



General Assembly

Amendment

February Session, 2012

LCO No. 3138

HB0531203138HDO

Offered by:

REP. ZALASKI, 81st Dist.

SEN. PRAGUE, 19th Dist.

To: Subst. House Bill No. 5312

File No. 218

Cal. No. 186

"AN ACT ESTABLISHING A TASK FORCE TO STUDY THE EFFECT OF COLLECTIVE BARGAINING FOR CERTAIN STATE EMPLOYEES."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective July 1, 2012*) For purposes of this section
4 and sections 2 and 3 of this act:

5 (1) "Parent" means parent or legal guardian; and

6 (2) "Family child care providers" means persons who provide child
7 care services under the child care subsidy program established
8 pursuant to section 17b-749 of the general statutes (A) in a family day
9 care home, as defined in section 19a-77 of the general statutes; or (B) in
10 a home not requiring a license pursuant to subdivision (4) of
11 subsection (b) of section 19a-77 of the general statutes.

12 Sec. 2. (NEW) (*Effective July 1, 2012*) (a) A family child care provider

13 shall not be considered a state employee and shall be exempt from any
14 and all provisions of the general statutes creating rights, obligations,
15 privileges or immunities to state employees as a result of or incident to
16 their state service.

17 (b) Family child care providers shall have the right to bargain
18 collectively and shall have such other rights and obligations incident
19 thereto as are created by sections 5-270 to 5-279, inclusive, of the
20 general statutes except as set forth in subsections (d) to (g), inclusive,
21 of this section, except:

22 (1) The following shall be prohibited subjects of bargaining: (A) The
23 application of state employee benefits to family child care providers,
24 including, but not limited to, health benefits and pensions; (B) a
25 parent's right to (i) recruit, (ii) select, (iii) direct the activities of, and
26 (iv) terminate the services of any family child care provider; and (C) a
27 procedure for grievance arbitration against any parent;

28 (2) No provision of any agreement or award shall provide for a
29 reduction in the services provided by family child care providers to
30 children under section 17b-749 of the general statutes;

31 (3) Any provision in any agreement or award which would require
32 an additional appropriation in order to maintain the levels of services
33 provided by existing appropriations shall be presented to the General
34 Assembly for approval in accordance with the budgetary process set
35 forth in subdivision (8) of subsection (e) of this section;

36 (4) The provisions of section 5-280 of the general statutes shall not
37 apply to family child care providers. An agreement or award reached
38 pursuant to this section may include provisions calling for the state or
39 its fiscal intermediary to deduct from reimbursement payments
40 regular dues and initiation fees, and nonmember service fees limited to
41 the lesser of regular dues, fees and assessments that a member is
42 charged or the proportionate share of expenses incident to collective
43 bargaining. Dues or fees may be charged only with respect to earnings
44 from participation in the child care subsidy program established

45 pursuant to section 17b-749 of the general statutes;

46 (5) The provisions of sections 5-276a and 5-276b of the general
47 statutes and subsections (b) to (g), inclusive, of section 5-278 of the
48 general statutes shall not apply to collective bargaining involving
49 family child care providers. Any impasse between the parties shall be
50 resolved in accordance with subsection (c) of this section;

51 (6) In any proceeding which may be filed under section 5-272 of the
52 general statutes, the State Board of Labor Relations shall be without
53 jurisdiction to consider any complaint against, or issue any remedy
54 against, any parent; and

55 (7) Any election required in order to resolve any question
56 concerning representation involving family child care providers shall
57 be conducted by mail ballot. No provision of this section shall grant
58 family child care providers a right to strike and such strikes are
59 prohibited.

60 (c) On or after July 1, 2012, and monthly thereafter, the
61 Commissioner of Social Services shall compile a list of the names of
62 family child care providers who have participated in the child care
63 subsidy program established pursuant to section 17b-749 of the general
64 statutes within the previous six calendar months. Such list shall be
65 considered a public record, as defined in section 1-200 of the general
66 statutes.

