

SENATE No. 223

The Commonwealth of Massachusetts

PRESENTED BY:

Sal N. DiDomenico

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act improving quality in early education care centers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>
<i>Daniel A. Wolf</i>	<i>Cape and Islands</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>James T. Welch</i>	<i>Hampden</i>
<i>Gale D. Candaras</i>	<i>First Hampden and Hampshire</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Anthony W. Petruccelli</i>	<i>First Suffolk and Middlesex</i>

<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Katherine M. Clark</i>	<i>Fifth Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>
<i>John P. Fresolo</i>	<i>16th Worcester</i>

SENATE No. 223

By Mr. DiDomenico, a petition (accompanied by bill, Senate, No. 223) of Sal N. DiDomenico, Michael F. Rush, Marc R. Pacheco, Harriette L. Chandler and other members of the General Court for legislation relative to the quality in early education care centers. Education.

The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen
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An Act improving quality in early education care centers.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately assure quality early education and care for children by authorizing negotiations between the commissioner of early education and care and a providers organization selected by certain child care providers, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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. Chapter 15D of the General Laws, as appearing in the 2010 Official
2 Edition, is hereby amended by adding the following sections:-

3 Section 17. Definitions.

4 The following words, as used in this section and in sections 17 to 21, inclusive, shall have
5 the following meanings:

6 “Administrative assessment”, an amount paid by the department to the providers
7 organization for the costs of representing child care providers as provided in sections eighteen
8 through 21 of this chapter.

9 “Child care center”, a center as defined in section 1A of chapter 15D, which is licensed
10 by the Commonwealth, and which holds a contract with the department for the provision of
11 subsidized child care services or receives a subsidy as provided by Section 2(b) of Chapter 15D.

12 "Child care providers", child care center directors and employees.

13 “Child Care Standards Agreement,” or “Agreement”, the agreement negotiated between
14 the department and the providers organization. The written agreement shall legally bind the
15 commissioner and the providers organization.

16 “Commissioner”, the commissioner of early education and care.

17 “Department”, the department of early education and care established by section 2 of
18 chapter 15D.

19 “Providers Organization”, the organization selected by child care providers to represent
20 them in negotiating, executing and administering a Child Care Standards Agreement with the
21 department.

22 Section 18. The commissioner shall develop and enforce quality early education
23 standards that will improve the delivery and quality of early learning and child care services at
24 child care centers defined in section 17 and sub-section (a) of section 19 of this chapter. Such
25 standards will be developed through negotiations as set forth in section 21 of this chapter with an
26 organization selected by child care providers. The process of developing and enforcing such
27 standards will in no way limit or intrude upon the rights of child care providers under federal
28 labor law.

29 Section 19. Child Care Providers Authorized to Negotiate with the Commonwealth.

30 (a) Sections 17 to 21, inclusive, shall apply to child care providers at child care centers
31 that receive a subsidy for at least 10 per cent of children attending their centers, but shall not
32 apply to child care providers at child care centers:

33 i. Operated directly by another unit of government;

34 ii. Operated by an individual, partnership, profit or nonprofit corporation, or other
35 entity that operates ten or more child care centers statewide;

36 iii. Operated by a local nonprofit organization whose primary mission is to provide
37 social services, including serving children and families, and that pays membership' dues or
38 assessments to either: (A) A national organization, exempt from income tax under section
39 501(c)(3) of the internal revenue code, with more than \$3,000,000 in membership dues and
40 assessments annually, as reported to the internal revenue service; or (B) a regional council that is
41 affiliated with a national organization, exempt from income tax under section 501(c)(3) of the
42 internal revenue code, with more than 200 affiliates;

43 iv. A private corporation or public agency designated as a community action agency
44 by the Director of the Community Services Administration and established pursuant to the
45 Economic Opportunity Act of 1964, Pub. L. 88-452, which is authorized to administer funds

46 received from Federal, State, local, or private funding entities to assess, design, operate, finance,
47 and oversee antipoverty programs; or

48 v. Funded by the Head Start program administered by the Department of Health and
49 Human Services (HHS) pursuant to 42 USC 9801 et seq.

