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BILL 15

EARLY LEARNING AND CHILD CARE ACT

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Minister of Children and Family Development

Explanatory Note

This Bill repeals and replaces the *Child Care BC Act* and the *Child Care Subsidy Act* and establishes a new requirement for the minister to report annually on the government's actions in relation to child care.

MINISTER OF CHILDREN AND FAMILY DEVELOPMENT

BILL 15 – 2021

EARLY LEARNING AND CHILD CARE ACT

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

PART 1 – DEFINITIONS AND APPLICATION

Definitions

1 In this Act:

- “**child**” means an unmarried person under 19 years of age;
- “**child care**” means, subject to section 2, the care and supervision of a child in a child care facility;
- “**child care benefit**” means a benefit within the meaning of section 4;
- “**child care facility**” means a setting in which child care is provided, including a child’s home;
- “**child care grant**” means a grant within the meaning of section 3;
- “**child care provider**” means a person operating a child care facility;
- “**grant agreement**” means an agreement, referred to in section 3, governing a child care grant;
- “**Indigenous governing body**” has the same meaning as in the *Declaration on the Rights of Indigenous Peoples Act*;
- “**Indigenous peoples**” has the same meaning as in the *Declaration on the Rights of Indigenous Peoples Act*;
- “**licensed child care facility**” means a child care facility licensed under the *Community Care and Assisted Living Act* to provide child care;
- “**parent**” includes a person with whom a child resides and who stands in place of a parent of the child;

“**recipient**”, in relation to a child care benefit, means a person to or for whom a child care benefit is paid;

“**tribunal**” means the Employment and Assistance Appeal Tribunal established under section 19 of the *Employment and Assistance Act*.

Application of Act

- 2 This Act does not apply to the care and supervision of a child
- (a) while the child is attending an educational program, in relation to kindergarten to grade 12 education, provided under the *School Act*, the *Independent School Act*, a Nisga’a law or a law of a treaty first nation, or
 - (b) by the child’s parent, except as provided by the regulations.

PART 2 – CHILD CARE

Division 1 – Financial Supports

Child care grants

- 3 (1) The minister may, at the minister’s discretion, pay a grant to a person in accordance with an agreement under this section.
- (2) On application by a person and subject to the regulations, the minister may enter into a written agreement with the person or another person for any of the following purposes:
- (a) to facilitate the establishment or operation of a licensed child care facility or, if prescribed, another type of child care facility;
 - (b) to improve the accessibility, quality, inclusiveness or affordability of child care;
 - (c) to facilitate the design or delivery of child care by Indigenous peoples for Indigenous peoples;
 - (d) a prescribed purpose;
 - (e) to facilitate the development or operation of programs or services that promote the achievement of a purpose referred to in paragraphs (a) to (d).
- (3) Subject to the regulations, the minister may specify the terms and conditions to be included in an agreement under subsection (2).

Child care benefits

- 4 On application by a parent and subject to the regulations, the minister may pay a benefit to or for the parent if the parent is eligible for the benefit, for the purpose of reducing or eliminating the cost of child care to the parent.

Division 2 – Child Care Strategy

Provincial Child Care Council

- 5** (1) In this section, “**council**” means the Provincial Child Care Council continued under subsection (2).
- (2) The Provincial Child Care Council is continued consisting of at least 14 and not more than 21 members appointed by the minister.
- (3) The minister must designate
- (a) one member as chair of the council, or
 - (b) 2 or more members as co-chairs of the council.
- (4) The minister may set the term of office of any member of the council.
- (5) The minister
- (a) may reimburse members for reasonable travelling and out-of-pocket expenses necessarily incurred by the members in attending council meetings, and
 - (b) may pay remuneration to the members.
- (6) The council may make recommendations to the minister about the following matters:
- (a) the accessibility, quality, inclusiveness or affordability of child care;
 - (b) child care grants or child care benefits;
 - (c) the role of child care in the social, cultural, educational, emotional, cognitive and physical development of children;
 - (d) the staffing of child care facilities and other resources for child care;
 - (e) any other matter related to child care.

