

Chapter 496

(House Bill 465)

AN ACT concerning

Collective Negotiations by Family Child Care Providers

FOR the purpose of establishing collective bargaining rights for certain family child care providers who participate in the Maryland Child Care Subsidy Program; requiring that there be only one appropriate bargaining unit for certain family child care providers; authorizing providers to designate an exclusive representative; requiring that certain procedures relating to the election and certification of an exclusive representative, collective bargaining process, and bargaining agreements be governed by certain provisions of the collective bargaining law for State employees; prohibiting the State Labor Relations Board from conducting a certain election within a certain period; requiring an exclusive representative to represent all family child care providers, whether or not they are members of the provider organization; providing for the scope of collective bargaining for family child care providers; authorizing collective bargaining negotiations pertaining to family child care providers to include, under certain circumstances, negotiations relating to the right of an employee organization to receive service fees from nonmembers; providing that certain family child care providers are not required to pay certain fees and are required to make certain other payments; requiring collective bargaining to include negotiations that result in the establishment of a certain fund to protect certain family child care providers under certain circumstances; specifying that the certification of certain exclusive representatives under this Act does not prevent provider organizations from appearing before or making proposals to certain State agencies at a public meeting or hearing; prohibiting a provider organization from calling or directing a strike; providing that the provisions of this Act may not alter certain roles and rights of parents with regard to family child care providers; declaring the legislative intent of the General Assembly as it relates to the application of a certain exemption to State and federal antitrust laws; providing for the application and construction of this Act; requiring that a certain provider organization certified as the majority representative in a certain election pursuant to a certain Executive Order shall continue as the exclusive representative of family child care providers without the requirement of an additional election and certification; requiring the Early Learning Programs Section of the Maryland State Department of Education to report to certain committees of the General Assembly on or before a certain date each year through a certain year; defining certain terms; declaring that the provisions of this Act are severable; and generally relating to collective bargaining for family child care providers.

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

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

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

Article – Family Law

5–550.

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

5–552.

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

- (1) is related to each child by blood or marriage;
- (2) is a friend of each child’s parents or legal guardian and the care is provided on an occasional basis; or
- (3) has received the care of the child from a child placement agency licensed by the Administration or by a local department.

PART XI. COLLECTIVE NEGOTIATIONS BY FAMILY CHILD CARE PROVIDERS.

5–595.

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

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

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

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

(C) "PROVIDER ORGANIZATION" MEANS AN ORGANIZATION THAT:

(1) INCLUDES FAMILY CHILD CARE PROVIDERS; AND

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

5-595.1.

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

5-595.2.

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

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

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

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

(3) THE STATE LABOR RELATIONS BOARD MAY NOT CONDUCT AN ELECTION FOR AN EXCLUSIVE REPRESENTATIVE IF AN ELECTION OR

CERTIFICATION OF AN EXCLUSIVE REPRESENTATIVE HAS TAKEN PLACE WITHIN THE PRECEDING 2 YEARS.

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

5-595.3.

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

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

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

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

- (1) REIMBURSEMENT RATES;**
- (2) BENEFITS;**
- (3) PAYMENT PROCEDURES;**
- (4) CONTRACT GRIEVANCE PROCEDURES;**
- (5) TRAINING;**
- (6) MEMBER DUES DEDUCTIONS; AND**

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

(E) (1) (I) ~~COLLECTIVE~~ SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, COLLECTIVE BARGAINING MAY INCLUDE NEGOTIATIONS RELATING TO THE RIGHT OF A PROVIDER ORGANIZATION THAT IS THE EXCLUSIVE REPRESENTATIVE TO RECEIVE SERVICE FEES FROM NONMEMBERS.

(II) THE REPRESENTATIVES OF THE STATE MAY NOT REACH AN AGREEMENT CONTAINING A SERVICE FEE PROVISION UNLESS THE REPRESENTATIVES OF THE STATE CONCLUDE THAT THE AGREEMENT AS A WHOLE WILL NOT ADVERSELY IMPACT NONMEMBER PROVIDERS.

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

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

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

(F) (1) COLLECTIVE BARGAINING SHALL INCLUDE NEGOTIATIONS THAT RESULT IN THE ESTABLISHMENT OF A FUND FOR THE PURPOSE OF PROTECTING FAMILY CHILD CARE PROVIDERS AGAINST EXTREME HARDSHIP OR LOSS OF LIVELIHOOD RESULTING FROM LATE STATE PAYMENTS.

(2) THE EXCLUSIVE REPRESENTATIVE SHALL PAY FOR A PORTION OF THE FUND.

(3) THE FUND:

(I) MAY NOT BE A STATE FUND; BUT

(II) SHALL BE ESTABLISHED AND ADMINISTERED IN CONSULTATION WITH THE STATE.

(4) ALL REVENUES, MONEY, AND ASSETS OF THE FUND BELONG SOLELY TO THE FUND AND ARE HELD BY THE FUND IN TRUST FOR FAMILY CHILD CARE PROVIDERS.

(5) THE STATE MAY NOT BORROW, APPROPRIATE, OR DIRECT PAYMENTS FROM THE REVENUES, MONEY, OR ASSETS OF THE FUND FOR ANY PURPOSE.

(6) THE FUND SHALL INCLUDE FUNDS SUFFICIENT TO MEET THE REASONABLY FORESEEABLE NEEDS OF THE FAMILY CHILD CARE PROVIDERS.

~~(F)~~ (G) NOTWITHSTANDING SUBSECTION (D) OF THIS SECTION, THE REPRESENTATIVES OF THE STATE:

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

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

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

5-595.4.

THE CERTIFICATION OF AN EXCLUSIVE REPRESENTATIVE OF FAMILY CHILD CARE PROVIDERS BY THE STATE DEPARTMENT OF EDUCATION DOES NOT PREVENT THE CERTIFIED PROVIDER ORGANIZATION OR ANY OTHER ORGANIZATION OR INDIVIDUAL FROM COMMUNICATING WITH ANY STATE OFFICIAL ON MATTERS OF INTEREST, INCLUDING APPEARING BEFORE OR MAKING PROPOSALS TO THE STATE DEPARTMENT OF EDUCATION AT A PUBLIC MEETING OR HEARING OR AT ANY OTHER FORUM OF THE STATE DEPARTMENT OF EDUCATION.

5-595.5.

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

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

5-595.6.

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

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

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

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

SECTION 4. AND BE IT FURTHER ENACTED, That:

(a) On or before December 31 of each year through 2013, the Early Learning Programs Section of the Maryland State Department of Education shall report to the Senate Finance Committee and the House Economic Matters Committee, in accordance with § 2-1246 of the State Government Article, on the status of the Maryland Child Care Subsidy Program as it relates to family child care providers.

(b) The report shall include:

(1) the number of child care providers and children participating in the Maryland Child Care Subsidy Program;

(2) the number of family child care providers who join the collective bargaining unit established under this Act and the number of children served by each of the providers; ~~and~~

(3) the number of family child care providers who have used the fund required to be established under § 5-595.3(e) of the Family Law Article, as enacted by Section 1 of this Act, and the terms of eligibility for payments from the fund;

(4) recommendations on how to safeguard the funds in the fund required to be established under § 5-595.3(e) of the Family Law Article, as enacted by

Section 1 of this Act, in the event that management of the fund is transferred or the fund is terminated; and

~~(3)~~ (5) an analysis of any positive or negative trends resulting from the implementation of this Act.

SECTION ~~4~~ 5. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2010.

Approved by the Governor, May 20, 2010.