

SENATE No. 01151

The Commonwealth of Massachusetts

PRESENTED BY:

Richard T. Moore

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 prohibit mandatory overtime for the health care workforce.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Richard T. Moore</i>	<i>Worcester and Norfolk</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>

SENATE No. 01151

By Mr. Moore, petition (accompanied by bill, Senate, No. 1151) of Tarr, Eldridge, Dwyer and other members of the General Court for legislation to prohibit mandatory overtime for the health care workforce [Joint Committee on Public Health].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ SENATE
□ , NO. 872 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to prohibit mandatory overtime for the health care workforce.

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 adding the
2 following section:

3 Section 223. As used in this section, the following words shall, unless the context
4 requires otherwise, have the following meanings:

5 “Facility”, a hospital licensed under section 51, the teaching hospital of the University of
6 Massachusetts medical school, any licensed private or state-owned and state-operated general
7 acute care hospital, an acute psychiatric hospital, an acute care specialty hospital, or any acute

8 care unit within a state-operated facility. As used in this section, “facility” shall not include
9 rehabilitation facilities or long-term acute care facilities.

10 “Health Care Workforce”, facility personnel that have an effect upon the delivery of quality care
11 to patients, including but not limited to registered nurses, licensed practical nurses, unlicensed
12 assistive personnel and/or other service, maintenance, clerical, professional and/or technical
13 workers and other health care workers. The health care workforce includes personnel employed
14 through a personnel agency that contracts with facility to provide personnel.

15 “Mandatory overtime”, any employer request with respect to overtime, which, if refused or
16 declined by the employee, may result in an adverse employment consequence to the employee.
17 The term overtime means any hours exceeding the scheduled daily work shift or other duty
18 period. The agreed upon scheduled work shift shall include pre-scheduled on-call time and time
19 spent for the purpose of communicating shift reports regarding patient status. No employer may
20 use on-call time as a substitute for mandatory overtime. Mandatory overtime shall include an
21 employer, directly or indirectly, requiring a member of the health care workforce to work either
22 more than twelve hours in any given shift or to exceed 16 hours in a 24 hour period. A member
23 of the health care workforce who works 12 consecutive hours in a shift shall be given at least 8
24 hours off from any work between shifts.

25 (a) Except in emergency situations where the safety of a patient requires its use and
26 when there is no reasonable alternative,, no facility may employ mandatory overtime with
27 respect to any member of the health care workforce.

28 (b) Whenever a facility determines there is an emergency situation where the safety of
29 a patient requires its use and when there is no reasonable alternative, the facility shall, before

30 requiring mandatory overtime, make a good faith effort to have overtime covered on a voluntary
31 basis.

32 (c) A member of the health care workforce who is required to work more than twelve
33 consecutive hours pursuant to subsection (a) or who volunteers to work more than twelve
34 consecutive hours pursuant to subsection (b) must be given at least ten consecutive hours of off-
35 duty time immediately after the worked overtime.

36 (d) The provisions of this section are intended as a remedial measure to protect the
37 public health and the quality of patient care, and shall not be construed to diminish or waive any
38 rights of the health care workforce pursuant to any other law, regulation, or collective bargaining
39 agreement. The refusal of an employee to accept work in excess of the limitations set forth in
40 subsections (a) and (c) shall not be grounds for discrimination, dismissal, discharge or any other
41 employment decision.

42 (f) Nothing in this act shall prevent an employer or facility from providing a member
43 of the health care workforce more protection from mandatory overtime than the minimum
44 established under this act.

45 (g) This law shall be effective and all facilities shall meet the applicable requirements
46 of Section 223 of Chapter 111 of the General Laws on or before October 1, 2012.

47 (h) The department of public health shall, on or before July 1, 2012, promulgate
48 regulations to implement the requirements this section. These regulations shall include a system
49 to levy an administrative fine on any facility that violates this act or any regulation issued under
50 this act. The fine shall be not less than \$100 and not greater than \$1,000 for each violation.