

1 H.97
2 Introduced by Representatives Larson of Burlington, Ancel of Calais,
3 Andrews of Rutland City, Bissonnette of Winooski, Burke of
4 Brattleboro, Buxton of Royalton, Cheney of Norwich, Christie
5 of Hartford, Clarkson of Woodstock, Consejo of Sheldon,
6 Copeland-Hanzas of Bradford, Davis of Washington, Deen of
7 Westminster, Edwards of Brattleboro, Fisher of Lincoln,
8 Font-Russell of Rutland City, Frank of Underhill, French of
9 Randolph, Grad of Moretown, Hebert of Vernon, Hooper of
10 Montpelier, Jerman of Essex, Kitzmiller of Montpelier, Klein of
11 East Montpelier, Lanpher of Vergennes, Lorber of Burlington,
12 Macaig of Williston, Marek of Newfane, Martin of Wolcott,
13 Masland of Thetford, McCullough of Williston, Mitchell of
14 Barnard, Mook of Bennington, Moran of Wardsboro, Morrissey
15 of Bennington, Mrowicki of Putney, Nuovo of Middlebury,
16 Partridge of Windham, Pearson of Burlington, Poirier of Barre
17 City, Ram of Burlington, Shand of Weathersfield, Sharpe of
18 Bristol, South of St. Johnsbury, Spengler of Colchester, Stevens
19 of Waterbury, Stuart of Brattleboro, Taylor of Barre City,
20 Townsend of Randolph, Webb of Shelburne, Weston of
21 Burlington, Wizowaty of Burlington and Young of Albany

1 Referred to Committee on

2 Date:

3 Subject: Human services; early childhood educators

4 Statement of purpose: This bill proposes to improve the quality of child care

5 and early learning programs for Vermont's children and families by

6 establishing a new model of collaboration between the state and child care

7 providers that recognizes the critical importance of early childhood educators

8 in the delivery of high-quality early childhood education.

9 An act relating to early childhood educators

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 ~~Sec. 1. FINDINGS~~

12 ~~The general assembly finds:~~

13 ~~(1) The instruction that young children receive is one of the most critical~~
14 ~~aspects of child care.~~

15 ~~(2) Vermont families currently need affordable high-quality child care.~~

16 ~~(3) The early education a child receives before school age, particularly~~
17 ~~before the age of three, has a profound effect on future mental, psychological,~~
18 ~~and academic success. High-quality early education lays the vital groundwork~~
19 ~~for the success of Vermont children.~~

1 ~~(4) The early education workforce faces an assortment of challenges,~~
2 ~~such as low wages, lack of benefits, and insufficient continuing education~~
3 ~~opportunities. These obstacles prevent the development of a stable early~~
4 ~~education workforce, and as a result the availability of high-quality early child~~
5 ~~care in Vermont continues to suffer.~~

6 (5) Whether center-based or family-based, all early childhood educators
7 should have the opportunity to work collectively with the state to improve the
8 standards in their profession, enhance educational training courses, increase
9 child-care subsidy assistance, and ensure the constant improvement of early
10 learning in Vermont.

11 (6) The matters subject to chapter 36 of Title 33 are within the purview
12 of the state and within the community of interest of all child-care providers
13 participating in or eligible to participate in the subsidy system.

14 (7) Child-care providers do not forfeit their rights under the National
15 Labor Relations Act (29 U.S.C. § 151, et seq.) by becoming members of an
16 organization that represents them in their dealings with the state.

1 ~~Sec. 2. 33 V.S.A. chapter 36 is added to read:~~

2 CHAPTER 36. THE EXTENSION OF LIMITED COLLECTIVE
3 BARCAINING RIGHTS TO CHILD-CARE PROVIDERS PARTICIPATING
4 IN OR ELIGIBLE TO PARTICIPATE IN THE VERMONT CHILD-CARE
5 FINANCIAL ASSISTANCE PROGRAM

6 § 3601. PURPOSE

7 (a) The general assembly recognizes the right of all child-care providers
8 participating in or eligible to participate in the subsidy system to collectively
9 bargain with the state over matters within the state's purview in order to
10 improve the quality of child care for Vermont families.

11 (b) The general assembly intends to create a new type of collective
12 bargaining for child-care providers whereby they can join together to bargain
13 with the state to improve the quality of child care for Vermont families.
14 Unlike traditional collective bargaining, this new approach will give child-care
15 workers the opportunity to bargain with the state over the state's support for
16 and regulation of child-care services, a matter of common concern to both
17 child-care center directors and workers.

