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**SUBSTITUTE HOUSE BILL 2013**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** House Early Learning & Human Services (originally sponsored by Representatives Dent, McDonald, Senn, Klippert, Kagi, Griffey, Jinkins, and Johnson)

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

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

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

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

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

(3)(a) The department may assess civil monetary penalties upon proof that an agency has failed or refused to comply with the rules adopted under this chapter or that an agency subject to licensing under this chapter is operating without a license except that civil monetary penalties shall not be levied against a licensed foster home.

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

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

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

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

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

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

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

(6)(a) A licensee or applicant who receives a denial, modification, suspension, or revocation of a license under this chapter may request a prehearing conference for the purpose of mediating the case as part of the adjudicative proceeding. Mediation must be conducted by an administrative law judge who has received training in dispute resolution techniques or has a demonstrated history in resolving disputes. A person who mediates in a particular appeal may not participate in a hearing on that appeal, may not write the decision and order in the appeal, may not have an interest in the resolution of the appeal, and may not be related to a party. The mediator may communicate with the licensee or applicant and an appointed department representative during the mediation. Mediation must be conducted pursuant to the provisions of the uniform mediation act under chapter 7.07 RCW.

(b) As long as both parties are demonstrating a good faith effort to participate in mediation, no hearing shall commence pursuant to RCW 34.05.434 until the mediation is complete. Upon the request of an applicant or licensee for a prehearing conference and during the pendency of mediation, the proceedings pursuant to chapter 34.05 RCW are stayed until the mediator indicates in writing that the mediation process has terminated or a settlement is reached.

(c) Licensees or applicants who receive a denial, modification, suspension, or revocation of a license under this chapter who request mediation by an administrative law judge retain their rights to contest the adverse action pursuant to the administrative procedure act, chapter 34.05 RCW.

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

(1) The department shall give written notice of the denial of an application for a license to the applicant or his or her agent. The department shall give written notice of revocation, suspension, or modification of a license to the licensee or his or her agent. The notice shall state the reasons for the action. The notice shall include a description of the appeal process and the option to engage in mediation pursuant to RCW 43.215.300. The notice shall be personally served in the manner of service of a summons in a civil action or shall be given in another manner that shows proof of receipt.

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

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

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

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

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

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

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

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