67 (d) For purposes of sections 4-65a and 5-270 of the general statutes
68 and subsection (a) of section 5-278 of the general statutes, the
69 Department of Social Services shall be considered an executive branch
70 employer and an organization representing family child care providers
71 that has been designated by the State Board of Labor Relations,
72 pursuant to section 5-275 of the general statutes or subsection (g) of
73 this section, as the exclusive bargaining agent of such providers, shall
74 have the right to bargain with the state concerning the terms and
75 conditions of participation of family child care providers in the
76 program covered by this section, including, but not limited to, (1) state

77 reimbursement rates, (2) benefits, (3) payment procedures, (4) contract
78 grievance arbitration, and (5) training, professional development and
79 other requirements and opportunities appropriate for family child care
80 providers.

81 (e) (1) If the organization representing family child care providers
82 and the Department of Social Services do not reach an agreement not
83 later than one hundred fifty days after negotiations have begun, the
84 parties shall jointly select an arbitrator. The arbitrator selected shall
85 have experience as an impartial arbitrator of labor-management
86 disputes, and shall not be an individual employed as an advocate or
87 consultant for labor or management in labor-management disputes. If
88 the parties fail to agree on an arbitrator not later than one hundred
89 sixty days after negotiations have begun, the selection of the arbitrator
90 shall be made using the procedures under the voluntary labor
91 arbitration rules of the American Arbitration Association.

92 (2) Each party shall submit to the arbitrator, and to each other, a
93 proposal setting forth such party's position on how each of the
94 unresolved issues shall be resolved.

95 (3) The arbitrator shall convene a hearing to allow the parties to
96 provide evidence and argument to the arbitrator. The parties shall
97 have the right to submit written briefs to the arbitrator. The arbitration
98 record shall be officially closed at the close of the hearing, or the
99 arbitrator's receipt of briefs, whichever is later.

100 (4) The arbitrator's authority is limited to selecting the complete
101 proposal of one party or the other on any unresolved issue. The
102 arbitrator shall issue an award not later than forty-five days after the
103 close of the record.

104 (5) The factors to be considered by the arbitrator in arriving at a
105 decision are: (A) The nature and needs of the family child care
106 program and the needs and welfare of parents and children served by
107 that program, including interests in better recruitment, retention and
108 quality with respect to the covered family child care provider; (B) the

109 history of negotiations between the parties including those leading to
110 the instant proceeding; (C) the existing conditions of employment of
111 similar groups of workers; (D) changes in the cost of living; and (E) the
112 interests and welfare of the covered family child care providers.

113 (6) The costs of the arbitrator and any fees associated with the
114 arbitration proceeding shall be shared equally by the parties.

115 (7) Any agreement or award reached pursuant to this section shall
116 be submitted to the General Assembly for approval by filing the
117 agreement or award with the clerks of the House and Senate. No
118 provision of any agreement or award resulting from the collective
119 bargaining process which would require supercedence of any law or
120 regulation shall take effect without affirmative legislative approval.

121 (8) Notwithstanding any other provision of this section, any
122 provision in any agreement or award which would require an
123 additional appropriation in order to maintain the levels of services
124 provided by existing appropriations shall be presented to the General
125 Assembly for approval in accordance with the budgetary process
126 applicable to appropriations, including, but not limited to, affirmative
127 legislative approval. Other provisions of the agreement or award shall
128 be deemed approved unless affirmatively rejected by a majority of
129 either house not later than thirty days after the filing with the clerk of
130 that chamber, provided the thirty-day period shall not begin or expire
131 unless the General Assembly is in regular session. Once approved by
132 the General Assembly, any provision of an agreement or award need
133 not be resubmitted by the parties to such agreement or award as part
134 of a future agreement approval process unless changes in the language
135 of such provision are negotiated by the parties.

136 (f) The only bargaining unit of family child care providers
137 appropriate for the purpose of collective bargaining shall be a state-
138 wide unit of all family child care providers.

139 (g) Any provider organization certified as the majority
140 representative of family child care providers in any election held prior

141 to the effective date of this section pursuant to Executive Order
142 Number 9 of Governor Dannel P. Malloy may provide proof of such
143 certification to the State Board of Labor Relations and the State Board
144 of Labor Relations shall certify such majority representative as the
145 exclusive bargaining agent for such providers without the requirement
146 of an additional election unless and until such time as a question
147 concerning representation is appropriately raised under this section
148 and section 1 of this act.