18 (c) Specific terms and conditions of employment at individual child-care
19 centers which are the subject of traditional collective bargaining between
20 employers and employees are outside the limited scope of this act.
21 Accordingly, traditional policy concerns over supervisors and employees being

1 ~~organized into a common bargaining unit are inapplicable. All child care~~
2 providers will be equally able to maintain full membership in the organization
3 that represents them in their efforts to improve the quality of child care in
4 Vermont.

5 § 3602. DEFINITIONS

6 For purposes of this chapter:

7 (1) "Board" means the state labor relations board established in 3 V.S.A.
8 § 921.

9 (2)(A) "Child-care provider" means a person who provides child-care
10 services as defined by subdivision 3511(3) of this title and who receives or is
11 eligible to receive any subsidy payments through a Vermont child-care
12 financial assistance program, including individuals in supervisory and
13 nonsupervisory roles providing care in or employed by:

14 (i) a licensed child-care center;

15 (ii) a licensed child-care home;

16 (iii) a registered child-care home;

17 (iv) a licensed after-school program;

18 (v) a license-exempt child-care provider home; and

19 (vi) any other category of provider eligible to participate in a

20 Vermont child-care financial program.

1 ~~(B) "Child care provider" does not include any person directly~~
2 ~~employed by a public school district.~~

3 (3) "Collective bargaining" or "bargaining collectively" means the
4 process by which the state and the exclusive representative of child-care
5 providers negotiate terms or conditions with the intent to arrive at an
6 agreement which, when reached, shall be legally binding on all parties.

7 (4) "Exclusive representative" means a labor organization that has been
8 elected or recognized and certified under this chapter and has the right under
9 section 3607 of this title to represent child-care providers in an appropriate
10 bargaining unit for the purpose of collective bargaining.

11 (5) "Subsidy payment" means any payment made by the state to assist in
12 the provision of child care through the state's child-care financial assistance
13 programs.

14 § 3603. ESTABLISHMENT OF LIMITED COLLECTIVE BARGAINING

15 (a) Child-care providers shall be considered state employees and the state
16 shall be considered the employer solely for the purpose of collective
17 bargaining under this chapter. The state shall not assume vicarious tort
18 liability for any action taken by a child-care provider.

19 (b) The state, through the governor's designee, shall meet with the
20 exclusive representative for the purposes of entering into a written agreement
21 that shall legally bind the state and the exclusive representative.

1 § 3604. SCOPE OF BARGAINING

2 The scope of collective bargaining under this chapter includes:

3 (1) Child-care subsidy rates and reimbursement practices, including rate
4 variations reflecting different provider classifications and quality incentives.

5 (2) Health care, disability, retirement, and related benefits.

6 (3) Professional development and training, including financial assistance
7 to meet training requirements and enhancement of recruitment and retention of
8 qualified child-care providers.

9 (4) Child-to-staff ratios.

10 (5) Licensing and other fees.

11 (6) Monitoring and evaluation.

12 (7) Grievance procedures.

13 (8) Representation fees and fair share representation fees.

14 (9) Any other matters relating to the role of the state and its contractors
15 in regulating, subsidizing, and enhancing the quality of child care within the
16 state.

17 § 3605. BARGAINING UNIT

18 (a) Any of the following units, either in combination or separately, shall be
19 considered an appropriate bargaining unit for the purposes of collective
20 bargaining under this chapter:

1 ~~(1) A statewide unit encompassing all child-care providers as defined in~~
2 ~~section 3602 of this chapter.~~

3 ~~(2) A unit composed of registered home child-care providers.~~

4 ~~(3) A unit composed of licensed home child-care providers.~~

5 ~~(4) A unit composed of supervisors and nonsupervisory employees of~~
6 ~~licensed child-care centers.~~

7 ~~(5) A unit composed of license-exempt child-care providers.~~

8 ~~(b) Child-care providers may elect an exclusive representative for the~~
9 ~~purpose of collective bargaining pursuant to the procedures set forth in section~~
10 ~~3607 of this chapter.~~

11 ~~(c) The exclusive representative of the child-care providers shall represent~~
12 ~~all child-care providers in the bargaining unit without regard to union~~
13 ~~membership.~~

14 § 3606. RIGHTS OF CHILD-CARE PROVIDERS

15 Child-care providers shall have the right to:

16 (1) Organize, form, join, or assist a union or labor organization for the
17 purposes of collective bargaining without interference, restraint, or coercion.

