/8/2019
Job #34612

Subcommittee
 Conference Committee

Committee Clerk: Justin Velez

Explanation or reason for introduction of bill/resolution:

Relating to early childhood service licensure adverse actions

Minutes:

Attachments #1-2

Chairman Anderson opens the conference committee on SB 2245. Please see Attachment #1 for proposed amendments from Senator Anderson drafted by Jonathan Alm and Attachment #2 for law definition of “child”.

Chairman Anderson: I think we have a couple of things here. There were quite a few amendments here so our committee chair just thought we should listen to the house to see why you did the things you did and then, I would like to move on to Jonathan Alm so he can explain what he has. I would ask the house to walk us through your changes.

Representative Damschen: I will just touch the highlights. Most of what we changed was we put language back in on page 2, line 2. We moved the strike from whether public or private. On page 2, line 6, we removed the strike out of 15.1-06-06 and we struck 15.1-06-06.1. In subsection D, line 7-10, we put “childcare, preschool, and pre-kindergarten services back in. We struck the new child and education program, we re-instated two children under six years of age, removed the strike from in line 9 “by the superintendent of public instruction”, and line 9 and 10 “pursuant to chapter 15.01-37. The feeling for the changes is was that, we didn’t like the idea of promoting public schools to be taking care of kids. I guess we took it out of the DPI, the public school section, and made the exemption for private facilities.

Chairman Anderson: Okay, any questions about what went on there?

Senator Hogan: Can you tell me what specifically you didn’t like or liked about why we shouldn’t move this to DPI because, these are school based programs.

Senator K. Roers: Actually, we struck DPI.

Representative Damschen: line 24 on page 1, “early childhood services does not include”.

Senator Hogan: So, if there was a school that had a childcare center and a kindergarten, the childcare center wouldn't be licensed, is that right?

Representative Damschen: I believe that was the intent.

Representative Fegley: Talk to me about that issue a little bit and the concern was to keep the licensing separate because the control of the education of preschool compared to the day care facility they have different ramifications on the amount of things they have to do in both and trying to keep those two separate would be their concern.

Chairman Anderson: In one place there was a limit put on that says, who doesn't take care of kid for over three hours, and that seems like a short time like if you had a preschool program or something like that. What happens if it goes over 3 hours? What license or accreditation do they need?

Senator Hogan: The chapter references are different. In section D, Page 2, line 10 we have a different reference then we do on section C, so I'm just not sure what those two chapter references are because, I thought that was one of the things that I was trying to get to.

Jonathan Alm, Attorney with the Department of Human Services: To answer the question as to the citation, we were attempting to fix and correct the citation and that was the 6.1. It was just a technical correction to have the current citation listed. What the senate passed out was just updating all the language in that section besides the 3 hours for preschool. When we were going through this change we noticed that it was using outdated or language that wasn't statutorily used in other sections so, most of those changes were created that way. When it went to the house there were some concerns that this was expanding and so, I did prepare an amendment for the committee which changed it back to what it was originally.

Senator Hogan: In section C on page 6, the 51.1-06-06.1, is just the correct cite?

Jonathan Alm: That is correct.

Senator Hogan: So that is truly a technical amendment. That is what the saw says, we should probably have it in this bill.

Jonathan Alm: I figured I could put in on the technical correction bill, next session.

Senator Hogan: If we can fix it now, we might as well. On section D, we are looking at this coming from the house, is the way it currently is?

Jonathan Alm: That is correct.

Senator Anderson: So, nothing would change?

Jonathan Alm: That is correct.

Chairman Anderson: Can you answer my question about what happens after the three hours?

Jonathan Alm: Currently the law only allows us for early child hood services purposes for the department to license the preschools for three hours. Some of those licenses have a multi-license so they are also licensed as a childcare center so the kid goes from that preschool program into the childcare center program. Another situation is, they are truly only preschool programs that operate for three hours and then that child gets picked up and goes to another facility or go home and then another round of children come for another three hours.

Chairman Anderson: How does that affect the federal preschool programs?

Jonathan Alm: I'm not aware of what the federal requirements are and that goes through DPI. This is the departments licensing structure for preschools so, you have a kind of two model where it could be the DPI model and then also the early childhood services model.

Chairman Anderson: This is only to address the non-DPI model then?

Jonathan Alm: That is correct.

Senator K. Roers: Do you know if there is any significance to the children under six years of age, we had struck that and they resurrected it so I'm wondering if you remember what the reasoning behind that was? It was on subsection D, page 2.

Jonathan Alm: The reasoning in to the original bill as to why it was struck out is because I do believe it is set forth in chapter 15.1.37 as to the age requirements. I'm not sure what the age requirement is in there, we just decided that, why have it stated twice.

Representative Skroch: I'm thinking of the reason why that language was put back in was to prevent those younger ages from being a part of the public school system? I'm trying to remember the argument on that when we were discussing it. That the facilities that have programs for kindergarten and IEP's, they have those requirements of age limits so we don't go all the way down to birth to kindergarten included in an established facility education program. I'm thinking that is part of the reasoning of why we wanted that language to stay back in.

Senator Hogan: Right now it is saying schools can do anything for children under the age of six.

Representative Skroch: It is on line 24 "early childhood services does not include:" and then if you go to that line it says "children under six years of age in an educational facility through a program approved by the superintendent of public instruction". What we are trying to do,

Senator Hogan: Make sure that no school ever had a childcare center.

Representative Skroch: Yes, that would be correct. That public schools do not become childcare centers.

