

SENATE No. 1048

The Commonwealth of Massachusetts

PRESENTED BY:

Karen E. Spilka

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 establishing a family and medical leave insurance program.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Karen E. Spilka</i>	<i>Second Middlesex and Norfolk</i>	
<i>Jack Lewis</i>	<i>7th Middlesex</i>	<i>1/24/2017</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>1/24/2017</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>1/24/2017</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>1/24/2017</i>
<i>Solomon Goldstein-Rose</i>	<i>3rd Hampshire</i>	<i>1/25/2017</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/25/2017</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/25/2017</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>1/25/2017</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>	<i>1/25/2017</i>
<i>Thomas M. McGee</i>	<i>Third Essex</i>	<i>1/25/2017</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>	<i>1/25/2017</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>	<i>1/25/2017</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	<i>1/26/2017</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	<i>1/26/2017</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>1/26/2017</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>1/26/2017</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>1/26/2017</i>

<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>1/27/2017</i>
<i>Michael J. Finn</i>	<i>6th Hampden</i>	<i>1/27/2017</i>
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>	<i>1/27/2017</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>1/27/2017</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>1/27/2017</i>
<i>Evandro C. Carvalho</i>	<i>5th Suffolk</i>	<i>1/27/2017</i>
<i>Brian Murray</i>	<i>10th Worcester</i>	<i>1/27/2017</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/27/2017</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	<i>1/27/2017</i>
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	<i>1/27/2017</i>
<i>Cynthia Stone Creem</i>	<i>First Middlesex and Norfolk</i>	<i>1/27/2017</i>
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>	<i>1/27/2017</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>1/27/2017</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>	<i>1/30/2017</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>	<i>1/30/2017</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>1/30/2017</i>
<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>	<i>1/30/2017</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/30/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/31/2017</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>1/31/2017</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>	<i>1/31/2017</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>1/31/2017</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>	<i>1/31/2017</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>1/31/2017</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>	<i>1/31/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/31/2017</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>1/31/2017</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>1/31/2017</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>2/1/2017</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>	<i>2/1/2017</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/1/2017</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/1/2017</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>2/2/2017</i>
<i>Bud Williams</i>	<i>11th Hampden</i>	<i>2/2/2017</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	<i>2/2/2017</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/2/2017</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	<i>2/2/2017</i>
<i>Juana B. Matias</i>	<i>16th Essex</i>	<i>2/2/2017</i>

<i>James M. Murphy</i>	<i>4th Norfolk</i>	<i>2/2/2017</i>
<i>James E. Timilty</i>	<i>Bristol and Norfolk</i>	<i>2/3/2017</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/3/2017</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>	<i>2/3/2017</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>	<i>2/3/2017</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>2/3/2017</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>2/6/2017</i>
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>	<i>2/10/2017</i>
<i>James T. Welch</i>	<i>Hampden</i>	<i>2/10/2017</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>2/23/2017</i>
<i>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	<i>10/3/2017</i>

SENATE No. 1048

By Ms. Spilka, a petition (accompanied by bill, Senate, No. 1048) of Karen E. Spilka, Jack Lewis, Sal N. DiDomenico, Michael J. Barrett and other members of the General Court for legislation to establish a family and medical leave insurance program. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 2477 OF 2015-2016.]

The Commonwealth of Massachusetts

—————
**In the One Hundred and Ninetieth General Court
(2017-2018)**
—————

An Act establishing a family and medical leave insurance program.

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. Section 150 of chapter 149 of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by inserting after the figure “151”, in line 41, the following
3 words:- or of chapter 175M.

4 SECTION 2. Subsection (c) of section 46 of chapter 151A of the General Laws is hereby
5 amended by striking out clause (3), inserted by section 7 of chapter 70 of the acts of
6 2016, and inserting in place thereof the following clause:

7 (3) to the heads of the departments of career services, transitional assistance, revenue,
8 veterans’ services, family and medical leave and the office of Medicaid and industrial accidents,
9 information necessary in the performance of their official duties.

10 SECTION 3. The General Laws are hereby amended by inserting after chapter 175L the
11 following chapter:

12 CHAPTER 175M.

13 FAMILY AND MEDICAL LEAVE

14 Section 1. As used in this chapter, the following words shall have the following meanings
15 unless the context clearly requires otherwise:

16 “Average weekly wage”, as provided in subsection (w) of section 1 of chapter 151A and
17 shall be calculated using the base period earnings as defined in subsection (a) of said section 1 of
18 said chapter 151A.

19 “Benefit year”, benefit year as defined in subsection (c) of section 1 of chapter 151A.

20 “Child”, a biological, adopted or foster child, stepchild or legal ward, a child to whom the
21 employee stands in loco parentis, or a person to whom the employee stood in loco parentis when
22 the person was a minor child.