18 (2) Bargain collectively through their chosen representatives.

19 (3) Engage in concerted activities for the purpose of supporting or
20 engaging in collective bargaining.

21 (4) Pursue grievances as provided in this chapter.

~~(5) Refrain from any or all activities related to collective bargaining.~~

§ 3607. PETITIONS FOR ELECTION; FILING; INVESTIGATIONS;

HEARINGS; DETERMINATIONS

(a) A petition may be filed with the board in accordance with regulations prescribed by the board:

(1) By a child-care provider or a group of child-care providers or by any individual or labor union acting on their behalf alleging that not less than 30 percent of the child-care providers:

(A) Wish to be represented for collective bargaining and that the state has declined to recognize their exclusive representative; or

(B) Believe that the exclusive representative recognized by the state no longer represents a majority of child-care providers.

(2) By the state alleging that one or more individuals or organizations has presented the state with a claim for recognition as the exclusive representative.

(b) The board shall investigate the petition, and, if it has reasonable cause to believe that a question of representation exists, shall provide for an appropriate hearing before the board itself, a member thereof, or its agents appointed for that purpose upon due notice. Written notice of the hearing shall be mailed by certified mail to the parties named in the petition not less than seven days before the hearing. If the board finds upon the record of the

1 ~~hearing that a question of representation exists, it shall conduct an election by~~
2 secret ballot and certify to the parties the results thereof.

3 (c) In determining whether a question of representation exists, the board
4 shall apply the same regulations and rules of decision regardless of the identity
5 of the persons filing the petition or the kind of relief sought.

6 (d) Nothing in this chapter prohibits the waiving of hearings by stipulation
7 for a consent election in conformity with the regulations and rules of decision
8 of the board.

9 (e) For the purposes of this chapter, representatives of child-care providers
10 voluntarily recognized by the state through the voluntary negotiation of an
11 agreement with the unit shall be the recognized representative of the child-care
12 providers until such time as any other representative is recognized under the
13 provisions of this section or until the representatives' authority is rescinded
14 under this chapter.

15 § 3608. ELECTION; RUNOFF ELECTIONS

16 (a) If a question of representation exists, the board shall conduct a secret
17 ballot election to determine the exclusive representative of child-care
18 providers. The labor organization receiving a majority of votes cast shall be
19 certified by the state as the exclusive representative of child-care providers. In
20 any election in which none of the choices on the ballot receive a majority, a
21 runoff shall be conducted by the board. The ballot shall provide for a selection

1 ~~between the two choices receiving the largest and second largest number of~~
2 ~~valid votes cast in the election.~~

3 ~~(b) An election shall not be directed during the term of a negotiated~~
4 ~~agreement or if in the preceding 12 months a valid election has been held.~~

5 § 3609. POWERS OF REPRESENTATIVES

6 The exclusive representative certified by the state shall be the exclusive
7 representative of all the child-care providers in the unit for the purposes of
8 collective bargaining. However, any individual child-care provider or group of
9 providers shall have the right at any time to present grievances to the state and
10 have such grievances adjusted without the intervention of the exclusive
11 representative, as long as the adjustment is not inconsistent with the terms of a
12 collective bargaining agreement then in effect and provided that the exclusive
13 representative has been given an opportunity to be present at such an
14 adjustment.

15 § 3610. REPRESENTATION AND FAIR SHARE REPRESENTATION

16 FEES

17 (a) Upon the certification or recognition of the bargaining unit's
18 representative and ratification of a collective bargaining agreement, the state
19 shall deduct the negotiated representative and fair share representation fees as
20 agreed to in the collective bargaining agreement. These funds shall be
21 transferred to the treasurer of the exclusive representative.

