

SENATE No. 872

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:
Richard T. Moore	Worcester and Norfolk
Patricia D. Jehlen	Second Middlesex
Martin J. Walsh	13th Suffolk
Michael Brady	9th Plymouth
Angelo J. Puppolo, Jr.	12th Hampden
Anthony D. Galluccio	Middlesex, Suffolk and Essex
Geraldo Alicea	6th Worcester
Christine E. Canavan	10th Plymouth
Scott P. Brown	Norfolk, Bristol and Middlesex
John W. Scibak	2nd Hampshire
Mary E. Grant	6th Essex
Paul J. Donato	35th Middlesex
Brian P. Wallace	4th Suffolk
Denise Provost	27th Middlesex
Timothy J. Toomey, Jr.	26th Middlesex
Anne M. Gobi	5th Worcester
Cleon H. Turner	1st Barnstable
Willie Mae Allen	6th Suffolk
Kay Khan	11th Middlesex

Anthony W. Petrucci	First Suffolk and Middlesex
Bruce E. Tarr	First Essex and Middlesex
Marc R. Pacheco	First Plymouth and Bristol
Matthew C. Patrick	3rd Barnstable
Steven J. D'Amico	4th Bristol
Elizabeth A. Malia	11th Suffolk
James J. O'Day	14th Worcester District
Anthony D. Galluccio	Middlesex, Suffolk and Essex
Karen E. Spilka	Second Middlesex and Norfolk
James Cantwell	4th Plymouth

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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 221. As used in this section, the following words shall, unless the context requires
4 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 "Facility-Wide Staffing Emergency", an unforeseen staffing shortage that could not be prudently
16 planned for by the facility and does not regularly occur; or an ongoing medical or surgical
17 procedure in which a member of the healthcare workforce is actively engaged progress if the
18 absence of the employee could have an adverse effect on the patient. The term does not include
19 vacancies that arise as a result of chronic understaffing.

20 "Mandatory overtime", any employer request with respect to overtime, which, if refused or
21 declined by the employee, may result in an adverse employment consequence to the employee.
22 The term overtime means any hours exceeding the scheduled daily work shift or other duty
23 period. The agreed upon scheduled work shift shall include pre-scheduled on-call time and time
24 spent for the purpose of communicating shift reports regarding patient status. No employer may
25 use on-call time as a substitute for mandatory overtime. Mandatory overtime shall include an
26 employer, directly or indirectly, requiring a member of the healthcare workforce to work either
27 more than twelve hours in a twenty-four hour period or more than eighty hours in a consecutive
28 fourteen-day period.

29 (a) Except in cases of declared public emergencies, or a facility-wide staffing emergency, no
30 facility may employ mandatory overtime with respect to any member of the health care
31 workforce.

32 (b) Whenever a facility determines there is a facility-wide staffing emergency, the facility shall,
33 before requiring mandatory overtime, make a good faith effort to have overtime covered on a
34 voluntary basis.

35 (c) A member of the health care workforce who is required to work more than twelve
36 consecutive hours pursuant to subsection (a) or who volunteers to work more than twelve

37 consecutive hours must be given at least ten consecutive hours of off-duty time immediately after
38 the worked overtime.

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

45 (e) Nothing in this section shall prohibit a member of the health care workforce from voluntarily
46 working overtime.

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

50 (g) This law shall be effective and all facilities shall meet the applicable requirements of
51 Section 221 of Chapter 111 of the General Laws on or before October 1, 2010.

52 (h) The department of public health shall, on or before July 1, 2009, promulgate regulations to
53 implement the requirements this section. These regulations shall include a system to levy an
54 administrative fine on any facility that violates this act or any regulation issued under this act.
55 The fine shall be not less than \$100 and not greater than \$1,000 for each violation.