

**FIRST ENGROSSMENT  
with Conference Committee Amendments**

Sixty-first  
Legislative Assembly  
of North Dakota

**ENGROSSED SENATE BILL NO. 2162**

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to create and enact a new section to chapter 50-06 and two new sections to  
2 chapter 50-11.1 of the North Dakota Century Code, relating to criminal history record checks  
3 and to self-declaration of an individual who provides early childhood services; to amend and  
4 reenact subdivision g of subsection 2 of section 12-60-24 and sections 50-11.1-02,  
5 50-11.1-02.1, 50-11.1-03, 50-11.1-04, 50-11.1-06, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07,  
6 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3, 50-11.1-07.4, 50-11.1-07.5, 50-11.1-07.6,  
7 50-11.1-07.8, 50-11.1-08, 50-11.1-09, 50-11.1-10, 50-11.1-11, 50-11.1-11.1, 50-11.1-12, and  
8 50-11.1-13.1 of the North Dakota Century Code, relating to criminal history record checks,  
9 licensing and registration of early childhood services providers, investigation of early childhood  
10 services providers, denial or revocation of request for early childhood services provider  
11 licensure or registration, and resource and referral services; to repeal section 50-11.1-03.1 of  
12 the North Dakota Century Code, relating to cardiopulmonary resuscitation certification for a  
13 family child care home operator; to provide a statement of legislative intent; to provide a  
14 penalty; to provide an appropriation; and to provide an expiration date.

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

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

18 g. The department of human services for ~~carecheck registrations under section~~  
19 ~~50-11.1-06.2~~ criminal history record checks authorized under section 2 of this  
20 Act.

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

23 **Criminal history record checks.** The department may require criminal history record  
24 checks as the department determines appropriate for:

- 1           1. Employees of the department upon hiring;
- 2           2. Providers licensed by the department under chapter 50-12, as well as for any
- 3           employees of those providers; and
- 4           3. Applicants for early childhood services licensure, nonlicensed holders of a
- 5           self-declaration, and in-home providers under chapter 50-11.1. The department
- 6           also may require criminal history record checks for new staff members of those
- 7           applicants, providers of an applicant, and a provider if the provider is providing
- 8           early childhood services within the provider's home.

9           **SECTION 3. AMENDMENT.** Section 50-11.1-02 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11           **50-11.1-02. Definitions.** As used in this chapter, unless the context or subject matter  
12 otherwise requires:

- 13           1. "Authorized agent" means the county social service board, unless another entity is
- 14           designated by the department.
- 15           2. "Child care center" means an early childhood ~~facility where~~ program licensed to
- 16           provide early childhood services ~~are provided~~ to nineteen or more children.
- 17           3. "County agency" means the county social service board in each of the counties of
- 18           the state.
- 19           4. "Department" means the department of human services.
- 20           5. "Drop-in care" means the care of children on a one-time, occasional, or
- 21           unscheduled basis to meet the short-term needs of families.
- 22           6. "Early childhood ~~facility program~~" means any facility program licensed under this
- 23           chapter where early childhood services are provided, ~~whether the facility is known~~
- 24           ~~as a child care center, day care home, day care center, day nursery, family child~~
- 25           ~~care home, group child care home, preschool educational facility nursery school,~~
- 26           ~~kindergarten, child play school, progressive school, child development center,~~
- 27           ~~preschool, drop-in care center, or known by any other name~~ for at least two hours
- 28           a day for three or more days a week.
- 29           7. "Early childhood services" means the care, supervision, education, or guidance of
- 30           a child or children, ~~unaccompanied by the child's parent, guardian, or custodian,~~
- 31           which is provided in exchange for money, goods, or other services ~~and is, or is~~

- 1 ~~anticipated to be, ongoing for periods of two or more hours per day for a part of~~  
2 ~~three or more days per week.~~ Early childhood services does not include:
- 3 a. Substitute parental child care provided pursuant to chapter 50-11.
  - 4 b. Child care provided in any educational facility, whether public or private, in  
5 grade one or above.
  - 6 c. Child care provided in a kindergarten which has been established pursuant to  
7 chapter 15.1-22 or a nonpublic elementary school program approved  
8 pursuant to subsection 1 of section 15.1-06-06.
  - 9 d. ~~Child care, preschool, and prekindergarten services provided to preschool~~  
10 ~~age handicapped children under six years of age~~ in any educational facility  
11 through a program approved by the superintendent of public instruction.
  - 12 e. Child care provided in facilities operated in connection with a church,  
13 ~~shopping center, business, or other establishment organization~~ where  
14 children are cared for during periods of time not exceeding four continuous  
15 hours while the child's parent, ~~guardian, or custodian~~ is attending church  
16 services, ~~shopping,~~ or is engaged in other activities, on or near the premises.
  - 17 f. Schools or classes for religious instruction conducted by religious orders  
18 during the summer months for not more than two weeks, Sunday schools,  
19 weekly catechism, or other classes for religious instruction.
  - 20 g. Summer resident or day camps for children which serve no ~~preschool age~~  
21 children under six years of age for more than two weeks.
  - 22 h. Sporting events, practices for sporting events, or sporting or physical activities  
23 conducted under the supervision of an adult.
  - 24 i. ~~Headstart~~ Head start and early head start programs that are federally funded  
25 and meet federal ~~headstart~~ head start performance standards.
  - 26 j. Child care provided ~~by a hospital in a medical facility~~ by medical personnel  
27 ~~within the physical structure of the hospital~~ to children who are ill.
- 28 8. "Family child care ~~home~~" means ~~an occupied a private residence in which licensed~~  
29 to provide early childhood services ~~are provided~~ for no more than seven children at  
30 any one time, except that the term includes a residence ~~providing licensed to~~  
31 provide early childhood services to two additional school-age children during the