149 Sec. 3. (NEW) (*Effective July 1, 2012*) The state shall not be liable for
150 any action, including, but not limited to, any civil action, any grievance
151 arbitration or any prohibited practice proceeding, brought by the
152 exclusive bargaining agent of such child care workers based upon any
153 alleged wrongdoing by a parent or child arising pursuant to section 2
154 of this act.

155 Sec. 4. (NEW) (*Effective July 1, 2012*) For purposes of this section and
156 sections 5 to 7, inclusive, of this act:

157 (1) "Consumer" means a person who receives services from a
158 personal care attendant under a state-funded program, including, but
159 not limited to, (A) the program for individuals with acquired brain
160 injuries, established pursuant to section 17b-260a of the general
161 statutes, (B) the personal care assistance program, established pursuant
162 to section 17b-605a of the general statutes, (C) the Connecticut home
163 care program for the elderly, established pursuant to section 17b-342 of
164 the general statutes, (D) the pilot program to provide home care
165 services to disabled persons, established pursuant to section 17b-617 of
166 the general statutes, (E) the individual and family support waiver
167 program administered by the Department of Developmental Services,
168 (F) the comprehensive waiver program administered by the
169 Department of Developmental Services, and (G) any state-funded
170 program that provides services from a personal care attendant;

171 (2) "Surrogate" means a consumer's legal guardian or a person
172 identified in a written agreement as having responsibility for the care

173 of a consumer;

174 (3) "Personal care attendants" means persons employed by a
175 consumer or surrogate to provide personal care assistance to a
176 consumer; and

177 (4) "Personal care assistance" means supportive home care, direct
178 support services, personal care or another nonprofessional service
179 provided to a person with a disability or an elderly person who
180 requires assistance to (A) meet such person's daily living needs, (B)
181 ensure such person may adequately function in such person's home, or
182 (C) provide such person with safe access to the community.

183 Sec. 5. (NEW) (*Effective July 1, 2012*) (a) There is established the
184 Personal Care Attendant Workforce Council to ensure the quality of
185 long-term personal home care. Said council shall be composed of the
186 following members:

187 (1) The Commissioner of Social Services, or the commissioner's
188 designee;

189 (2) The Commissioner of Developmental Services, or the
190 commissioner's designee;

191 (3) The Healthcare Advocate, or the Healthcare Advocate's
192 designee;

193 (4) The Secretary of the Office of Policy and Management, or the
194 secretary's designee;

195 (5) Three appointed by the Governor one of whom shall be a
196 member of an organization representing the interests of consumers
197 with developmental disabilities, one of whom shall be a member of an
198 organization representing the interests of consumers with physical
199 disabilities, and one of whom shall be a member of an organization
200 representing the interests of elderly consumers;

201 (6) One appointed by the speaker of the House of Representatives

202 who shall be a member of an organization representing the interests of
203 consumers with developmental disabilities;

204 (7) One appointed by the president pro tempore of the Senate who
205 shall be a member of an organization representing the interests of
206 consumers with physical disabilities;

207 (8) One appointed by the majority leader of the House of
208 Representatives who shall be a member of an organization
209 representing the interests of elderly consumers;

210 (9) One appointed by the majority leader of the Senate who shall be
211 a member of an organization representing the interests of consumers
212 with developmental disabilities;

213 (10) One appointed by the minority leader of the House of
214 Representatives who shall be a member of an organization
215 representing the interests of consumers with physical disabilities; and

216 (11) One appointed by the minority leader of the Senate who shall
217 be a member of an organization representing the interests of elderly
218 consumers.

219 (b) All initial appointments to the council shall be made not later
220 than August 1, 2012. The chairperson of the council shall be appointed
221 by the Governor from among its members. The chairperson shall
222 convene the first meeting of the council not later than September 1,
223 2012. Members of the council shall serve coterminously and at the
224 pleasure of the appointing authority in accordance with section 4-1a of
225 the general statutes. A majority of the members of the Personal Care
226 Attendant Workforce Council shall constitute a quorum for the
227 transaction of any business. Members of the Personal Care Attendant
228 Workforce Council shall receive no compensation for their service but
229 shall be reimbursed for actual expenses necessarily incurred in
230 performance of their duties. The council shall be within the
231 Department of Social Services for administrative purposes only.