23 “Contributions”, payments made by an employer or employee to the Family and
24 Employment Security Trust Fund established in section 8.

25 “Department”, the department of family and medical leave established in section 3.

26 “Director”, the director of the department of family and medical leave.

27 “Employee”, as provided in subsection (h) section 1 of chapter 151A; provided, however,
28 that an individual employed by an employing unit not subject to chapter 151A but employed to
29 an employing unit that has opted into coverage under this chapter shall be deemed an employee;

30 and provided further that family child care providers, as defined in subsection (a) of section 17 of
31 chapter 15D, shall be deemed employees for the purposes of this chapter; and provided further,
32 that a person hired to temporarily replace an employee on family care leave or temporary
33 disability leave shall not be considered an employee for the purposes of this chapter.

34 “Employer”, as provided in subsection (i) of section 1 of chapter 151A; provided,
35 however, that for purposes of this chapter, the department of early education and care shall be
36 deemed the employer of family child care providers, as defined in subsection (a) of section 17 of
37 chapter 15D, and the PCA quality home care workforce council established in section 71 of
38 chapter 118E shall be the employer of personal care attendants, as defined in section 70 of said
39 chapter 118E; and provided further, that a political subdivision or its instrumentalities shall not
40 be subject to this chapter unless it adopts this chapter under section 10; provided further, that an
41 entity not deemed an employer under subsection (i) of section 1 of chapter 151A may opt to be
42 considered an employer for the purposes of this chapter through a notification and registration
43 process as determined by the department.

44 “Employment”, employment as defined in subsection (k) section 1 of chapter 151A.

45 “Employment benefits”, benefits provided or made available to employees by an
46 employer including, but not limited to, group life insurance, health insurance, disability
47 insurance, sick time, annual or vacation leave, educational benefits and pensions or other
48 retirement accounts.

49 “Family member”, spouse, domestic partner, child, parent, parent of a spouse or domestic
50 partner, an individual who stood in loco parentis to the employee when the employee was a
51 minor child, grandchild, grandparent, or a sibling of the employee.

52 “Family leave benefits”, wages paid to an employee on family leave.

53 “Family leave”, leave taken by an employee from employment to provide care for a
54 family member for 1 of the following reasons: (i) to bond with the employee's child during the
55 first 12 months after the child's birth or the first 12 months after the placement of the child for
56 adoption or foster care with the employee; (ii) a serious health condition of a family member; or
57 (iii) because of a qualifying exigency pursuant to the Family and Medical Leave Act, 29 U.S.C.
58 2612(a)(1)(e), arising out of a family member of the employee being on active duty in the armed
59 forces of the United States.

60 “Health care provider”, health care provider as defined in section 1 of chapter 111.

61 “Medical leave benefits”, wages to an employee who is on medical leave from
62 employment.

63 “Medical leave”, leave taken by an employee from employment due to a serious health
64 condition of the employee that renders the employee unable to perform the functions of the
65 employee’s position.

66 “Premium”, the amount paid by the employer, the employee or a self-employed person
67 into the family and medical leave security trust fund to receive family and medical leave
68 benefits.

69 “Serious health condition”, an illness, injury, impairment or other physical or mental
70 condition that involves either: (i) inpatient care in a hospital, hospice or residential medical
71 facility; or (ii) continuing treatment by a health care provider.

72 “State average weekly wage”, the average weekly wage in the commonwealth as
73 determined under subsection (a) of section 29 of chapter 151A.

74 “Wages”, wages as defined in subsection (s) of section 1 of chapter 151A.

75 “Weekly benefit amount”, the amount of wages paid to an employee on a weekly basis
76 while on family or medical leave.

77 Section 2. (a) There shall be a department of family and medical leave within the
78 executive office of labor and workforce development which shall be administered by a director.
79 The director shall oversee the administration of family and medical leave benefits. The director
80 may hire staff, subject to the approval of the secretary of labor and workforce development, as
81 needed to fulfill the powers and duties of the department.

82 The department shall administer claims for family and medical leave benefits and
83 implement an appeals process for claims denied. The department may also investigate any claims
84 and refer violations of this chapter to the attorney general. Claims for family and medical leave
85 benefits shall be filed with the department and handled under the procedures prescribed in
86 sections 1, 10, 11, 12, 14, 15 and 16 of chapter 30A.

87 The department shall inform employees and employers about an employer’s obligations
88 under this chapter, the availability of family and medical leave benefits, the requirements for
89 receiving such leave and benefits and how to apply for such leave and benefits. The department
90 shall maintain a website and phone line to provide employers and employees with such
91 information, in addition to information related to the status of a filed claim for family or medical
92 leave benefits.

93 (b) The attorney general shall be responsible for the enforcement of this chapter and may
94 promulgate rules and regulations to carry out this chapter; provided, however, that penalties or
95 violations recovered under this chapter shall be deposited in the Family and Employment
96 Security Trust Fund.