- 1 two hours immediately before and after the schoolday and all day, except Saturday  
2 and Sunday, when school is not in session during the official school year.
- 3 9. ~~"Group child care home" or "group child care facility"~~ means a child care facility  
4 ~~where program licensed to provide~~ early childhood services ~~are provided for eight~~  
5 ~~through eighteen or fewer children or a facility, other than an occupied private~~  
6 ~~residence, which serves fewer than eight children.~~
- 7 10. "Household member" means an adult living in the private residence out of which a  
8 program is operated, regardless of whether the adult is living there permanently or  
9 temporarily.
- 10 11. "In-home provider" means any person who provides early childhood services to  
11 children in the children's home.
- 12 44. 12. ~~"License Licensed"~~ means an early childhood program has the rights, authority, or  
13 permission granted by the department to operate ~~a family child care home, group~~  
14 ~~child care facility, child care center, drop-in care center, or preschool educational~~  
15 ~~facility and provide early childhood services.~~
- 16 42. 13. "Multiple licensed facility program" means an early childhood facility that provides  
17 program licensed to provide more than one type of early childhood services.
- 18 43. 14. "Owner" or "operator" means the person who has legal responsibility for the early  
19 childhood program and premises.
- 20 15. "Parent" means an individual with the legal relationship of father or mother to a  
21 child or an individual who legally stands in place of a father or mother, including a  
22 legal guardian or custodian.
- 23 16. "Premises" means the indoor and outdoor areas approved for providing early  
24 childhood services.
- 25 17. ~~"Preschool educational facility"~~ means a ~~facility that offers~~ program licensed to  
26 offer early childhood services and, which follows a preschool curriculum and  
27 course of study designed primarily to enhance the educational development of the  
28 children enrolled ~~in the facility and that~~ which serves no child for more than three  
29 hours per day.

- 1           18.   "Public approval" means a nonlicensed early childhood program operated by a  
2                   government entity that has self-certified that the program complies with this  
3                   chapter.
- 4    44. 19.   "Registrant" means the holder of a an in-home provider registration document  
5                   issued by the department in accordance with this chapter.
- 6    45. 20.   "Registration" means the process whereby the department maintains a record of  
7                   all in-home providers who have stated that they have complied or will comply with  
8                   the prescribed standards and adopted rules.
- 9    46. 21.   "Registration document" ~~is~~ means a written instrument issued by the department to  
10                   publicly document that the registrant has complied with this chapter and the  
11                   applicable rules and standards as prescribed by the department.
- 12           22.   "School-age child care" means a child care program licensed to provide early  
13                   childhood services on a regular basis for nineteen or more children aged five years  
14                   through eleven years.
- 15           23.   "Self-declaration" means voluntary documentation of an individual providing early  
16                   childhood services in a private residence for up to three children below the age of  
17                   twenty-four months or for no more than five children through the age of eleven.
- 18           24.   "Staff member" means operator, caregiver, provider, or any other individual,  
19                   whether paid or volunteer, who provides care, supervision, or guidance to children  
20                   in an early childhood program and includes food preparation, transportation, and  
21                   maintenance personnel.

22           **SECTION 4. AMENDMENT.** Section 50-11.1-02.1 of the North Dakota Century Code  
23 is amended and reenacted as follows:

24           **50-11.1-02.1. Number of children in program - How determined.** For the purpose of  
25 determining the number of children ~~in an~~ receiving early childhood ~~facility~~ services, all children  
26 ~~of the operator or employees, present in the facility~~ on the premises and under the age of  
27 twelve years; must be counted ~~except for purposes of determining fire, safety, or zoning~~  
28 requirements. All children present are protected by this chapter regardless of whether money  
29 is received or goods or other services are received for their care.

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

1           **50-11.1-03. Operation of ~~family child care home, group child care facility,~~**  
2 **~~preschool educational facility, and child care center~~ early childhood services program -**  
3 **License required - Fees.**

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

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

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

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

18          5. A governmental organization may not establish or operate a family child care,  
19 group child care facility, preschool educational facility school-age child care, or  
20 child care center without first receiving public approval by certifying, to the  
21 department or the department's authorized agent, that it has complied with all rules  
22 applicable to family child care, group child care facilities, preschool educational  
23 facilities, or school-age child care, or to child care centers.

