

1 Introduced by Committee on Education

2 Date:

3 Subject: Education; collective bargaining; early child care and education  
4 providers

5 Statement of purpose of bill as introduced: This bill proposes to extend  
6 collective bargaining rights to early child care providers to improve the quality  
7 of early education in Vermont.

8 An act relating to child care providers

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

10 Sec. 1. FINDINGS

11 The General Assembly finds:

12 (1) The early education a child receives before school age, particularly  
13 before the age of three, has a profound effect on a child's development during  
14 this critical stage of life. Investments in the consistency and quality of early  
15 education lay a vital foundation for the future cognitive, social, and academic  
16 success of Vermont children.

17 (2) Early education providers should have the opportunity to work  
18 collectively with the State to enhance professional development and  
19 educational opportunities for early educators, to increase child care subsidy  
20 funding to enable more children to receive critical early education

1 opportunities, and to ensure the continual improvement of early education in  
2 Vermont.

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

4 CHAPTER 36. EARLY CARE AND EDUCATION PROVIDERS

5 LABOR RELATIONS ACT

6 § 3601. PURPOSE

7 (a) The General Assembly recognizes the right of all early care and  
8 education providers to bargain collectively with the State over matters within  
9 the State’s control and identified as subjects of bargaining pursuant to  
10 subsection 3603(b) of this chapter.

11 (b) The General Assembly intends to create an opportunity for early care  
12 and education providers to choose to form a union and bargain with the State  
13 over matters within the State’s control and identified as subjects of bargaining  
14 pursuant to subsection 3603(b) of this chapter.

15 (c) Specific terms and conditions of employment at individual child care  
16 centers, which are the subject of traditional collective bargaining between  
17 employers and employees, are outside the limited scope of this chapter.

18 (d) The matters subject to this chapter are those within the control of the  
19 State of Vermont and relevant to all early care and education providers.

20 (e) Early care and education providers do not forfeit their rights under the  
21 National Labor Relations Act, 29 U.S.C. §§ 151–169, or the Vermont State

1 Labor Relations Act, 21 V.S.A. §§ 1501–1624, by becoming members of an  
2 organization that represents them in their dealings with the State. The terms  
3 and conditions of employment with individual early care and education  
4 providers, which are the subjects of traditional collective bargaining between  
5 employers and employees and which are governed by federal law, fall outside  
6 the limited scope of bargaining defined in this chapter.

7 § 3602. DEFINITIONS

8 As used in this chapter:

9 (1) “Board” means the State Labor Relations Board established under  
10 3 V.S.A. § 921.

11 (2) “Collective bargaining” or “bargaining collectively” means the  
12 process by which the State and the exclusive representative of early care and  
13 education providers negotiate terms or conditions related to the subjects of  
14 collective bargaining identified in subsection 3603(b) of this title that when  
15 reached and funded shall be legally binding.

16 (3) “Early care and education provider” means a licensed child care  
17 home provider, a registered child care home provider, or a legally exempt child  
18 care home provider who provides child care services as defined in subdivision  
19 3511(3) of this title.

20 (4) “Exclusive representative” means the labor organization that has  
21 been elected or recognized and certified by the Board under this chapter and

1 consequently has the exclusive right under section 3608 of this title to  
2 represent early care and education providers for the purpose of collective  
3 bargaining and the enforcement of any contract provisions.

4 (5) “Grievance” means the exclusive representative’s formal written  
5 complaint regarding an improper application of one or more terms of the  
6 collective bargaining agreement.

7 (6) “Subsidy payment” means any payment made by the State to assist  
8 families in paying for child care services through the State’s child care  
9 financial assistance program.

10 § 3603. ESTABLISHMENT OF COLLECTIVE BARGAINING

11 (a) Early care and education providers, through their exclusive  
12 representative, shall have the right to bargain collectively with the State  
13 through the Governor’s designee.

14 (b) Mandatory subjects of bargaining are limited to child care subsidy  
15 reimbursement rates and payment procedures, professional development, the  
16 collection of dues or agency fees and disbursement to the exclusive  
17 representative, and procedures for resolving grievances. The parties may also  
18 negotiate on any mutually agreed matters that are not in conflict with State or  
19 federal law.

20 (c) The State, acting through the Governor’s designee, shall meet with the  
21 exclusive representative for the purpose of entering into a written agreement.

