

Initiative Measure No. 1233

filed April 5, 2012

AN ACT Relating to child care teachers and staff; adding new sections to chapter 43.215 RCW; amending RCW 42.56.250, RCW 43.215.505, and RCW 67.70.240; and creating new sections.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

PART I INTENT

NEW SECTION: Sec. 101.

It is the intent of the people of Washington to increase the quality, safety, and affordability of early childhood education in the state's subsidized child care system through: (1) Requiring child care center teachers and staff to obtain preservice criminal background checks and quality assurance training, including training on detecting and reporting child abuse; (2) disqualifying violent felons from working as child care teachers and staff; and (3) establishing a process to assist child care teachers and staff to access affordable health insurance and to collaboratively develop and implement quality early education standards to professionalize and stabilize the child care workforce and improve the quality of early learning and child care for the state's children and families.

PART II REQUIRING CRIMINAL BACKGROUND CHECKS AND TRAINING FOR CHILD CARE TEACHERS AND STAFF

New Section: Sec. 201. A new section is added to chapter 43.215 RCW to read as follows:

- (1) Beginning July 1, 2013, all child care center teachers and staff must obtain preservice criminal background checks and training.
- (2) For the purposes of this section and section 202 of this act, "preservice" means prior to any service that places the individual in unsupervised contact with children.
- (3) The intent of this section is to require background checks and training to be completed preservice. The extent of background check and training requirements applicable to any individual child care center teacher or staff must be determined based upon the applicable statutes and rules in effect during the preservice period, except that beginning July 1, 2013, preservice trainings must also include a minimum of two hours of training regarding the physical and behavioral indicators of child abuse, neglect, and

maltreatment, and statutory reporting requirements. Existing training scholarship programs continue in effect and must be applied to preservice training requirements.

NEW SECTION: Sec. 202. A new section is added to chapter 43.215 RCW to read as follows:

(1) To facilitate the preservice criminal background checks and training, the department must:

(a) Complete criminal background checks for child care teachers and staff within seven working days of submittal of a completed background check application; and

(b) Schedule trainings and take other necessary actions to allow child care teachers and staff to complete preservice trainings within seven days of submittal of a completed background check application, if not previously completed.

(2) Applicable laws and rules governing fees for criminal background checks and training continue to apply, except that the department is responsible for additional costs associated with providing the criminal background checks and training on the expedited schedule required by section 201 of this act.

PART III
**DISQUALIFYING VIOLENT FELONS FROM WORKING AS CHILD CARE
TEACHERS OR STAFF**

NEW SECTION. Sec. 301. A new section is added to chapter 43.215 RCW to read as follows:

(1) The department must permanently disqualify violent felons from working as child care teachers or staff.

(2) For the purposes of this section, a “violent felon” means a person convicted of one or more of the following criminal felonies:

(a) Child abuse or neglect, or both;

(b) Spousal abuse;

(c) A crime against a child, including child pornography;

(d) The following crimes involving violence: Rape, sexual assault, homicide, assault in the first degree, assault in the second degree, or assault in the third degree involving domestic violence; or

(e) Any federal or out-of-state conviction for an offense equivalent to those enumerated in (a) through (d) of this subsection.

(3) This section does not: (a) Limit or lessen existing laws or rules regarding the protection of children or other persons or disqualifications from caring for such populations, including but not limited to, the director's list set forth at WAC 170-06-0120; or (b) limit or lessen the authority of state agencies or officials to establish, amend, and enforce laws or rules relating to the protection of children or other persons.

PART IV

ALLOWING CHILD CARE CENTER TEACHERS AND STAFF TO ACCESS HEALTH CARE AND TO COLLABORATE IN THE DEVELOPMENT AND IMPLEMENTATION OF A CHILD CARE STANDARDS AGREEMENT

NEW SECTION. Sec. 401.

The people find the following:

(1) Quality child care is essential to prepare Washington's children to succeed in school and in life, and to allow families to work and contribute to the state's economy. The state's communities and economy are placing increasing demands on our state's child care system. In 2010, the state adopted plans to expand the Washington state early childhood education program to serve all eligible children by 2018, which will require the program to increase by more than 300%.