24          ~~3.~~ 6. An applicant for a license shall submit the following nonrefundable fees with the  
25 application:

26           a. The operator of a family child care ~~home~~ applying for a license shall pay an  
27 annual license fee of twenty dollars or if the license is issued for a two-year  
28 period, a fee of thirty-five dollars.

29           b. The operator of a group child care ~~home~~ applying for a license shall pay an  
30 annual license fee of twenty-five dollars or if the license is issued for a  
31 two-year period, a fee of forty-five dollars.

- 1 c. The operator of a preschool ~~educational facility~~ applying for a license shall  
2 pay an annual license fee of thirty dollars or if the license is issued for a  
3 two-year period, a fee of fifty-five dollars.
- 4 d. The operator of a child care center applying for a license shall pay an annual  
5 license fee of forty dollars or if the license is issued for a two-year period, a  
6 fee of seventy-five dollars.
- 7 e. The operator of a multiple licensed ~~facility~~ program applying for a license shall  
8 pay an annual license fee of fifty dollars or if the license is issued for a  
9 two-year period, a fee of ninety-five dollars.
- 10 ~~4.~~ 7. In addition to any criminal sanctions or other civil penalties which may be imposed  
11 pursuant to law, the operator of an early childhood ~~facility~~ program who, after  
12 being given written notice by ~~a representative of the department or the~~  
13 department's authorized agent, continues to provide early childhood services  
14 without a license as required by this section is subject to a civil penalty of ~~fifty two~~  
15 hundred dollars per day for each day of operation without ~~such~~ the required  
16 license. The civil penalty may be imposed by the courts or by the department  
17 through an administrative hearing pursuant to chapter 28-32.
- 18 ~~5.~~ 8. All fees collected under subsection ~~3~~ 6 must be paid to the department or the  
19 department's authorized agent and must be used to defray the cost, to the  
20 department or the department's authorized agent, of investigating, inspecting, and  
21 evaluating the applications or to provide training to providers of early childhood  
22 services.

23 **SECTION 6. AMENDMENT.** Section 50-11.1-04 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25 **50-11.1-04. Application for license - Prerequisites for issuance - License**  
26 **granted - Term.** ~~Applications~~

- 27 1. An application for operation of an early childhood ~~facility licenses~~ program must be  
28 made on forms provided, in the manner prescribed, by the department. The  
29 department or the department's authorized agent shall investigate the applicant's  
30 activities and proposed standards of care and shall make an inspection of all  
31 ~~facilities~~ premises to be used by the early childhood program applying for a

- 1 license. The applicant for a license and the ~~applicant's employees~~ staff members,  
2 and, if the ~~license application~~ is for an occupied a program that will be located in a  
3 private residence, every ~~person~~ individual living or working in that residence, ~~may~~  
4 must be investigated in accordance with the rules adopted by the department to  
5 determine whether any of them has a criminal record or has had a finding of  
6 services required for child abuse or neglect filed against them. The department  
7 may use the findings of the investigation to determine licensure. Except as  
8 otherwise provided, the department shall grant a license for the operation of an  
9 early childhood ~~facility~~ program upon a showing that:
- 10 4. a. The premises to be used are in fit and sanitary condition ~~and~~, are properly  
11 equipped to provide for the health and safety for all children ~~who may be~~  
12 received, and must be maintained according to rules adopted by the  
13 department;
- 14 2. ~~The persons in charge of the facility and their assistants~~
- 15 b. Staff members are qualified to fulfill the duties required of them according to  
16 the provisions of this chapter and standards prescribed for their qualifications  
17 by the rules ~~and regulations~~ of the department;
- 18 3. ~~The facility will be maintained according to the standards prescribed for its conduct~~  
19 ~~by the rules and regulations of the department;~~
- 20 c. The application does not include any fraudulent or untrue representations;
- 21 4. d. The ~~facility~~ owner or operator, or applicant has not had a previous license or  
22 self-declaration denied or revoked within the one hundred eighty days ~~twelve~~  
23 months prior to the date of the current application;
- 24 e. The owner or operator, or applicant has not had three or more previous  
25 licenses or self-declarations denied or revoked. The most recent revocation  
26 or denial cannot have occurred within the five years immediately preceding  
27 the application date;
- 28 5. f. The ~~facility~~ program has paid its license fees and any penalties assessed  
29 against the ~~facility~~ program as required by section 50-11.1-03;
- 30 g. The family child care owner or operator has received training and is currently  
31 certified in cardiopulmonary resuscitation by the American heart association,



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

4           6- h. The group child care, preschool, school-age child care, or child care center  
5           facility maintains, at all times during which early childhood services is are  
6           provided, at least one person who has received training and is currently  
7           certified in ~~resuscitation~~ cardiopulmonary resuscitation by the American heart  
8           association, American red cross, or other similar cardiopulmonary  
9           resuscitation training programs that are approved by the department, and at  
10           least one person who is currently certified in first aid by a program approved  
11           by the department.

