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SENATE BILL 5952

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State of Washington

60th Legislature

2007 Regular Session

By Senators McAuliffe, Kohl-Welles and Rasmussen; by request of Department of Early Learning

Read first time 02/08/2007. Referred to Committee on Early Learning & K-12 Education.

1 AN ACT Relating to correcting provisions for the department of  
2 early learning; amending RCW 43.215.300, 43.43.838, 42.48.010,  
3 35.21.688, 35.63.185, 35A.63.215, 36.70.757, and 36.70A.450; adding new  
4 sections to chapter 43.215 RCW; recodifying RCW 74.15.030 and  
5 74.13.0903; and repealing RCW 43.215.2201.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.215 RCW  
8 to read as follows:

9 (1) The director shall charge fees to the licensee for obtaining a  
10 license. The director may waive the fees when, in the discretion of  
11 the director, the fees would not be in the best interest of public  
12 health and safety, or when the fees would be to the financial  
13 disadvantage of the state.

14 (2) Fees charged shall be based on, but shall not exceed, the cost  
15 to the department for the licensure of the activity or class of  
16 activities and may include costs of necessary inspection.

17 (3) The director shall establish the fees charged by rule.

1       **Sec. 2.** RCW 43.215.300 and 2006 c 265 s 311 are each amended to  
2 read as follows:

3       (1) An agency may be denied a license, or any license issued  
4 pursuant to this chapter may be suspended, revoked, modified, or not  
5 renewed by the director upon proof (a) that the agency has failed or  
6 refused to comply with the provisions of this chapter or the  
7 requirements adopted pursuant to this chapter; or (b) that the  
8 conditions required for the issuance of a license under this chapter  
9 have ceased to exist with respect to such licenses. (~~RCW 43.20A.205~~)  
10 Section 3 of this act governs notice of a license denial, revocation,  
11 suspension, or modification and provides the right to an adjudicative  
12 proceeding.

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

17       (3) The department may assess civil monetary penalties upon proof  
18 that an agency has failed or refused to comply with the rules adopted  
19 under this chapter or that an agency subject to licensing under this  
20 chapter is operating without a license except that civil monetary  
21 penalties shall not be levied against a licensed foster home. Monetary  
22 penalties levied against unlicensed agencies that submit an application  
23 for licensure within thirty days of notification and subsequently  
24 become licensed will be forgiven. These penalties may be assessed in  
25 addition to or in lieu of other disciplinary actions. Civil monetary  
26 penalties, if imposed, may be assessed and collected, with interest,  
27 for each day an agency is or was out of compliance. Civil monetary  
28 penalties shall not exceed seventy-five dollars per violation for a  
29 family day care home and two hundred fifty dollars per violation for  
30 child day care centers. Each day upon which the same or substantially  
31 similar action occurs is a separate violation subject to the assessment  
32 of a separate penalty. The department shall provide a notification  
33 period before a monetary penalty is effective and may forgive the  
34 penalty levied if the agency comes into compliance during this period.  
35 The department may suspend, revoke, or not renew a license for failure  
36 to pay a civil monetary penalty it has assessed pursuant to this  
37 chapter within ten days after such assessment becomes final. (~~Chapter~~  
38 ~~43.20A-RCW~~) Section 4 of this act governs notice of a civil monetary

1 penalty and provides the right ((of)) to an adjudicative proceeding.  
2 The preponderance of evidence standard shall apply in adjudicative  
3 proceedings related to assessment of civil monetary penalties.

4 (4)(a) In addition to or in lieu of an enforcement action being  
5 taken, the department may place a child day care center or family day  
6 care provider on nonreferral status if the center or provider has  
7 failed or refused to comply with this chapter or rules adopted under  
8 this chapter or an enforcement action has been taken. The nonreferral  
9 status may continue until the department determines that: (i) No  
10 enforcement action is appropriate; or (ii) a corrective action plan has  
11 been successfully concluded.

12 (b) Whenever a child day care center or family day care provider is  
13 placed on nonreferral status, the department shall provide written  
14 notification to the child day care center or family day care provider.

15 (5) The department shall notify appropriate public and private  
16 child care resource and referral agencies of the department's decision  
17 to: (a) Take an enforcement action against a child day care center or  
18 family day care provider; or (b) place or remove a child day care  
19 center or family day care provider on nonreferral status.

