

10764

I N A S S E M B L Y

April 20, 2010

Introduced by M. of A. JOHN -- read once and referred to the Committee
on Labor

AN ACT to amend the labor law, in relation to the representation of
child care providers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The labor law is amended by adding a new article 19-C to
2 read as follows:

3 ARTICLE 19-C
4 REPRESENTATION OF CHILD CARE PROVIDERS

5 SECTION 695-A. STATEMENT OF PUBLIC POLICY; FINDINGS.
6 695-B. DEFINITIONS.
7 695-C. REPRESENTATION UNITS.
8 695-D. PROCEDURE FOR RECOGNITION.
9 695-E. CHALLENGES.
10 695-F. APPLICATION OF THIS ARTICLE.
11 695-G. LEGAL EFFECT.

12 S 695-A. STATEMENT OF PUBLIC POLICY; FINDINGS. THE LEGISLATURE
13 DECLARES THAT IT IS THE PUBLIC POLICY OF THE STATE AND THE PURPOSE OF
14 THIS ACT TO CREATE A FRAMEWORK FOR CHILD CARE PROVIDERS TO SECURE REPRE-
15 SENTATION TO HELP IMPROVE THE ENVIRONMENT IN WHICH THEY WORK.

16 THE LEGISLATURE HEREBY FINDS CHILD CARE PROVIDERS PERFORM AN ESSENTIAL
17 SERVICE FOR WORKING PARENTS AND GUARDIANS IN THIS STATE BY CREATING A
18 SAFE, EDUCATIONAL AND ENJOYABLE HOME-LIKE ENVIRONMENT FOR THEIR CHIL-
19 DREN. MANY OF NEW YORK'S CHILDREN SPEND A SIGNIFICANT PART OF THEIR
20 CRUCIAL EARLY YEARS OF DEVELOPMENT UNDER THE SUPERVISION OF CHILD CARE
21 PROVIDERS. IT IS IN THE BEST INTEREST OF NEW YORK STATE TO MAINTAIN A
22 CHILD CARE DELIVERY SYSTEM THAT FOSTERS QUALITY CHILD CARE OPTIONS AND
23 COMPENSATION, AND BENEFITS AND WORKING CONDITIONS FOR CHILD CARE PROVID-
24 ERS COMMENSURATE WITH THE VALUE OF THE WORK THEY PERFORM.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 ACCORDINGLY CHILD CARE PROVIDERS ARE HEREBY GIVEN THE OPTION TO ORGAN-
2 IZE THEMSELVES AND SELECT REPRESENTATIVES FOR THE PURPOSE OF DISCUSSING
3 WITH THE STATE THE CONDITIONS OF THEIR EMPLOYMENT, THE STABILITY OF
4 FUNDING AND OPERATIONS OF CHILD CARE PROGRAMS AND THE EXPANSION OF QUAL-
5 ITY CHILD CARE.

6 S 695-B. DEFINITIONS. AS USED IN THIS ARTICLE, "CHILD CARE PROVIDER"
7 SHALL MEAN:

8 1. AN OPERATOR OF A GROUP FAMILY DAY CARE HOME AS DEFINED IN PARAGRAPH
9 (D) OF SUBDIVISION ONE OF SECTION THREE HUNDRED NINETY OF THE SOCIAL
10 SERVICES LAW OR

11 2. A FAMILY DAY CARE HOME AS DEFINED IN PARAGRAPH (C) OF SUBDIVISION
12 ONE OF SECTION THREE HUNDRED NINETY OF THE SOCIAL SERVICES LAW OR

13 3. AN INDIVIDUAL PROVIDING CHILD CARE IN REFERENCE TO ONE OR MORE
14 CHILDREN WHO ARE RECEIVING CHILD CARE ASSISTANCE UNDER TITLE FIVE-C OF
15 ARTICLE SIX OF THE SOCIAL SERVICES LAW UNDER CIRCUMSTANCES WHERE THE
16 INDIVIDUAL IS NOT REQUIRED TO BE LICENSED OR REGISTERED UNDER SECTION
17 THREE HUNDRED NINETY OF THE SOCIAL SERVICES LAW OR TO BE LICENSED UNDER
18 THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK.

19 S 695-C. REPRESENTATION UNITS. FOR PURPOSES OF THIS ARTICLE ONLY, NEW
20 YORK'S CHILD CARE PROVIDERS SHALL BE DIVIDED INTO FOUR REPRESENTATION
21 UNITS AS FOLLOWS:

22 1. ALL CHILD CARE PROVIDERS IN NEW YORK CITY WHO ARE PAID FROM FUNDS
23 ADMINISTERED BY NEW YORK CITY PURSUANT TO SECTION FOUR HUNDRED TEN-U OF
24 THE SOCIAL SERVICES LAW.

