

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Menard, Joan (SEN)

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 passage of the accompanying bill:

An Act relating to improving quality in early education and care by family child care providers.

PETITION OF:

NAME:

Menard, Joan (SEN)

DISTRICT/ADDRESS:

First Bristol and Plymouth

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATING TO IMPROVING QUALITY IN EARLY EDUCATION AND CARE BY FAMILY CHILD CARE PROVIDERS.

Whereas, The deferred operation for this act would tend to defeat its purpose, which is to establish forthwith a system for improving the quality of family child care services in the commonwealth and to provide collective bargaining rights for providers of such services, 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. Section 1 of Chapter 15D of the General Laws, amended by chapter 215 of the acts
2 of 2008, is hereby further amended by adding the following paragraph: -

3

4 Subject to appropriations and notwithstanding any general or special law to the contrary,
5 it is the intention of the commonwealth to assure quality early education and care for children by
6 family child care providers. It is also the intention of the commonwealth that family child care
7 providers and the commonwealth work jointly to establish a quality early education and care
8 program that serves eligible low income families through providers who have the requisite skills
9 and training.

10 SECTION 2. Said chapter 15D is hereby further amended by adding the following 3 sections:

11 Section 17. As used in section 17 to 19, inclusive, the following terms shall have the
12 following meanings:

13 “Division”, the division of labor relations established by section 90 of chapter 23.

14 “Employee organization”, an employee organization as defined in section 1 of chapter 150E.

15 “Family child care services”, child care services provided for less than 24 hours per day in a
16 private residence, including the residence of the provider or the home of the child, on behalf of
17 low-income and other at risk children, for which payment from the commonwealth is made
18 pursuant to a rate structure for voucher and contracted payments developed by the department.

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

23 Section 18. (a) Family child care providers shall be considered public employees, as
24 defined by and solely for the purposes of, chapter 150E and section 17J of chapter 180. Said
25 chapter 150E shall apply to family child care providers except to the extent that chapter 150E is
26 inconsistent with this section, in which case this section shall control. In addition, family child
27 care providers shall be treated as state employees solely for the purposes of sections 17A and
28 17G of chapter 180. Family child care providers shall not be considered public employees or
29 state employees for any purpose other than those set forth in this paragraph. The
30 commonwealth, acting through the commissioner of administration, shall be the employer, as
31 defined by and solely for the purposes of said chapter 150E and sections 17A, 17G and 17J of
32 said chapter 180 and deductions under said sections 17A, 17G and 17J may be made by any
33 entity authorized by the commonwealth to compensate family child care providers pursuant to a
34 rate structure for voucher and contracted payments developed by the department. Family child
35 care providers shall not be eligible for benefits through the group insurance commission, the
36 state board of retirement or the state employee workers' compensation program.

37 (b) Family child care providers who are employees of the commonwealth under this
38 section are not, for that reason, public employees or employees of the commonwealth for any

39 other purpose. Nothing in this chapter shall alter the obligations of the commonwealth or the
40 parent or legal guardian of the child receiving family child care services to provide their share of
41 social security, federal and state unemployment taxes, Medicare and workers' compensation
42 insurance under the Federal Insurance Contributions Act, federal and state unemployment law,
43 the Massachusetts Workers' Compensation Act, or vicarious liability in tort.

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

47 (d) The only appropriate bargaining unit for family child care providers shall consist of
48 all family child care providers in the commonwealth who are on the most current list provided by
49 the commissioner of early education and care, regardless of the number of hours of care such
50 family child care providers have worked.

51 (e) An employee organization seeking to represent family child care providers shall file
52 with the division either a representation petition accompanied by a showing of interest of 30 per
53 cent or a petition for certification by written majority authorization

54 (f) The mandatory subjects as to which the commonwealth and an employee
55 organization certified by the division as the bargaining representative of family child care
56 providers shall bargain shall include training for family child care providers, monitoring and
57 evaluation criteria, improvement of recruitment and retention of qualified providers, the quality
58 of early education provided, and payment procedures. Nothing in this legislation shall inhibit the
59 parties from discussing other permissive subjects of bargaining, including without limitation the
60 rate structure for family child care providers.

61 (g) In addition to the mandatory subjects set forth above in clause (f), the commonwealth
62 and an employee organization certified by the division as the bargaining representative of family
63 child care providers shall bargain about the rate structure for voucher and contracted payments
64 for family child care services on behalf of low-income and other at risk children.

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

67 Section 19. Collective bargaining and related activity by providers, as authorized
68 pursuant to this chapter, shall qualify for the state action exemption to the federal anti-trust laws.

69 SECTION 3. Clause (g) of section 18 of chapter 15D, as set forth in section 2 of this act, shall
70 take effect on January 1, 2011.

71

72