Senator Anderson: Are there any more specific questions on the house amendments.

Representative Skroch: One question about the age limits, I think that was based on recommendations by early childhood providers and I'm thinking those that are not under the DPI is that they don't like a structured program for more than 3 hours and want more free play time for children. I think that was the thinking behind limiting that structured learning program to three hours and not going above that in order to let children have free play time and exploration time instead of completely structured time.

Senator Hogan: My granddaughter is in a very high quality preschool program and half their time is free play but it is a licensed preschool program. I don't know that the free play and licensing have anything to do with it.

Representative Skroch: With that hour limit?

Senator Hogan: With that hour limit because free play is an essential category in preschool licensing so I don't know quite how those relate.

Chairman Anderson: If there are no more questions on the house amendments, I would like to ask Mr. Alm to tell us why we need this amendment I passed out (**Attachment #1**) and I passed out a section of the law (**Attachment #2**) which does not include neglect. We do mention several places that we are going to spank people for neglecting children and we don't have any definition of that so, he is going to explain why we need this additional section in the bill.

Jonathan Alm: Recently we were going through and working with our Assistant Attorney General regarding a specific case that we are looking at and it came up that the definition of neglect and, the child abuse and neglect law refers to the juvenile court law and that talks about parents, custodians, and guardians. Under child abuse and neglect law we talk about a person responsible for the welfare of the child, which can include daycares and teachers as well. If the definition still remains over in the juvenile court law, if there was a neglect situation in a childcare setting, we would not be able to go in and perform an assessment. At least for the last 11 years I have been here and the past 30 years we have been doing that. We have been looking at neglect situations in a daycare setting and determining that if it is or no falling under the definition of neglect. This wouldn't necessarily change the practice; it would correct the definition to allow us to continue with this practice. If the definition is not fixed, we would not be going into a childcare setting looking for neglect or doing a neglect assessment. Those previous laws that have been passed out of both committee's regarding providing parents notice when we find a determination of abuse and neglect, we would only be doing abuse and not neglect so, that is what that amendment does. It fixes the error made years ago.

Senator Anderson: My understanding is that, attorneys now have noticed a difference in this law and other laws so that cases that we might bring under this law is going to get thrown out because we cited neglect and there is no definition in law.

Jonathan Alm: That is correct, we have cases now that we will be deciding it was not from neglect, reversing decisions.

Chairman Anderson: Once one court or one attorney recognizes that and it goes into the court record, then it is easy for the rest of the attorneys to refer to it and so then consequently other cases the department have in that regard are automatically thrown or won't even bring up charges. That is why we felt like we could add this now and current practice could continue. We will be putting an emergency clause on that section so it would take affect right away. Any case that the department has that is filed before the emergency clause takes affect is not going to be able to go forward. Is that correct?

Jonathan Alm: That is correct.

Representative Skroch: I wanted to make sure that it is not retroactive.

Chairman Anderson: Yeah the judges won't let us do retroactive stuff.

Representative Damschen: All are things equal between a parent and childcare services, as far as neglect?

Jonathan Alm: To me not all things equal but neglect is neglect so, that definition would still be applied to an individual that is in a day care setting, staff member, and a parent as well. The difference comes in what kind of remedy can be done if we do determine there is a neglect situation, for childcare services we can take licensing action and the individual also goes on the index, if it is a parent we can require services and have the parents do some other things that we would not be able to do with the childcare center. Things are not equal but they still applied equally to the definition.

Senator Hogan: The definitions are equal but the consequences are different?

Jonathan Alm: That is correct.

Representative Skroch: I'm trying to think how that process would work, does the parent have any say in that process? Are they involved in that process in regards to the assessment of the daycare if it is related to their child, do they have full knowledge of the investigation that is ongoing, and do they get the final results?

Jonathan Alm: Yes, based on the facts and circumstances the parent would be involved in the child abuse and neglect assessment.

Representative Fegley: I carried a bill on the floor that dealt with childcare services that in that bill they actually split abuse of the child and neglect but they also set up the process of the reports and reports to the parents and the biggest part of that bill was they could do an investigation before they notified anybody.

Chairman Anderson: This won't change any of that, this just makes what the department has been doing all the time is going to be okay in the future. It doesn't change any of the notification or involvement of the parents or anything else. Unless the senators here have

any questions, I would like for the senate to concur to the house amendments and further amend to add the language that Mr. Alm has brought to us. Do the senators have any opinion about that?

Senator Hogan: I think we need to change the technical change on section c line 6 where it is supposed to be 15.1-06-06.1. We could fix that because it is a technical change.

Representative Damschen: Most of what we did was restore some language that the senate overstruck and there are some numbering changes. There was a section of the AED (automated external defibrillator) that we added back and the self-declaration document.

Chairman Anderson: The house changed that self-declaration, we had in there that they could not issue a license or a renewal license if the self-declaration document and, I don't think the department issues that.

Jonathan Alm: We don't license self-declarations we issue them so that amendment was to correct that technical issue.

Chairman Anderson: That solves my problem because I thought the self-declaration document was from the provider.

Jonathan Alm: I am currently looking to make sure that the 50-06-06.1 is the correct citation.

Chairman Anderson: For some reason the point 1 was taken out, I'm not sure why.

Senator K. Roers: The AED as my understanding is, it is not required to have an AED, if you do have one it is good to know how to do it on a child. It is required for everyone to take the training and I think it should be if you have an AED.

Chairman Anderson: We had that in a different bill and we already approved that on the senate floor.

