

SENATE No. 2210

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

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. (a)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

technical workers and other health care workers. The health care workforce includes personnel employed through a personnel agency that contracts with facility to provide personnel.

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

(b) Except in emergency situations as declared by a state or federal agency where the safety of a patient requires its use and when there is no reasonable alternative, no facility may employ mandatory overtime with respect to any member of the health care workforce.

(c) Pursuant to paragraph (b), whenever a facility determines there is an emergency situation where the safety of a patient requires its use and when there is no reasonable alternative, the facility shall, before requiring mandatory overtime, make a good faith effort to have overtime covered on a voluntary basis.

(d) A member of the health care workforce who is required to work more than twelve consecutive hours pursuant to paragraph (b) or who volunteers to work more than twelve

consecutive hours pursuant to paragraph (c) must be given at least ten consecutive hours of off-duty time immediately after the worked overtime.

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

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

(g) This law shall be effective and all facilities shall meet the applicable requirements of this section on or before October 1, 2012.

(h) The department of public health shall, on or before July 1, 2012, promulgate regulations to implement the requirements of this section. These regulations shall include a system to levy an administrative fine on any facility that violates this act or any regulation issued under this act. The fine shall be not less than \$100 and not greater than \$1,000 for each violation. A nurse may not be disciplined, dismissed or discharged for refusing to work beyond the hours specified in this section.