(2) The state's child care system is plagued by systemic problems including the inability of child care teachers and staff to access health insurance, lack of training and professionalization, and a resulting high turnover of teachers and staff that jeopardizes the academic and socialization goals of early childhood education. These problems are particularly acute in small, highly-subsidized child care centers.

(3) The state's system of child care funding and licensing and the private marketplace have proven insufficient to overcome these systemic problems.

(4) The state must play an active role in solving these problems in the child care system, given its high rate of state subsidy and the increasing and critical role that child care plays in our communities and economy. The state must assist the child care workforce to professionalize and stabilize, and to access health care if the child care system is to meet the increasing demands put upon it.

(5) The state has established a successful system to collaborate with family child care providers, and that system has begun to address these systemic problems through collaborative development and implementation of standards, improving access to health care, and increasing professionalization, training, and stabilization of the workforce. A collaborative approach is also necessary with regard to child care centers, which play an even larger role in our communities and economy.

(6) The provisions in Section 402 through 406 of this act are necessary to assist child care center teachers and staff to access health insurance, to collaboratively develop and implement standards to improve the quality of early learning and child care services, and to increase professionalization and stabilization of the child care profession. These

provisions are necessary if the child care system is to meet the demands of our communities and economy.

NEW SECTION. Sec. 402. A new section is added to chapter 43.215 RCW to read as follows:

The definitions in this section apply throughout this act unless the context clearly requires otherwise.

(1) “Child care center” means a child care center licensed by the state that receives state child care funding, but excluding family child care providers as defined by RCW 41.56.030(7).

(2) “Child care center teachers and staff” includes all employees of child care centers who work on-site at a center and owners of such center, but excluding family child care providers as defined by RCW 41.56.030(7).

(3) “Department” means the department of early learning.

(4) “Child care standards agreement” means a negotiated agreement that promotes access to high-quality early childhood education and care for the state’s children and families and improves standards for the profession of child care center teachers and staff, including by improving access to health care and other benefits for child care center teachers and staff. The written agreement legally binds the department and the providers’ organization.

(5) “Providers’ organization” means the organization selected by child care teachers and staff to negotiate, execute, and administer a child care standards agreement with the department.

(6) “Service fee” means the fee paid to the providers’ organization for its services in representing child care center teachers and staff in the development and implementation of a child care standards agreement.

NEW SECTION. Sec. 403. A new section is added to chapter 43.215 RCW to read as follows:

(1) Beginning July 1, 2013, child care center teachers and staff have the right to form, join, and participate in the activities of an organization of their own choosing for the purpose of assisting them to access affordable health insurance and negotiating and implementing a child care standards agreement with the state.

(2) Sections 401 through 406 of this act shall apply to child care center teachers and staff at child care centers that receive state child care funding for at least ten percent of the children attending their center, but excluding such teachers and staff at centers:

(a) Operated directly by another unit of government or tribe;

(b) Operated by an entity that operates ten or more child care centers statewide;

(c) Operated by a local nonprofit organization whose primary mission is to provide social services, including serving children and families, and that has a primary affiliation with and pays membership dues or assessments to either: (i) A national organization, exempt from income tax under section 501(c)(3) of the internal revenue code, with more than three million dollars in membership dues and assessments annually, as reported to the internal revenue service; or (ii) a regional council that is affiliated with a national organization, exempt from income tax under section 501(c)(3) of the internal revenue code, with more than two hundred affiliates; or

(d) Funded by the head start program administered by the federal department of health and human services pursuant to 42 U.S.C. Sec. 9801 et seq.

(3) To qualify as the providers' organization, an entity must be a not-for-profit entity that (a) has represented or whose membership includes individuals or entities in the early learning field within the state of Washington, or both; (b) has helped such individuals or entities access group health insurance; and (c) has successfully negotiated a contract or agreement with the state or its agencies on behalf of such individuals or entities. A newly formed entity must be deemed to meet these criteria if it was formed by one or more entities meeting these criteria.

(4) Every child care center employing teachers or staff covered by subsection (2) of this section must provide to the department a list of the names, home addresses, phone numbers, workplace addresses and job titles of all current child care center teachers and staff at the center every six months, except that the lists must also be provided within thirty days of enactment. The department must keep this information confidential and may only share it with an organization seeking to serve as the providers' organization upon the submittal of a request that describes the organization's qualifications to seek election as set forth in subsection (3) of this section. Such information must be disclosed to such an organization promptly upon request and must be used solely for the purpose of seeking election or reelection as a providers' organization.