Annual reporting

- 6** (1) The minister must, for each fiscal year of the government, prepare a report of the actions taken by the government during the fiscal year to
- (a) support the design and delivery of child care that is
 - (i) affordable,
 - (ii) inclusive,
 - (iii) accessible by every child whose family needs or wants child care, and
 - (iv) of high quality, taking into account the social, cultural, educational, emotional, cognitive and physical development of children,
 - (b) support the relationship between child care and kindergarten to grade 12 education and the transitions between child care and that education, and

- (c) collaborate with Indigenous peoples in relation to the matters referred to in paragraphs (a) and (b), taking into account the United Nations Declaration on the Rights of Indigenous Peoples.
- (2) On or before December 1 following the end of the fiscal year to which a report prepared under subsection (1) relates, the minister must publish the report on a publicly accessible website maintained by or on behalf of the government.

PART 3 – ADMINISTRATION AND ENFORCEMENT

Division 1 – Information Collection

Information and verification

- 7 (1) For the purpose of determining or auditing eligibility for a child care benefit, the minister may do one or more of the following:
 - (a) direct an applicant for or recipient of a child care benefit to supply information to the minister within the time and in the manner specified by the minister;
 - (b) seek verification of any information supplied by a person referred to in paragraph (a);
 - (c) direct a person referred to in paragraph (a) to supply to the minister verification of any information supplied by that person or another person;
 - (d) without limiting a power of the minister under paragraphs (b) and (c), collect unsolicited information from a person about another person if the information relates to an application for or payment of a child care benefit.
- (2) For the purpose of auditing a child care benefit, the minister may direct a child care provider who provides child care in respect of which the child care benefit is paid to supply information about the child care to the minister within the time and in the manner specified by the minister.
- (3) For the purpose of entering into, or auditing compliance with, a grant agreement, the minister may do one or more of the following:
 - (a) direct an applicant for or recipient of a child care grant to supply information to the minister within the time and in the manner specified by the minister;
 - (b) seek verification of any information supplied by a person referred to in paragraph (a);
 - (c) direct a person referred to in paragraph (a) to supply to the minister verification of any information supplied by that person or another person;

- (d) without limiting a power of the minister under paragraphs (b) and (c), collect unsolicited information from a person about another person if the information relates to an application for or payment of a child care grant.

Duty to provide information

- 8** (1) A recipient of a child care benefit must notify the minister, within the time and in the manner prescribed, of any change in circumstances affecting the recipient's eligibility for the child care benefit.
- (2) A child care provider who provides child care in respect of which a child care benefit is paid must notify the minister, within the time and in the manner prescribed, of any change in the operation of the child care provider's child care facility affecting the payment of a child care benefit.

Consequences of failing to provide information

- 9** (1) If, under section 7 (1) (a) or (c), the minister directs an applicant for a child care benefit to supply information or a verification, the minister may not, subject to the regulations, pay the child care benefit before the applicant complies with that direction.
- (2) If a recipient of a child care benefit fails to comply with a direction under section 7 (1) (a) or (c), the minister may
 - (a) reduce the amount of the child care benefit, or
 - (b) discontinue the child care benefit.
- (3) If a recipient of a child care grant fails to comply with a direction under section 7 (3) (a) or (c) or fails to provide information to the minister in accordance with the grant agreement governing the child care grant, the minister may, without limiting the terms or conditions of the grant agreement,
 - (a) reduce the amount of the child care grant, or
 - (b) discontinue the child care grant.

Division 2 – Recovery of Financial Supports

Overpayments

- 10** (1) If the minister determines that an amount of a child care grant has been paid to a person who is not eligible for the amount under the grant agreement governing the child care grant or the regulations, the person is liable to repay that amount to the government.
- (2) If the minister determines that an amount of a child care benefit has been paid to or for a person who is not eligible for the amount, the person is liable to repay that amount to the government.

- (3) If the amount referred to in subsection (2) has been paid because of an error, omission or misrepresentation made by a child care provider, despite that subsection, the child care provider, and not the person, is liable to repay the amount to the government.