97 (c) All presumptions shall be made in favor of the availability of leave and the payment
98 of family and medical leave benefits under this chapter.

99 Section 3. (a) An employee shall be eligible for family or medical leave if the employee
100 has accrued at least 1,250 hours of service for an employer. A participating self-employed person
101 shall be eligible for family or medical leave if the self-employed person has paid a premium for
102 at least 2 consecutive quarters during the past 12 month base period prior to the claim.

103 An employee or self-employed person shall be eligible for a maximum of 16 weeks of
104 family leave in a benefit year.

105 An employee or self-employed person shall be eligible for medical leave for a maximum
106 of 26 weeks in a benefit year. An employee or self-employed person may take an aggregate of
107 not more than 26 weeks of family and medical leave under this chapter in the same benefit year.

108 (b) An employee may take leave under this chapter intermittently or on a reduced leave
109 schedule, provided that the employee and the employer agree to the intermittent or reduced leave
110 schedule and document it in a manner determined by the department. The employer shall engage
111 in a timely, good faith and collaborative process with the employee to determine a reasonable
112 intermittent or reduced leave schedule.

113 (c) An employee or self-employed person on family or medical leave shall receive a
114 weekly benefit amount, as determined under section 4.

115 (d) An employee who has taken family or medical leave shall be restored to the
116 employee's previous position, or to a substantially similar position, with the same status, pay,
117 employment benefits, length of service credit and seniority the employee had at the beginning of
118 the leave. An employer shall not be required to restore an employee who has taken family or
119 medical leave to the previous or to an equivalent position if other employees of equal length of
120 service credit and status in the same or substantially similar positions have been laid off due to
121 economic conditions or other changes in operating conditions affecting employment during the
122 period of leave; provided, however, that the employee shall be extended the same rights or
123 benefits, if any, extended to employees of equal length of service in the equivalent position.

124 (e) The taking of family or medical leave shall not affect an employee's right to accrue
125 vacation time, sick time, bonuses, advancement, seniority, length of service credit or other
126 employment benefits, plans or programs for which the employee was eligible at the date of the
127 employee's leave. The employer shall continue to provide for and contribute to the employee's
128 employment-related health insurance benefits, if any, for the duration of an employee's family or
129 medical leave under the same terms and conditions as those in effect prior to the employee's
130 leave.

131 (f) Nothing in this chapter shall be construed to affect a collective bargaining agreement,
132 company policy or other federal, state or municipal law that provides greater or additional rights
133 to family or medical leave than those provided under this chapter.

134 (g) Nothing in this chapter shall be construed to permit an employer to compel an
135 employee to exhaust rights to any sick, vacation or personal time prior to or while taking leave
136 under this chapter.

137 (h) Leave taken under this chapter shall run concurrently with leave taken under either
138 section 105D of chapter 149 or the federal Family Medical Leave Act, 29 U.S.C. 2611, et. seq.

139 Section 4. (a) No family or medical leave benefits shall be paid during the first 7
140 consecutive calendar days of such leave. An employee may, but shall not be required to, utilize
141 accrued sick, vacation or any other paid time off during the first 7 consecutive calendar days of
142 such leave. An employee or self-employed person who receives medical leave benefits due to
143 pregnancy and requests family leave for the birth of a child shall receive family leave benefits
144 immediately upon approval of the family leave.

145 (b) The weekly benefit amount for an employee or self-employed person on family or
146 medical leave shall be 50 per cent of an employee's or self-employed person's average weekly
147 wage; provided, however, that the maximum weekly benefit amount shall not exceed \$1,000
148 dollars per week.

149 An employee on an intermittent or reduced leave schedule shall receive a prorated
150 weekly benefit amount, as determined by the department.

151 (c) The weekly benefit amount shall be reduced by the amount of wages or wage
152 replacement an employee receives while on family or medical leave under any of the following:

153 (i) a government program or law including, but not limited to, unemployment insurance,
154 worker's compensation other than for permanent partial disability incurred prior to the medical

155 leave claim or under other state or federal temporary or permanent disability benefits law; or (ii)
156 a permanent disability policy or program of an employer.

157 The weekly benefit amount shall be reduced by the amount of wage replacement an
158 employee receives while on family or medical leave under any of the following, if the aggregate
159 amount an employee would receive exceeds the employee's average weekly wage: (i) a
160 temporary disability policy or program of an employer; or (ii) a paid family, or medical leave
161 policy of an employer.

162 Section 5. (a) Each employer shall keep posted in a conspicuous place on each of its
163 premises a workplace notice prepared by the department providing notice of benefits available
164 under this chapter. The workplace notice shall be issued in English, Spanish, Chinese, Haitian
165 Creole, Italian, Portuguese, Vietnamese, Laotian, Khmer, Russian and any other language that is
166 the primary language of at least 10,000 or 1/2 of 1 per cent of all residents of the commonwealth.
167 Each employer shall post the workplace notice in English and each primary language other than
168 English which is the primary language of 5 or more employees of that workplace, if such notice
169 is available from the department.