NEW SECTION: **Sec 404.** A new section is added to chapter 43.215 RCW to read as follows:

(1) The department must recognize as the providers' organization an entity that can demonstrate that it has the written support of the majority of the child care center teachers and staff covered under Section 403 of his act. Such a showing of majority status must be verified by a neutral third party, agreed upon by the entity and the department, who shall conduct a confidential inspection of the evidence of majority status to determine whether the organization has the support of a majority of child care center teachers and staff and report the results to the department, entity and child care center teachers and staff. Only one providers' organization may be recognized in the state at any time.

(2) The department, upon receipt of an entity's petition asserting that thirty percent of child care center teachers and staff covered under section 403 of this act wish to be represented by that entity, or upon receipt of a petition of thirty percent of child care

center teachers and staff covered under section 403 of this act alleging that the recognized providers' organization no longer represents a majority of the child care center teachers and staff, shall direct an election by secret ballot or shall use any other suitable method to determine whether, or by which entity, the child care center teachers and staff desire to be represented for purposes of Sections 401 through 406 of this act. The department must recognize the entity that receives a majority of the votes cast in such election as the providers' organization. The department must designate a neutral third party to conduct the election and resolve issues regarding the election of the providers' organization. The decision and determinations of the neutral party are final and binding.

(3) No election may be conducted when a verification of majority status or an election has been held in the preceding twelve months, or when a child care standards agreement is in effect, except during a designated time period for petitions between one hundred fifty and one hundred eighty days prior to the expiration of the child care standards agreement.

NEW SECTION: **Sec 405** A new section is added to chapter 43.215 RCW to read as follows:

The providers' organization shall make efforts to assist the child care center teachers and staff covered by the child care standards agreement to access health insurance, either through its own health insurance program, through that of another entity, or through the mechanisms of the federal patient protection and affordable care act.

NEW SECTION. **Sec. 406.** A new section is added to chapter 43.215 RCW to read as follows:

(1) The state must collaborate with child care center teachers and staff, through good faith negotiations, to develop and implement a child care standards agreement to improve access to affordable health insurance, to improve accessibility, delivery and quality of early education and care, and to professionalize and stabilize the child care workforce.

(2) The department, acting through the governor, or the governor's designee, must negotiate and agree to terms of a child care standards agreement with the providers' organization.

(3) Negotiations between the department and the providers' organization under this section are limited to the following matters, and only to the extent that such matters are within the control of the state and related to the state's role in workforce development: (a) improving access to health care for child care center teachers and staff; (b) state standards for professional development and training, including the career and wage ladder established under RCW 43.215.505; (c) conditions affecting recruitment and retention; (d) quality ratings by the department; (e) improving access for child care teachers and staff to retirement and welfare benefits; (f) the manner and rate of subsidies, reimbursement by the state, and other economic support for child care centers, including tiered reimbursements; (g) the amount and mechanism for payment of the service fee; and (h) dispute resolution procedures related to (a) through (g). The procedures of this

section apply to the adoption of workforce development standards, but not to the adoption of regulations or state policy, which shall be adopted through rulemaking, legislation, or other policy making procedures.

(4) A child care standards agreement reached between the department and the providers' organization shall not exceed a term of three years. The agreement must be reduced to writing, executed by the parties.

(5) The negotiations authorized by this act do not constitute collective bargaining pursuant to RCW 41.56.030(4) or under the national labor relations act, 29 U.S.C. Sec 151 et seq.

(6) After a reasonable period of good faith negotiations and the inability to reach a child care standards agreement, either party or the parties acting jointly may declare impasse and trigger mediation or arbitration. Such mediation and arbitration process must be patterned on the procedures set forth in RCW 41.56.430 through 41.56.470 and 41.56.480.

(7) The governor must submit, as a part of the proposed biennial or supplemental operating budget submitted to the legislature under RCW ~~43.88.030~~, a request for any new appropriations necessary to implement the provisions of the child care standards agreement entered into under this section or for legislation necessary to implement such agreement. This duty is ministerial, mandatory, and nondiscretionary.

(8) The legislature must approve or reject the submission of the request for funds as a whole. If the legislature rejects or fails to act on the submission, any child care standards agreement must be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement.