232 (c) The Personal Care Attendant Workforce Council shall have the
233 following duties and responsibilities relating to personal care
234 attendants: (1) Study issues relating to the recruitment, retention and
235 adequacy of personal care attendants; and (2) develop a plan to
236 improve the quality, stability and availability of personal care
237 attendants by (A) developing a means to identify and recruit personal
238 care attendants, (B) developing training and educational opportunities
239 for personal care attendants and consumers, (C) developing one or
240 more registries to (i) provide routine, emergency and respite referrals
241 of qualified personal care attendants to consumers and surrogates who
242 are authorized to receive long-term, in-home personal care services by
243 a personal care attendant, (ii) enable consumers and surrogates to
244 access information about prospective personal care attendants such as
245 their training, educational background and work experience, and (iii)
246 provide appropriate employment opportunities for personal care
247 attendants, and (D) establishing standards for wages, benefits and
248 conditions of employment for personal care attendants.

249 (d) On or after July 1, 2013, the commissioners of the departments
250 having cognizance of the covered waiver programs shall review the
251 plans recommended by the Personal Care Attendant Workforce
252 Council pursuant to subsection (c) of this section. The commissioners
253 shall include in budgetary requests submitted to the Office of Policy
254 and Management requests for funding necessary to implement aspects
255 of such plans that meet said commissioners' approval.

256 (e) (1) For purposes of sections 4-65a and 5-270 of the general
257 statutes and subsection (a) of section 5-278 of the general statutes, the
258 Personal Care Attendant Workforce Council shall be within the
259 executive branch of state government. An organization representing
260 personal care attendants that has been designated by the State Board of
261 Labor Relations, pursuant to section 5-275 of the general statutes or
262 subsection (f) of section 6 of this act, as the exclusive bargaining agent
263 of such personal care attendants, shall have the right to bargain with
264 the state concerning the terms and conditions of participation of
265 personal care attendants in the programs covered by this section and

266 section 4 of this act, including, but not limited to, (A) state
267 reimbursement rates, (B) benefits, (C) payment procedures, (D)
268 contract grievance arbitration, and (E) training, professional
269 development and other requirements and opportunities appropriate
270 for such personal care attendants.

271 (2) (A) No provision of any agreement or award which may be
272 reached pursuant to collective bargaining between the state and any
273 organization representing personal care attendants shall interfere with
274 the right of a consumer or surrogate to hire, refuse to hire, supervise,
275 direct the activities of, or terminate the employment of any personal
276 care attendant.

277 (B) In those covered programs where budgets provided to
278 consumers receiving direct support services are allocated using the
279 individual budget methodology, budgets shall be increased to account
280 for additional expenses caused by a contract or award negotiated in
281 accordance with this section which includes increases in wages or
282 benefits.

283 (f) (1) Not later than October 1, 2012, and monthly thereafter, the
284 Personal Care Attendant Workforce Council shall compile and
285 maintain a registry list of the names and addresses of all personal care
286 attendants who have been paid through the state-funded programs
287 identified in subdivision (1) of section 4 of this act within the previous
288 six calendar months. The list shall not include the name of any
289 consumer, or indicate that a personal care attendant is a relative of a
290 consumer or has the same address as a consumer. Any fiscal
291 intermediary that provides administrative services to the state
292 concerning state-funded programs shall assist and cooperate with said
293 council in compiling and maintaining such list. The Personal Care
294 Attendant Workforce Council shall utilize such list for the purposes of
295 this section and sections 6 and 7 of this act. Such list shall be a public
296 record, as defined in section 1-200 of the general statutes.

297 (2) Not later than seven days after receiving a request from an

298 employee organization, as defined in subsection (d) of section 5-270 of
299 the general statutes, that is interested in representing an appropriate
300 unit of personal care attendants, the Personal Care Attendant
301 Workforce Council shall provide to the employee organization the
302 most recent list of personal care attendants compiled pursuant to
303 subdivision (1) of this subsection.

304 Sec. 6. (NEW) (*Effective July 1, 2012*) (a) Personal care attendants
305 shall not be considered state employees and shall be exempt from any
306 and all provisions of the general statutes creating rights, obligations,
307 privileges or immunities to state employees as a result of or incident to
308 their state service.