20 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.215 RCW  
21 to read as follows:

22 (1) The department shall give written notice of the denial of an  
23 application for a license to the applicant or his or her agent. The  
24 department shall give written notice of revocation, suspension, or  
25 modification of a license to the licensee or his or her agent. The  
26 notice shall state the reasons for the action. The notice shall be  
27 personally served in the manner of service of a summons in a civil  
28 action or shall be given in another manner that shows proof of receipt.

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

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

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

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

11 (3) Except for licensees suspended for noncompliance with a support  
12 order under chapter 74.20A RCW, a license applicant or licensee who is  
13 aggrieved by a department denial, revocation, suspension, or  
14 modification has the right to an adjudicative proceeding. The  
15 proceeding is governed by the administrative procedure act, chapter  
16 34.05 RCW. The application must be in writing, state the basis for  
17 contesting the adverse action, include a copy of the adverse notice, be  
18 served on and received by the department within twenty-eight days of  
19 the license applicant's or licensee's receiving the adverse notice, and  
20 be served in a manner that shows proof of receipt.

21 (4)(a) If the department gives a licensee twenty-eight or more  
22 days' notice of revocation, suspension, or modification and the  
23 licensee files an appeal before its effective date, the department  
24 shall not implement the adverse action until the final order has been  
25 entered. The presiding or reviewing officer may permit the department  
26 to implement part or all of the adverse action while the proceedings  
27 are pending if the appellant causes an unreasonable delay in the  
28 proceeding, if the circumstances change so that implementation is in  
29 the public interest, or for other good cause.

30 (b) If the department gives a licensee less than twenty-eight days'  
31 notice of revocation, suspension, or modification and the licensee  
32 timely files a sufficient appeal, the department may implement the  
33 adverse action on the effective date stated in the notice. The  
34 presiding or reviewing officer may order the department to stay  
35 implementation of part or all of the adverse action while the  
36 proceedings are pending if staying implementation is in the public  
37 interest or for other good cause.

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 43.215 RCW  
2 to read as follows:

3        (1) The department shall give written notice to the person against  
4 whom it assesses a civil fine. The notice shall state the reasons for  
5 the adverse action. The notice shall be personally served in the  
6 manner of service of a summons in a civil action or shall be given in  
7 another manner that shows proof of receipt.

8        (2) Except as otherwise provided in subsection (4) of this section,  
9 the civil fine is due and payable twenty-eight days after receipt. The  
10 department may make the date the fine is due later than twenty-eight  
11 days after receipt. When the department does so, it shall state the  
12 effective date in the written notice given the person against whom it  
13 assesses the fine.

14        (3) The person against whom the department assesses a civil fine  
15 has the right to an adjudicative proceeding. The proceeding is  
16 governed by the administrative procedure act, chapter 34.05 RCW. The  
17 application must be in writing, state the basis for contesting the  
18 fine, include a copy of the adverse notice, be served on and received  
19 by the department within twenty-eight days of the person's receiving  
20 the notice of civil fine, and be served in a manner that shows proof of  
21 receipt.

22        (4) If the person files a timely and sufficient appeal, the  
23 department shall not implement the action until the final order has  
24 been served. The presiding or reviewing officer may permit the  
25 department to implement part or all of the action while the proceedings  
26 are pending if the appellant causes an unreasonable delay in the  
27 proceedings or for other good cause.

28        **Sec. 5.**    RCW 43.43.838 and 2005 c 421 s 5 are each amended to read  
29 as follows:

30        (1) After January 1, 1988, and notwithstanding any provision of RCW  
31 43.43.700 through 43.43.810 to the contrary, the state patrol shall  
32 furnish a transcript of the conviction record pertaining to any person  
33 for whom the state patrol or the federal bureau of investigation has a  
34 record upon the written request of:

35        (a) The subject of the inquiry;

36        (b) Any business or organization for the purpose of conducting  
37 evaluations under RCW 43.43.832;

1 (c) The department of social and health services;

2 (d) Any law enforcement agency, prosecuting authority, or the  
3 office of the attorney general; (~~(or)~~)

4 (e) The department of social and health services for the purpose of  
5 meeting responsibilities set forth in chapter 74.15, 18.51, 18.20, or  
6 72.23 RCW, or any later-enacted statute which purpose is to regulate or  
7 license a facility which handles vulnerable adults. However, access to  
8 conviction records pursuant to this subsection (1)(e) does not limit or  
9 restrict the ability of the department to obtain additional information  
10 regarding conviction records and pending charges as set forth in RCW  
11 74.15.030(2)(b) (as recodified by this act); or

12 (f) The department of early learning for the purpose of meeting  
13 responsibilities in chapter 43.215 RCW.