12           2. The license issued to the owner or operator of an early childhood facility must  
13           services program may not be in force and effect effective for a period of not more  
14           longer than two years.

15           3. The department may consider the applicant's prior licensing, self-declaration, and  
16           registration history in determining whether to issue a license.

17           4. The department may issue a provisional or restricted license in accordance with  
18           the rules of the department.

19           **SECTION 7. AMENDMENT.** Section 50-11.1-06 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21           **50-11.1-06. In-home provider - Registration voluntary - Prerequisites for**  
22 **approval - Issuance of registration ~~certificate document~~ - Term.** ~~In-home providers An~~  
23 in-home provider may apply for a registration ~~certificate document~~ from the department. The  
24 department or the department's authorized agent shall determine whether the applicant meets  
25 the standards have been met and shall issue or deny a registration ~~certificate document~~ based  
26 upon that determination. ~~Registration certificates~~ A registration document for an in-home  
27 ~~providers must be in force and effect~~ provider may not be effective for not more longer than  
28 one year. The application does not include any fraudulent or untrue representations. The  
29 department may consider the early childhood services history of the applicant in determining  
30 issuance of a registration document. The department may investigate an applicant according  
31 to rules adopted by the department to determine whether the applicant has a criminal record or

1 has been the subject of a finding of services required for child abuse and neglect. The  
2 department may issue a provisional in-home provider registration document in accordance with  
3 the rules of the department.

4 **SECTION 8.** A new section to chapter 50-11.1 of the North Dakota Century Code is  
5 created and enacted as follows:

6 **Self-declaration - Approved application required - Fees.**

- 7 1. a. An application for self-declaration is voluntary. An individual may apply for  
8 self-declaration from the department. The department or the department's  
9 authorized agent shall determine whether the standards for self-declaration  
10 have been met and shall approve or deny a self-declaration based upon that  
11 determination.
- 12 b. An applicant for self-declaration shall pay a nonrefundable fee of fifteen  
13 dollars at the time the application is filed.
- 14 2. All fees collected under this section must be paid to the department or the  
15 department's authorized agent and must be used to defray the cost of  
16 investigating, inspecting, and evaluating applications for self-declarations or to  
17 provide training to providers of early childhood services.

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

20 **Application for self-declaration - Prerequisites for approval - Approval - Term.**

- 21 1. Applications for self-declarations must be made on forms provided and in the  
22 manner prescribed by the department. The department or the department's  
23 authorized agent shall investigate the applicant and every individual living in the  
24 private residence and shall conduct a background check. The department or the  
25 department's authorized agent shall conduct the investigation in accordance with  
26 the rules adopted by the department and shall determine whether any of them has  
27 a criminal record or has had a finding of services required for child abuse or  
28 neglect filed against them. Except as otherwise provided, the department shall  
29 approve a self-declaration upon the applicant's declaration that:

- 1           a. The premises to be used are in fit and sanitary condition to provide for the  
2                   health and safety of all children and shall be maintained according to the  
3                   standards prescribed by the rules of the department;
- 4           b. The applicant is able to provide for the health and safety of each child  
5                   receiving early childhood services from the applicant according to this chapter  
6                   and standards prescribed by the department as set forth in its rules;
- 7           c. The applicant has not had a previous license or self-declaration denied or  
8                   revoked within the twelve months before the date of the current application;
- 9           d. The applicant has not had three or more previous licenses or self-declarations  
10                  denied or revoked. The most recent revocation or denial cannot have  
11                  occurred within five years of the application date;
- 12          e. The applicant has paid the required application fees;
- 13          f. The applicant has paid any penalties assessed against the program required  
14                  by section 50-11.1-03;
- 15          g. The applicant is currently certified in cardiopulmonary resuscitation by the  
16                  American heart association, the American red cross, or a similar  
17                  cardiopulmonary resuscitation training program approved by the department;
- 18          h. The applicant is currently certified in first aid through a training program  
19                  approved by the department; and
- 20          i. The application does not include any fraudulent or untrue representations.
- 21          2. The department may consider the early childhood services history of the applicant  
22                  in determining issuance of a self-declaration document.
- 23          3. The department may issue a provisional self-declaration document in accordance  
24                  with the rules of the department.

25           **SECTION 10. AMENDMENT.** Section 50-11.1-06.1 of the North Dakota Century Code

26 is amended and reenacted as follows:

27           **50-11.1-06.1. Conviction not bar to licensure, self-declaration, or registration -**

28 **Exceptions.** Conviction of an offense does not disqualify ~~a person~~ an individual from  
29 licensure, self-declaration, or registration under this chapter unless the department determines  
30 ~~that the~~

- 1           1. The offense has a direct bearing upon a person's the individual's ability to serve  
2           the public as the owner or ~~proprietor~~ operator of an early childhood ~~facility~~  
3           program, holder of a self-declaration, or as an in-home provider;; or ~~that, following~~  
4           2. Following conviction of any offense, the person individual is not sufficiently  
5           rehabilitated under section 12.1-33-02.1.