1        (d) Early care and education providers shall be considered employees, and  
2        the State shall be considered the employer, solely for the purpose of collective  
3        bargaining under this chapter. Early care and education providers shall not be  
4        considered State employees other than for purposes of collective bargaining,  
5        including for purposes of vicarious liability in tort, and for purposes of  
6        unemployment compensation or workers' compensation. Early care and  
7        education providers shall not be eligible for participation in the State  
8        Employees Retirement System or the health insurance plans available to  
9        Executive Branch employees solely by virtue of bargaining under this chapter.

10       (e) Agency fees may be collected only from early care and education  
11       providers who receive subsidy payments from the State. Any dispute raised by  
12       a nonmember concerning the amount of an agency fee, as provided for under  
13       subsection (b) of this section, may be grieved to the State Labor Relations  
14       Board which shall review and determine such matter promptly, in accordance  
15       with the Board's rules.

16       § 3604. RIGHTS OF EARLY CARE AND EDUCATION PROVIDERS

17       Early care and education providers shall have the right to:

18       (1) organize, form, join, or assist any union or labor organization for the  
19       purpose of collective bargaining without any interference, restraint, or  
20       coercion;

21       (2) bargain collectively through a representative of their own choice;

1           (3) engage in concerted activities for the purpose of supporting or  
2           engaging in collective bargaining;

3           (4) pursue grievances through the exclusive representative as negotiated  
4           pursuant to this chapter; and

5           (5) refrain from any or all such activities.

6           § 3605. RIGHTS OF THE STATE

7           Nothing in this chapter shall be construed to interfere with right of the  
8           State to:

9           (1) carry out the statutory mandate and goals of the Agency of Human  
10          Services and to use personnel, methods, and means in the most appropriate  
11          manner possible;

12          (2) with the approval of the Governor, take whatever action may be  
13          necessary to carry out the mission of the Agency of Human Services in an  
14          emergency situation;

15          (3) comply with federal and State laws and regulations regarding child  
16          care and child care subsidies;

17          (4) enforce child care regulations and regulatory processes, including  
18          regulations regarding the qualifications of early care and education providers  
19          and the prevention of abuse in connection with the provisions of child care  
20          services;

1           (5) develop child care regulations and regulatory processes subject to  
2           the rulemaking authority of the General Assembly and the Human Services  
3           Board;

4           (6) establish and administer quality standards under the Step Ahead  
5           Recognition system;

6           (7) solicit and accept for use any grant of money, services, or property  
7           from the federal government, the State, or any political subdivision or agency  
8           of the State, including federal matching funds, and to cooperate with the  
9           federal government or any political subdivision or agency of the State in  
10          making an application for any grant; and

11          (8) refuse to take any action that would diminish the quantity or quality  
12          of child care provided under existing law.

13          § 3606. BARGAINING UNIT

14          (a) The bargaining unit shall be composed of licensed home child care  
15          providers, registered home child care providers, and legally exempt child care  
16          providers as defined in this chapter.

17          (b) Early care and education providers may select an exclusive  
18          representative for the purpose of collective bargaining by using the procedures  
19          in sections 3607 and 3608 of this title.

1        (c) The exclusive representative of the early care and education providers is  
2        required to represent all of the providers in the unit without regard to  
3        membership in the union.

4        § 3607. PETITIONS FOR ELECTION; FILING; INVESTIGATIONS;  
5        HEARINGS; DETERMINATIONS

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

8            (1) By an early care and education provider or group of providers or any  
9            individual or labor organization acting on the providers' behalf:

10            (A) alleging that not less than 30 percent of the providers in the  
11            petitioned bargaining unit wish to be represented for collective bargaining and  
12            that the State declines to recognize their representative as the representative  
13            defined in this chapter; or

14            (B) asserting that the labor organization that has been certified as the  
15            bargaining representative no longer represents a majority of early care and  
16            education providers.

17            (2) By the State alleging that one or more individuals or labor  
18            organizations have presented a claim to be recognized as the exclusive  
19            representative defined in this chapter.

20            (b) The Board shall investigate the petition and, if it has reasonable cause  
21            to believe that a question concerning representation exists, shall conduct a



1 hearing. The hearing shall be held before the Board, a member of the Board,  
2 or its agents appointed for that purpose upon due notice. Written notice of the  
3 hearing shall be mailed by certified mail to the parties named in the petition  
4 not less than seven days before the hearing. If the Board finds upon the record  
5 of the hearing that a question of representation exists, it shall conduct an  
6 election by secret ballot and certify to the parties, in writing, the results of the  
7 election.