1 ~~(b) Child care providers, acting through the exclusive representative, shall~~
2 ~~not charge a fair share representation fee without establishing and maintaining~~
3 ~~a procedure to provide nonmembers with:~~

4 ~~(1) an audited financial statement that identifies the major categories of~~
5 ~~expenses and divides them into chargeable and nonchargeable expenses; and~~

6 ~~(2) an opportunity to object to the amount of the agency fee sought.~~

7 ~~Any amount objected to and reasonably in dispute shall be placed in escrow.~~

8 ~~§ 3611. GRIEVANCE PROCEDURES; BINDING ARBITRATION;~~

9 ~~MEDIATION; FACT-FINDING; LAST BEST OFFER~~

10 ~~The state and the exclusive representative shall negotiate a procedure for~~
11 ~~resolving complaints and grievances. A collective bargaining agreement may~~
12 ~~provide for binding arbitration as the final step of a grievance procedure.~~

13 ~~Mediation, fact-finding, and last best offer procedures shall be conducted~~
14 ~~according to the procedures of 21 V.S.A. §§ 1731 and 1732.~~

15 ~~§ 3612. DUTIES~~

16 ~~(a) The state and all child-care providers and their representatives shall~~
17 ~~make every reasonable effort to make and maintain agreements concerning~~
18 ~~matters allowed under this chapter and to settle all disputes arising from the~~
19 ~~agreements. All disputes between the state and child-care providers shall,~~
20 ~~upon request of either party, be considered within 15 days of the request or at~~
21 ~~such times as may be mutually agreed to and if possible settled with all~~

1 ~~expedition in conference between representatives designated and authorized by~~
2 the state and the interested child-care providers. This obligation does not
3 compel either party to make any agreements or concessions.

4 (b) Every licensed home child-care provider, registered home child-care
5 provider, licensed child-care center, and license-exempt child-care provider
6 that receives or is eligible to receive child-care subsidies shall submit to the
7 state a list of the names, home addresses, telephone numbers, workplace
8 names, and job titles of their current directors and employees within 14 days of
9 the effective date of this act and shall update the information quarterly,
10 tracking the dates of the state fiscal year.

11 (c) The state shall provide within seven days of a request by a labor
12 organization all available information submitted under subsection (b) of this
13 section.

14 § 3613. PROHIBITED CONDUCT

15 (a) The state shall not:

16 (1) Interfere with, restrain, or coerce child-care providers in the exercise
17 of their rights under this chapter or by any law, rule, or regulation.

18 (2) Discriminate against a child-care provider because of the provider's
19 affiliation with a labor organization or because a provider has filed charges or
20 complaint or given testimony under this chapter.

1 ~~(3) Take negative action against a child-care provider because the~~
2 ~~provider has taken actions demonstrating the provider's support for a labor~~
3 ~~organization, including signing a petition, grievance, or affidavit.~~

4 ~~(4) Refuse to bargain collectively in good faith with the exclusive~~
5 ~~representative or fail to abide by any agreement reached.~~

6 ~~(5) Discriminate against a child-care provider based on race, color,~~
7 ~~creed, religion, age, disability, gender, sexual orientation, gender identity, or~~
8 ~~national origin.~~

9 ~~(6) Request or require a child-care provider to take an HIV-related blood~~
10 ~~test or discriminate against a child-care provider based on his or her HIV~~
11 ~~status.~~

12 ~~(b) A child-care provider or the exclusive representative shall not:~~

13 ~~(1) Restrain or coerce child-care providers in the exercise of the rights~~
14 ~~guaranteed them by law. However, a labor organization may prescribe its own~~
15 ~~rules with respect to the acquisition or retention of membership, provided such~~
16 ~~rules are not discriminatory.~~

17 ~~(2) Cause or attempt to cause the state to discriminate against a~~
18 ~~child-care provider in violation of this section.~~

19 ~~(3) Discriminate against a child-care provider with respect to whom~~
20 ~~membership in the organization has been denied or terminated on some ground~~

1 ~~other than a failure to tender periodic dues and initiation fees required as a~~
2 condition of acquiring or maintaining membership.

3 (4) Refuse to bargain in good faith with the state.

4 § 3614. GENERAL PROVISIONS

5 (a) Cost items agreed upon in collective bargaining between the parties
6 shall be submitted for inclusion in the governor's budget within 10 days after
7 the date on which an agreement is executed by the parties. If the general
8 assembly rejects any of the cost items submitted, all the cost items shall be
9 returned to the parties to the agreement for further bargaining. If the general
10 assembly appropriates sufficient funds, the agreement shall become effective at
11 the beginning of the next fiscal year. If the general assembly appropriates a
12 different amount of funds, the terms of the agreement affected by that
13 appropriation shall be renegotiated based on the amount of funds actually
14 appropriated and the new agreement shall become effective at the beginning of
15 the next fiscal year.