14 (2) The state patrol shall by rule establish fees for disseminating  
15 records under this section to recipients identified in subsection  
16 (1)(a) and (b) of this section. The state patrol shall also by rule  
17 establish fees for disseminating records in the custody of the national  
18 crime information center. The revenue from the fees shall cover, as  
19 nearly as practicable, the direct and indirect costs to the state  
20 patrol of disseminating the records. No fee shall be charged to a  
21 nonprofit organization for the records check. In the case of record  
22 checks using fingerprints requested by school districts and educational  
23 service districts, the state patrol shall charge only for the  
24 incremental costs associated with checking fingerprints in addition to  
25 name and date of birth. Record checks requested by school districts  
26 and educational service districts using only name and date of birth  
27 shall continue to be provided free of charge.

28 (3) No employee of the state, employee of a business or  
29 organization, or the business or organization is liable for defamation,  
30 invasion of privacy, negligence, or any other claim in connection with  
31 any lawful dissemination of information under RCW 43.43.830 through  
32 43.43.840 or 43.43.760.

33 (4) Before July 26, 1987, the state patrol shall adopt rules and  
34 forms to implement this section and to provide for security and privacy  
35 of information disseminated under this section, giving first priority  
36 to the criminal justice requirements of this chapter. The rules may  
37 include requirements for users, audits of users, and other procedures

1 to prevent use of civil adjudication record information or criminal  
2 history record information inconsistent with this chapter.

3 (5) Nothing in RCW 43.43.830 through 43.43.840 shall authorize an  
4 employer to make an inquiry not specifically authorized by this  
5 chapter, or be construed to affect the policy of the state declared in  
6 chapter 9.96A RCW.

7 **Sec. 6.** RCW 42.48.010 and 1989 1st ex.s. c 9 s 207 are each  
8 amended to read as follows:

9 For the purposes of this chapter, the following definitions apply:

10 (1) "Individually identifiable" means that a record contains  
11 information which reveals or can likely be associated with the identity  
12 of the person or persons to whom the record pertains.

13 (2) "Legally authorized representative" means a person legally  
14 authorized to give consent for the disclosure of personal records on  
15 behalf of a minor or a legally incompetent adult.

16 (3) "Personal record" means any information obtained or maintained  
17 by a state agency which refers to a person and which is declared exempt  
18 from public disclosure, confidential, or privileged under state or  
19 federal law.

20 (4) "Research" means a planned and systematic sociological,  
21 psychological, epidemiological, biomedical, or other scientific  
22 investigation carried out by a state agency, by a scientific research  
23 professional associated with a bona fide scientific research  
24 organization, or by a graduate student currently enrolled in an  
25 advanced academic degree curriculum, with an objective to contribute to  
26 scientific knowledge, the solution of social and health problems, or  
27 the evaluation of public benefit and service programs. This definition  
28 excludes methods of record analysis and data collection that are  
29 subjective, do not permit replication, and are not designed to yield  
30 reliable and valid results.

31 (5) "Research record" means an item or grouping of information  
32 obtained for the purpose of research from or about a person or  
33 extracted for the purpose of research from a personal record.

34 (6) "State agency" means: (a) The department of social and health  
35 services; (b) the department of corrections; (c) an institution of  
36 higher education as defined in RCW 28B.10.016; ~~((or))~~ (d) the  
37 department of health; or (e) the department of early learning.

1        NEW SECTION.    **Sec. 7.**    The following sections are each recodified  
2 as sections in chapter 43.215 RCW:  
3        RCW 74.15.030  
4        RCW 74.13.0903

5        NEW SECTION.    **Sec. 8.**    RCW 43.215.2201 (Licensed day care centers--  
6 Notice of pesticide use) and 2001 c 333 s 5 are each repealed.

7        **Sec. 9.**    RCW 35.21.688 and 2003 c 286 s 1 are each amended to read  
8 as follows:

9        (1) Except as provided in subsections (2) and (3) of this section,  
10 no city or town may enact, enforce, or maintain an ordinance,  
11 development regulation, zoning regulation, or official control, policy,  
12 or administrative practice that prohibits the use of a residential  
13 dwelling, located in an area zoned for residential or commercial use,  
14 as a family day-care provider's facility serving twelve or fewer  
15 children.