8 (c) In determining whether or not a question of representation exists, the  
9 Board shall apply the same regulations and rules of decision-making regardless  
10 of the identity of the persons filing the petition or the kind of relief sought.

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

13 (e) For the purposes of this chapter, the State may voluntarily recognize the  
14 exclusive representative of a unit of early care and education providers if the  
15 labor organization demonstrates that it has the support of a majority of the  
16 providers in the unit it seeks to represent and no other employee organization  
17 seeks to represent the providers.

18 § 3608. ELECTION; RUNOFF ELECTIONS

19 (a) If a question of representation exists, the Board shall conduct a secret  
20 ballot election to determine the exclusive representative of the unit of early  
21 care and education providers. The original ballot shall be prepared to permit a

1 vote against representation by anyone named on the ballot. The labor  
2 organization receiving a majority of votes cast shall be certified by the Board  
3 as the exclusive representative of the unit of early care and education  
4 providers. In any election in which there are three or more choices, including  
5 the choice of “no union,” and none of the choices on the ballot receives a  
6 majority, a runoff election shall be conducted by the Board. The ballot shall  
7 provide for a selection between the two choices receiving the largest and  
8 second largest number of valid votes cast in the election.

9 (b) An election shall not be directed if in the preceding 12 months a valid  
10 election has been held.

11 § 3609. POWERS OF REPRESENTATIVES

12 The exclusive representative shall be the exclusive representative of all the  
13 early care and education providers in the unit for the purposes of collective  
14 bargaining and the resolution of grievances.

15 § 3610. NEGOTIATED AGREEMENT; FUNDING

16 (a) If the State and the exclusive representative reach an agreement, the  
17 Governor shall request from the General Assembly an appropriation sufficient  
18 to fund the agreement in the next operating budget. If the General Assembly  
19 appropriates sufficient funds, the negotiated agreement shall become effective  
20 and binding at the beginning of the next fiscal year. If the General Assembly  
21 appropriates a different amount of funds, the terms of the agreement affected

1 by that appropriation shall be renegotiated based on the amount of funds  
2 actually appropriated by the General Assembly and shall become effective and  
3 legally binding in the next fiscal year.

4 (b) Collective bargaining agreements shall be for a maximum term of two  
5 years and shall not be subject to cancellation or renegotiation during the term  
6 except with the mutual consent in writing of both parties, which consent shall  
7 be filed with the Board. Upon the filing of such consent, an agreement may be  
8 supplemented, cancelled, or renegotiated.

9 (c) The agreement shall terminate at the expiration of its specified term.  
10 Negotiations for a new agreement to take effect upon the expiration of the  
11 preceding agreement shall be commenced at any time within one year next  
12 preceding the expiration date upon the request of either party and may be  
13 commenced at any time previous thereto with the consent of both parties.

14 (d) In the event the State of Vermont and the collective bargaining unit are  
15 unable to arrive at an agreement and there is not an existing agreement in  
16 effect, the existing contract shall remain in force until a new contract is ratified  
17 by the parties. However, nothing in this subsection shall prohibit the parties  
18 from agreeing to a modification of certain provisions of the existing contract  
19 that, as amended, shall remain in effect until a new contract is finalized and  
20 funded by the General Assembly.

1       (e) The Board is authorized to enforce compliance with all provisions of a  
2       collective bargaining agreement upon complaint of either party. In the event a  
3       complaint is made by either party to an agreement, the Board shall proceed in  
4       the manner prescribed in section 3612 of this title relating to the prevention of  
5       unfair labor practices.

6       § 3611. MEDIATION; FACT-FINDING; LAST BEST OFFER

7       (a) If after a reasonable period of negotiation, the exclusive representative  
8       and the State reach an impasse, the Board upon petition of either party may  
9       authorize the parties to submit their differences to mediation. Within five days  
10       after receipt of the petition, the Board shall appoint a mediator who shall  
11       communicate with the parties and attempt to mediate an amicable settlement.  
12       A mediator shall be of high standing and not affiliated with either labor or  
13       management.

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

17       (c) Upon the request of either party, the Board shall appoint a fact finder  
18       who has been mutually agreed upon by the parties. If the parties fail to agree  
19       on a fact finder within five days, the Board shall appoint a fact finder who shall  
20       be a person of high standing and shall not be affiliated with either labor or  
21       management. A member of the Board or any individual who has actively

1 participated in mediation proceedings for which fact-finding has been called  
2 shall not be eligible to serve as a fact finder under this section unless agreed  
3 upon by the parties.