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

8           **50-11.1-06.2. ~~Carecheck registry – Child care providers – Background~~**  
9 **investigations - Fees.** ~~Placement in the carecheck registry is voluntary. To apply for~~  
10 ~~placement in the carecheck registry, an in-home provider, a family child care home exempt~~  
11 ~~from licensure, or a licensed~~

- 12           1. Upon a determination by the department that a criminal history record check is  
13           appropriate, a provider holding or an applicant for early childhood services  
14           ~~provider~~ licensure, self-declaration, or in-home provider, as well as new staff  
15           members of early childhood services programs and new household members of a  
16           residence out of which early childhood services are provided, shall obtain two sets  
17           of that person's own the individual's fingerprints from a law enforcement agency or  
18           other local agency authorized to take fingerprints and.
- 19           2. The individual shall request the agency to submit the fingerprints and a completed  
20           fingerprint card for each set to the division of children and family services of the  
21           department or to ~~any division as determined appropriate by the department~~  
22           department's authorized agent.
- 23           3. If the division has no record of a determination of services required for child abuse  
24           or neglect, the division shall submit the fingerprints to the bureau of criminal  
25           investigation to determine if there is any criminal history record information  
26           regarding the applicant ~~for carecheck, household members, or staff members~~ in  
27           accordance with section 12-60-24.
- 28           4. The results of the investigations must be forwarded to the division of children and  
29           family services of the department or to ~~any other division as determined~~  
30           ~~appropriate by the department. The applicant for placement in the carecheck~~  
31           registry, after satisfying requirements imposed by the department, must be placed

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

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

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

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

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

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

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

27           **50-11.1-07. Investigation of applicants, licensees, and registrants, applicant,**  
28          **licensee, holder of self-declaration or registration document, and staff members -**  
29          **Inspection of programs and premises - Maintenance of records - Confidentiality of**  
30          **records.**

- 1           1. The department ~~and~~ or its authorized agent at any time may investigate and  
2           inspect an early childhood program, or a holder of a self-declaration or registration  
3           document and the conditions of the facility their premises, the qualifications of ~~the~~  
4           ~~providers~~ a provider of early childhood services ~~in any early childhood facility, and~~  
5           ~~the qualifications~~, of current and prospective staff members, of any in-home  
6           provider or applicant seeking or holding a license, self-declaration, or registration  
7           document under this chapter.
- 8           2. Upon request of the department or its authorized agent, the state department of  
9           health or the state fire marshal, or the fire marshal's designee, shall inspect ~~any~~  
10          ~~facility~~ the premises for which a license or self-declaration is applied ~~for~~ or issued  
11          and shall report the findings to the department or the department's authorized  
12          agent.
- 13          ~~2. Licensees and registrants~~
- 14          3. A licensee, holder of a self-declaration, or registrant shall:
- 15           a. Maintain ~~such~~ records as the department ~~may prescribe~~ prescribes regarding  
16           each child in ~~their~~ the licensee's, holder's, or registrant's care and control, and  
17           shall report to the department or the department's authorized agent, when  
18           requested, ~~such~~ upon forms furnished by the department, facts as the  
19           department may require with reference to ~~the children upon forms furnished~~  
20           ~~by the department~~ each child;
- 21           b. Admit for inspection ~~authorized agents of~~ the department or the department's  
22           authorized agent and open for examination all records, books, and reports ~~of~~  
23           ~~the home or facility~~; and
- 24           c. Notify the parent, ~~guardian, or custodian~~ of each child receiving ~~care at the~~  
25           ~~facility~~ early childhood services and ~~each employee of the facility~~ all staff  
26           members of the process for reporting a complaint or a suspected licensing  
27           violation.
- 28          ~~3.~~ 4. Except as provided in subsection ~~4~~ 5, all records and information maintained with  
29          respect to ~~children~~ any child receiving early childhood services are confidential and  
30          must be properly safeguarded and may not be disclosed except:
- 31           a. In a judicial proceeding;

- 1           b. To officers of the law or other legally constituted boards or agencies; or
- 2           c. To persons having a definite interest in the well-being of the child ~~or children~~
- 3                 concerned and who, in the judgment of the department, are in a position to
- 4                 serve ~~their~~ the child's interests should that be necessary.
- 5       4- 5. A provider of early childhood services, upon the request of the parent ~~or guardian~~
- 6                 of a child for whom the provider provides such services, shall make available to the
- 7                 parent ~~or guardian~~ a list of the names, telephone numbers, and addresses of the
- 8                 parents ~~or guardians~~ of children for whom early childhood services are provided.
- 9                 The list may ~~only~~ include only the names, telephone numbers, ~~or~~ electronic mail
- 10                 addresses, and addresses of parents ~~or guardians~~ who grant the provider
- 11                 permission to disclose that information.
- 12       6. The following information for early childhood services licensees, self-declarations,
- 13                 in-home providers, staff members, and adults residing in a home out of which early
- 14                 childhood services are provided is not confidential:
- 15                 a. Name;
- 16                 b. Address;
- 17                 c. Telephone number; and
- 18                 d. Electronic mail address.