Jonathan Alm: That is why that was fixed and taken out at the house side, we prepared that amendment because SB 2043 already addressed that so we did not need that in both bills. It was restored to the original language but because SB 2043 passed out, then that would take care of that AED issue. The citation 15.1-06-06.1 that is approval for nonpublic school's citation and in that subsection C it talks about non-public elementary school program approved pursuant to, so it should be 06.1 instead of 06. it should be 6.

Senator K. Roers: I'm not loving the fact that you are adding back the three hours a day, I'm not sure it is worth scrapping the bill over because I understand it may not pass without that but I think that limiting to three hours a day also is putting a strain on our parents and families because, if they can only go for three hours in a very structured way, why couldn't they go four hours one day and not at all the next day? I struggle with us being that prescriptive but I also get that sometimes you just need the bill to pass so, I just wanted my opinion known.

Chairman Anderson: Do I have a motion from a senator?

Senator K. Roers: I move that we **ACCEDE TO THE HOUSE AMENDMENTS AND FURTHER AMEND** with the proposed amendments from the Department of Human Services and **ADD AN EMERGENCY CLAUSE.**
Seconded by Senator Hogan.

Chairman Anderson: Comments or discussion about that? Okay, let's call the roll.

ROLL CALL VOTE TAKEN

SENATORS: 3 YEA, 0 NAY, 0 ABSENT
REPRESENTATIVES: 3 YEA, 0 NAY, 0 ABSENT
FINAL VOTE COUNT: 6 YEA, 0 NAY, 0 ABSENT

Senator Hogan and Representative Sckroch will carry SB 2245 to the floor in their respective chambers.

Chairman Anderson closes the conference committee on SB 2245.

***Please note that conference committee report was changed from Senate accede and further amend to House recede and amend as follows due to an amendment technicality. The Senate chamber and House chamber chairman's both agreed on the change and signed the bill back to the floor.**

April 9, 2019

SK
419
1003

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2245

That the House recede from its amendments as printed on pages 1135-1137 of the Senate Journal and pages 1259-1261 of the House Journal and that Engrossed Senate Bill No. 2245 be amended as follows:

Page 1, line 3, remove "and"

Page 1, line 3, after "50-11.1-17" insert ", and subsection 13 of section 50-25.1-02"

Page 1, line 4, after "services" insert "and the definition of a neglected child; and to declare an emergency"

Page 2, line 2, remove the overstrike over "~~whether public or private,~~"

Page 2, line 7, remove the overstrike over "~~Child care, preschool, and prekindergarten services~~"

Page 2, line 7, remove "Early childhood education"

Page 2, line 8, remove "program"

Page 2, line 8, remove the overstrike over "~~to children under six years of age~~"

Page 2, line 9, remove the overstrike over "~~by the superintendent of public instruction~~"

Page 2, line 9, remove "pursuant"

Page 2, line 10, remove "to chapter 15.1-37"

Page 2, line 26, remove "\"Educational facility\" means a public or nonpublic school."

Page 2, line 27, remove "9."

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Page 3, line 1, remove "10."

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- Page 8, line 21, replace "license" with "self-declaration document"
- Page 8, line 24, replace "license" with "self-declaration document"

Page 8, line 26, replace "license" with "self-declaration document"

Page 8, after line 28, insert:

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

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

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

Re-number accordingly

**2019 SENATE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. SB 2245 as (re) engrossed

Senate Senate Human Services Committee

- Action Taken SENATE accede to House Amendments
 SENATE accede to House Amendments and further amend
 HOUSE recede from House amendments
 HOUSE recede from House amendments and amend as follows
 Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Senator K. Roers Seconded by: Senator Hogan

Senators				Yes	No	Representatives				Yes	No
Sen. Anderson				X		Rep. Damschen				X	
Sen. K. Roers				X		Rep. Skroch				X	
Sen. Hogan				X		Rep. Fegley				X	
Total Senate Vote				3	0	Total Rep. Vote				3	0

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier _____ House Carrier _____

LC Number 19.0589 . 02002 of amendment

LC Number _____ . 04000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

The definition of neglect and, the child abuse and neglect law refers to the juvenile court law and that talks about parents, custodians, and guardians. Under child abuse and neglect law we talk about a person responsible for the welfare of the child, which can include daycares and teachers as well. If the definition still remains over in the juvenile court law, if there was a neglect situation in a childcare setting, we would not be able to go in and preform an assessment. This amendment corrects that.

*Please note that conference committee report was changed from Senate accede and further amend to House recede and amend as follows due to an amendment technicality. The Senate chamber and House chamber chairman's both agreed on the change and signed the bill back to the floor.

REPORT OF CONFERENCE COMMITTEE

SB 2245, as engrossed: Your conference committee (Sens. Anderson, K. Roers, Hogan and Reps. Damschen, Skroch, Fegley) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 1135-1137, adopt amendments as follows, and place SB 2245 on the Seventh order:

That the House recede from its amendments as printed on pages 1135-1137 of the Senate Journal and pages 1259-1261 of the House Journal and that Engrossed Senate Bill No. 2245 be amended as follows:

Page 1, line 3, remove "and"

Page 1, line 3, after "50-11.1-17" insert ", and subsection 13 of section 50-25.1-02"

Page 1, line 4, after "services" insert "and the definition of a neglected child; and to declare an emergency"

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Page 3, line 10, remove the overstrike over " ~~13.~~"

Page 3, line 10, remove "14."

Page 3, line 12, remove the overstrike over " ~~14.~~"

Page 3, line 12, remove "15."

