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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)

READ FIRST TIME 02/17/17.

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

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

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

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

32 (1) The department shall give written notice of the denial of an  
33 application for a license to the applicant or his or her agent. The  
34 department shall give written notice of revocation, suspension, or  
35 modification of a license to the licensee or his or her agent. The  
36 notice shall state the reasons for the action. The notice shall  
37 include a description of the appeal process and the option to engage  
38 in mediation pursuant to RCW 43.215.300. The notice shall be  
39 personally served in the manner of service of a summons in a civil

1 action or shall be given in another manner that shows proof of  
2 receipt.

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

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

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

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

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

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

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

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