Recovery of debts

- 11** (1) The amount of a child care grant that a person is liable to repay under section 10 (1) is a debt due to the government and may be
- (a) recovered by the government in a court of competent jurisdiction, or
 - (b) deducted by the government as follows:
 - (i) from a subsequent child care grant payable to the person;
 - (ii) from another amount payable to the person by the government under a prescribed enactment.
- (2) The amount of a child care benefit that a person is liable to repay under section 10 (2) is a debt due to the government and may be
- (a) recovered by the government in a court of competent jurisdiction, or
 - (b) deducted by the government as follows:
 - (i) from a subsequent child care benefit payable to or for the person;
 - (ii) from another amount payable to the person by the government under a prescribed enactment.
- (3) The amount of a child care benefit that a person is liable to repay under section 10 (3) is a debt due to the government and may be
- (a) recovered by the government in a court of competent jurisdiction, or
 - (b) deducted by the government from another amount payable to the person, in the person's capacity as a child care provider, by the government under a prescribed enactment.
- (4) Subject to the regulations, the minister may enter into an agreement, or may accept any right assigned, for the repayment of an amount referred to in subsection (1), (2) or (3).
- (5) An agreement under subsection (4) may be entered into before or after payment of the child care grant or child care benefit to which the agreement relates.

No garnishment, attachment, execution or seizure

- 12** (1) Child care grants and child care benefits are exempt from garnishment, attachment, execution or seizure under any Act.
- (2) Subsection (1) does not prevent a child care grant or child care benefit being retained by way of a deduction or set-off under this Act, the *Financial Administration Act* or a prescribed Act.

PART 4 – RECONSIDERATIONS AND APPEALS RESPECTING BENEFITS

Reconsiderations

- 13** (1) Subject to section 15, a person may request the minister to reconsider any of the following decisions made under this Act:
- (a) a decision that results in a refusal to pay a child care benefit to or for the person;
 - (b) a decision that results in a discontinuance or reduction of the child care benefit paid to or for the person;
 - (c) a decision made under section 10 (2) [*overpayments*].
- (2) A child care provider may request the minister to reconsider a decision made under section 10 (3).
- (3) A request under subsection (1) or (2) must be made, and the decision reconsidered, in accordance with any rules specified in the regulations.

Appeals

- 14** (1) Subject to section 15, the minister's decision on a reconsideration under section 13 may be appealed to the tribunal.
- (2) A right of appeal under subsection (1) is subject to the time limits and other requirements set out in the *Employment and Assistance Act* and the regulations under that Act.

Limits on reconsiderations and appeals

- 15** (1) If a person reapplies for a child care benefit after
- (a) the person's eligibility for the child care benefit has been determined under this Act,
 - (b) the person has exercised a right of appeal under section 14 (1) in respect of the determination referred to in paragraph (a) of this subsection, and
 - (c) the decision of the tribunal in respect of the appeal has been implemented,
- no right of reconsideration or appeal exists in respect of the second or a subsequent application unless there has been a change in circumstances relevant to the determination referred to in paragraph (a) of this subsection.
- (2) The minister's determination of the amount a person is liable to repay under section 10 (2) or (3) [*overpayments*] is not appealable under section 14 (1).

PART 5 – GENERAL

Division 1 – Offences

Offence of supplying false or misleading information

- 16** (1) A person commits an offence if the person supplies information that is false or misleading with respect to a material fact
- (a) to obtain a child care grant,
 - (b) in an application under this Act for a child care benefit, or
 - (c) when required or directed to do so under section 7 (1) or (2) [*information and verification*], section 8 (1) [*duty to provide information*] or the regulations.
- (2) A person does not commit an offence under subsection (1) if, at the time the information was supplied, the person did not know that it was false or misleading and, with the exercise of reasonable diligence, could not have known that it was false or misleading.
- (3) If a person is convicted of an offence under subsection (1), in addition to any punishment imposed, the court may order the person to pay to the government all or part of any amount the person received under this Act as a result of committing the offence.

Section 5 of Offence Act

- 17** Section 5 [*general offence*] of the *Offence Act* does not apply to this Act or the regulations.

Limitation period for prosecution

- 18** (1) The time limit for laying an information for an offence under this Act is 12 months after the date that the facts on which the information is based first came to the minister's attention.
- (2) A document purporting to have been issued by the minister, certifying the date on which the minister became aware of the facts on which the information is based,
- (a) is admissible without proof of the signature or official character of the person appearing to have signed the certificate, and
 - (b) is proof of the certified facts unless there is evidence to the contrary.

