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State of Washington

65th Legislature

2017 Regular Session

By Representatives Dent, McDonald, Senn, Klippert, Kagi, Griffey, Jinkins, and Johnson

Read first time 02/07/17. Referred to Committee on Early Learning & Human Services.

1 AN ACT Relating to mediation to address adverse licensing
2 decisions by the department of early learning; and amending RCW
3 43.215.300 and 43.215.305.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 43.215.300 and 2011 c 296 s 1 are each amended to
6 read as follows:

7 (1) An agency may be denied a license, or any license issued
8 pursuant to this chapter may be suspended, revoked, modified, or not
9 renewed by the director upon proof (a) that the agency has failed or
10 refused to comply with the provisions of this chapter or the
11 requirements adopted pursuant to this chapter; or (b) that the
12 conditions required for the issuance of a license under this chapter
13 have ceased to exist with respect to such licenses. RCW 43.215.305
14 governs notice of a license denial, revocation, suspension, or
15 modification and provides the right to an adjudicative proceeding.

16 (2) In any adjudicative proceeding regarding the denial,
17 modification, suspension, or revocation of any license under this
18 chapter, the department's decision shall be upheld if it is supported
19 by a preponderance of the evidence.

20 (3)(a) The department may assess civil monetary penalties upon
21 proof that an agency has failed or refused to comply with the rules

1 adopted under this chapter or that an agency subject to licensing
2 under this chapter is operating without a license except that civil
3 monetary penalties shall not be levied against a licensed foster
4 home.

5 (b) Monetary penalties levied against unlicensed agencies that
6 submit an application for licensure within thirty days of
7 notification and subsequently become licensed will be forgiven. These
8 penalties may be assessed in addition to or in lieu of other
9 disciplinary actions. Civil monetary penalties, if imposed, may be
10 assessed and collected, with interest, for each day an agency is or
11 was out of compliance.

12 (c) Civil monetary penalties shall not exceed one hundred fifty
13 dollars per violation for a family day care home and two hundred
14 fifty dollars per violation for child day care centers. Each day upon
15 which the same or substantially similar action occurs is a separate
16 violation subject to the assessment of a separate penalty.

17 (d) The department shall provide a notification period before a
18 monetary penalty is effective and may forgive the penalty levied if
19 the agency comes into compliance during this period.

20 (e) The department may suspend, revoke, or not renew a license
21 for failure to pay a civil monetary penalty it has assessed pursuant
22 to this chapter within ten days after such assessment becomes final.
23 RCW 43.215.307 governs notice of a civil monetary penalty and
24 provides the right to an adjudicative proceeding. The preponderance
25 of evidence standard shall apply in adjudicative proceedings related
26 to assessment of civil monetary penalties.

27 (4)(a) In addition to or in lieu of an enforcement action being
28 taken, the department may place a child day care center or family day
29 care provider on nonreferral status if the center or provider has
30 failed or refused to comply with this chapter or rules adopted under
31 this chapter or an enforcement action has been taken. The nonreferral
32 status may continue until the department determines that: (i) No
33 enforcement action is appropriate; or (ii) a corrective action plan
34 has been successfully concluded.

35 (b) Whenever a child day care center or family day care provider
36 is placed on nonreferral status, the department shall provide written
37 notification to the child day care center or family day care
38 provider.

39 (5) The department shall notify appropriate public and private
40 child care resource and referral agencies of the department's

1 decision to: (a) Take an enforcement action against a child day care
2 center or family day care provider; or (b) place or remove a child
3 day care center or family day care provider on nonreferral status.

4 (6)(a) The department shall contract with independent mediators
5 as defined and used in chapter 7.07 RCW that may be used by
6 applicants or licensees who receive a denial, modification,
7 suspension, or revocation of any license under this chapter from the
8 department.

9 (b) The independent mediators contracted with by the department
10 must have knowledge of or experience providing licensed child care
11 and may not have an interest in the resolution of the case or be
12 related to a party.