Page 3, line 14, remove the overstrike over " 15."

Page 3, line 14, remove "16."

Page 3, line 17, remove the overstrike over " 16."

Page 3, line 17, remove "17."

Page 3, line 19, remove the overstrike over " 17."

Page 3, line 19, remove "18."

Page 3, line 21, remove the overstrike over "~~and which serves no child for more~~"

Page 3, line 22, remove the overstrike over "~~than three hours per day~~"

Page 3, line 23, remove the overstrike over "18."

Page 3, line 23, remove "19."

Page 3, line 25, remove the overstrike over " 19."

Page 3, line 25, remove "20."

Page 3, line 27, remove the overstrike over " 20."

Page 3, line 27, remove "21."

Page 4, line 1, remove the overstrike over "21."

Page 4, line 1, remove "22."

Page 4, line 4, remove the overstrike over " 22."

Page 4, line 4, remove "23."

Page 4, line 7, remove the overstrike over " 23."

Page 4, line 7, remove "24."

Page 4, line 9, remove the overstrike over " 24."

Page 4, line 9, remove "25."

Page 4, line 12, remove the overstrike over " 25."

Page 4, line 12, remove "26."

Page 5, line 27, after "~~and~~" insert ", including"

Page 5, line 27, remove the overstrike over "~~the use of an automated external defibrillator~~"

Page 5, line 29, remove the overstrike over "~~and automated external defibrillator~~"

Page 6, line 4, after "~~and~~" insert ", including"

Page 6, line 4, remove the overstrike over "~~the use of an automated external defibrillator~~"

Page 6, line 6, remove the overstrike over "and ~~automated external defibrillator~~"

Page 8, line 21, replace "license" with "self-declaration document"

Page 8, line 24, replace "license" with "self-declaration document"

Page 8, line 26, replace "license" with "self-declaration document"

Page 8, after line 28, insert:

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

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

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

Renumber accordingly

Engrossed SB 2245 was placed on the Seventh order of business on the calendar.

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TESTIMONY
Senate Human Services Committee
SB 2245
January 30, 2019 Senator Kathy Hogan

Chairman Lee and members of the Senate Human Services Committee, my name is Kathy Hogan. I represent District 21.

This bill is in response to the closure of a child care facility. During the process of investigation and following actions, there was a concern about two key issues - the timing of revocation of a license as they relate to the issuing of the annual re-license and the need to additional potential adverse action options rather than simply revocation.

Let me briefly describe the situation. A major child protection incident happened in the child care center resulting in a full child abuse neglect investigation. Because of the investigation, it was recommended that the child care license be revoked. The provider appealed that decision.

Paralleling this child protection issue the child care center was involved in the annual re-licensing process. The renew was not approved because of the pending revocation. The question is about due process. Should an agency not be relicensed without the opportunity to exhaust all due process options?

This bill would allow the Department through the administrative rules process to expand the potential options for adverse actions.

The second key idea that is used in some situations is the concept of peer review. It was suggested that rules allow for similar size and types of child care be used as a peer review model to review the situation and provide input in the final decision.

Finally, I have a set of proposed technical amendments for consideration that will update child care licensing requirement to comply with federal regulations.

Thank you Chair Lee, I am more than willing to answer any questions.

January 15, 2019

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2245

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 50-11.1-02 and 50-11.1-04, subsection 10 of section 50-11.1-06.2, subsection 1 of section 50-11.1-07.2, sections 50-11.1-07.3 and 50-11.1-07.5, and subsection 3 of section 50-11.1-17 of the North Dakota Century Code, relating to early childhood services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

50-11.1-02. Definitions.

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

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

- d. ~~Child care, preschool, and prekindergarten services~~ Early childhood education program provided to children under six years of age in any educational facility through a program approved by the superintendent of public instruction pursuant to chapter 15.1-37.
 - e. Child care provided in facilities operated in connection with a church, business, or organization where children are cared for during periods of time not exceeding four continuous hours while the child's parent is attending church services or is engaged in other activities, on the premises.
 - f. Schools or classes for religious instruction conducted by religious orders during the summer months for not more than two weeks, Sunday schools, weekly catechism, or other classes for religious instruction.
 - g. Summer resident or day camps for children which serve no children under six years of age for more than two weeks.
 - h. Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
 - i. Head start and early head start programs that are federally funded and meet federal head start performance standards.
 - j. Child care provided in a medical facility by medical personnel to children who are ill.
8. "Educational facility" means a public or nonpublic school.
9. "Family child care" means a private residence licensed to provide early childhood services for no more than seven children at any one time, except that the term includes a residence licensed to provide early childhood services to two additional school-age children.
- 9-10. "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.
- 11-12. "In-home provider" means any person who provides early childhood services to children in the children's home.
- 12-13. "Licensed" means an early childhood program has the rights, authority, or permission granted by the department to operate and provide early childhood services.
- 13-14. "Multiple licensed program" means an early childhood program licensed to provide more than one type of early childhood services.
- 14-15. "Owner" or "operator" means the person who has legal responsibility for the early childhood program and premises.