Division 2 – Miscellaneous

Agreements

- 19** (1) In this section, “**information-sharing agreement**” includes a data-matching agreement but does not include an agreement to share
- (a) information obtained by the minister for the purposes of another Act administered by the minister, or
 - (b) information obtained by the minister pursuant to an agreement under this section.
- (2) Subject to subsection (3), the minister may enter into a written agreement with any person or group of persons.
- (3) The minister may enter into the following agreements only with the prior approval of the Lieutenant Governor in Council:
- (a) an agreement with the government of Canada, or an agency of that government, about financial arrangements or other matters relating to this Act;
 - (b) a reciprocal agreement with the government of another province or other jurisdiction in Canada, or an agency of that government, respecting child care grants, child care benefits or a program related to child care;
 - (c) subject to subsection (4), an information-sharing agreement with any of the following:
 - (i) the government of Canada or an agency of that government;
 - (ii) the government of a province or other jurisdiction in Canada or an agency of that government;
 - (iii) an Indigenous governing body or other entity representing Indigenous peoples;
 - (iv) the government of a state of the United States or an agency of that government;
 - (v) a public body as defined in Schedule 1 of the *Freedom of Information and Protection of Privacy Act*.
- (4) An information-sharing agreement referred to in subsection (3) (c) may be entered into only for the following purposes:
- (a) the administration of this Act;
 - (b) the administration of a social benefit program operated by a government, agency, entity or public body referred to in subsection (3) (c);
 - (c) in the case of information obtained by the minister in relation to a child care benefit, the administration of the *Income Tax Act* or the *Income Tax Act* (Canada).

Delegation of minister's powers and duties

- 20** (1) Subject to subsection (2) and the regulations, the minister may delegate to any person or class of persons any or all of the minister's powers and duties under this Act, including the power under section 3 [*child care grants*] to pay a child care grant.
- (2) Subsection (1) does not apply to the minister's power to enter into an agreement under section 19 (3).
- (3) A delegation under subsection (1) must be in writing and may include any limits or conditions the minister considers advisable.

Regulations

- 21** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:
- (a) respecting applications for child care grants and child care benefits and the information, authorizations and verifications that must be supplied in support of an application;
 - (b) respecting eligibility for child care benefits;
 - (c) respecting grant agreements;
 - (d) establishing when and how child care grants and child care benefits are paid;
 - (e) establishing rules for determining the income of applicants for, or recipients of, child care benefits;
 - (f) establishing rules for how the amount, or the maximum amount, of a child care benefit is to be determined;
 - (g) specifying conditions on which child care benefits may be provided, including a condition that the child care benefits be provided on a repayable basis, and the consequences of failing to comply with those conditions;
 - (h) establishing limits on amounts that may be charged, and on any increases to amounts charged, by child care providers for the provision of child care in respect of which child care grants are paid under this Act;
 - (i) respecting the duties of recipients of child care benefits, including their duty to notify the minister of any change in circumstances affecting their eligibility for child care benefits;
 - (j) specifying circumstances in which the minister may
 - (i) declare a person ineligible to enter into a grant agreement or ineligible for a child care benefit, or

- (ii) reduce the amount of a child care grant or child care benefit or discontinue a child care grant or child care benefit.
- (3) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:
- (a) specifying circumstances in which the care and supervision of a child in a child care facility by the child's parent constitutes child care for the purposes of the Act;
 - (b) for the purposes of section 11 [*recovery of debts*], prescribing the circumstances in which repayment agreements may be entered into or assignments accepted and the terms to be included in those agreements or assignments;
 - (c) specifying time limits and other rules for the purposes of section 13 (3) [*reconsiderations*];
 - (d) respecting reinstatement of child care benefits pending reconsiderations and appeals;
 - (e) respecting terms and conditions that are to be included in information-sharing agreements under section 19 (3) [*agreements*];
 - (f) prescribing the records to be kept and the reports to be made to the minister under this Act;
 - (g) prescribing how accounts are to be submitted to the minister and the information and records to be supplied with those accounts;
 - (h) governing investigations and audits for the purposes of administering and enforcing this Act, the regulations and grant agreements;
 - (i) establishing a register of child care facilities other than licensed child care facilities;
 - (j) respecting the delegation of the powers and duties of the minister under this Act;
 - (k) defining any word or expression used but not defined in this Act;
 - (l) respecting any other matter for which regulations are contemplated by this Act.
- (4) In making a regulation under this Act, the Lieutenant Governor in Council may do one or more of the following:
- (a) delegate a matter to a person;
 - (b) confer a discretion on a person;
 - (c) establish or define classes of persons, places, circumstances, child care, child care facilities, child care grants or child care benefits;
 - (d) make different regulations for different classes of persons, places, circumstances, child care, child care facilities, child care grants or child care benefits.