16 (b) The activities of child-care providers and their exclusive representatives
17 authorized by this chapter shall be afforded state-action immunity under
18 applicable state and federal anti-trust laws.

19 § 3615. RIGHTS UNALTERED

20 This chapter does not alter or infringe upon the rights of:

1 ~~(1) A parent or legal guardian to select or discontinue child-care services~~
2 ~~of any child-care provider.~~

3 ~~(2) A parent or legal guardian to negotiate child-care services not~~
4 ~~regulated by the state.~~

5 ~~(3) A child-care center to choose, direct, or terminate the services of any~~
6 ~~child-care worker in its center.~~

7 ~~(4) The general assembly and the judiciary to make modifications to the~~
8 ~~delivery of state services through child-care subsidy programs, including~~
9 ~~eligibility standards for families, legal guardians, and child-care providers~~
10 ~~participating in child-care subsidy programs and the nature of the services~~
11 ~~provided.~~

12 ~~(5) Nothing in this chapter shall affect the rights and obligations of~~
13 ~~private sector employer and employees under the National Labor Relations Act~~
14 ~~(29 U.S.C. § 151 et seq.). The terms and conditions of employment at~~
15 ~~individual child-care centers, which are the subject of traditional collective~~
16 ~~bargaining between employers and employees and are governed by federal~~
17 ~~law, fall outside the limited scope of bargaining as it is defined in this chapter.~~

18 § 3616. SEVERABILITY

19 If any of the provisions of this act or its application is held invalid as it
20 relates to state law or federal funding requirements, the invalidity shall not
21 affect other provisions of this act which can be given effect without the invalid

1 ~~provision or application, and to this end, the provisions of this act are~~
2 ~~severable.~~
3

Sec. 1. FINDINGS

The general assembly finds:

(1) Quality early childhood education and care is essential to the quality of life in Vermont and is a vital contributor to the healthy development of children. Numerous studies have demonstrated that high-quality early childhood education and care during the first five years of a child's life is crucial to brain development and increases the likelihood of a child's success in school and later in life.

(2) The early childhood education and care a child receives before school age has a profound effect on future mental, psychological, and academic success. High-quality early childhood education and care lay the vital groundwork for the success of Vermont children.

(3) The state is committed to ensuring that all Vermont children are ready to succeed in school; that Vermont families have access to high quality early childhood education and care and after school services; and that the early childhood and after school supports and services administered by the department for children and families are child-focused, family friendly, and fair to all child care providers.

(4) Home-based child-care providers should have the opportunity to work collectively with the state to improve the standards in their profession, enhance educational training courses, increase child-care subsidy assistance, and ensure the constant improvement of early childhood education and care for the benefit of Vermont children.

Sec. 2. 33 V.S.A. chapter 36 is added to read:

CHAPTER 36. EXTENSION OF LIMITED COLLECTIVE BARGAINING RIGHTS TO CHILD-CARE PROVIDERS

§ 3601. DEFINITIONS

For purposes of this chapter:

(1) "Board" means the state labor relations board established in 3 V.S.A. § 921.

(2) "Child-care provider" shall have the same meaning as in subdivision 3511(2) of this title and includes people who provide child-care

services as defined by subdivisions 3511(3) and 4902(2)–(3) of this title, except that it shall not include licensed child-care centers. For purposes of this chapter, “child-care provider” means the owner or operator of a licensed family-care home or a registered family day-care home, or a legally exempt child-care provider.

(3) “Collective bargaining” or “bargaining collectively” means the process by which the state and the exclusive representative of the child-care providers negotiate terms or conditions as defined in subsection 3603(b) of this title with the intent to arrive at an agreement which, when reached, shall be legally binding on all parties.

(4) “Exclusive representative” means a labor organization that has been elected or recognized and certified under this chapter and has the right to represent child-care providers in an appropriate bargaining unit for the purpose of collective bargaining.

(5) “Grievance” means a child-care provider’s or the exclusive representative’s formal written complaint regarding the improper application of one or more terms of the collective bargaining agreement, which has not been resolved to a satisfactory result through informal discussion with the state.

(6) “Legally exempt child-care provider” means a person who has obtained an Exempt Child Care Provider Certificate, has been approved by the department to provide legally exempt child care, and who is reimbursed for that care through the agency of human services.

(7) “Licensed family child-care home” means a home licensed by the department for children and families that provides child-care services for up to 12 children in the residence of the licensee, and the licensee is one of the primary caregivers.

