

HOUSE BILL 465

P4

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CF SB 284

By: **The Speaker (By Request – Administration) and Delegates Hucker, Anderson, Barve, Benson, Carter, Frick, Frush, Gutierrez, Guzzone, Hixson, Hubbard, Lafferty, Manno, McHale, McIntosh, Mizeur, Montgomery, Murphy, Nathan–Pulliam, Olszewski, Ramirez, Simmons, Tarrant, Taylor, V. Turner, Vaughn, and Waldstreicher**

Introduced and read first time: January 29, 2010

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Collective Negotiations by Family Child Care Providers**

3 FOR the purpose of establishing collective bargaining rights for certain family child
4 care providers who participate in the Maryland Child Care Subsidy Program;
5 requiring that there be only one appropriate bargaining unit for certain family
6 child care providers; authorizing providers to designate an exclusive
7 representative; requiring that certain procedures relating to the election and
8 certification of an exclusive representative, collective bargaining process, and
9 bargaining agreements be governed by certain provisions of the collective
10 bargaining law for State employees; prohibiting the State Labor Relations
11 Board from conducting a certain election within a certain period; requiring an
12 exclusive representative to represent all family child care providers, whether or
13 not they are members of the provider organization; providing for the scope of
14 collective bargaining for family child care providers; authorizing collective
15 bargaining negotiations pertaining to family child care providers to include
16 negotiations relating to the right of an employee organization to receive service
17 fees from nonmembers; providing that certain family child care providers are
18 not required to pay certain fees and are required to make certain other
19 payments; specifying that the certification of certain exclusive representatives
20 under this Act does not prevent provider organizations from appearing before or
21 making proposals to certain State agencies at a public meeting or hearing;
22 prohibiting a provider organization from calling or directing a strike; providing
23 that the provisions of this Act may not alter certain roles and rights of parents
24 with regard to family child care providers; declaring the legislative intent of the
25 General Assembly as it relates to the application of a certain exemption to State
26 and federal antitrust laws; providing for the application and construction of this
27 Act; requiring that a certain provider organization certified as the majority

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 representative in a certain election pursuant to a certain Executive Order shall
2 continue as the exclusive representative of family child care providers without
3 the requirement of an additional election and certification; defining certain
4 terms; declaring that the provisions of this Act are severable; and generally
5 relating to collective bargaining for family child care providers.

6 BY repealing and reenacting, without amendments,
7 Article – Family Law
8 Section 5–550(d) and 5–552(b)
9 Annotated Code of Maryland
10 (2006 Replacement Volume and 2009 Supplement)

11 BY adding to
12 Article – Family Law
13 Section 5–595 through 5–595.6 to be under the new part “Part XI. Collective
14 Negotiations by Family Child Care Providers”
15 Annotated Code of Maryland
16 (2006 Replacement Volume and 2009 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article – Family Law**

20 **5–550.**

21 (d) “Family day care provider” means an individual who cares for no more
22 than eight children in a registered family day care home.

23 **5–552.**

24 (b) A family day care home is not required to be registered if the day care
25 provider:

26 (1) is related to each child by blood or marriage;

27 (2) is a friend of each child’s parents or legal guardian and the care is
28 provided on an occasional basis; or

29 (3) has received the care of the child from a child placement agency
30 licensed by the Administration or by a local department.

31 **PART XI. COLLECTIVE NEGOTIATIONS BY FAMILY CHILD CARE PROVIDERS.**

32 **5–595.**

1 (A) IN THIS PART XI OF THIS SUBTITLE THE FOLLOWING WORDS HAVE
2 THE MEANINGS INDICATED.

3 (B) “FAMILY CHILD CARE PROVIDER” MEANS AN INDIVIDUAL WHO
4 PARTICIPATES IN THE MARYLAND CHILD CARE SUBSIDY PROGRAM WHO IS:

5 (1) A REGISTERED PROVIDER AS DEFINED IN § 5-550(D) OF THIS
6 SUBTITLE; OR

7 (2) EXEMPT FROM THE REGISTRATION REQUIREMENTS UNDER §
8 5-552(B) OF THIS SUBTITLE.

9 (C) “PROVIDER ORGANIZATION” MEANS AN ORGANIZATION THAT:

10 (1) INCLUDES FAMILY CHILD CARE PROVIDERS; AND

11 (2) HAS AS ONE OF ITS PURPOSES THE REPRESENTATION OF
12 FAMILY CHILD CARE PROVIDERS IN THEIR RELATIONS WITH THE STATE.

13 **5-595.1.**

14 IN ACCORDING FAMILY CHILD CARE PROVIDERS AND THEIR
15 REPRESENTATIVES RIGHTS UNDER THIS PART XI OF THIS SUBTITLE, IT IS THE
16 LEGISLATIVE INTENT OF THE GENERAL ASSEMBLY THAT THE STATE ACTION
17 EXEMPTION TO THE APPLICATION OF FEDERAL AND STATE ANTITRUST LAWS BE
18 FULLY AVAILABLE TO THE EXTENT THAT THE ACTIVITIES OF THE FAMILY CHILD
19 CARE PROVIDERS AND THEIR REPRESENTATIVES ARE AUTHORIZED UNDER THIS
20 TITLE.