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

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

10 (f) In making a recommendation, the fact finder shall consider whether the  
11 proposal increases the amount and quality of care provided to children and  
12 families in a manner that is more affordable for Vermont families and citizens  
13 and whether the subsidies provided are consistent with federal guidance.

14 (g) Upon completion of the hearings, the fact finder shall file written  
15 findings and recommendations with both parties.

16 (h) The costs of witnesses and other expenses incurred by either party in  
17 fact-finding proceedings shall be paid directly by the parties incurring them,  
18 and the costs and expenses of the fact finder shall be paid equally by the  
19 parties. The fact finder shall be paid a rate mutually agreed upon by the parties  
20 for each day or any part of a day while performing fact-finding duties and shall  
21 be reimbursed for all reasonable and necessary expenses incurred in the

1 performance of his or her duties. A statement of fact-finding per diem and  
2 expenses shall be certified by the fact finder and submitted to the Board for  
3 approval. The Board shall provide a copy of approved fact-finding costs to  
4 each party with its order apportioning one-half of the total to each party for  
5 payment. Each party shall pay its half of the total within 15 days after receipt  
6 of the order. Approval by the Board of the fact finder’s costs and expenses and  
7 its order for payment shall be final as to the parties.

8 (i) If the dispute remains unresolved 15 days after transmittal of findings  
9 and recommendations, each party shall submit to the Board its last best offer  
10 on all disputed issues as a single package. Each party’s last best offer shall be  
11 filed with the Board under seal and shall be unsealed and placed in the public  
12 record only when both parties’ last best offers are filed with the Board. The  
13 Board may hold hearings and consider the recommendations of the fact finder.  
14 Within 30 days of the certifications, the Board shall select between the last best  
15 offers of the parties, considered in their entirety without amendment, and shall  
16 determine that selection’s cost. The Board shall not issue an order under this  
17 subsection that is in conflict with any law or rule or that relates to an issue that  
18 is not a mandatory subject of collective bargaining. The Board shall determine  
19 the cost of the agreement selected and recommend to the General Assembly its  
20 choice with a request for appropriation. If the General Assembly appropriates  
21 sufficient funds, the agreement shall become effective and legally binding at

1 the beginning of the next fiscal year. If the General Assembly appropriates a  
2 different amount of funds, the terms of the agreement affected by that  
3 appropriation shall be renegotiated based on the amount of funds actually  
4 appropriated by the General Assembly, and the agreement with the negotiated  
5 changes shall become effective and binding at the beginning of the next fiscal  
6 year.

7 § 3612. GENERAL DUTIES AND PROHIBITED CONDUCT

8 (a) The State and all early care and education providers and their  
9 representatives shall exert every reasonable effort to make and maintain  
10 agreements concerning matters allowable under this chapter and to settle all  
11 disputes, whether arising out of the application of those agreements or growing  
12 out of any disputes concerning those agreements. However, this obligation  
13 does not compel either party to agree to a proposal or make a concession.

14 (b) It shall be an unfair labor practice for the State to:

15 (1) interfere with, restrain, or coerce early care and education providers  
16 in the exercise of their rights under this chapter or by any other law, rule, or  
17 regulation;

18 (2) dominate or interfere with the formation or administration of any  
19 labor organization or contribute financial or other support to it;

1           (3) discriminate against an early care and education provider because of  
2           the provider’s affiliation with a labor organization or because a provider has  
3           filed charges or complaints or has given testimony under this chapter;

4           (4) take negative action against an early care and education provider  
5           because the provider has taken actions such as signing a petition, grievance, or  
6           affidavit that demonstrates the provider’s support for a labor organization;

7           (5) refuse to bargain collectively in good faith with the exclusive  
8           representative;

9           (6) discriminate against an early care and education provider based on  
10          race, color, religion, ancestry, age, sex, sexual orientation, gender identity,  
11          national origin, place of birth, or marital status, or against a qualified disabled  
12          individual; or

13          (7) request or require an early care and education provider to have an  
14          HIV-related blood test or discriminate against a provider on the basis of HIV  
15          status of the provider.

16          (c) It shall be an unfair labor practice for the exclusive representative to:

17               (1) Restrain or coerce early care and education providers in the exercise  
18               of the rights guaranteed to them under this chapter or by law, rule, or  
19               regulation. However, a labor organization may prescribe its own rules with  
20               respect to the acquisition or retention of membership provided such rules are  
21               not discriminatory.