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- 15-16. "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.
- 16-17. "Premises" means the indoor and outdoor areas approved for providing early childhood services.
- 17-18. "Preschool" means a program licensed to offer early childhood services, which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled and which serves no child for more than three hours per day.
- 18-19. "Public approval" means a nonlicensed early childhood program operated by a government entity that has self-certified that the program complies with this chapter.
- 19-20. "Registrant" means the holder of an in-home provider registration document issued by the department in accordance with this chapter.
- 20-21. "Registration" means the process whereby the department maintains a record of all in-home providers who have stated that they have complied or will comply with the prescribed standards and adopted rules.
- 21-22. "Registration document" means a written instrument issued by the department to publicly document that the registrant has complied with this chapter and the applicable rules and standards as prescribed by the department.
- 22-23. "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.
- 23-24. "School-age children" means children served under this chapter who are at least five years but less than twelve years of age.
- 24-25. "Self-declaration" means voluntary documentation of an individual providing early childhood services in a private residence for up to five children through the age of eleven, of which no more than three may be under the age of twenty-four months.
- 25-26. "Staff member" means an individual:
 - a. Who is an employee of an early childhood program or of an early childhood services provider under a self-declaration; ~~or~~
 - b. Whose activities involve the care, supervision, or guidance of children ~~for~~ of an early childhood program; or
 - c. Who may have unsupervised access to children under the care, supervision, or guidance of an early childhood program or early childhood services provider under a self-declaration.

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

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

1. An application for operation of an early childhood program must be made on forms provided, in the manner prescribed, by the department. The department or the department's authorized agent shall investigate the applicant's activities and proposed standards of care and shall make an inspection of all premises to be used by the early childhood program applying for a license. The applicant for a license and the staff members, and, if the application is for a program that will be located in a private residence, every individual living in that residence must be investigated in accordance with the rules adopted by the department to determine whether any of them has a criminal record or has had a finding of services required for child abuse or neglect filed against them. The department may use the findings of the investigation to determine licensure. Except as otherwise provided, the department shall grant a license for the operation of an early childhood program within thirty days of receipt of a completed application and all supporting documents by the department and upon a showing:
 - a. The premises to be used are in fit and sanitary condition, are properly equipped to provide for the health and safety for all children, and are maintained according to rules adopted by the department;
 - b. Staff members are qualified to fulfill the duties required of them according to the provisions of this chapter and standards prescribed for their qualifications by the rules of the department;
 - c. The application and supporting documents do not include any fraudulent or untrue representations;
 - d. The owner, operator, or applicant has not had a previous license or self-declaration denied or revoked within the twelve months before the date of the current application, unless waived by the department after the department considers the health and safety of children and the licensing history of the owner, operator, or applicant;
 - e. The owner, operator, or applicant has not had three or more previous licenses or self-declarations denied or revoked. The most recent revocation or denial may not have occurred within the five~~three~~ years immediately preceding the application date;
 - f. The program paid its license fees and any penalties and sanctions assessed against the program as required by sections 50-11.1-03 and 50-11.1-07.4;
 - g. The family child care owner or operator and staff members have received training and are currently certified in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department, and are currently certified in first aid by a program approved by the department; and

- h. The group child care, preschool, school-age child care, or child care center, at all times during which early childhood services are provided, staff members have received training and are currently certified in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department, and currently certified in first aid by a program approved by the department.
2. The license issued to the owner or operator of an early childhood program may not be effective for longer than two years.
3. The department may consider the applicant's past licensing, self-declaration, and registration history in determining whether to issue a license.
4. The department may issue a provisional or restricted license in accordance with the rules of the department. The department shall consider issuing a provisional or restricted license before revoking a license. The department may require the owner or operator of an early childhood program to provide a compliance plan to address compliance issues with this chapter and rules of the department. The department shall review the compliance plan before issuing a provisional or restricted license. The department shall approve the provisional license if the department approves the compliance plan. The department may revoke a license if the owner and operator fail to comply with the department approved compliance plan or for any additional violations of this chapter or rules of the department.
5. The department shall notify the owner or operator that the owner or operator is required to post a notice of late application at the early childhood program premises if the department has not received a completed application and all supporting documents for licensure or self-declaration renewal at least thirty days before the expiration date of the early childhood program's license.

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

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

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

1. If the department or the department's authorized agent finds, upon inspection, that the program, self-declaration, or premises is not in compliance with this chapter or the rules adopted under this chapter, the department or the department's authorized agent ~~shall~~may issue a correction order to the program or self-declaration, provided the department does not revoke the license or self-declaration as a result of the noncompliance. The correction order must cite the specific statute or

rule violated, state the factual basis of the violation, state the suggested method of correction, and specify the time allowed for correction. The correction order must also specify the amount of any fiscal sanction to be assessed if the program or self-declaration fails to comply with the correction order in a timely fashion. This section does not apply to an applicant's failure to comply with subsection 8 of section 50-11.1-03 or subdivision c of subsection 1 of section 50-11.1-16.

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

50-11.1-07.3. Reinspections.

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

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

50-11.1-07.5. Accumulation of fiscal sanctions.

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

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

3. The department may issue a provisional self-declaration document in accordance with the rules of the department. The department shall consider issuing a provisional or restricted license 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

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with this chapter and rules of the department. The department shall review the compliance plan before issuing a provisional or restricted license. The department shall approve the provisional self-declaration document if the department approves the compliance plan. The department may revoke a license 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."

Renumber accordingly

My name is Michelle Roeszler. I live in Fargo. Some of you may recognize me. I am the former owner of Curious Kids Childcare and this past summer I was in the news when my clients were advocating very publicly to reverse the revocation decision made against my license after 3 toddlers were able to escape our outdoor play space and get to the street. While that incident was definitely serious, my clients disagreed that this single incident warranted revocation and I should have instead received a correction order. I would like to give you an overview of the revocation process as someone who has been dragged through it.