**PART 6 – TRANSITIONAL PROVISIONS, REPEALS
AND CONSEQUENTIAL AMENDMENTS**

Division 1 – Transitional Provisions

Transition – definitions

22 In this Division:

“**Child Care BC Act**” means the *Child Care BC Act* as it read immediately before the coming into force of section 26 [*repeal of Child Care BC Act*] of this Act;

“**child care grant**”, except as otherwise provided, has the same meaning as in the *Child Care BC Act*;

“**child care subsidy**” has the same meaning as in the *Child Care Subsidy Act*;

“**Child Care Subsidy Act**” means the *Child Care Subsidy Act* as it read immediately before the coming into force of section 27 [*repeal of Child Care Subsidy Act*] of this Act.

Transition – child care grants and child care subsidies

23 On the coming into force of this section,

- (a) an application for a child care grant made under the *Child Care BC Act* but in respect of which a determination has not been made is deemed to be an application for a child care grant as defined in section 1 [*definitions*] of this Act,
- (b) an application for a child care subsidy made under the *Child Care Subsidy Act* but in respect of which a determination has not been made is deemed to be an application for a child care benefit as defined in section 1 of this Act,
- (c) a child care grant that is being paid under the *Child Care BC Act* is deemed to be a child care grant as defined in section 1 of this Act, and
- (d) a child care subsidy that is being paid under the *Child Care Subsidy Act* is deemed to be a child care benefit as defined in section 1 of this Act.

Transition – limit on reconsiderations and appeals

24 Section 15 [*limits on reconsiderations and appeals*] applies in relation to a person as if an earlier determination of the person’s eligibility for a child care subsidy under the *Child Care Subsidy Act* were a determination of the person’s eligibility for a child care benefit under this Act.

Transition – agreements

- 25 On the coming into force of this section,
- (a) an agreement that is in effect under section 6 [*child care grants*] of the *Child Care BC Act* continues in force and effect as if it were a grant agreement,
 - (b) an agreement that is in effect under section 7 (2) [*overpayments, repayments and assignments*] of the *Child Care Subsidy Act* continues in force and effect as if it were an agreement under section 11 (4) [*recovery of debts*] of this Act, and
 - (c) an agreement that is in effect under section 8 [*agreements*] of the *Child Care BC Act* or section 9 [*agreements*] of the *Child Care Subsidy Act* continues in force and effect as if it were an agreement under section 19 [*agreements*] of this Act.

Division 2 – Repeals

Repeal of *Child Care BC Act*

- 26 The *Child Care BC Act*, S.B.C. 2001, c. 4, is repealed.

Repeal of *Child Care Subsidy Act*

- 27 The *Child Care Subsidy Act*, R.S.B.C. 1996, c. 26, is repealed.

Division 3 – Consequential Amendments

Employment and Assistance Act

- 28 *Section 19 (1) (c) of the Employment and Assistance Act, S.B.C. 2002, c. 40, is repealed and the following substituted:*
- (c) section 14 (1) [*appeals*] of the *Early Learning and Child Care Act*.

Evidence Act

- 29 *Section 61 (1) (e) and (f) of the Evidence Act, R.S.B.C. 1996, c. 124, is repealed and the following substituted:*
- (b.1) for the *Early Learning and Child Care Act*, each person to whom the minister has delegated powers or duties under that Act; .

Representative for Children and Youth Act

30 *Section 1 of the Representative for Children and Youth Act, S.B.C. 2006, c. 29, is amended in paragraph (a) of the definition of “designated services” by striking out “the Child Care BC Act, the Child Care Subsidy Act,” and by adding “, the Early Learning and Child Care Act” before “and the Youth Justice Act”.*

Commencement

31 This Act comes into force by regulation of the Lieutenant Governor in Council.