

HOUSE No. 03986

By Ms. Khan of Newton, for the committee on Children, Families and Persons with Disabilities, on Senate, No. 28 and House, No. 541, a Bill relative to improving quality in early education and care by family child care providers (House, No. 3986). March 12, 2012.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to improving quality in early education and care by family child care providers .

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 2 of chapter 15D of the General Laws, as appearing in the 2008 Official
2 Edition, is hereby amended by adding the following paragraph: -
3 (u) subject to appropriation and notwithstanding any general or special law to the contrary,
4 assure quality early education and care provided to children through family child care providers
5 by working cooperatively with family child care providers to build upon the existing system and
6 continuously improve the delivery of high quality early education and care services for eligible
7 low income families through providers who have the requisite skills and training.

8 SECTION 2. Said chapter 15D is hereby further amended by adding the following section:-

9 Section 17. (a) As used in this section the following terms shall have the following meanings:-

10 Department of labor relations, the department of labor relations established by section 90 of
11 chapter 23, as amended.

12

13 Employee organization, an employee organization as defined in section 1 of chapter 150E.

14 Family child care services, child care services provided for less than 24 hours per day in the
15 residence of the provider on behalf of low-income and other at risk children, for which payment
16 from the commonwealth is made pursuant to a rate structure for voucher and contracted
17 payments.

18 Family child care provider, a person who provides family child care services on behalf of low-
19 income and other at risk children and receives payment from the commonwealth for such
20 services pursuant to a rate structure for voucher and contracted payments.

21 (b) Family child care providers shall be considered public employees, as defined by and solely
22 for the purposes of, chapter 150E and section 17J of chapter 180. Said chapter 150E, including
23 subsection (c) of section 7, shall apply to family child care providers except to the extent that
24 chapter 150E is inconsistent with this section, in which case this section shall control. In
25 addition, family child care providers shall be treated as state employees solely for the purposes of
26 sections 17A and 17G of chapter 180. Family child care providers shall not be considered public
27 employees or state employees for any purpose other than those set forth in this paragraph. The
28 department, acting through the commissioner, shall be the employer, solely for the purposes of
29 said chapter 150E and sections 17A, 17G and 17J of said chapter 180 and deductions under said
30 sections 17A, 17G and 17J may be made by any entity authorized by the commonwealth to
31 compensate family child care providers pursuant to a rate structure for voucher and contracted

32 payments. Family child care providers shall not be eligible for benefits through the group
33 insurance commission, the state board of retirement or the state employee workers' compensation
34 program.

35 (c) Family child care providers who are employees of the commonwealth under this section are
36 not, for that reason, public employees or employees of the commonwealth for any other purpose,
37 and shall not be classified as employees of the Commonwealth or as employees of family child
38 care systems, as defined in section 1(A) of chapter 15D, pursuant to Chapter 149 Section 148B.
39 Nothing in this chapter shall alter the obligations of the commonwealth or the parent or legal
40 guardian of the child receiving family child care services to provide their share of social security,
41 federal and state unemployment taxes, Medicare and workers compensation insurance under the
42 Federal Insurance Contributions Act, federal and state unemployment law, the Massachusetts
43 Workers Compensation Act or vicarious liability in tort.

44 (d) Consistent with section 9A of chapter 150E, no family child care provider shall engage in a
45 strike and no family child care provider shall induce, encourage or condone any strike, work
46 stoppage, slowdown or withholding of services by any family child care provider.

47 (e) The only appropriate bargaining unit for family child care providers shall consist of all family
48 child care providers in the commonwealth who are on the most current list provided by the
49 commissioner, regardless of the number of hours of care such family child care providers have
50 worked.

51 (f) An employee organization seeking to represent family child care providers shall file with the
52 department of labor relations in accordance with the provisions of section 4 of chapter 150E.

53 (g) The mandatory subjects as to which the department and an employee organization certified
54 by the department of labor relations as the bargaining representative of family child care
55 providers shall bargain shall include developing and encouraging greater education and training
56 opportunities for family child care providers, improvement of recruitment and retention of
57 qualified providers and reimbursement and payment procedures. Nothing in this legislation shall
58 inhibit the parties from discussing other permissive subjects of bargaining, including without
59 limitation the rate structure for family child care providers.

60 (h) In addition to the mandatory subjects set forth in clause (g), the department and an employee
61 organization certified by the department of labor relations as the bargaining representative of
62 family child care providers shall bargain about the rate structure for voucher and contracted
63 payments for family child care services on behalf of low-income and other at risk children.

64 (i) Nothing in this section shall modify any right of a parent or legal guardian to choose,
65 terminate the services of, or otherwise supervise a family child care provider.

66 (j) Nothing in this section shall alter or abridge the department's statutory rights and
67 responsibilities to visit, inspect and monitor facilities, or to suspend, revoke, sanction, assess
68 fines or take any other action against a providers license in furtherance of this chapter, inclusive
69 of sections 6 to 10, and in furtherance of the department's regulations promulgated in this regard.
70 The collective bargaining process and the grievance procedures described in chapter 150E
71 including section 8 of chapter 150E, shall not apply to the departments statutory and regulatory
72 licensing, monitoring and enforcement functions or to the contractual arrangements and
73 reimbursements between the department and family child care systems as defined in section 1(A)
74 of chapter 15D.

75 (k) Collective bargaining and related activity by providers, as authorized pursuant to this section,
76 shall qualify for the state action exemption to the federal anti-trust laws.

77 SECTION 3. The first paragraph of subsection (c) of section 7 of chapter 150E of the General
78 Laws, as amended by section 100 of chapter 25 of the acts of 2009, is hereby further amended by
79 inserting after the word council the following words:-, the department of early education and
80 care with regard to bargaining with family child care providers.

81 SECTION 4. The first sentence of section 17G of chapter 180, as amended by section 1 of
82 chapter 45 of the acts of 2009, is hereby further amended by inserting after the words workforce
83 council, added by said section 1 of said chapter 45, , the following words:- or a collective
84 bargaining agreement with the department of early education and care covering family child care
85 providers.

86 SECTION 5. Clause (h) of section 17 of chapter 15D of the General Laws, as set forth in section
87 2 of this act, shall take effect on July 1, 2012.