

HOUSE No. 02906

The Commonwealth of Massachusetts

PRESENTED BY:

Byron Rushing

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to increase routine screening for HIV.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>

HOUSE No. 02906

By Mr. Rushing of Boston, a petition (accompanied by bill, House, No. 2906) of Byron Rushing and others for legislation to increase routine screening for the HIV virus. Public Health.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to increase routine screening for HIV.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 111 of the General Laws is hereby amended by striking out Section 70F
2 and inserting in place thereof the following section:

3 (a) For purposes of this section, the following words shall have the following meanings:

4 “HIV test” means a test for the presence of Human Immunodeficiency Virus (HIV), or for
5 antibodies or antigens that result from HIV infection, or for any other substance specifically
6 indicating infection with HIV.

7 “HIV-related medical information” means: (1) the results of an HIV test; (2) any information that
8 indicates that the patient was the subject of an HIV test; or (3) any information that identifies a
9 patient as having HIV or AIDS, including but not limited to a diagnosis of HIV infection or
10 AIDS or the use of HIV antiretroviral or other medications. (b) No health care facility, as

11 defined in Section 70E, or health care provider, as defined in Section 1 shall order an HIV test

12 without first obtaining the verbal informed consent of the patient. To obtain informed consent, a
13 health care provider shall explain to the patient in person the purpose of an HIV test and the
14 meaning of negative and positive test results, offer the patient the opportunity to ask questions,
15 and determine that the patient voluntarily and knowingly consents to an HIV test. The patient's
16 decision to grant or deny consent shall be contemporaneously documented in the medical record.

17 (c) No HIV test shall be conducted for any purpose related to insurance coverage of any
18 type without the written informed consent of the subject of the test. Nothing herein shall be
19 construed to limit regulations on HIV testing issued by the Commissioner of Insurance.

20 (d) Any health care provider who orders the performance of an HIV test, or such
21 person's representative, shall provide the subject of the test with written information about HIV.
22 The Department of Public Health shall by regulation establish the content of such information
23 and shall develop a document containing such information.

24 (e) Informed consent for an HIV test is not required for repeated testing by a health care
25 facility or health care provider who previously obtained verbal informed consent for an HIV test
26 when such repeated testing is for the purpose of monitoring the course of established HIV
27 infection.

28 (f) Every health care provider who delivers primary medical care services or infectious
29 disease services to an adolescent or adult patient shall offer an HIV test to the patient unless the
30 health care provider determines that there is evidence of prior HIV testing or that the patient is
31 being treated for a life threatening emergency. The Department of Public Health shall through
32 regulation designate patients who are at high risk for HIV and establish the frequency with which
33 health care providers shall offer HIV testing to such patients. Nothing herein shall be construed

34 to limit the frequency or appropriateness of HIV testing based upon clinical judgment. For the
35 purpose of this subparagraph (f) only, “health care provider” means any physician, physician
36 assistant, nurse, nurse practitioner, gynecologist, obstetrician or midwife; “infectious disease
37 services” means health care services provided for the diagnosis or treatment of infectious
38 diseases including, but not limited to, sexually transmitted diseases and tuberculosis; and
39 “primary medical care” means the medical fields of family medicine, general pediatrics, primary
40 care, urgent care within an emergency department of a health care facility as defined in section
41 70E, internal medicine, primary care obstetrics, or primary care gynecology.

42 (g) Any person who orders the performance of an HIV test, or such person’s
43 representative, shall provide any patient testing positive for HIV with a connection to HIV-
44 related medical care and counseling.

45 (h) No health care facility, as defined in section seventy E, and no health care provider
46 shall disclose HIV-related medical information to any person other than the subject thereof
47 without first obtaining the subject’s written informed consent. For the purpose of this section
48 “written informed consent” shall mean a written consent for each requested release of an
49 individual’s HIV-related medical information. Such written consent form shall state the purpose
50 for which the HIV-related medical information is being requested and shall be distinguished
51 from written consent for the release of any other medical information.

52 (i) No employer shall require an HIV test as a condition of employment or require the
53 disclosure of any HIV-related medical information as part of any medical examination.

54 (j) Whoever violates the provisions of this section shall be deemed to have violated
55 section 2 of chapter 93A.

56 (k) It shall not be a violation of this section for any physician, health care provider, health
57 care institution or laboratory to report information, including the names of patients diagnosed
58 with HIV infection or AIDS, to the Department of Public Health pursuant to its authority under
59 Chapter 111 or Chapter 111D and regulations promulgated thereunder. No physician, health
60 care provider, health care institution or laboratory so required to report shall be liable in any civil
61 or criminal action by reason of any such report based on a diagnosis of HIV or AIDS made at
62 any time.

63 (l) The Department of Public Health shall have authority to promulgate regulations
64 implementing the provisions of this section.

65 SECTION 2. Chapter 175 of the General Laws is hereby amended by inserting after
66 section 47Z the following section:

67 Section 47AA. Any individual policy of accident and sickness insurance issued pursuant
68 to section 108, which provides hospital expense and surgical expense insurance or that provides
69 benefits for outpatient services, and which is delivered, issued or renewed within or without the
70 commonwealth, and every group blanket or general policy of accident and sickness insurance
71 issued pursuant to section 110, which provides hospital expense and surgical expense insurance
72 or that provides benefits for outpatient services, which is delivered, issued or renewed within or
73 without the commonwealth, and any employees' health and welfare fund which provides hospital
74 expense and surgical benefits or that provides benefits for outpatient services and which is
75 promulgated or renewed to any person or group of persons in the commonwealth, shall cover the
76 costs of HIV testing performed pursuant to Chapter 111, Section 70F(f) or regulations
77 promulgated thereunder.

78 SECTION 3. Chapter 176A of the General Laws is hereby amended by inserting after
79 section 8AA the following section:

80 Section 8BB. Any contract between a subscriber and the corporation under an individual
81 or group hospital service plan that is delivered, issued or renewed within or without the
82 commonwealth shall cover the costs of HIV testing performed pursuant to Chapter 111, Section
83 70F(f) or regulations promulgated thereunder for all individual subscribers and members within
84 the commonwealth and for all group members having a principal place of employment within the
85 commonwealth.

86 SECTION 4. Chapter 176B of the General Laws is hereby amended by inserting after
87 section 4CC the following section:

88 Section 4DD. Any subscription certificate under an individual or group hospital service
89 plan or medical service agreement that is delivered, issued or renewed within or without the
90 commonwealth, shall cover the costs of HIV testing performed pursuant to Chapter 111, Section
91 70F (f) or regulations promulgated thereunder for all individual subscribers and members within
92 the commonwealth and all group members having a principal place of employment within the
93 commonwealth.

94 SECTION 5. Chapter 176G of the General Laws is hereby amended by inserting after
95 section 4U the following section:

96 Section 4V. Any individual or group health maintenance contract that is issued, renewed,
97 or delivered within or without the commonwealth shall provide to a member or enrollee benefits
98 to cover the costs of HIV testing performed pursuant to Chapter 111, Section 70F(d) or
99 regulations promulgated thereunder.