19       **SECTION 13. AMENDMENT.** Section 50-11.1-07.1 of the North Dakota Century Code

20 is amended and reenacted as follows:

21       **50-11.1-07.1. Notice.** After each inspection or reinspection, the department or the

22 department's authorized agent ~~shall~~, by certified mail, shall send copies of any correction order

23 or notice of noncompliance, to the early childhood ~~facility~~ program or holder of a

24 self-declaration.

25       **SECTION 14. AMENDMENT.** Section 50-11.1-07.2 of the North Dakota Century Code

26 is amended and reenacted as follows:

27       **50-11.1-07.2. Correction orders.**

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

1            department or the department's authorized agent shall issue a correction order  
2            must be issued to the facility program or self-declaration, provided the department  
3            does not revoke the license or self-declaration as a result of the noncompliance.  
4            The correction order must cite the specific statute or ~~regulation~~ rule violated, state  
5            the factual basis of the violation, state the suggested method of correction, and  
6            specify the time allowed for correction. The correction order must also specify the  
7            amount of any fiscal sanction to be assessed if the program or self-declaration fails  
8            to comply with the correction order is not complied with in a timely fashion. ~~The~~  
9            ~~department shall, by rule promulgated pursuant to subsection 2 of section~~  
10           ~~50-11.1-08, establish a schedule of allowable time periods for correction of~~  
11           ~~deficiencies.~~  
12           2. Within three business days of the receipt of the correction order, the licensee of  
13           the early childhood facility program or the holder of a self-declaration shall notify  
14           the parent, ~~guardian, or custodian~~ of each child receiving care at the facility early  
15           childhood services that a correction order has been issued. In addition to  
16           providing notice to the parent, ~~guardian, or custodian~~ of each child, the licensee or  
17           holder of a self-declaration shall post the correction order in a conspicuous location  
18           within upon the facility early childhood premises until the violation has been  
19           corrected or for five days, whichever is longer.

20           **SECTION 15. AMENDMENT.** Section 50-11.1-07.3 of the North Dakota Century Code  
21 is amended and reenacted as follows:

22           **50-11.1-07.3. Reinspections.** ~~An~~ The department or the department's authorized  
23 agent shall reinspect an early childhood facility program or holder of a self-declaration issued a  
24 correction order under section 50-11.1-07.2 ~~must be reinspected,~~ at the end of the period  
25 allowed for correction. If, upon reinspection, ~~it is determined~~ the department determines that  
26 the facility program or holder of a self-declaration has not corrected a violation identified in the  
27 correction order, the department shall mail to the program or the holder of a self-declaration, by  
28 certified mail, a notice of noncompliance with the correction order ~~must be mailed by certified~~  
29 ~~mail to the facility.~~ The notice must specify the violations not corrected and the penalties  
30 assessed in accordance with section 50-11.1-07.5.



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

3           **50-11.1-07.4. Fiscal sanctions.** ~~An~~ If the department or the department's authorized  
4 agent issues a notice of noncompliance with a correction order to an early childhood facility, if  
5 ~~issued a notice of noncompliance with a correction order, must be assessed~~ program or holder  
6 of a self-declaration, the department shall assess fiscal sanctions in accordance with a  
7 schedule of fiscal sanctions established by rules ~~promulgated pursuant to~~ adopted by the  
8 department under subsection 2 of section 50-11.1-08. The department shall assess a fiscal  
9 ~~sanction must be assessed~~ for each day the ~~facility~~ early childhood program or holder of a  
10 self-declaration remains in noncompliance after the allowable time period for the correction of  
11 ~~deficiencies~~ violations ends and the sanction must continue as set forth in section 50-11.1-07.6  
12 until a the department receives notice ~~of correction is received by the department or the~~  
13 ~~department's authorized agent in accordance with section 50-11.1-07.6.~~ No indicating the  
14 violations are corrected. The fiscal sanction for a specific violation may not exceed ~~twenty-five~~  
15 one hundred dollars per day of noncompliance.