1           (2) Cause or attempt to cause the State to discriminate against an early  
2           care and education provider or to discriminate against a provider.

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

4           (4) Threaten to or cause a provider to strike or curtail the provider's  
5           services in recognition of a picket line of any employee or labor organization.

6           (d) Early care and education providers shall not strike or curtail their  
7           services in recognition of a picket line of any employee or labor organization.

8           (e) Complaints related to this section shall be made and resolved in  
9           accordance with procedures set forth in 3 V.S.A. § 965.

10           § 3613. ANTITRUST EXEMPTION

11           The activities of early care and education providers and their exclusive  
12           representatives that are necessary for the exercise of their rights under this  
13           chapter shall be afforded State action immunity under applicable federal and  
14           State antitrust laws. The State intends that the "State action" exemption to  
15           federal antitrust laws be available only to the State, to early care and education  
16           providers, and to their exclusive representative in connection with these  
17           necessary activities. Exempt activities shall be actively supervised by the  
18           State.

19           § 3614. RIGHTS UNALTERED

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

1           (1) a parent or legal guardian to select and discontinue child care  
2           services of any early care and education provider;

3           (2) an early care and education provider to choose, direct, and terminate  
4           the services of any employee that provides care in that home; or

5           (3) the Judiciary and General Assembly to make programmatic  
6           modifications to the delivery of State services through child care subsidy  
7           programs, including standards of eligibility for families, legal guardians, and  
8           providers participating in child care subsidy programs, and to the nature of  
9           services provided.

10          (b) Nothing in this chapter shall affect the rights and obligations of private  
11          sector employers and employees under the National Labor Relations Act,  
12          29 U.S.C. §§ 151–169, or the Vermont State Labor Relations Act, 21 V.S.A.  
13          §§ 1501–1624. The terms and conditions of employment with individual early  
14          care and education providers, which are the subjects of traditional collective  
15          bargaining between employers and their employees and which are governed by  
16          federal laws, fall outside the limited scope of bargaining defined in this  
17          chapter.

18          § 3615. RULES AND REGULATIONS

19          The Board shall make and may amend and rescind and adopt such rules and  
20          regulations consistent with this chapter as may be necessary to carry out the  
21          provisions of this chapter.

1     § 3616. APPEAL

2           (a) Any person aggrieved by an order or decision of the Board issued under  
3     the authority of this chapter may appeal on questions of law to the Supreme  
4     Court.

5           (b) An order of the Board shall not automatically be stayed pending appeal.  
6     A stay must first be requested from the Board. The Board may stay the order  
7     or any part of it. If the Board denies a stay, then a stay may be requested from  
8     the Supreme Court. The Supreme Court or a single justice may stay the order  
9     or any part of it and may order additional interim relief.

10    § 3617. ENFORCEMENT

11           (a) Orders of the Board issued under this chapter may be enforced by any  
12    party or by the Board by filing a petition with the Civil Division of the  
13    Superior Court of Washington County or in the Civil Division of the Superior  
14    Court in the county in which the action before the Board originated. The  
15    petition shall be served on the adverse party as provided for service of process  
16    under the Vermont Rules of Civil Procedure. If, after hearing, the Court  
17    determines that the Board had jurisdiction over the matter and that a timely  
18    appeal was not filed or that an appeal was timely filed and a stay of the Board  
19    order or any part of it was not granted or that a Board order was affirmed on  
20    appeal in pertinent part by the Supreme Court, the Court shall incorporate the  
21    order of the Board as a judgment of the Court. There is no appeal from that

1 judgment except that a judgment reversing a Board decision on jurisdiction  
2 may be appealed to the Supreme Court.

3 (b) Upon filing of a petition by a party or the Board, the Court may grant  
4 such temporary relief, including a restraining order, as it deems proper pending  
5 formal hearing.

6 (c) Orders and decisions of the Board shall apply only to the particular case  
7 under appeal, but any number of appeals presenting similar issues may be  
8 consolidated for hearing with the consent of the Board. The Board shall not  
9 modify, add to, or detract from a collective bargaining agreement by any order  
10 or decision.

11 Sec. 3. NEGOTIATIONS; EARLY CARE AND EDUCATION PROVIDERS

12 The State's costs of negotiating an agreement pursuant to 33 V.S.A.  
13 chapter 36 shall be borne by the State out of existing appropriations made to it  
14 by the General Assembly.

15 Sec. 4. EFFECTIVE DATE

16 This act shall take effect on passage.