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AN ACT

RELATING TO CHILD CARE; ENACTING A NEW SECTION OF CHAPTER 50  
NMSA 1978 TO PROVIDE FOR COLLECTIVE BARGAINING AND  
REPRESENTATION OF CHILD CARE PROVIDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 50 NMSA 1978 is  
enacted to read:

"FAMILY CHILD CARE PROVIDER COLLECTIVE BARGAINING--  
REPRESENTATION.--

A. The purpose of this section is to authorize  
family child care providers to organize and to use collective  
bargaining on all matters specified in this section. It is  
the intent of the legislature 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 section.

B. Family child care providers shall have the  
right to form, join or assist a labor organization for the  
purpose of collective bargaining through representatives  
chosen by family child care providers without interference,  
restraint or coercion and shall have the right to refuse any  
such activities.

C. The exclusive representative may be selected by SB 402  
Page 1

1 mail ballot election conducted by a reputable organization  
2 with experience in conducting representation elections. In  
3 order for an election to occur, a representative or  
4 representative organization shall have collected signed cards  
5 from at least thirty percent of affected family child care  
6 providers indicating their desire for representation. The  
7 organization conducting the election shall establish  
8 procedures to ensure the secrecy of any ballot cast in any  
9 election held pursuant to this section. Costs of the  
10 election shall be borne by the labor organization seeking  
11 exclusive representative status. The providers in the unit  
12 shall be offered the opportunity to choose between the  
13 following:

14 (1) representation by the provider  
15 organization; or

16 (2) no representation.

17 D. Within ten days of receiving authorization  
18 cards requesting a mail-in ballot election, the children,  
19 youth and families department or another appropriate state  
20 agency shall submit a list verifying all eligible family  
21 child care providers in the state to the organization making  
22 the request.

23 E. A labor organization that has been certified  
24 through the process as representing the family child care  
25 providers shall be the exclusive representative for all

1 family child care providers for the purposes of negotiating a  
2 collective bargaining agreement with the children, youth and  
3 families department.

4 F. The children, youth and families department  
5 shall meet with the family child care providers and their  
6 exclusive representative with the purpose of entering into a  
7 written agreement that shall be binding upon both the state  
8 and the exclusive representative. The written agreement  
9 shall include a binding arbitration procedure, a grievance  
10 process, the creation of a labor-management committee that  
11 will meet regularly to discuss concerns and issues as they  
12 arise and mechanisms for dues collection.

13 G. Topics of negotiations shall include terms and  
14 conditions under which family child care providers provide  
15 child care in their homes and in the homes of parents,  
16 including reimbursement rates and payment procedures for  
17 publicly funded care, health and safety conditions, the  
18 monitoring and evaluating of family child care homes,  
19 licensing and other fees, quality rating standards, training  
20 and certification requirements and any other matters that  
21 would improve recruitment and retention of qualified family  
22 child care providers and the quality of the programs they  
23 provide. The labor organization and the state agency shall  
24 work together to explore systems for family child care  
25 providers to have access to affordable, comprehensive health

1 insurance coverage.

2 H. An agreement provision by the state and the  
3 exclusive representative that requires the expenditure of  
4 funds shall be contingent upon the specific appropriation of  
5 funds by the legislature and the availability of funds.

6 I. In order to ensure that the children, youth and  
7 families department's mandate for quality measures continues  
8 for all licensed providers of child care services, the  
9 department shall ensure the adequate allocation of  
10 appropriated funds to those providing the highest-quality  
11 care, including licensed centers and licensed family child  
12 care providers.

13 J. Should the parties be unable to reach an  
14 agreement, the parties shall follow the impasse resolution  
15 procedure as outlined in the Public Employee Bargaining Act.

16 K. The children, youth and families department  
17 shall not:

18 (1) discriminate or knowingly allow any  
19 other organizations with which the children, youth and  
20 families department contracts to administer services related  
21 to child care to discriminate against a family child care  
22 provider with regard to the terms and conditions of its  
23 relationship with the provider because of the provider's  
24 membership in a labor organization;

25 (2) take negative action against a family

1 child care provider or knowingly allow any other  
2 organizations with which the children, youth and families  
3 department contracts to administer services related to child  
4 care to take negative action because the provider has signed  
5 or filed an affidavit, petition, grievance or complaint or  
6 given information or testimony or because the provider is  
7 forming, joining or choosing to be represented by a labor  
8 organization;

9 (3) refuse to bargain collectively in good  
10 faith with the labor organization; or

11 (4) refuse to comply with a collective  
12 bargaining agreement reached with the labor organization  
13 pursuant to this section.

14 L. The labor organization shall not:

15 (1) discriminate against a family child care  
16 provider with regard to labor organization membership because  
17 of race, color, religion, creed, age, sex or national origin;

18 (2) refuse to bargain collectively in good  
19 faith with the children, youth and families department; or

20 (3) refuse to comply with a collective  
21 bargaining agreement reached with the children, youth and  
22 families department pursuant to this section.

23 M. If either party believes a provision of this  
24 section has been violated, the parties shall follow the  
25 public employee labor relations board's rules of prohibited

1 practice proceedings.

2 N. By entering into an agreement, the children,  
3 youth and families department and the exclusive  
4 representative do not intend to interfere with parental  
5 rights to select or deselect family child care providers to  
6 provide care for children.

7 O. In enacting bargaining rights for family child  
8 care providers, the state intends to provide state action  
9 immunity under federal and state antitrust laws for the  
10 activities of family child care providers and their exclusive  
11 bargaining representative to the extent such activities are  
12 authorized by this section.

13 P. A family child care provider or an employee of  
14 a family child care provider is not a public employee for  
15 purposes of the Tort Claims Act.

16 Q. As used in this section:

17 (1) "exclusive representative" means a labor  
18 organization that, as a result of certification, has the  
19 right to represent family child care providers in an  
20 appropriate bargaining unit for the purposes of collective  
21 bargaining;

22 (2) "family child care provider" means a  
23 person who provides care services and supervision for  
24 children in the provider's own home under regulations  
25 established by the children, youth and families department

1 and who is:

2 (a) licensed by the state and is a  
3 vendor in the state and federal child care assistance  
4 program; or

5 (b) registered with the state to  
6 participate in the child and adult care food program and is a  
7 vendor in the state and federal child care assistance  
8 program; and

9 (3) "labor organization" means a family  
10 child care provider organization whose purposes include the  
11 representation of family child care providers in collective  
12 bargaining and in otherwise meeting, consulting and  
13 conferring with the children, youth and families department  
14 on matters pertaining to family child care provider  
15 relations.

16 R. If any part or application of this section is  
17 held invalid, the remainder or its application to other  
18 situations or persons shall not be affected."

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