

**SENATE . . . . . No. 1151**

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**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 adoption 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>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>James B. Eldridge</i>	
<i>Bruce E. Tarr</i>	

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By Mr. Moore, a petition (accompanied by bill, Senate, No. 1151) of Richard T. Moore, James J. Dwyer, James B. Eldridge and Bruce E. Tarr for legislation to prohibit mandatory overtime for the health care workforce. Public Health.

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[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  
2 the following section:

3                   Section 223. As used in this section, the following words shall, unless the  
4 context 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  
11 quality care to patients, including but not limited to registered nurses, licensed practical nurses,  
12 unlicensed assistive personnel and/or other service, maintenance, clerical, professional and/or  
13 technical workers and other health care workers. The health care workforce includes personnel  
14 employed through a personnel agency that contracts with facility to provide personnel.

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

25 (a) Except in emergency situations where the safety of a patient requires its use  
26 and 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  
29 safety of a patient requires its use and when there is no reasonable alternative, the facility shall,  
30 before requiring mandatory overtime, make a good faith effort to have overtime covered on a  
31 voluntary basis.

32 (c) A member of the health care workforce who is required to work more than  
33 twelve 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  
37 the public health and the quality of patient care, and shall not be construed to diminish or waive  
38 any rights of the health care workforce pursuant to any other law, regulation, or collective  
39 bargaining agreement. The refusal of an employee to accept work in excess of the limitations set  
40 forth in subsections (a) and (c) shall not be grounds for discrimination, dismissal, discharge or  
41 any other employment decision.

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

45 (g) This law shall be effective and all facilities shall meet the applicable  
46 requirements 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.