

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Antonio F.D. Cabral

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 establishing paid family leave.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Antonio F.D. Cabral	13th Bristol
Robert M. Koczera	11th Bristol
Stephen R. Canessa	12th Bristol

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT ESTABLISHING PAID FAMILY LEAVE.

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

1 Chapter 151A of the General Laws as appearing in the 2006 Official Edition is hereby amended
2 by adding the following:—

3 Section 75. Definitions.

4 Section 75. The definitions contained in section 1 of chapter 151A shall apply to section 75 to
5 section 82, inclusive, unless a term is also defined in this section 75. The following words or
6 phrases as used in section 75 to section 82, inclusive, shall have the following meanings unless
7 the context clearly requires otherwise:

8 “Benefits” means moneys payable to a covered employee from the family fund pursuant to this
9 section.

10 “Child” means a biological, adopted or foster son or daughter, a stepson or stepdaughter, a legal
11 ward under the age of eighteen years, or a son or daughter of a covered employee who stands in
12 loco parentis to that child.

13 “Contribution Rate” means the percentage of employees’ total compensation paid to the family

14 fund annually.

15 “Covered Employee” means any Massachusetts resident meeting the qualifications of subsection
16 h of section 1 of chapter 151A.

17 “Family Fund” means a segregated account established by section 76 of chapter 151A.

18 “Family Member” means a covered employee’s spouse, child or parent.

19 “Parent” means a biological, foster, or adoptive parent, a stepparent, a legal guardian or other
20 person who stood in loco parentis to the covered employee or his spouse when the covered
21 employee or spouse was a child.

22 “Serious Health Condition” means an illness, injury, impairment, or physical or mental condition
23 that involves inpatient care in a hospital, hospice, or residential health care facility, or continuing
24 treatment or continuing supervision by a health care provider.

25 Section 76. Contributions.

26 Section 76. The contributions required hereunder shall be paid by all employees to the
27 commonwealth in such manner and at such times as the commissioner may prescribe, and shall
28 be paid over by the commissioner to the state treasurer and credited by him to the Family Fund.

29 Section 77. Rates.

30 Section 77. Employee contributions required under section 2 shall equal 0.1% of wages, up to a
31 maximum of \$120 annually. On or before September 30th of each year, the commissioner shall
32 prepare a statement, which shall be a public record, declaring the total amount of contributions
33 and benefits for the preceding calendar year, the administrative costs of the family fund, the
34 estimated benefits for the next calendar year and the percentage of compensation to be paid to
35 the family fund by covered employee in the next calendar year. Notwithstanding this section 77,
36 the commissioner may, at his discretion, increase or decrease, by not to exceed 0.01 percent, the

37 contribution rate if he determines the adjustment is necessary to reimburse the fund for benefits
38 paid or estimated to be paid to covered employees or to prevent the accumulation of funds in
39 excess of those needed to maintain an adequate fund balance.

40 Section 78. Benefits.

41 Section 78. A covered employee who has satisfied the requirements of this section shall be
42 eligible for up to twelve weeks worth of benefits in any twelve month period. Said weekly
43 benefit amount shall be equal to the amount of the benefit for which the individual would have
44 been eligible at the start of said leave pursuant to chapter 151A had that individual been in total
45 unemployment, including any dependency benefits payable there under. An individual is not
46 eligible for benefits hereunder with respect to any day that he or she has received unemployment
47 compensation benefits pursuant to chapter 151 or any other jurisdiction's similar unemployment
48 compensation program. No two or more individuals are eligible for benefits hereunder with
49 respect to the same family member at the same time. Any payment resulting from a birth or
50 adoption described in this section from a disability insurance plan contributed to by the
51 individual's employer, in proportion to the employer's contribution to such plan shall cause a
52 reduction, in the same amount as the payments, to the total amount of benefits for which the
53 individual is otherwise eligible under this section. Employers may require covered employees to
54 use up to two weeks worth of vacation time prior to receiving benefits hereunder.