(8) “Registered family day care home” means a home registered with the department for children and families that provides child-care services for up to six children at any one time, and which in addition to the six children, may provide care for up to four school-age children for not more than four hours per day.

(9) “Subsidy payment” means any payment made by the state to assist in the provision of child-care services through the state’s child-care financial assistance programs.

§ 3602. RIGHTS OF CHILD-CARE PROVIDERS

(a) Child-care providers shall have the right to:

(1) Organize, form, join, or assist a union or labor organization for the purposes of collective bargaining without interference, restraint, or coercion.

(2) Bargain collectively through their chosen representatives.

(3) Engage in concerted activities for the purpose of supporting or engaging in collective bargaining or exercising their rights under this chapter.

(4) Pursue grievances as provided in this chapter.

(5) Refrain from any or all such activities.

(b) Child-care providers shall not strike or curtail their services in recognition of a picket line of any employee or labor organization, unless otherwise permitted to do so under federal or state law, including the National Labor Relations Act (29 U.S.C. § 151 et seq.) or the Vermont state labor relations act (21 V.S.A. § 1501 et seq.).

§ 3603. ESTABLISHMENT OF LIMITED COLLECTIVE BARGAINING;

SCOPE OF BARGAINING

(a) Child-care providers, through their exclusive representative, shall have the right to bargain collectively with the state, through the governor's designee, under this chapter.

(b) The scope of collective bargaining for child-care providers under this section is limited to the following:

(1) child-care subsidy payments, including rates and reimbursement practices and rate variations reflecting different provider classifications and quality incentives;

(2) professional development and training, including financial assistance for child-care providers and their staff; and

(3) procedures for resolving grievances against the state.

(c) The state, acting through the governor's designee, shall meet with the exclusive representative for the purpose of entering into a written agreement that promotes access to high-quality early childhood education and care and after-school services and care for Vermont's children and families and ensures policies and practices that are child-focused, family friendly, and fair to all child-care providers. The negotiated agreement shall legally bind the state and the exclusive representative subject to subsection 3612(a) or subdivision 3613(a)(2) of this title.

§ 3604. PETITIONS FOR ELECTION; FILING; INVESTIGATIONS;

HEARINGS; DETERMINATION

(a) A petition may be filed with the board in accordance with regulations prescribed by the board:

(1) By a child-care provider or a group of child-care providers or by any individual or labor union acting on their behalf alleging:

(A) that not less than 30 percent of the child-care providers in the petitioned bargaining unit wish to be represented for collective bargaining, and that the state has declined to recognize their exclusive representative; or

(B) that the labor organization which has been certified or is being recognized by the state as the exclusive representative no longer represents a majority of child-care providers.

(2) By the state alleging that one or more individuals or labor organizations have presented the state with a claim for recognition as the exclusive representative.

(b) The board shall investigate the petition and, if it has reasonable cause to believe that a question of unit determination or representation exists, conduct an appropriate hearing. Written notice of the hearing shall be mailed by certified mail to the parties named in the petition not less than seven days before the hearing. If the board finds upon the record of the hearing that a question of representation exists, it shall conduct an election by secret ballot and certify to the parties the election's results.

(c) In determining whether a question of representation exists, the board shall apply the same regulations and rules of decision regardless of the identity of the persons filing the petition or the kind of relief sought.

(d) Nothing in this chapter prohibits the waiving of hearings by stipulation for a consent election in conformity with the regulations and rules of the board.

(e) For the purposes of this chapter, the state may voluntarily recognize the exclusive representative of a unit of child-care providers, if the labor organization demonstrates that it has the support of a majority of the child-care providers in the unit it seeks to represent, no rival employee organization seeks to represent the child-care providers, and the bargaining unit is appropriate under section 3606 of this chapter.

§ 3605. ELECTION; RUNOFF ELECTIONS

(a) In determining the representation of child-care providers in a collective bargaining unit, the board shall conduct a secret ballot of the providers and certify the results to the interested parties and to the state. The original ballot shall be prepared so as to permit a vote against representation by anyone named on the ballot. No exclusive representative shall be certified or remain

certified with less than a majority of all votes cast. The labor organization receiving a majority of votes cast shall be certified by the board as the exclusive representative of the unit of child-care providers.

(b) A runoff election shall be conducted by the board when an election, in which the ballot provides for no less than three choices, results in no choice receiving a majority of valid votes cast. The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast in the original election.