16        (2) A city or town may require that the facility: (a) Comply with  
17 all building, fire, safety, health code, and business licensing  
18 requirements; (b) conform to lot size, building size, setbacks, and lot  
19 coverage standards applicable to the zoning district except if the  
20 structure is a legal nonconforming structure; (c) is certified by the  
21 (~~office of child care policy~~) department of early learning licenser  
22 as providing a safe passenger loading area; (d) include signage, if  
23 any, that conforms to applicable regulations; and (e) limit hours of  
24 operations to facilitate neighborhood compatibility, while also  
25 providing appropriate opportunity for persons who use family day-care  
26 who work a nonstandard work shift.

27        (3) A city or town may also require that the family day-care  
28 provider, before state licensing, require proof of written notification  
29 by the provider that the immediately adjoining property owners have  
30 been informed of the intent to locate and maintain such a facility. If  
31 a dispute arises between neighbors and the day-care provider over  
32 licensing requirements, the licenser may provide a forum to resolve the  
33 dispute.

34        (4) This section may not be construed to prohibit a city or town  
35 from imposing zoning conditions on the establishment and maintenance of  
36 a family day-care provider's home serving twelve or fewer children in



1 an area zoned for residential or commercial use, if the conditions are  
2 no more restrictive than conditions imposed on other residential  
3 dwellings in the same zone and the establishment of such facilities is  
4 not precluded. As used in this section, "family day-care provider" is  
5 as defined in RCW (~~(74.15.020)~~) 43.215.010.

6 **Sec. 10.** RCW 35.63.185 and 2003 c 286 s 3 are each amended to read  
7 as follows:

8 (1) Except as provided in subsections (2) and (3) of this section,  
9 no city may enact, enforce, or maintain an ordinance, development  
10 regulation, zoning regulation, or official control, policy, or  
11 administrative practice that prohibits the use of a residential  
12 dwelling, located in an area zoned for residential or commercial use,  
13 as a family day-care provider's home facility.

14 (2) A city may require that the facility: (a) Comply with all  
15 building, fire, safety, health code, and business licensing  
16 requirements; (b) conform to lot size, building size, setbacks, and lot  
17 coverage standards applicable to the zoning district except if the  
18 structure is a legal nonconforming structure; (c) is certified by the  
19 (~~office of child care policy~~) department of early learning licenser  
20 as providing a safe passenger loading area; (d) include signage, if  
21 any, that conforms to applicable regulations; and (e) limit hours of  
22 operations to facilitate neighborhood compatibility, while also  
23 providing appropriate opportunity for persons who use family day-care  
24 and who work a nonstandard work shift.

25 (3) A city may also require that the family day-care provider,  
26 before state licensing, require proof of written notification by the  
27 provider that the immediately adjoining property owners have been  
28 informed of the intent to locate and maintain such a facility. If a  
29 dispute arises between neighbors and the family day-care provider over  
30 licensing requirements, the licenser may provide a forum to resolve the  
31 dispute.

32 (4) Nothing in this section shall be construed to prohibit a city  
33 from imposing zoning conditions on the establishment and maintenance of  
34 a family day-care provider's home in an area zoned for residential or  
35 commercial use, so long as such conditions are no more restrictive than  
36 conditions imposed on other residential dwellings in the same zone and

1 the establishment of such facilities is not precluded. As used in this  
2 section, "family day-care provider" is as defined in RCW ((74.15.020))  
3 43.215.010.

4 **Sec. 11.** RCW 35A.63.215 and 2003 c 286 s 4 are each amended to  
5 read as follows:

6 (1) Except as provided in subsections (2) and (3) of this section,  
7 no city may enact, enforce, or maintain an ordinance, development  
8 regulation, zoning regulation, or official control, policy, or  
9 administrative practice that prohibits the use of a residential  
10 dwelling, located in an area zoned for residential or commercial use,  
11 as a family day-care provider's home facility.

12 (2) A city may require that the facility: (a) Comply with all  
13 building, fire, safety, health code, and business licensing  
14 requirements; (b) conform to lot size, building size, setbacks, and lot  
15 coverage standards applicable to the zoning district except if the  
16 structure is a legal nonconforming structure; (c) is certified by the  
17 ((office of child care policy)) department of early learning licenser  
18 as providing a safe passenger loading area; (d) include signage, if  
19 any, that conforms to applicable regulations; and (e) limit hours of  
20 operations to facilitate neighborhood compatibility, while also  
21 providing appropriate opportunity for persons who use family day-care  
22 and who work a nonstandard work shift.

23 (3) A city may also require that the family day-care provider,  
24 before state licensing, require proof of written notification by the  
25 provider that the immediately adjoining property owners have been  
26 informed of the intent to locate and maintain such a facility. If a  
27 dispute arises between neighbors and the family day-care provider over  
28 licensing requirements, the licenser may provide a forum to resolve the  
29 dispute.