My response to the incident was to meet with staff to review what happened, to form a plan to prevent it from happening again, and then to follow through with that plan. We met together as a full staff and formulated a prevention plan before we even had a visit from the CPS investigator. I never in my wildest imagination thought that one incident in many dedicated years of licensed childcare would result in the total destruction of my business and my reputation as a quality childcare provider known for using research-based developmentally appropriate practices.

The investigation and revocation process was lengthy and unbalanced. The day the CPS investigator came to interview staff I made sure that every single staff person was available in a single visit. I was open and honest about what I knew, my response to the situation, and how we planned to prevent it from happening again. The investigator was there for five hours straight.

After receiving the revocation notice I properly requested, in writing, an appeal hearing. My attorney submitted this request within the time required and in the proper format. As a point of reference, the incident occurred on Friday, April 27, 2018. I received verbal notice of my revocation on Friday, May 25 from my licenser and received the written notice on June 1. My request for appeal hearing was received by DHS on June 11, 2018.

The administrative appeal process is extremely slow. Despite my notice of revocation stating that a hearing would be held within 60 days of my request for one, my hearing was finally set for August but then changed to the end of October, 2018 more than four months after my request. In the meantime, I was allowed to continue operating during the appeal until the matter was settled or my license expired, whichever came first. As it turned out my current license was set to expire on July 22, 2018 and since my application for license renewal had also been denied in writing I now had just over a month to settle this matter. This was fundamentally unfair to my business. If this incident had occurred the day after my new license had begun I would have had an entire year to settle the matter. Instead I had just a few weeks.

In that time my appeal request sat in the DHS legal advisory unit not forwarded to the Office of Administrative Hearings until June 22, 2018, 11 days later. Once the OAH was involved the appeal process seemed to turn into a formal district court action. The process dragged on and on with talk of motions for summary judgement and waiting on DHS to produce the supporting documents for us to review. It wasn't until July 5, nearly a month after requesting an appeal hearing, when the attorneys finally had a scheduling conference and the documents weren't delivered to us until July 13th to review the information used to make the decision to revoke. At that time we still didn't have a hearing date for the appeal.

Meanwhile 27 out of 27 parents signed a public letter in defense of me and advocating to keep Curious Kids. There were countless former families who wrote letters to DHS on my behalf as well supporting our continued operation. I had a large group of families not wanting to leave care because they held out hope that DHS would reverse their decision and issue a correction order instead. On Friday, July 21st the Curious Kids family was forced to say their final goodbyes. Children were stripped of the community they had come to love and trust and parents lost a strong support system that I had worked tirelessly to build for them and with them. A strong, child-led program was closed because of one incident and the parents of those three toddlers involved were our loudest advocates to stay open. No families left care over the incident despite the horribly upsetting onset and revocation letters they all received. That should speak volumes for what the action against us should have been.

Today you are considering an amendment to the childcare license revocation law which proposes to add a peer review process to that action. I truly feel that a peer review process will aid DHS in determining the best course of action in childcare incidents by involving others in the field.

Other childcare providers in our state agree that while this was a serious incident, corrections were made right away to ensure it wouldn't happen again. In fact, we had three months to not only implement the new policies and procedures but perfect them. This could have, and should have, been the outcome. I would have welcomed whatever supervision deemed necessary by DHS to make sure our corrections were being followed but nothing short of revocation was offered to me. In fact no contact was made with me by CPS nor my licensor after that single visit in early May. No follow up questions were asked and only a couple very short visits by my licensor to check on us were made after that initial day of interviews. A peer review process could have assisted the decision-making team in considering the possible rehabilitation of a childcare rather than total devastation. In the alternative, some type of informal mediation process would have also been helpful prior to the revocation decision to lay out the information available to DHS and the decision-making team and to ask questions of the childcare program rather than getting their information from a single investigator. In my case DHS closed down a thriving business, disregarding my immediate corrective action and my years of proven experience, disregarding 100% of the parents enrolled, and disregarding the true best interests of 25 children. There needs to be balance in the process.

I support a Do Pass vote by this committee of the proposed amendments as a good first step in shortening the timeline on revocations and to give the perspective of childcare providers to the decision-making team prior to a revocation determination.

I thank you for your time and consideration on this matter and welcome any questions you may have of me.

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#1
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3/4/19

TESTIMONY
House Human Services Committee
SB 2245
Senator Kathy Hogan
March 4, 2019

Chairman Weisz and members of the House Human Services Committee, my name is Kathy Hogan. I represent District 21.

This bill is in response to the closure of a child care facility. During the process of investigation and following actions, there was a concern about two key issues - the timing of revocation of a license as they relate to the issuing of the annual re-license and the need to additional potential adverse action options rather than simply revocation.

Let me briefly describe the situation. A major child protection incident happened in the child care center resulting in a full child abuse neglect investigation. Because of the investigation, it was recommended that the child care license be revoked. The provider appealed that decision.

Paralleling this child protection issue the child care center was involved in the annual re-licensing process. The renew was not approved because of the pending revocation. The question is about due process. Should an agency not be relicensed without the opportunity to exhaust all due process options?

This bill would allow the Department through the administrative rules process to expand the potential options for adverse actions.

Finally, there are a few technical amendments regarding child care licensing requirement to move school-based child care programs under the Department of Public Instruction to reduce duplication. The Department will also address any other issues I may have missed.

Thank you Chairman Weisz, I am more than willing to answer any questions.

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Testimony
Engrossed Senate Bill 2245-Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
March 4, 2019

Chairman Weisz, and members of the House Human Services Committee, I am Jonathan Alm, an attorney with the Department of Human Services (Department). I appear before you to support Engrossed Senate Bill 2245, which was introduced by Senator Hogan. This Bill relates to regulation of early childhood services.