16           **SECTION 17. AMENDMENT.** Section 50-11.1-07.5 of the North Dakota Century Code  
17 is amended and reenacted as follows:

18           **50-11.1-07.5. Accumulation of fiscal sanctions.** An early childhood ~~facility~~ program  
19 or holder of a self-declaration shall promptly notify the department or the department's  
20 authorized agent in writing when a violation noted in a notice of noncompliance is corrected.  
21 Upon receipt of written notice by the department or the department's authorized agent, the daily  
22 fiscal sanction assessed for the ~~deficiency~~ violation must stop accruing. The ~~facility~~ must be  
23 ~~reinspected~~ department or the department's authorized agent shall reinspect the early  
24 childhood program or premises out of which the holder of the self-declaration is operating within  
25 three working days after receipt of the notification. If, upon reinspection, ~~it is determined the~~  
26 department determines that a ~~deficiency~~ violation has not been corrected, the department shall  
27 resume the daily assessment of fiscal sanction ~~must resume~~ and shall add the amount of fiscal  
28 sanction which otherwise would have accrued during the period prior to resumption ~~must be~~  
29 ~~added~~ to the total assessment due from the ~~facility~~ program or holder of the self-declaration.  
30 The department or the department's authorized agent shall notify the facility of the resumption  
31 by certified mail. Recovery of the resumed fiscal sanction must be stayed if the operator of the

1 facility makes a written request for an administrative hearing in the manner provided in chapter  
2 28-32; provided, that written request for the hearing is made to the department within ten days  
3 of the notice of resumption.

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

6 **50-11.1-07.6. Recovery of fiscal sanctions - Hearing.** Fiscal sanctions assessed  
7 pursuant to this chapter are payable fifteen days after receipt of the notice of noncompliance  
8 and at fifteen-day intervals thereafter, as the fiscal sanctions accrue. Recovery of an assessed  
9 fiscal sanction must be stayed if the ~~operator~~ program or holder of a self-declaration makes  
10 written request to the department for an administrative hearing within ten days after the ~~facility's~~  
11 ~~receipt of~~ early childhood program or the holder of the self-declaration receives the notice. If  
12 the appeal is unsuccessful or withdrawn, the daily assessment of fiscal sanctions must resume  
13 and the department shall add the amount of fiscal sanctions which otherwise would have  
14 accrued during the period prior to resumption to the total assessment due from the early  
15 childhood program or the holder of a self-declaration. The department or the department's  
16 authorized agent shall notify the early childhood program or the holder of a self-declaration of  
17 the resumption by certified mail.

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

20 **50-11.1-07.8. Suspension of license, self-declaration, or registration document -**  
21 **Notification to parent, guardian, or custodian.**

22 1. The department may suspend the a license of any early childhood  
23 facility, self-declaration, or registration document during an investigation of a report  
24 of child abuse or neglect at the facility conducted pursuant to section 50-25.1-05  
25 premises of the licensed program, holder of the self-declaration, or registration, or  
26 of a staff member.

27 2. Notwithstanding sections 50-11.1-07 and 50-25.1-11, the department shall notify  
28 the parent, guardian, or custodian of any child receiving care at the facility early  
29 childhood services when the that program's license of the facility, self-declaration,  
30 or registration document is suspended.

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

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

6           **50-11.1-08. Minimum standards - Rules ~~and regulations~~ - Inspection by a**  
7           **governmental unit.** The department may:

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

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

25           **50-11.1-09. Revocation of license, self-declaration, or registration document.**

- 26           1. The department may revoke the license, self-declaration, or registration document  
27           of any early childhood ~~facility or the registration document of any in-home~~ services  
28           provider upon proper showing of any of the following:
  - 29           a. Any of the applicable conditions set forth in ~~section~~ sections 50-11.1-04,  
30           50-11.1-06, and section 9 of this Act as prerequisites for the issuance of the  
31           license, self-declaration, or registration document no longer exist.

- 1           b. The licensee, holder of a self-declaration, or registrant is no longer in  
2           compliance with the minimum standards prescribed by the department.
- 3           c. The license, self-declaration, or registration document was issued upon  
4           fraudulent or untrue representation.
- 5           d. The licensee, holder of a self-declaration, or registrant has violated any rules  
6           of the department.
- 7           e. The licensee ~~or~~, holder of a self-declaration, registrant, or a household  
8           member of a home out of which early childhood services are provided has  
9           been found guilty of, or pled guilty to, an offense ~~determined by the~~  
10          department ~~to have~~ determines has a direct bearing upon ~~a person's an~~  
11          individual's ability to serve the public as a licensee, a holder of a  
12          self-declaration, or a registrant.
- 13          f. The licensee, holder of a self-declaration, or registrant has been convicted of  
14          any offense and the department, acting pursuant to section 12.1-33-02.1, has  
15          determined that the ~~licensee~~ individual has not been sufficiently rehabilitated.
- 16          g. The department may consider the early childhood services history of the  
17          licensee, holder of a self-declaration, or registrant in determining revocation of  
18          a license, self-declaration, or in-home registration document.
- 19          2. The department shall notify, in writing, the parent, ~~guardian, or custodian~~ of each  
20          child receiving ~~care in~~ early childhood services from the facility early childhood  
21          services provider that is the subject of the issuance of a ~~revocation notice.~~

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

24           **50-11.1-10. Denial or revocation of license, self-declaration, or registration**  
25          **certificate document - Administrative hearing.** Before the department may deny any  
26          application for a license, self-declaration, or registration certificate document under the  
27          ~~provisions of this chapter may be denied or before revocation of~~ the department may revoke  
28          any license, self-declaration, or registration ~~certificate may take place, written charges as to~~  
29          document, the department shall provide a written notice to the applicant, licensee, or holder of  
30          the self-declaration or registration document of the reasons therefor must be served upon the  
31          applicant, licensee, or registrant for the denial or revocation. The applicant, licensee, holder of

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

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

8 **50-11.1-11. Public agency purchase of early childhood services.** No agency of  
9 state or local government may purchase early childhood services, including care provided by or  
10 in the home of a relative, unless the early childhood ~~facility or early childhood services~~  
11 ~~attendant program~~ program is licensed, registered, or approved by the department.