50 (b) Child care providers who are employed at a child care center and are not covered
51 by paragraph (a) of this Section may agree to be represented by the providers organization and
52 bound by the child care standards agreement if they meet all of the following conditions:

53 i. The child care center receives a subsidy for at least 10 per cent of children
54 attending that center;

55 ii. A majority of child care providers at that child care center authorize
56 representation by the providers organization; and

57 iii. The owner, executive director, or chief executive officer of the child care center
58 authorizes representation by the providers organization.

59 Section 20. Child Care Providers' Right to Select an Organization to Negotiate with the
60 Commissioner over Specified Subjects.

61 (a) Child care providers shall have the right to form, join and participate in the
62 activities of an organization of their own choosing for the purpose of representation and
63 negotiations with the commissioner over those subjects specified in sub-section (a) of section 21.

64 (b) The commissioner or his or her designee is authorized to engage on behalf of the
65 Commonwealth in negotiations with the providers organization and agree to terms of a child care
66 standards agreement pursuant to section 21 of this chapter.

67 (c) Every child care center to which sections 17 to 21 applies shall provide to the
68 commissioner a list of the names of all currently employed child care providers with additional
69 information for each including home address, telephone numbers, workplace addresses and job
70 titles. Such lists shall be provided in the manner requested by the commissioner within 30 of
71 enactment, and annually thereafter by January 30. Except as provided in sub-section (d) of this
72 section, the list shall not be a public record.

73 (d) The commissioner shall, upon request and written certification that the list and
74 accompanying information shall be used solely for the purpose of seeking to represent or
75 continuing representation of child care providers, provide to an organization a list of all current
76 child care providers who are authorized to select a representative under section 19. Such list
77 shall contain such information including name, home address, telephone numbers, workplace
78 addresses and job titles for each child care provider.

79 (e) The commissioner shall recognize as a Providers Organization an organization
80 designated by the child care providers in accordance with the following process:

81 i. The commissioner shall extend recognition to an organization identified by a
82 showing of written majority support by the child care providers authorized to select a
83 representative under this section. A showing of majority support shall be verified by a neutral
84 third-party, agreed upon by the organization and the Commissioner, who shall conduct a
85 confidential inspection of the showing of majority support to determine whether the organization
86 has such support and shall report the results to the Commissioner, organization and child care
87 providers; or

88 ii. The commissioner, upon receipt of an organization's petition that 30 percent of
89 child care providers in the Commonwealth wish to be represented by that organization, or upon
90 receipt of a petition filed by or on behalf of forty-five percent of the child care providers in the
91 Commonwealth alleging that the recognized providers organization no longer represents a
92 majority of the child care providers, shall direct an election by secret ballot or shall use any other
93 suitable method provided the opportunity for a private vote is preserved to determine whether, or
94 by which organization, the child care providers desire to be represented for purposes of sections
95 17 through 21. Said election shall be conducted by an experienced, neutral third party selected
96 by the Providers Organization from a list of five neutral third parties prepared by the
97 Commissioner. The Commissioner shall certify the organization that receives a majority of the
98 votes cast in such election as the recognized Providers Organization. The decision and
99 determinations of the neutral shall be final and binding.

100 iii. In any election conducted pursuant to subsection ii, the commissioner and the
101 department shall not seek to influence the vote of any child care providers. Recognition pursuant
102 to this section shall remain in effect until a majority of child care providers chooses another
103 providers organization or no providers organization in accordance with subsection ii. Only one
104 organization at any time may be recognized as the representative of child care providers for the
105 purposes of sections 17 through 21. .

106 (g) No election shall be conducted when a valid election has been held in the
107 preceding 12 months or a child care standards agreement is in effect.

108 Section 21. Negotiation Of A Child Care Standards Agreement

109 (a) Negotiations between the commissioner and the providers organization shall be
110 limited to matters related to the Commonwealth's role in workforce development as described in
111 Sections 2 and 5 of chapter 15D, including: (i) professional development and training; (ii)
112 conditions affecting recruitment and retention; (iii) quality ratings by the department; (iv) career
113 development payments made by the Commonwealth to compensate professionals for increases in
114 educational attainment and incentives for advancement; (v) improving access for child care
115 providers to retirement, health and welfare benefits; (vi) the manner and rate of subsidy and

116 reimbursement by the department; (vii); an administrative assessment; and (viii) dispute
117 resolution procedures related to (i) through (vii).