21 **5-595.2.**

22 (A) THERE SHALL BE ONLY ONE APPROPRIATE BARGAINING UNIT OF
23 FAMILY CHILD CARE PROVIDERS IN THE STATE.

24 (B) FAMILY CHILD CARE PROVIDERS MAY DESIGNATE, IN ACCORDANCE
25 WITH THE PROVISIONS OF THIS PART XI OF THIS SUBTITLE, WHICH PROVIDER
26 ORGANIZATION, IF ANY, SHALL BE THE EXCLUSIVE REPRESENTATIVE OF ALL
27 FAMILY CHILD CARE PROVIDERS IN THE STATE.

28 (C) (1) THE ELECTION AND CERTIFICATION OF THE EXCLUSIVE
29 REPRESENTATIVE OF FAMILY CHILD CARE PROVIDERS SHALL BE GOVERNED BY
30 THE PROCEDURES SET FORTH IN TITLE 3, SUBTITLE 4 OF THE STATE
31 PERSONNEL AND PENSIONS ARTICLE.

1 **(2) ALL ELECTIONS SHALL BE CONDUCTED BY THE STATE LABOR**
2 **RELATIONS BOARD AND SUBJECT TO THE REQUIREMENTS AND LIMITATIONS OF**
3 **TITLE 3, SUBTITLE 4 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.**

4 **(3) THE STATE LABOR RELATIONS BOARD MAY NOT CONDUCT**
5 **AN ELECTION FOR AN EXCLUSIVE REPRESENTATIVE IF AN ELECTION OR**
6 **CERTIFICATION OF AN EXCLUSIVE REPRESENTATIVE HAS TAKEN PLACE WITHIN**
7 **THE PRECEDING 2 YEARS.**

8 **(4) A PROVIDER ORGANIZATION DESIGNATED AS THE EXCLUSIVE**
9 **REPRESENTATIVE SHALL REPRESENT ALL FAMILY CHILD CARE PROVIDERS IN**
10 **THE STATE FAIRLY AND WITHOUT DISCRIMINATION, WHETHER OR NOT THE**
11 **FAMILY CHILD CARE PROVIDERS ARE MEMBERS OF THE PROVIDER**
12 **ORGANIZATION.**

13 **5-595.3.**

14 **(A) THE STATE DEPARTMENT OF EDUCATION SHALL DESIGNATE**
15 **APPROPRIATE REPRESENTATIVES TO PARTICIPATE IN COLLECTIVE**
16 **BARGAINING WITH THE PROVIDER ORGANIZATION CERTIFIED AS THE**
17 **EXCLUSIVE REPRESENTATIVE OF FAMILY CHILD CARE PROVIDERS.**

18 **(B) EXCEPT AS OTHERWISE PROVIDED IN THIS PART XI OF THIS**
19 **SUBTITLE, THE PARTIES SHALL ADHERE TO THE BARGAINING PROCESS SET**
20 **FORTH IN § 3-501 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.**

21 **(C) THE STATE DEPARTMENT OF EDUCATION SHALL NEGOTIATE IN**
22 **CONSULTATION WITH THE DEPARTMENT OF BUDGET AND MANAGEMENT**
23 **REGARDING ALL MATTERS THAT REQUIRE APPROPRIATION OF STATE FUNDS.**

24 **(D) COLLECTIVE BARGAINING SHALL INCLUDE ALL MATTERS RELATED**
25 **TO THE TERMS AND CONDITIONS OF PARTICIPATION BY FAMILY CHILD CARE**
26 **PROVIDERS IN THE MARYLAND CHILD CARE SUBSIDY PROGRAM, INCLUDING:**

27 **(1) REIMBURSEMENT RATES;**

28 **(2) BENEFITS;**

29 **(3) PAYMENT PROCEDURES;**

30 **(4) CONTRACT GRIEVANCE PROCEDURES;**

31 **(5) TRAINING;**

1 **(6) MEMBER DUES DEDUCTIONS; AND**

2 **(7) OTHER TERMS AND CONDITIONS OF PARTICIPATION BY**
3 **FAMILY CHILD CARE PROVIDERS IN THE MARYLAND CHILD CARE SUBSIDY**
4 **PROGRAM.**

5 **(E) (1) COLLECTIVE BARGAINING MAY INCLUDE NEGOTIATIONS**
6 **RELATING TO THE RIGHT OF A PROVIDER ORGANIZATION THAT IS THE**
7 **EXCLUSIVE REPRESENTATIVE TO RECEIVE SERVICE FEES FROM NONMEMBERS.**