30 (4) Nothing in this section shall be construed to prohibit a city  
31 from imposing zoning conditions on the establishment and maintenance of  
32 a family day-care provider's home in an area zoned for residential or  
33 commercial use, so long as such conditions are no more restrictive than  
34 conditions imposed on other residential dwellings in the same zone and  
35 the establishment of such facilities is not precluded. As used in this  
36 section, "family day-care provider" is as defined in RCW ((74.15.020))  
37 43.215.010.

1       **Sec. 12.** RCW 36.70.757 and 2003 c 286 s 2 are each amended to read  
2 as follows:

3       (1) Except as provided in subsections (2) and (3) of this section,  
4 no county may enact, enforce, or maintain an ordinance, development  
5 regulation, zoning regulation, or official control, policy, or  
6 administrative practice that prohibits the use of a residential  
7 dwelling, located in an area zoned for residential or commercial use,  
8 as a family day-care provider's facility serving twelve or fewer  
9 children.

10       (2) A county may require that the facility: (a) Comply with all  
11 building, fire, safety, health code, and business licensing  
12 requirements; (b) conform to lot size, building size, setbacks, and lot  
13 coverage standards applicable to the zoning district except if the  
14 structure is a legal nonconforming structure; (c) is certified by the  
15 (~~office of child care policy~~) department of early learning licenser  
16 as providing a safe passenger loading area; (d) include signage, if  
17 any, that conforms to applicable regulations; and (e) limit hours of  
18 operations to facilitate neighborhood compatibility, while also  
19 providing appropriate opportunity for persons who use family day-care  
20 who work a nonstandard work shift.

21       (3) A county may also require that the family day-care provider,  
22 before state licensing, require proof of written notification by the  
23 provider that the immediately adjoining property owners have been  
24 informed of the intent to locate and maintain such a facility. If a  
25 dispute arises between neighbors and the day-care provider over  
26 licensing requirements, the licenser may provide a forum to resolve the  
27 dispute.

28       (4) This section may not be construed to prohibit a county from  
29 imposing zoning conditions on the establishment and maintenance of a  
30 family day-care provider's home serving twelve or fewer children in an  
31 area zoned for residential or commercial use, if the conditions are no  
32 more restrictive than conditions imposed on other residential dwellings  
33 in the same zone and the establishment of such facilities is not  
34 precluded. As used in this section, "family day-care provider" is as  
35 defined in RCW (~~74.15.020~~) 43.215.010.

36       **Sec. 13.** RCW 36.70A.450 and 2003 c 286 s 5 are each amended to  
37 read as follows:

1 (1) Except as provided in subsections (2) and (3) of this section,  
2 no county or city may enact, enforce, or maintain an ordinance,  
3 development regulation, zoning regulation, or official control, policy,  
4 or administrative practice that prohibits the use of a residential  
5 dwelling, located in an area zoned for residential or commercial use,  
6 as a family day-care provider's home facility.

7 (2) A county or city may require that the facility: (a) Comply  
8 with all building, fire, safety, health code, and business licensing  
9 requirements; (b) conform to lot size, building size, setbacks, and lot  
10 coverage standards applicable to the zoning district except if the  
11 structure is a legal nonconforming structure; (c) is certified by the  
12 (~~office of child care policy~~) department of early learning licenser  
13 as providing a safe passenger loading area; (d) include signage, if  
14 any, that conforms to applicable regulations; and (e) limit hours of  
15 operations to facilitate neighborhood compatibility, while also  
16 providing appropriate opportunity for persons who use family day-care  
17 and who work a nonstandard work shift.

18 (3) A county or city may also require that the family day-care  
19 provider, before state licensing, require proof of written notification  
20 by the provider that the immediately adjoining property owners have  
21 been informed of the intent to locate and maintain such a facility. If  
22 a dispute arises between neighbors and the family day-care provider  
23 over licensing requirements, the licenser may provide a forum to  
24 resolve the dispute.

25 (4) Nothing in this section shall be construed to prohibit a county  
26 or city from imposing zoning conditions on the establishment and  
27 maintenance of a family day-care provider's home in an area zoned for  
28 residential or commercial use, so long as such conditions are no more  
29 restrictive than conditions imposed on other residential dwellings in  
30 the same zone and the establishment of such facilities is not  
31 precluded. As used in this section, "family day-care provider" is as  
32 defined in RCW (~~(74.15.020)~~) 43.215.010.

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