309 (b) Personal care attendants shall have the right to bargain
310 collectively and shall have such other rights and obligations incident
311 thereto as are created by sections 5-270 to 5-279, inclusive, of the
312 general statutes except as set forth in subsections (c), (d) and (f) of this
313 section, except:

314 (1) The following shall be prohibited subjects of bargaining: (A) A
315 consumer or surrogate's right to (i) hire or refuse to hire, (ii) supervise,
316 (iii) direct the activities of, or (iv) terminate the employment of any
317 personal care attendant, (B) any proposal that would prevent
318 surrogates from hiring personal care attendants not on the registry list
319 described in section 5 of this act, (C) any proposal that would prevent
320 consumers or surrogates from requiring any additional training, (D) a
321 procedure for grievance arbitration against any consumer or surrogate,
322 and (E) application of state employee benefits to personal care
323 attendants, including, but not limited to, health benefits and pensions;

324 (2) No provision of any agreement or award shall provide for a
325 reduction in Medicaid funds provided to the state, nor shall any
326 provision of any agreement or award provide for a reduction in the
327 services of personal care attendants to consumers. Any provision in
328 any agreement or award which would require an additional
329 appropriation in order to maintain the levels of services provided by

330 existing appropriations shall be submitted to the General Assembly for
331 approval in accordance with subdivision (8) of subsection (c) of this
332 section;

333 (3) The provisions of section 5-280 of the general statutes shall not
334 apply to personal care attendants. An agreement or award reached
335 pursuant to this section may include provisions calling for the state or
336 its fiscal intermediary to deduct from reimbursement payments the
337 regular dues, fees and assessments that a member is charged and
338 nonmember service fees limited to the lesser of dues and initiation fees
339 required of members or the proportionate share of expenses incident to
340 collective bargaining. Dues or fees may be charged only with respect to
341 earnings from participation in the waiver programs covered by this
342 section;

343 (4) The provisions of sections 5-276a and 5-276b of the general
344 statutes and subsections (b) to (g), inclusive, of section 5-278 of the
345 general statutes shall not apply to collective bargaining involving
346 personal care attendants. Any impasse between the parties shall be
347 resolved in accordance with subsection (c) of this section;

348 (5) In any proceeding which may be filed under section 5-272 of the
349 general statutes, the State Board of Labor Relations shall be without
350 jurisdiction over, or authority to issue any remedy against, any
351 consumer or surrogate; and

352 (6) Any election required in order to resolve any question
353 concerning representation involving personal care attendants shall be
354 conducted by mail ballot. No provision of this section shall grant
355 personal care attendants a right to strike and such strikes are
356 prohibited.

357 (c) (1) If the organization representing personal care attendants and
358 the state do not reach an agreement not later than one hundred fifty
359 days after negotiations have begun, the parties shall jointly select an
360 arbitrator. The arbitrator selected shall have experience as an impartial
361 arbitrator of labor-management disputes and shall not be an individual

362 employed as an advocate or consultant for labor or management in
363 labor-management disputes. If the parties fail to agree on an arbitrator
364 not later than one hundred sixty days after the negotiations have
365 begun, the selection shall be made using the procedures under the
366 voluntary labor arbitration rules of the American Arbitration
367 Association.

368 (2) Each party shall submit to the arbitrator, and to the other party, a
369 proposal setting forth such party's position on how each of the
370 unresolved issues shall be resolved.

371 (3) The arbitrator shall convene a hearing to allow each party to
372 provide evidence and argument to the arbitrator. Each party shall have
373 the right to submit written briefs to the arbitrator. The arbitration
374 record shall be officially closed at the close of the hearing or the
375 arbitrator's receipt of briefs, whichever is later.

376 (4) The arbitrator's authority is limited to selecting the complete
377 proposal of one party or the other's on any unresolved issue. The
378 arbitrator shall issue an award not later than forty-five days after the
379 close of the record.