Section 1:

The proposed changes in Section 1 of this Bill amend section 50-11.1-02 of the North Dakota Century Code. Page 2, line 2, removes “whether public or private” as a definition of “educational facility” has been added to page 2, line 26. The change on page 2, line 6, updates a citation. Page 2, lines 7 through 10, only updates the language to reflect the language currently used in chapter 15.1-37. Since section 15.1-37-01 sets forth the age of the child, the age is being removed from 50-11.1-02 to eliminate any confusion between Department of Public Instruction’s early childhood education law and the Department’s early childhood services licensing law. To be clear, these changes do not change the current process being used by the Department or the Department of Public Instruction. The Department has a proposed amendment for page 3, lines 21 and 22 as this committee previously passed out a change to the definition of “preschool” to allow a preschool licensed by the Department to operate no more than four hours a day. Page 4, lines 14 through 17 updates the definition of “staff member” pursuant to federal regulations.

Section 2:

The proposed changes in Section 2 of this Bill amend section 50-11.1-04 regarding the prerequisites for issuance of an early childhood program license. Currently, if an early childhood services applicant had a previous license or self-declaration denied or revoked, they were prohibited from reapplying for twelve months. The change being proposed on page 5, lines 16 through 18, would allow the Department to consider an application after the Department considers the health and safety of children and previous licensing history. This would allow providers holding multiple early childhood licenses to continue to operate other locations if one location was revoked or an application was denied. Page 5, line 21, reduces the time period from five to three years that an applicant is barred from resubmitting an application if the provider has had

three or more previous licenses or self-declarations denied or revoked. Page 5, lines 27 and 29 and page 6, lines 4 and 6, removes the requirement for providers to be trained in automated external defibrillator as providers are not required by law to have automated external defibrillators. Page 6, lines 14 through 22 adds language to require the Department to consider issuing a provisional or restricted license prior to revoking a license. The Department may require the provider to provide a compliance plan to address compliance issues before the Department issues a provisional or restricted license. The proposed language also allows the Department to revoke the license if the provider fails to comply with the compliance plan. This same language is used for holders of a self-declaration on page 8, lines 20 through 28.

Section 3:

The proposed changes in this Section amend subsection 10 of section 50-11.1-06.2 of the North Dakota Century Code in order for the Department to be in compliance with federal regulations.

Section 4:

The proposed changes in this Section amend subsection 1 of section 50-11.1-07.2 of the North Dakota Century Code. The change on page 7, line 8 would permit, based on the circumstance, the Department to not issue a correction order. Currently, any rule or law violation results in a correction order. For example, some rule violations can be corrected while the licensor is present.

Section 5:

The proposed changes in this Section amend section 50-11.1-07.3 of the North Dakota Century Code. The changes on page 7, line 20 and 23 clarifies that some correction order situations do not require the Department's authorized agent to reinspect a licensed program or self-declaration, as the authorized agent can accomplish the same task by reviewing documentation. The remaining changes are just minor clerical changes.

Section 6:

The proposed changes in this Section amend section 50-11.1-07.5 of the North Dakota Century Code. The changes on page 8, lines 2, 3, 9, 11, and 15 are clerical changes made by Legislative Council. The changes on page 8, lines 6 and 8, adds "or review" as stated before, the Department or its authorized agency does not need to reinspect every situation when a review can achieve the same result.

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Section 7:

The proposed changes in this Section amend subsection 3 of section 50-11.1-17 of the North Dakota Century Code. The change on page 8, lines 20 through 28 regarding self-declarations are the same changes made in page 6, lines 14 through 22 that adds language to require the Department to consider issuing a provisional or restricted self-declaration prior to revoking a self-declaration. The Department may require the holder of a self-declaration to provide a compliance plan to address compliance issues before the Department issues a provisional or restricted self-declaration. The proposed language also allows the Department to revoke the self-declaration document if the holder of a self-declaration fails to comply with the compliance plan.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

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PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2245

Page 3, line 21, remove the overstrike over "~~and which serves no child for more~~"

Page 3, line 22, remove the overstrike over "~~than~~"

Page 3, line 22, after "~~three~~" insert "four"

Page 3, line 22, remove the overstrike over "~~hours per day~~"

Renumber accordingly

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PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2245

Page 2, line 2, remove the overstrike over “~~whether public or private,~~”

Page 2, line 6, remove the overstrike over “~~subsection 1 of~~”

Page 2, line 6, remove the overstrike over “~~15.1-06-06~~”

Page 2, line 6, remove “15.1-06-06.1”

Page 2, line 7, remove the overstrike over “~~Child care, preschool, and prekindergarten services~~”

Page 2, line 7, remove “Early childhood education”

Page 2, line 8, remove “program”

Page 2, line 8, remove the overstrike over “~~to children under six years of age~~”

Page 2, line 9, remove the overstrike over “~~by the superintendent of public instruction~~”

Page 2, line 9, remove “pursuant”

Page 2, line 10, remove “to chapter 15.1-37”

Page 2, line 26, remove ““Educational facility” means a public or nonpublic school.”

Page 2, line 27, remove “9.”

Page 3, line 1, remove the overstrike over “~~9.~~”

Page 3, line 1, remove “10.”

Page 3, line 3, remove the overstrike over “~~10.~~”

Page 3, line 3, remove “11.”

Page 3, line 6, remove the overstrike over “~~11.~~”

Page 3, line 6, remove “12.”