118 (b) The parties shall seek to reach a child care standards agreement through good
119 faith negotiations based on the interests of both parties. If after a reasonable period of
120 negotiations t h e parties are unable to reach an agreement, the parties shall engage, and share the
121 costs of, a third p art y facilitator o r mediator to assist them in further interest-based
122 negotiations. The parties may engage such a facilitator or mediator at any earlier stage of
123 negotiations. A facilitator or mediator shall be empowered to order the parties to exchange
124 information that is reasonably necessary and relevant to negotiations and to require specific
125 representatives authorized to enter into a child care standards agreement to be present during
126 negotiations. If after a reasonable period of facilitated or mediated negotiations the parties are
127 unable to reach an agreement, the facilitator or mediator shall issue a written report indicating the
128 subjects upon which Agreement was reached and recommendations for a complete Agreement
129 with a rationale. If the full report is not mutually agreeable to the parties, the mediator or
130 facilitator shall determine a schedule for resumed negotiations, provided that the parties ma y
131 mutually agree at an y time to adopt such recommendations as to which there is Agreement and
132 limit further negotiation to the issues remaining in dispute. The mediator or facilitator shall
133 have the authority to request information from the parties regarding their respective positions on
134 any matter in dispute.

135 (c) The funds required to finance the costs of the child care standards agreement shall
136 not be diverted from funding for child care assistance, including line items for Temporary
137 Assistance for Needy Families (TANF)-Related Child Care, Supportive Child Care, and Low-
138 Income Child Care.

139 (d) A child care standards agreement reached between the commissioner and the
140 providers organization shall not exceed a term of three years, provided however that the parties
141 may mutually agree to modify or extend an agreement or any portion(s) thereof for a period of
142 time in excess of the agreement's duration. The agreement shall be reduced to writing and
143 executed by the parties.

144 (e) The Commissioner shall submit to the General Court within 30 days after the date
145 on which the agreement is executed by the parties, a request for an appropriation necessary to
146 fund the items associated with matters identified in subsection (a) above contained therein;
147 provided, that if the General Court is not in session at that time, such request shall be submitted
148 at the next session thereof. If the General Court rejects the request for an appropriation
149 necessary to fund the cost items, such cost items

150 shall be returned to the parties for further negotiations.

151 (f) The commissioner shall take all necessary steps to fund, implement, and enforce
152 the terms of the agreement. If an agreement contains a conflict between matters which are within

153 the scope of negotiations pursuant this section and any rules, regulations or policies of the
154 department, the terms of the child care standards agreement shall prevail.

155 (g) This section does not create or modify:

156 (i) The parents' or legal guardians' right to choose and terminate the services of any
157 child care center that provides care for their child or children;

158 (ii) The child care center's right to choose, direct, and terminate the services of a
159 caregiver that it employs;

160 (ii) The rights of employers and employees under the National Labor
161 Relations Act, 29 U.S.C. §§ 151, et seq.;

162 (iv) The Secretary of the Executive Office of Health and Human Services and the
163 commissioner's right to adopt requirements pursuant to chapter 15D except that such
164 requirements shall not diminish the minimum standards established under a child care standards
165 agreement;

166 (v) The General Court's right to make programmatic modifications to the delivery of
167 Commonwealth services through child care subsidy programs, including standards of eligibility
168 of parents, legal guardians, and child
169 care centers participating in child care subsidy programs, and the nature of services
170 provided.

171 (g) In enacting this section, the General Court intends to provide state action immunity
172 under federal and state antitrust laws for the joint activities of child care providers and the
173 organization they select to represent them for purposes of this chapter.

174 SECTION 2. This act applies only to the relationship, as defined above in sections 20 and
175 21, between the Department of Early Education and Care and child care providers. If any part of
176 this act is found to be in conflict with federal requirements that are a prescribed condition to the
177 allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the
178 extent of the conflict and with respect to the agencies directly affected, and any such finding
179 does not affect the operation of the remainder of this act in its application to the agencies
180 concerned. Standards adopted under this act must meet federal requirements that are a necessary
181 condition to the receipt of federal funds by the Commonwealth.

182 SECTION 3. If any part of this Act is found to be unlawful, that part shall be severed and
183 the remaining provisions given full force and effect.

184 SECTION 4. This act may be known and cited as the Access to Quality Early Education
185 and Care Act.