55 Section 79. Conflicts.

56 Section 79. Nothing in this section shall interfere with any greater rights or benefits under the
57 terms of a collective bargaining agreement or any other employment agreement between the
58 employee and the employing unit, nor shall the payment of benefits under this section require an
59 employer not covered under 29 U.S.C. Section 2601 or under section 105D of chapter 149 to

60 provide a job-protected leave.

61 Section 80. Regulations.

62 Section 80. The Commissioner shall issue regulations providing guidelines for eligibility and the
63 application procedure.

64 Section 81. Eligibility.

65 Section 81. In accordance with the regulations issued pursuant hereto, a covered employee shall
66 receive benefits pursuant to this section upon establishing eligibility for each uninterrupted
67 period of disability by filing a first claim supported by the certificate of a treating physician or
68 practitioner that establishes the serious health condition or injury of the family member that
69 warrants the care of the covered employee or upon producing the relevant birth certificate or
70 adoption certificate of the covered employee's or his or her spouse's or domestic partner's new
71 child. A certificate filed to establish the serious health condition of the family member shall
72 include:

73 (a) a diagnosis and diagnostic code prescribed in the International Classification of Diseases, or,
74 where no diagnosis has yet been obtained, a detailed statement of symptoms.

75 (b) the date, if known, on which the condition commenced.

76 (c) The probably duration of the condition.

77 (d) An estimate of the amount of time that the physician or practitioner believes the covered
78 employee is needed to care for the family member.

79 (e) A statement that the serious health condition warrants the participation of the covered
80 employee to provide care for his or her family member. "Warrants the participation of the
81 covered employee" includes, but is not limited to, providing psychological comfort, and
82 arranging "third party" care for the family member, as well as directly providing or participating

83 in medical care.

84 Section 82. Further Evidence.

85 Section 82. Nothing in this section shall be construed to preclude the department from requesting
86 additional medical evidence to supplement a claim filed pursuant to this section if the evidence
87 can be procured without additional cost to the claimant. The commissioner may require that
88 additional evidence include identification of diagnoses, symptoms, or a statement as to the facts
89 of the claimant's disability by the physician or practitioner treating the claimant, by the registrar,
90 authorized medical officer, or other duly authorized official of the hospital or health facility
91 treating the claimant, or by an examining physician or other representative of the department.

92 SECTION 2. Effective Date.

93 This act shall become operative on January 1, 2008, except that benefits shall be payable for
94 periods of leave commencing on or after July 1, 2008.

95 SECTION 3. The General Laws are amended by inserting after paragraph 11A of section 4 of
96 chapter 151 B the following:—

97 11B. (1) For an employer to discharge, fine, suspend, expel, discipline or in any other manner
98 discriminate against an employee: (i) for exercising any right to which such employee is entitled
99 under the provisions of section 75 to section 82, inclusive, of chapter 151A, or (ii) with the
100 purpose of interfering with the exercise of any right to which such employee is entitled under
101 section 75 to section 82, inclusive, of chapter 151A. (2) For any employer to discharge, fine,
102 suspend, expel, discipline or in any other manner discriminate against an employee who has filed
103 a complaint or instituted or caused to be instituted a proceeding under or related to section 75 to
104 section 82, inclusive, of chapter 151 A, or who has testified or is about to testify in an inquiry or

105 proceeding, or who has given or is about to give information connected to any inquiry or
106 proceeding related to section 75 to section 82, inclusive, of chapter 151 A. For purposes of this
107 subsection, any negative change in the seniority, status, employment benefits, pay or other terms
108 or conditions of employment of an employee who has been restored to a position pursuant to
109 section 75 to section 82, inclusive, of chapter 151 A that occurs within six months of such
110 restoration, or of an employee who has participated in proceedings or inquiries pursuant to
111 section 75 to section 82, inclusive, of chapter 151A within six months of the termination of
112 proceedings shall be presumed to be retaliation.

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