

# SENATE BILL 284

P4

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CF HB 465

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By: **The President (By Request – Administration) and Senators Garagiola, Harrington, Jones, King, Lenett, Madaleno, Muse, Pinsky, Raskin, and Rosapepe**

Introduced and read first time: January 22, 2010

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 26, 2010

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## CHAPTER \_\_\_\_\_

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;~~ requiring collective bargaining to include negotiations that result in  
20 the establishment of a certain fund to protect certain family child care providers  
21 under certain circumstances; specifying that the certification of certain  
22 exclusive representatives under this Act does not prevent provider  
23 organizations from appearing before or making proposals to certain State

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 agencies at a public meeting or hearing; prohibiting a provider organization  
 2 from calling or directing a strike; providing that the provisions of this Act may  
 3 not alter certain roles and rights of parents with regard to family child care  
 4 providers; declaring the legislative intent of the General Assembly as it relates  
 5 to the application of a certain exemption to State and federal antitrust laws;  
 6 providing for the application and construction of this Act; requiring that a  
 7 certain provider organization certified as the majority representative in a  
 8 certain election pursuant to a certain Executive Order shall continue as the  
 9 exclusive representative of family child care providers without the requirement  
 10 of an additional election and certification; requiring the Early Learning  
 11 Programs Section of the Maryland State Department of Education to report to  
 12 certain committees of the General Assembly on or before a certain date each  
 13 year through a certain year; defining certain terms; declaring that the  
 14 provisions of this Act are severable; and generally relating to collective  
 15 bargaining for family child care providers.

16 BY repealing and reenacting, without amendments,  
 17 Article – Family Law  
 18 Section 5–550(d) and 5–552(b)  
 19 Annotated Code of Maryland  
 20 (2006 Replacement Volume and 2009 Supplement)

21 BY adding to  
 22 Article – Family Law  
 23 Section 5–595 through 5–595.6 to be under the new part “Part XI. Collective  
 24 Negotiations by Family Child Care Providers”  
 25 Annotated Code of Maryland  
 26 (2006 Replacement Volume and 2009 Supplement)

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

29 **Article – Family Law**

30 5–550.

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

33 5–552.

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

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

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

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

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

6       **5-595.**

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

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

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

13           **(2)    EXEMPT FROM THE REGISTRATION REQUIREMENTS UNDER §**  
14 **5-552(B) OF THIS SUBTITLE.**

15           **(C)    “PROVIDER ORGANIZATION” MEANS AN ORGANIZATION THAT:**

16           **(1)    INCLUDES FAMILY CHILD CARE PROVIDERS; AND**

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

19       **5-595.1.**

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

27       **5-595.2.**

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

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

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

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

12           **(3) THE STATE LABOR RELATIONS BOARD MAY NOT CONDUCT**  
13 **AN ELECTION FOR AN EXCLUSIVE REPRESENTATIVE IF AN ELECTION OR**  
14 **CERTIFICATION OF AN EXCLUSIVE REPRESENTATIVE HAS TAKEN PLACE WITHIN**  
15 **THE PRECEDING 2 YEARS.**

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

21 **5-595.3.**

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

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

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

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

35           **(1) REIMBURSEMENT RATES;**

- 1           (2)    BENEFITS;
- 2           (3)    PAYMENT PROCEDURES;
- 3           (4)    CONTRACT GRIEVANCE PROCEDURES;
- 4           (5)    TRAINING;
- 5           (6)    MEMBER DUES DEDUCTIONS; AND
- 6           (7)    OTHER TERMS AND CONDITIONS OF PARTICIPATION BY
- 7 FAMILY CHILD CARE PROVIDERS IN THE MARYLAND CHILD CARE SUBSIDY
- 8 PROGRAM.

9           ~~(E) (1) COLLECTIVE BARGAINING MAY INCLUDE NEGOTIATIONS~~

10 ~~RELATING TO THE RIGHT OF A PROVIDER ORGANIZATION THAT IS THE~~

11 ~~EXCLUSIVE REPRESENTATIVE TO RECEIVE SERVICE FEES FROM NONMEMBERS.~~

12           ~~(2) A FAMILY CHILD CARE PROVIDER WHOSE RELIGIOUS BELIEFS~~

13 ~~ARE OPPOSED TO JOINING OR FINANCIALLY SUPPORTING ANY COLLECTIVE~~

14 ~~BARGAINING ORGANIZATION IS:~~

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

16           ~~(H) REQUIRED TO PAY AN AMOUNT OF MONEY AS~~

17 ~~DETERMINED IN COLLECTIVE BARGAINING NEGOTIATIONS, NOT TO EXCEED ANY~~

18 ~~SERVICE FEE NEGOTIATED UNDER PARAGRAPH (1) OF THIS SUBSECTION, TO~~

19 ~~ANY CHARITABLE ORGANIZATION EXEMPT FROM TAXATION UNDER § 501(C)(3)~~

20 ~~OF THE INTERNAL REVENUE CODE AND TO FURNISH TO THE STATE~~

21 ~~DEPARTMENT OF EDUCATION AND THE EXCLUSIVE REPRESENTATIVE WRITTEN~~

22 ~~PROOF OF THE PAYMENT.~~

23           (E) (1) COLLECTIVE BARGAINING SHALL INCLUDE NEGOTIATIONS

24 THAT RESULT IN THE ESTABLISHMENT OF A FUND FOR THE PURPOSE OF

25 PROTECTING FAMILY CHILD CARE PROVIDERS AGAINST EXTREME HARDSHIP OR

26 LOSS OF LIVELIHOOD RESULTING FROM LATE STATE PAYMENTS.

27           (2) THE EXCLUSIVE REPRESENTATIVE SHALL PAY FOR A PORTION

28 OF THE FUND.

29           (3) THE FUND:

30           (I) MAY NOT BE A STATE FUND; BUT

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

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

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

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

11                    (F) NOTWITHSTANDING SUBSECTION (D) OF THIS SECTION, THE  
12 REPRESENTATIVES OF THE STATE:

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

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

19                    (G) THE PARTIES SHALL REDUCE THEIR AGREEMENT TO A  
20 MEMORANDUM OF UNDERSTANDING THAT COMPLIES WITH THE PROVISIONS OF  
21 § 3-601 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.

22 5-595.4.

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

31 5-595.5.

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

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

5 **5-595.6.**

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

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

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

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

23           SECTION 4. AND BE IT FURTHER ENACTED, That:

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

29           (b) The report shall include:

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

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

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

4           (4) recommendations on how to safeguard the funds in the fund  
5 required to be established under § 5-595.3(e) of the Family Law Article, as enacted by  
6 Section 1 of this Act, in the event that management of the fund is transferred or the  
7 fund is terminated; and

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

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.