13 (c) Licensees or applicants who receive a denial, modification,
14 suspension, or revocation of a license under this chapter who choose
15 to use an independent mediator contracted by the department retain
16 their rights to contest the adverse action pursuant to the
17 administrative procedure act, chapter 34.05 RCW.

18 (d) A licensee or applicant must give notice to the department of
19 his or her request to engage in mediation within the time frame
20 required for appealing an adverse licensing action pursuant to the
21 administrative procedure act, chapter 34.05 RCW.

22 (e) If the licensee or applicant chooses to appeal a denial,
23 modification, suspension, or revocation of a license after completing
24 the mediation process, the licensee or applicant has the same amount
25 of time that was required for appeal after the final agency decision,
26 and that time begins again upon completion of the mediation session,
27 but the mediation must be completed within twenty-eight days after a
28 licensee or applicant gives notice to the department of his or her
29 intention to engage in mediation.

30 (f) If mediation has not resolved the appealable issue or issues,
31 the licensee or applicant must follow the procedure in this section
32 for providing notice and serving the department with his or her
33 intent to appeal after completion of mediation.

34 **Sec. 2.** RCW 43.215.305 and 2007 c 17 s 3 are each amended to
35 read as follows:

36 (1) The department shall give written notice of the denial of an
37 application for a license to the applicant or his or her agent. The
38 department shall give written notice of revocation, suspension, or
39 modification of a license to the licensee or his or her agent. The

1 notice shall state the reasons for the action. The notice shall
2 include a description of the appeal process and the option to engage
3 in mediation pursuant to RCW 43.215.300. The notice shall be
4 personally served in the manner of service of a summons in a civil
5 action or shall be given in another manner that shows proof of
6 receipt.

7 (2) Except as otherwise provided in this subsection and in
8 subsection (4) of this section, revocation, suspension, or
9 modification is effective twenty-eight days after the licensee or the
10 agent receives the notice.

11 (a) The department may make the date the action is effective
12 later than twenty-eight days after receipt. If the department does
13 so, it shall state the effective date in the written notice given the
14 licensee or agent.

15 (b) The department may make the date the action is effective
16 sooner than twenty-eight days after receipt when necessary to protect
17 the public health, safety, or welfare. When the department does so,
18 it shall state the effective date and the reasons supporting the
19 effective date in the written notice given to the licensee or agent.

20 (c) When the department has received certification pursuant to
21 chapter 74.20A RCW from the division of child support that the
22 licensee is a person who is not in compliance with a support order,
23 the department shall provide that the suspension is effective
24 immediately upon receipt of the suspension notice by the licensee.

25 (3) Except for licensees suspended for noncompliance with a
26 support order under chapter 74.20A RCW, a license applicant or
27 licensee who is aggrieved by a department denial, revocation,
28 suspension, or modification has the right to an adjudicative
29 proceeding. The proceeding is governed by the administrative
30 procedure act, chapter 34.05 RCW. The application must be in writing,
31 state the basis for contesting the adverse action, include a copy of
32 the adverse notice, be served on and received by the department
33 within twenty-eight days of the license applicant's or licensee's
34 receiving the adverse notice, and be served in a manner that shows
35 proof of receipt.

36 (4)(a) If the department gives a licensee twenty-eight or more
37 days' notice of revocation, suspension, or modification and the
38 licensee files an appeal before its effective date, the department
39 shall not implement the adverse action until the final order has been
40 entered. The presiding or reviewing officer may permit the department

1 to implement part or all of the adverse action while the proceedings
2 are pending if the appellant causes an unreasonable delay in the
3 proceeding, if the circumstances change so that implementation is in
4 the public interest, or for other good cause.

5 (b) If the department gives a licensee less than twenty-eight
6 days' notice of revocation, suspension, or modification and the
7 licensee timely files a sufficient appeal, the department may
8 implement the adverse action on the effective date stated in the
9 notice. The presiding or reviewing officer may order the department
10 to stay implementation of part or all of the adverse action while the
11 proceedings are pending if staying implementation is in the public
12 interest or for other good cause.

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