§ 3606. BARGAINING UNITS

(a) The board shall decide the unit appropriate for the purpose of collective bargaining in each case and those child care providers to be included in the units in order to promote the purposes of this statute. The board may consider as an appropriate bargaining unit or units, but is not restricted in its discretion, any of the following units:

(1) a unit composed of registered family day-care home providers;

(2) a unit composed of licensed family child-care home providers;

(3) a unit composed of legally exempt child-care providers;

(4) a unit composed of child-care providers in subdivisions (1)–(3) of this subsection;

(5) a unit composed of a combination of child-care providers in subdivisions (1)–(3) of this subsection.

(b) Child-care providers may elect an exclusive representative for the purpose of collective bargaining by using the election procedures set forth in section 3605 of this chapter.

(c) The exclusive representative of child-care providers is required to represent all of the child-care providers in the unit without regard to membership in the union.

§ 3607. MEMBER DUES

Member dues shall be sent to the exclusive representative by each individual dues-paying member.

§ 3608. POWERS OF REPRESENTATIVES

The exclusive representative certified by the board shall be the exclusive representative of all the child-care providers in the unit for the purposes of collective bargaining. However, any individual child-care provider or group of providers shall have the right at any time to present grievances to the board and have such grievances adjusted without the intervention of the exclusive

representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect, and provided that the exclusive representative has been given an opportunity to be present at such an adjustment.

§ 3609. DUTY TO BARGAIN; PROHIBITED CONDUCT

(a) The state and all child-care providers and their representatives shall make every reasonable effort to make and maintain agreements concerning matters allowed under this chapter and to settle all disputes, whether arising out of the application of those agreements or disputes concerning the agreements. All such disputes between the state and child-care providers shall, upon request of either party, be considered within 15 days of the request or at such times as may be mutually agreed to and if possible settled with all expedition in conference between representatives designated and authorized to confer by the state or the interested child-care providers. This obligation does not compel either party to make any agreements or concessions.

(b) The state shall provide within seven days of a request by a labor organization the names, home addresses, telephone numbers, and workplace names of all registered family day-care homes, licensed family-care homes, and legally exempt child-care providers.

(c) The state shall not:

(1) Interfere with, restrain, or coerce child-care providers in the exercise of their rights under this chapter or by any law, rule, or regulation.

(2) Discriminate against a child-care provider because of the provider's affiliation with a labor organization or because a provider has filed charges or complaints or given testimony under this chapter.

(3) Take negative action against a child-care provider because the provider has taken actions demonstrating the provider's support for a labor organization, including signing a petition, grievance, or affidavit.

(4) Refuse to bargain collectively in good faith with the exclusive representative or fail to abide by any agreement reached.

(5) Discriminate against a child-care provider because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, or age, or against a qualified disabled individual.

(6) Request or require a child-care provider to take an HIV-related blood test or discriminate against a child-care provider based on his or her HIV status.

(d) The exclusive representative or its agents shall not:

(1) Restrain or coerce child-care providers in the exercise of the rights guaranteed them by law, rule, or regulation. However, a labor organization may prescribe its own rules with respect to the acquisition or retention of membership, provided such rules are not discriminatory.

(2) Cause or attempt to cause the state to discriminate against a child-care provider in violation of this chapter or to discriminate against a child-care provider with respect to whom membership in the organization has been denied or terminated.

(3) Refuse to bargain collectively in good faith with the state.

(e) Complaints related to this section shall be made and resolved in accordance with the procedures set forth in 21 V.S.A. §§ 1622 and 1623.

§ 3610. MEDIATION; FACT-FINDING; LAST BEST OFFER

(a) If, after a reasonable period of negotiation, the representative of a collective bargaining unit and the state of Vermont reach an impasse, the board, upon petition of either party, may authorize the parties to submit their differences to mediation. Within five days after receipt of the petition, the board shall appoint a mediator who shall communicate with the parties and attempt to mediate an amicable settlement.

(b) If, after a minimum of 15 days after the appointment of a mediator, the impasse is not resolved, the mediator shall certify to the board that the impasse continues.

(c) Upon the request of either party, the board shall appoint a fact finder who has been mutually agreed upon by the parties. If the parties fail to agree on a fact finder within five days, the board shall appoint a fact finder. A member of the board or any individual who has actively participated in mediation proceedings for which fact-finding has been called shall not be eligible to serve as a fact finder under this section, unless agreed upon by the parties.