Page 3, line 8, remove the overstrike over “~~12.~~”

Page 3, line 8, remove “13.”

Page 3, line 10, remove the overstrike over “~~13.~~”

Page 3, line 10, remove “14.”

Page 3, line 12, remove the overstrike over “~~14.~~”

Page 3, line 12, remove "15."

Page 3, line 14, remove the overstrike over "~~15.~~"

Page 3, line 14, remove "16."

Page 3, line 17, remove the overstrike over "~~16.~~"

Page 3, line 17, remove "17."

Page 3, line 19, remove the overstrike over "~~17.~~"

Page 3, line 19, remove "18."

Page 3, line 21, remove the overstrike over "~~and which serves no child for more~~"

Page 3, line 22, remove the overstrike over "~~than~~"

Page 3, line 22, after "~~three~~" insert "four"

Page 3, line 22, remove the overstrike over "~~hours per day~~"

Page 3, line 23, remove the overstrike over "~~18.~~"

Page 3, line 23, remove "19."

Page 3, line 25, remove the overstrike over "~~19.~~"

Page 3, line 25, remove "20."

Page 3, line 27, remove the overstrike over "~~20.~~"

Page 3, line 27, remove "21."

Page 4, line 1, remove the overstrike over "~~21.~~"

Page 4, line 1, remove "22."

Page 4, line 4, remove the overstrike over "~~22.~~"

Page 4, line 4, remove "23."

Page 4, line 7, remove the overstrike over "~~23.~~"

Page 4, line 7, remove "24."

Page 4, line 9, remove the overstrike over "~~24.~~"

Page 4, line 9, remove "25."

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Page 4, line 12, remove the overstrike over "~~25.~~"

Page 4, line 12, remove "26."

Page 5, line 27, remove the overstrike over "~~and the use of an automated external defibrillator~~"

Page 5, line 29, remove the overstrike over "~~and automated external defibrillator~~"

Page 6, line 4, remove the overstrike over "~~and the use of an automated external defibrillator~~"

Page 6, line 6, remove the overstrike over "~~and automated external defibrillator~~"

Page 8, line 21, replace "license" with "self-declaration document"

Page 8, line 24, replace "license" with "self-declaration document"

Page 8, line 26, replace "license" with "self-declaration document"

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2245

That the Senate accede to the House amendments as printed on pages 1135 through 1137 of the Senate Journal and pages 1259 through 1261 of the House Journal and that Engrossed Senate Bill No. 2245 be further amended as follows:

Page 1, line 3, remove "and"

Page 1, line 3, after "50-11.1-17" add ", and subsection 13 of section 50-25.1-02"

Page 1, line 4, after "services" insert "and the definition of a neglected child; and to declare an emergency"

Page 8, after line 25, insert:

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

13. "Neglected child" means a ~~deprived child as defined in chapter 27-20~~who, due to the action or inaction of a person responsible for the child's welfare:

- a. Is without proper care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and is not due primarily to the lack of financial means of a person responsible for the child's welfare;
- b. Has been placed for care or adoption in violation of law;
- c. Has been abandoned;
- d. Is without proper care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of a person responsible for the child's welfare, and that such lack of care is not due to a willful act of commission or act of omission, and care is requested by a person responsible for the child's welfare;
- e. Is in need of treatment and a person responsible for the child's welfare has refused to participate in treatment as ordered by the juvenile court;

- f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner;
- g. Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2; or
- h. Is a victim of human trafficking as defined in title 12.1.

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

Renumber accordingly

4. "Child" means an individual who is:
 - a. Under the age of eighteen years and is not married; or
 - b. Under the age of twenty years with respect to a delinquent act committed while under the age of eighteen years.
5. "Custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of a court.
6. "Delinquent act" means an act designated a crime under the law, including local ordinances or resolutions of this state, or of another state if the act occurred in that state, or under federal law, and the crime does not fall under subdivision c of subsection 19.
7. "Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation.
8. "Deprived child" means a child who:
 - a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;
 - b. Has been placed for care or adoption in violation of law;
 - c. Has been abandoned by the child's parents, guardian, or other custodian;
 - d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent;
 - e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court;
 - f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner;
 - g. Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2.
 - h. Is a victim of human trafficking as defined in title 12.1.
9. "Detention" means a physically secure facility with locked doors and does not include shelter care, attendant care, or home detention.
10. "Director" means the director of juvenile court or the director's designee.
11. "Fit and willing relative or other appropriate individual" means a relative or other individual who has been determined, after consideration of an assessment that includes a criminal history record investigation under chapter 50-11.3, to be a qualified person under chapter 30.1-27, and who consents in writing to act as a legal guardian.
12. "Home" when used in the phrase "to return home" means the abode of the child's parent with whom the child formerly resided.
13. "Juvenile court" means the district court of this state.
14. "Juvenile drug court" means a program established in a judicial district consisting of intervention and assessment of juveniles involved in forms of substance abuse; frequent drug testing; intense judicial and probation supervision; individual, group, and family counseling; substance abuse treatment; educational opportunities; and use of sanctions and incentives.
15. "Permanency hearing" means a hearing, conducted with respect to a child who is in foster care, to determine the permanency plan for the child which includes:
 - a. Whether and, if applicable, when the child will be returned to the parent;
 - b. Whether and, if applicable, when the child will be placed for adoption and the state will file a petition for termination of parental rights;
 - c. Whether and, if applicable, when a fit and willing relative or other appropriate individual will be appointed as a legal guardian;