(9) After the expiration date of any child care standards agreement, all of the terms and conditions specified in any such agreement remain in effect until the effective date of a subsequent agreement.

(10) Nothing in this act creates or modifies: (a) The parents' or legal guardians' right to choose and terminate the services of any child care provider that provides care for their child or children; (b) the child care centers' right to choose, direct, and terminate the services of any child care teacher or staff; or (c) the rights of employers and employees under the national labor relations act, 29 U.S.C. Sec. 151 et seq. Sections 401 through 406 must be interpreted to be consistent with the national labor relations act and not to limit or intrude, in any way, upon the rights of center employers or employees under federal labor law.

(11) No individual or center may be required to make any payment to the providers' organization. The state's recognition of a providers' organization may not impinge on any individual or organization's right to associate with, or to decline to associate with, the providers' organization or any other organization or group. The state's recognition of a

providers' organization may not prevent any individual or organization from communicating with the state or its agencies on matters of interest, including appearing before or making proposals to the state or its agencies at a public meeting or hearing or at any other state or agency forum.

(12) In enacting this section, the state intends to provide state action immunity under federal and state antitrust laws for the joint activities of child care centers, teachers and staff, and the providers' organization they select for purposes of this chapter.

Sec. 407. RCW 42.56.250 is hereby amended as follows:

The following employment and licensing information is exempt from public inspection and copying under this chapter:

(1) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination;

(2) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;

(3) The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency that are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency. For purposes of this subsection, "employees" includes independent provider home care workers as defined in RCW [74.39A.240](#);

(4) Information that identifies a person who, while an agency employee: (a) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter [49.60](#) RCW against the person; and (b) requests his or her identity or any identifying information not be disclosed;

(5) Investigative records compiled by an employing agency conducting an active and ongoing investigation of a possible unfair practice under chapter [49.60](#) RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment;

(6) Criminal history records checks for board staff finalist candidates conducted pursuant to RCW [43.33A.025](#);

(7) Except as provided in *RCW [47.64.220](#), salary and benefit information for

maritime employees collected from private employers under *RCW 47.64.220(1) and described in *RCW 47.64.220(2); ~~and~~

(8) Photographs and month and year of birth in the personnel files of employees and workers of criminal justice agencies as defined in RCW 10.97.030. The news media, as defined in RCW 5.68.010(5), shall have access to the photographs and full date of birth. For the purposes of this subsection, news media does not include any person or organization of persons in the custody of a criminal justice agency as defined in RCW 10.97.030; ~~and~~

(9) Lists of child care center teachers and staff obtained or maintained by the department of early learning pursuant to Section 403 of this act.

NEW SECTION. Sec. 408. RCW 43.215.505 is hereby amended as follows:

(1) Subject to the availability of funds appropriated for this specific purpose, except as set forth in subsection 3 of this section, the department shall establish a child care career and wage ladder in licensed child care centers that meet the following criteria: (a) At least ~~ten percent of one~~ child care slot is slots are dedicated to children whose care is subsidized by the state or any political subdivision thereof or any local government; and (b) the center agrees to adopt the child care career and wage ladder, ~~which, at a minimum, shall be at the same pay schedule as existed in the previous child care career and wage ladder pilot project~~; and (c) the center meets further program standards as established by rule pursuant to *section 4, chapter 507, Laws of 2005.

The child care career and wage ladder shall include wage increments for levels of education, ~~years of relevant experience, levels of work responsibility~~, relevant early childhood education credits, and relevant requirements in the state training and registry system.

(2) The department shall establish procedures for the allocation of funds to implement the child care career and wage ladder among child care centers meeting the criteria identified in subsection (1) of this section. In developing these procedures, the department shall implement any child care standards agreement pursuant to this act. In addition, to advise the governor and child care center teachers and staff, the department must:

(a) Review past efforts or administration of the child care career and wage ladder pilot project in order to take advantage of any findings, recommendations, or administrative practices that contributed to that pilot project's success;

(b) Consult with stakeholders, ~~including organizations representing child care teachers and providers~~, in developing an allocation formula that incorporates consideration of geographic and demographic distribution of child care centers adopting the child care career and wage ladder; ~~and~~

(c) Develop a system for prioritizing child care centers interested in adopting the child care career and wage ladder that is based on the criteria identified in subsection (1) of this section; and

(d) Provide information gathered in completing (a) through (c) of this subsection to the governor and child care center teachers and staff through their providers' organization .