25 2. ALL REGISTERED OR LICENSED CHILD CARE PROVIDERS IN NEW YORK CITY
26 WHO ARE NOT PAID FROM FUNDS ADMINISTERED BY NEW YORK CITY PURSUANT TO
27 SECTION FOUR HUNDRED TEN-U OF THE SOCIAL SERVICES LAW.

28 3. ALL REGISTERED OR LICENSED CHILD CARE PROVIDERS OUTSIDE THE CITY OF
29 NEW YORK AND

30 4. ALL CHILD CARE PROVIDERS OUTSIDE NEW YORK CITY WHO PROVIDE CHILD
31 CARE IN A RESIDENCE TO ONE OR MORE CHILDREN WHO ARE RECEIVING CHILD CARE
32 ASSISTANCE UNDER TITLE 5-C OF ARTICLE SIX OF THE SOCIAL SERVICES LAW
33 UNDER CIRCUMSTANCES WHERE THE INDIVIDUAL IS NOT REQUIRED TO BE LICENSED
34 OR REGISTERED UNDER SECTION THREE HUNDRED NINETY OF THE SOCIAL SERVICES
35 LAW.

36 S 695-D. PROCEDURE FOR RECOGNITION. 1. FOR THE PURPOSE OF THIS ARTI-
37 CLE, NEW YORK STATE SHALL RECOGNIZE AS THE REPRESENTATIVE OF THE CHILD
38 CARE PROVIDERS IN ANY UNIT SET FORTH IN SECTION SIX HUNDRED
39 NINETY-FIVE-C OF THIS ARTICLE EACH REPRESENTATIVE AS IS DESIGNATED BY A
40 MAJORITY OF THE PROVIDERS IN THE UNIT PURSUANT TO THE FOLLOWING PROCE-
41 DURE: A PERSPECTIVE REPRESENTATIVE MAY DEMONSTRATE MAJORITY DESIGNATION
42 UPON SUBMISSION OF AUTHORIZATION CARDS, APPROVED WITHIN TWELVE MONTHS OF
43 THIS SUBMISSION, BY THE MAJORITY OF PROVIDERS IN THE UNIT, TO THE STATE
44 EMPLOYMENT RELATIONS BOARD (SERB) OR ANY SUCCESSOR AGENCY FOR THE
45 PURPOSE OF REVIEW. THE SERB AND/OR ITS DESIGNEE SHALL REVIEW THE CARDS
46 AND IF IT DETERMINES THAT THE CARDS CONSTITUTE AT LEAST FIFTY PERCENT
47 PLUS ONE OF THE PROVIDERS IN THE UNIT AT ISSUE, THEN THE SERB SHALL
48 CERTIFY THE PARTY MAKING APPLICATION AS THE DESIGNATED REPRESENTATIVE OF
49 THE UNIT. IF THE SERB DETERMINES THAT CARDS SUBMITTED CONSTITUTE AT
50 LEAST THIRTY PERCENT OF PROVIDERS IN THE UNIT AT ISSUE, BUT NOT MORE
51 THAN FIFTY PERCENT, IT SHALL CONDUCT AN ELECTION IN A MANNER DIRECTED BY
52 THE SERB AND CONSISTENT WITH ITS STANDARD ELECTION PROCEDURE TO DETER-
53 MINE IF A MAJORITY OF MEMBERS DESIGNATE THE PROSPECTIVE REPRESENTATIVE.

54 2. ANY RELEVANT STATE AGENCY, INCLUDING THE OFFICE OF CHILDREN AND
55 FAMILY SERVICES SHALL PROVIDE THE SERB WITH INFORMATION NECESSARY TO
56 DETERMINE THE SIZE OF THE UNITS AND THE IDENTITIES OF MEMBERS OF SAID

UNIT SUBJECT TO ANY LIMITATIONS OR DISSEMINATION OF INFORMATION AS THE AGENCY BELIEVES NECESSARY TO PROTECT CONFIDENTIALITY, OR AS OTHERWISE REQUIRED BY LAW.