8 **(2) A FAMILY CHILD CARE PROVIDER WHOSE RELIGIOUS BELIEFS**
9 **ARE OPPOSED TO JOINING OR FINANCIALLY SUPPORTING ANY COLLECTIVE**
10 **BARGAINING ORGANIZATION IS:**

11 **(I) NOT REQUIRED TO PAY A SERVICE FEE; AND**

12 **(II) REQUIRED TO PAY AN AMOUNT OF MONEY AS**
13 **DETERMINED IN COLLECTIVE BARGAINING NEGOTIATIONS, NOT TO EXCEED ANY**
14 **SERVICE FEE NEGOTIATED UNDER PARAGRAPH (1) OF THIS SUBSECTION, TO**
15 **ANY CHARITABLE ORGANIZATION EXEMPT FROM TAXATION UNDER § 501(C)(3)**
16 **OF THE INTERNAL REVENUE CODE AND TO FURNISH TO THE STATE**
17 **DEPARTMENT OF EDUCATION AND THE EXCLUSIVE REPRESENTATIVE WRITTEN**
18 **PROOF OF THE PAYMENT.**

19 **(F) NOTWITHSTANDING SUBSECTION (D) OF THIS SECTION, THE**
20 **REPRESENTATIVES OF THE STATE:**

21 **(1) MAY NOT BE REQUIRED TO NEGOTIATE ANY MATTER THAT IS**
22 **INCONSISTENT WITH APPLICABLE LAW; AND**

23 **(2) MAY NEGOTIATE AND REACH AGREEMENT WITH REGARD TO**
24 **ANY SUCH MATTER ONLY IF IT IS UNDERSTOOD THAT THE AGREEMENT WITH**
25 **RESPECT TO SUCH MATTER CANNOT BECOME EFFECTIVE UNLESS THE**
26 **APPLICABLE LAW IS AMENDED BY THE GENERAL ASSEMBLY.**

27 **(G) THE PARTIES SHALL REDUCE THEIR AGREEMENT TO A**
28 **MEMORANDUM OF UNDERSTANDING THAT COMPLIES WITH THE PROVISIONS OF**
29 **§ 3-601 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.**

30 **5-595.4.**

31 **THE CERTIFICATION OF AN EXCLUSIVE REPRESENTATIVE OF FAMILY**
32 **CHILD CARE PROVIDERS BY THE STATE DEPARTMENT OF EDUCATION DOES**
33 **NOT PREVENT THE CERTIFIED PROVIDER ORGANIZATION OR ANY OTHER**

1 ORGANIZATION OR INDIVIDUAL FROM COMMUNICATING WITH ANY STATE
2 OFFICIAL ON MATTERS OF INTEREST, INCLUDING APPEARING BEFORE OR
3 MAKING PROPOSALS TO THE STATE DEPARTMENT OF EDUCATION AT A PUBLIC
4 MEETING OR HEARING OR AT ANY OTHER FORUM OF THE STATE DEPARTMENT
5 OF EDUCATION.

6 **5-595.5.**

7 (A) A PROVIDER ORGANIZATION MAY NOT CALL OR DIRECT A STRIKE OR
8 OTHER COLLECTIVE CESSATION OF THE DELIVERY OF SERVICES.

9 (B) THIS PART XI OF THIS SUBTITLE MAY NOT BE CONSTRUED TO
10 GRANT ANY RIGHT, OR IMPLY THAT FAMILY CHILD CARE PROVIDERS HAVE ANY
11 RIGHT, TO ENGAGE IN A STRIKE OR OTHER COLLECTIVE CESSATION OF THE
12 DELIVERY OF SERVICES.

13 **5-595.6.**

14 (A) THIS PART XI OF THIS SUBTITLE MAY NOT BE CONSTRUED TO MAKE
15 FAMILY CHILD CARE PROVIDERS EMPLOYEES OF THE STATE.

16 (B) THIS PART XI OF THIS SUBTITLE MAY NOT ALTER IN ANY WAY THE
17 ROLE OF PARENTS IN SELECTING, DIRECTING, AND TERMINATING THE
18 SERVICES OF FAMILY CHILD CARE PROVIDERS.

19 SECTION 2. AND BE IT FURTHER ENACTED, That, notwithstanding the
20 provisions of § 5-595.2 of the Family Law Article as enacted by Section 1 of this Act,
21 the provider organization certified as the majority representative of family child care
22 providers in the election held pursuant to Executive Order 01.01.2007.14 prior to the
23 effective date of this Act shall continue as the exclusive representative without the
24 requirement of an additional election and certification.

25 SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this
26 Act or the application thereof to any person or circumstance is held invalid for any
27 reason in a court of competent jurisdiction, the invalidity does not affect other
28 provisions or any other application of this Act which can be given effect without the
29 invalid provision or application, and for this purpose the provisions of this Act are
30 declared severable.

31 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 July 1, 2010.