380 (5) The factors to be considered by the arbitrator in arriving at a
381 decision are: (A) The nature and needs of the personal care assistance
382 program and the needs and welfare of consumers, including interests
383 in better recruitment, retention and quality with respect to the covered
384 personal care attendants; (B) the history of negotiations between each
385 party including those leading to the proceeding; (C) the existing
386 conditions of employment of similar groups of workers; (D) changes in
387 the cost of living; and (E) the interests and welfare of the covered
388 personal care attendants.

389 (6) The costs of the arbitrator and any fees associated with the
390 arbitration proceeding shall be shared equally by each party.

391 (7) Any agreement or award reached pursuant to this section shall
392 be reduced to writing and submitted to the General Assembly for

393 approval by filing the agreement or award with the clerks of the House
394 of Representatives and Senate. No provision of any agreement or
395 award resulting from the collective bargaining process which would
396 require supercedence of any law or regulation shall take effect without
397 affirmative legislative approval.

398 (8) Notwithstanding any other provision of sections 5 to 7, inclusive,
399 of this act, any provision of any agreement or award requiring the
400 appropriation of additional funds shall be subject to the state's regular
401 budgetary approval process, subject to funds being made available and
402 affirmative legislative approval. Other provisions of the agreement or
403 award shall be deemed approved unless affirmatively rejected by a
404 majority of either house not later than thirty days after the filing with
405 the clerk of that chamber, provided the thirty-day period shall not
406 begin or expire unless the General Assembly is in regular session. Once
407 approved by the General Assembly, any provision of an agreement or
408 award need not be resubmitted by the parties to such agreement or
409 award as part of a future agreement approval process unless changes
410 in the language of such provision are negotiated by the parties.

411 (d) The provisions of this section shall not alter the obligations of
412 the state or the consumer to provide the state's or the consumer's share
413 of Social Security, federal and state unemployment contributions,
414 Medicare or workers' compensation insurance.

415 (e) The bargaining units of personal care attendants appropriate for
416 the purpose of collective bargaining shall be (1) a state-wide unit of all
417 personal care attendants, (2) a state-wide unit of personal care
418 attendants who provide services under programs administered by the
419 Department of Social Services, or (3) a state-wide unit of personal care
420 attendants who provide services under programs administered by the
421 Department of Developmental Services. Personal care attendants who
422 are members of the consumer's or surrogate's family shall not be
423 excluded from the bargaining unit because of such personal care
424 attendant's familial relationship to a consumer or surrogate.

425 (f) Any organization certified as the majority representative of
 426 personal care attendants in any election held prior to the effective date
 427 of this section, pursuant to Executive Order Number 10 of Governor
 428 Dannel P. Malloy, may provide proof of such certification to the State
 429 Board of Labor Relations and the State Board of Labor Relations shall
 430 certify such majority representative as the exclusive bargaining
 431 representative for such personal care attendants without the
 432 requirement of an additional election unless and until such time as a
 433 question concerning representation is appropriately raised under this
 434 section and section 2 of this act.

435 Sec. 7. (NEW) (*Effective July 1, 2012*) The Commissioners of Social
 436 Services and Developmental Services shall submit any application for a
 437 waiver of federal law necessary to effectuate the provisions of sections
 438 4 to 6, inclusive, of this act, in accordance with the provisions of section
 439 17b-8 of the general statutes. The Commissioners of Social Services and
 440 Developmental Services and any other department or agency of the
 441 state shall take all actions reasonably necessary to obtain approval for
 442 any such waiver and to ensure the continuation of necessary federal
 443 funding.

444 Sec. 8. (NEW) (*Effective July 1, 2012*) The state shall not be liable for
 445 any action, including, but not limited to, any civil action, any grievance
 446 arbitration or any prohibited practice proceeding, brought by the
 447 exclusive bargaining agent of such personal care attendants based
 448 upon any alleged wrongdoing by a consumer or surrogate arising
 449 pursuant to sections 5 to 7, inclusive, of this act."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2012</i>	New section
Sec. 2	<i>July 1, 2012</i>	New section
Sec. 3	<i>July 1, 2012</i>	New section
Sec. 4	<i>July 1, 2012</i>	New section
Sec. 5	<i>July 1, 2012</i>	New section
Sec. 6	<i>July 1, 2012</i>	New section

Sec. 7	<i>July 1, 2012</i>	New section
Sec. 8	<i>July 1, 2012</i>	New section