~~(3) The Legislature and Director must fund the career and wage ladder with a minimum of \$20 million annually from the sources set forth in section 502 in this act. Notwithstanding the requirements of subsection (2) of this section, child care centers meeting the criteria in subsection (1) of this section located in urban areas of the department of social and health services region one shall receive a minimum of fifteen percent of the funds allocated through the child care career and wage ladder, and of these centers, child care centers meeting the criteria in subsection (1) of this section participating in the Spokane tiered reimbursement pilot project shall have first priority for child care career and wage ladder funding~~

PART V MISCELLANEOUS

NEW SECTION. Sec. 501. The department of early learning is authorized to promulgate rules to implement this act.

NEW SECTION. Sec. 502. It shall be a priority to pay any new state costs associated with implementation of this act out of the child care and development fund provided to the state of Washington by the federal government or from proceeds from the Washington State Lottery, before utilizing other state funds. The department of early learning shall take any necessary actions to comply with this directive, including amending the child care and development fund plan if necessary.

NEW SECTION. Sec. 503. RCW 67.70.240 is hereby amended as follows:

The moneys in the state lottery account shall be used only:

- (1) For the payment of prizes to the holders of winning lottery tickets or shares;
- (2) For purposes of making deposits into the reserve account created by RCW 67.70.250 and into the lottery administrative account created by RCW 67.70.260;
- (3) For purposes of making deposits into the education construction fund created in RCW 43.135.045 and the Washington opportunity pathways account created in RCW 28B.76.526. On and after July 1, 2010, all deposits not otherwise obligated under this section shall be placed in the Washington opportunity pathways account. Moneys in the state lottery account deposited in the Washington opportunity pathways account are included in "general state revenues" under RCW 39.42.070;

(4) For distribution to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs. Three million dollars shall be distributed under this subsection during calendar year 1996. During subsequent years, such distributions shall equal the prior year's distributions increased by four percent. Distributions under this subsection shall cease when the bonds issued for the construction of the baseball stadium are retired, but not more than twenty years after the tax under RCW 82.14.0485 is first imposed;

(5) For distribution to the stadium and exhibition center account, created in RCW 43.99N.060. Subject to the conditions of RCW 43.99N.070, six million dollars shall be distributed under this subsection during the calendar year 1998. During subsequent years, such distribution shall equal the prior year's distributions increased by four percent. No distribution may be made under this subsection after December 31, 1999, unless the conditions for issuance of the bonds under RCW 43.99N.020(2) are met. Distributions under this subsection shall cease when the bonds are retired, but not later than December 31, 2020;

(6) For transfer to the veterans innovations program account. The net revenues received from the sale of the annual Veteran's Day lottery raffle conducted under RCW 67.70.500 must be deposited into the veterans innovations program account created in RCW 43.60A.185 for purposes of serving veterans and their families. For purposes under this subsection, "net revenues" means all revenues received from the sale of veteran lottery raffle tickets less the sum of the amount paid out in prizes and the actual administration expenses of the lottery solely related to the veteran lottery raffle;

(7) For the purchase and promotion of lottery games and game-related services; ~~and~~

(8) For the payment of agent compensation; and

(9) For the payment of costs to the state associated with implementation of this act.

The office of financial management shall require the allotment of all expenses paid from the account and shall report to the ways and means committees of the senate and house of representatives any changes in the allotments.

NEW SECTION. Sec. 504. The requirements contained in this act constitute ministerial, mandatory, and nondiscretionary duties. Failure to perform such duties fully constitutes a violation of this act. Any person may bring an action to require the governor or other responsible persons to perform such duties. Such action may be brought in the superior court, at the petitioner's option, for (1) Thurston county, or (2) the county of the petitioner's residence or principal place of business, or such action may be filed directly with the supreme court, which is hereby given original jurisdiction over such action.

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NEW SECTION. **Sec. 505.** If any provision of this act or its application to any person or circumstances is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 506.** The constitutional subject of this act is “child care teachers and staff.”

NEW SECTION. **Sec. 507.** This act may be known as quality child care workforce act.