S 695-E. CHALLENGES. ANY PARTY SEEKING TO CHALLENGE THE STATUS OF A UNIT REPRESENTATIVE MAY SUBMIT INFORMATION TO THE SERB. THE SERB SHALL DETERMINE WHETHER THE INFORMATION PROVIDES A REASONABLE BASIS TO CONSTITUTE THAT A MAJORITY OF THE UNIT WISHES TO BE REPRESENTED BY A DIFFERENT REPRESENTATIVE OR A MAJORITY OF THE UNIT DECIDES NO REPRESENTATION. IF THE SERB SO DETERMINES, IT SHALL ADOPT A PROCESS IT BELIEVES WARRANTED TO ASCERTAIN THE MAJORITY'S CHOICE OF REPRESENTATION, INCLUDING BY THE SUBMISSION OF AUTHORIZATION CARDS OR ELECTION, UNLESS SUCH PROCESS HAS BEEN UNDERTAKEN IN THE PREVIOUS TWO YEARS.

S 695-F. APPLICATION OF THIS ARTICLE. 1. THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL MEET WITH THE DESIGNATED REPRESENTATIVE OF THOSE UNITS OF CHILD CARE PROVIDERS, EITHER JOINTLY OR SEPARATELY, FOR THE PURPOSE OF ENTERING INTO A WRITTEN AGREEMENT TO THE EXTENT FEASIBLE. THE AGREEMENT MAY ADDRESS THE STABILITY, FUNDING AND OPERATION OF CHILD CARE PROGRAMS, EXPANSION OF QUALITY CHILD CARE, IMPROVEMENT OF WORKING CONDITIONS, SALARIES AND BENEFITS AND PAYMENT FOR CHILD CARE PROVIDERS. IF ISSUES UNDER DISCUSSION REQUIRE THE PARTICIPATION AND/OR APPROVAL OF OTHER STATE AGENCIES, THOSE AGENCIES SHALL PARTICIPATE IN THE DISCUSSIONS. NOTHING HEREIN SHALL REQUIRE THAT AN AGREEMENT BE REACHED ON ANY MATTERS DESCRIBED ABOVE.

2. IN THE EVENT AN AGREEMENT IS REACHED, IT SHALL BE EMBODIED IN WRITING BETWEEN THE OFFICE OF CHILDREN AND FAMILY SERVICES AND OTHER AFFECTED AGENCIES AND THE DESIGNATED REPRESENTATIVE. THE AGREEMENT SHALL BE BINDING ON THE STATE, CONTINGENT UPON ANY REGULATORY OR LEGISLATIVE ACTION THAT MAY BE REQUIRED.

3. IF LEGISLATIVE OR REGULATORY ACTION OR APPROPRIATION OF FUNDS IS REQUIRED THE PARTIES WILL JOINTLY SEEK SUCH ACTION.

S 695-G. LEGAL EFFECT. NOTHING HEREIN SHALL:

1. PERMIT CHILD CARE PROVIDERS COLLECTIVELY THE RIGHT TO ENGAGE IN A STRIKE OR TO TAKE WORK ACTION TO SECURE ANY RIGHT OR PRIVILEGE FROM THE STATE OR ITS AGENCIES;

2. RENDER A CHILD CARE PROVIDER A STATE OFFICER OR EMPLOYEE OR IN ANY WAY IMPLY AN EMPLOYEE-EMPLOYER RELATIONSHIP WITH THE STATE OR ITS SUBDIVISIONS, INCLUDING BUT NOT LIMITED TO A PUBLIC RETIREMENT SYSTEM, PUBLIC HEALTH INSURANCE PROGRAM, UNEMPLOYMENT INSURANCE, WORKERS COMPENSATION, DISABILITY COVERAGE, NEW YORK CIVIL SERVICE LAW OR INDEMNIFICATION UNDER THE PUBLIC OFFICERS LAW;

3. ALTER ANY CURRENT REGULATIONS, POLICIES OR PROCEDURES FOR HEALTH, SAFETY, DISCIPLINE INSPECTION OR ENFORCEMENT APPLICABLE TO CHILD CARE PROVIDERS OR PROGRAMS UNLESS AGREED TO AND ENACTED;

4. INTERFERE WITH THE EXISTING RELATIONSHIP BETWEEN CONSUMERS AND CHILD CARE PROVIDERS INCLUDING EXISTING RIGHTS OF PARENTS OR GUARDIANS TO CHANGE OR TERMINATE A PROVIDER'S SERVICE;

5. INTERFERE WITH ANY ABILITY OF CHILD CARE PROVIDERS OR CHILD CARE PROVIDER REPRESENTATIVES TO MEET OR CORRESPOND WITH ANY STATE AGENCY WITH REGARD TO ANY MATTER OF RELEVANCE; AND

6. CREATE ANY CONTRACTUAL RIGHT OR OBLIGATIONS.

S 2. This act shall take effect immediately.