

HOUSE No. 3986

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to 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
2 Official Edition, is hereby amended by adding the following paragraph: -

3 (u) subject to appropriation and notwithstanding any general or special law to the
4 contrary, assure quality early education and care provided to children through family child care
5 providers by working cooperatively with family child care providers to build upon the existing
6 system and continuously improve the delivery of high quality early education and care services
7 for eligible 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
9 section:-

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

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

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15 Employee organization, an employee organization as defined in section 1 of chapter
16 150E.

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

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

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

36 insurance commission, the state board of retirement or the state employee workers' compensation
37 program.

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

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

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

54 (f) An employee organization seeking to represent family child care providers shall file
55 with the department of labor relations in accordance with the provisions of section 4 of chapter
56 150E.

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

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

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

71 (j) Nothing in this section shall alter or abridge the department's statutory rights and
72 responsibilities to visit, inspect and monitor facilities, or to suspend, revoke, sanction, assess
73 fines or take any other action against a providers license in furtherance of this chapter, inclusive
74 of sections 6 to 10, and in furtherance of the department's regulations promulgated in this regard.
75 The collective bargaining process and the grievance procedures described in chapter 150E
76 including section 8 of chapter 150E, shall not apply to the departments statutory and regulatory
77 licensing, monitoring and enforcement functions or to the contractual arrangements and

78 reimbursements between the department and family child care systems as defined in section 1(A)
79 of chapter 15D.

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

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

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

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