(d) The fact finder shall conduct hearings pursuant to rules of the board. Upon request of either party or of the fact finder, the board may issue subpoenas of persons and documents for the hearings, and the fact finder may require that testimony be given under oath and may administer oaths.

(e) Nothing in this section shall prohibit the fact finder from mediating the dispute at any time prior to issuing recommendations.

(f) The fact finder shall consider factors related to the scope of bargaining contained in this chapter in making a recommendation.

(g) Upon completion of the hearings as provided in subsection (d) of this section, the fact finder shall file written findings and recommendations with both parties.

(h) The costs of witnesses and other expenses incurred by either party in fact-finding proceedings shall be paid directly by the parties incurring them, and the costs and expenses of the fact finder shall be paid equally by the parties. The fact finder shall be paid a rate mutually agreed upon by the parties for each day or any part of a day while performing fact-finding duties and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of his or her duties. A statement of fact-finding per diem and expenses shall be certified by the fact finder and submitted to the board for approval. The board shall provide a copy of approved fact-finding costs to each party with its order apportioning one-half of the total to each party for payment. Each party shall pay its half of the total within 15 days after receipt of the order. Approval by the board of fact-finding and the fact finder's costs and expenses and its order for payment shall be final as to the parties.

(i) If the dispute remains unresolved 15 days after transmittal of findings and recommendations, each party shall submit to the board its last best offer on all disputed issues as a single package. Each party's last best offer shall be certified to the board by the fact finder. The board may hold hearings and consider the recommendations of the fact finder. Within 30 days of the certifications, the board shall select between the last best offers of the parties, considered in their entirety without amendment, and shall determine its cost. The board shall not issue a recommendation under this subsection that is in conflict with any law or rule or that relates to an issue that is not subject to bargaining. The board shall recommend its choice to the general assembly as the agreement which shall become effective subject to appropriations by the general assembly pursuant to subsection 3612(a) of this title.

§ 3611. GRIEVANCE PROCEDURES; BINDING ARBITRATION

The state and the exclusive representative shall negotiate a procedure for resolving complaints and grievances. A collective bargaining agreement may provide for binding arbitration as the final step of a grievance procedure.

§ 3612. COST ITEMS TO BE SUBMITTED TO GENERAL ASSEMBLY; ANTITRUST EXEMPTION

(a) Agreements reached between the parties shall be submitted to the governor who shall request sufficient funds from the general assembly to implement the agreement. If the general assembly rejects any of the cost items submitted to it, all the cost items shall be returned to the parties to the agreement for further bargaining. If the general assembly appropriates sufficient funds, the agreement shall become effective at the beginning of the

next fiscal year. If the general assembly appropriates a different amount of funds, the terms of the agreement affected by that appropriation shall be renegotiated based on the amount of funds actually appropriated, and the new agreement shall become effective at the beginning of the next fiscal year.

(b) The activities of child-care providers and their exclusive representatives that are necessary for the exercise of their rights under this chapter shall be afforded state-action immunity under applicable state and federal antitrust laws. The state intends that the "State Action" exemption to federal antitrust laws be available only to the state, to child-care providers, and to their exclusive representative in connection with these necessary activities. Such exempt activities shall be actively supervised by the state.

§ 3613. RIGHTS UNALTERED

(a) This chapter does not alter or infringe upon the rights of:

(1) A parent or legal guardian to select, discontinue, or negotiate terms of child-care services.

(2) The general assembly and the judiciary to make modifications to the delivery of state services through child-care subsidy programs, including eligibility standards for families, legal guardians, and child-care providers participating in child-care subsidy programs and the nature of the services provided.

(b) Nothing in this chapter shall affect the rights and obligations of private sector employers and employees under the National Labor Relations Act (29 U.S.C. § 151 et seq.) or the Vermont state labor relations act (21 V.S.A. § 1501 et seq.).

(c) Child-care providers shall not be eligible for participation in the Vermont state employees' retirement system or in the health insurance plans available to executive branch employees.

(d) Child-care providers bargaining under this section do not become employees of the state by virtue of such bargaining.

§ 3614. SEVERABILITY

If any of the provisions of this act or its application is held invalid as it relates to state law, federal law, or federal funding requirements, the invalidity shall not affect other provisions of this act which can be given effect without the invalid provision or application, and to this end, the provisions of this act are severable.