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

14 **50-11.1-11.1. Resource and referral ~~program services~~ - Authority of department**  
15 **to make grants - Federal funds - ~~Program components~~ Components.**

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

- 1 updated at least quarterly. The services must include early childhood services ~~and~~  
2 ~~service providers as defined as identified~~ in section 50-11.1-02.
- 3 4. Each ~~program~~ entity providing early childhood resource and referral services ~~must~~  
4 shall establish a referral process that responds to parental needs for information,  
5 fully ensures the confidentiality of records and information as required under  
6 subsection ~~3~~ 4 of section 50-11.1-07, affords parents maximum access to all  
7 referral information, and includes telephone referral available for no less than  
8 twenty hours per week and access via the internet. Each ~~program~~ entity shall  
9 publicize its services through popular media sources, agencies, employers, and  
10 other appropriate methods.
- 11 5. All early childhood services resource and referral ~~programs must~~ entities shall  
12 maintain documentation of the number of calls and contacts ~~to the program. A~~  
13 ~~program received and~~ may collect and maintain the following information:  
14 a. Ages of children served.  
15 b. Time category of child care request for each child.  
16 c. Special time category, such as nights, weekends, or swing shift.  
17 d. The reason ~~that~~ the child care is needed.
- 18 6. Each ~~program must~~ early childhood services resource and referral entity shall  
19 have available, as an educational aid to parents, information on available parent,  
20 early childhood, and family education programs in the community and information  
21 on aspects of evaluating the quality and suitability of early childhood services,  
22 including licensing regulation, financial assistance availability, child abuse  
23 reporting procedures, and appropriate child development information.
- 24 7. A ~~program may~~ child care resource and referral entity shall provide technical  
25 assistance to existing and potential providers of all types of early childhood  
26 services and to employers. This assistance must include:  
27 a. Information on all aspects of initiating new early childhood services, including  
28 licensing, zoning, program and budget development, and assistance in finding  
29 information from other sources;

- 1           b. Information and resources which help existing early childhood service
- 2           providers to maximize their ability to serve the children and parents of their
- 3           community-;
- 4           c. Dissemination of information on current public issues affecting the local and
- 5           statewide delivery of early childhood services-;
- 6           d. Facilitation of communication between existing early childhood service
- 7           providers and child-related services in the community served-;
- 8           e. Recruitment of licensed providers- ; and
- 9           f. Options, and the benefits available to employers utilizing the various options,
- 10          to expand child care services to employees.
- 11         8. Services prescribed by this section must be designed to maximize parental choice
- 12          in the selection of early childhood services and to facilitate the maintenance and
- 13          development of such services and resources.

14           **SECTION 25. AMENDMENT.** Section 50-11.1-12 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16           **50-11.1-12. Violation of chapter or ~~regulations~~ rules - Injunction.** The department  
17 may seek injunctive action against an early childhood ~~facility~~ program, or holder of a  
18 self-declaration, or in-home registration document in the district court through proceedings  
19 instituted by the attorney general on behalf of the department if:

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

27           **SECTION 26. AMENDMENT.** Section 50-11.1-13.1 of the North Dakota Century Code  
28 is amended and reenacted as follows:

29           **50-11.1-13.1. Penalty for provision of services - When applicable.** ~~A person~~ An  
30 individual who provides early childhood services to any child, other than a child who is a  
31 member of that ~~person's~~ individual's household, is guilty of a class B misdemeanor if:

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

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

18           **SECTION 28. LEGISLATIVE INTENT - FULL-TIME EQUIVALENT POSTIONS -**  
19 **BACKGROUND CHECKS.** It is the intent of the sixty-first legislative assembly that of the new  
20 2.0 full-time equivalent positions authorized for the attorney general to assist with conducting  
21 background checks under this Act, the attorney general may fill the positions only as necessary  
22 to meet workload demands for the biennium beginning July 1, 2009, and ending June 30, 2011.

23           **SECTION 29. APPROPRIATION.** There is appropriated out of any moneys in the  
24 general fund in the state treasury, not otherwise appropriated, the sum of \$210,856, or so much  
25 of the sum as may be necessary, and \$82,904 in special funds, to the attorney general for the  
26 purpose of conducting background checks under this Act, for the biennium beginning July 1,  
27 2009, and ending June 30, 2011.

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