170 Each employer shall issue to each employee, not more than 30 days from the beginning
171 date of the employee's employment, the following written information provided or approved by
172 the department: (i) an explanation of the availability of family and medical leave and benefits
173 provided under this chapter; (ii) the employee's contribution amount and obligations under this
174 chapter; (iii) the name and mailing address of the employer; (iv) the identification number
175 assigned to the employer by the department; (v) instructions on how to file a claim for family or
176 medical leave benefits; (vi) the address and telephone number of the department; and (vii) any

177 other information deemed necessary by the department. Delivery is made when an employee
178 provides written acknowledgement of receipt of the information.

179 Any employer who fails to comply with this subsection shall be punished, for a first
180 violation, by a fine of not less than \$50 and not more than \$300 and for a subsequent violation by
181 a fine of not less than \$300 and not more than \$1,000. The employer shall have the burden of
182 demonstrating compliance with this subsection.

183 (b) The employee shall give at least 2 weeks' notice to the employer of the anticipated
184 starting date of the leave, the anticipated length of the leave and the expected date of return or
185 shall provide notice as soon as practicable if the delay is for reasons beyond the employee's
186 control. If an employer fails to provide notice of this chapter as required under subsection (a), the
187 employee's notice requirement shall be waived.

188 Section 6. (a) An employee taking family or medical leave under this chapter may be
189 required to provide certification to the employer and the department. An employee shall provide
190 certification supporting a request for leave under this chapter as soon as practicable; provided,
191 however, that an employer shall not delay family or medical leave or delay payment of benefits
192 for the period in which leave is taken for employees entitled to a weekly benefit under section 3,
193 if the employer has not yet received the certification.

194 The department shall process the notification and certification upon receipt and provide
195 notice to the employer and employee of its determination of the employee's eligibility for
196 benefits. The department shall provide a process for self-employed persons to provide notice and
197 certification to receive benefits. A self-employed person, employer or employee may appeal the
198 departments' eligibility determination, according to the process established by the department.

199 Certification for medical leave shall include, but not be limited to: (i) the date on which
200 the serious health condition commenced; (ii) the expected period of time the employee plans to
201 be on medical leave; (iii) a description of the serious health condition from a health care provider
202 as required by the department; and (iv) a statement from the health care provider confirming that
203 the employee is unable to perform the functions of the employee's position due to the serious
204 health condition.

205 Certification for family care leave shall include, but not be limited to: (i) the expected
206 period of time the employee plans to take family care leave; (ii) a statement affirming that the
207 employee is needed to care for a family member or bond with a child; and (iii) relevant medical
208 information provided by a health care provider. Certification for military exigency leave shall
209 include, but not be limited to: (i) a copy of the covered servicemember's active-duty orders or
210 (ii) other documentation issued by the military.

211 The department may request updated information, including updated medical
212 information, from a self-employed person or employee to ensure accurate updates of the actual
213 period of family or medical leave. A self-employed person or employee shall provide additional
214 notification to the department and employer, if applicable, of the actual date a self-employed
215 person or employee returns to work and is no longer collecting benefits.

216 The department shall develop certification forms, as well as any other necessary forms or
217 notices, for family and medical leave and make them available on the department's website.

218 (b) Medical or health information required under this section shall be treated as
219 confidential and not disclosed except with permission from the employee who provided it unless
220 disclosure is otherwise required by law. Nothing in this section shall be construed to require an

221 employee to provide as certification any information from a health care provider in violation of
222 section 1177 of the Social Security Act, 42 U.S.C. 1320d-6, or the regulations promulgated
223 under section 264(c) of the Health Insurance Portability and Accountability Act of 1996, 42
224 U.S.C. 1320d-2.

225 (c) An employee or a self-employed person shall not be eligible to receive family or
226 medical leave benefits if the director finds that the employee or self-employed person, for the
227 purpose of obtaining these benefits, has willfully made a false statement or representation, with
228 actual knowledge of the falsity thereof or has willfully withheld a material fact concerning the
229 facts required to be certified pursuant to this subsection. If found ineligible by the department, an
230 employee or self-employed person may be liable for the repayment of any received family or
231 medical leave benefits to the Family and Employment Security Trust Fund.

232 Section 7. (a) An employer shall secure family and medical leave benefits for employees
233 by making contributions, solely or jointly with employees, to the Family and Employment
234 Security Trust Fund established in section 8 in the form and manner determined by the
235 department. Contributions shall be proportionate to the employee's salary.

236 (b) A self-employed person may secure family and medical leave benefits by making
237 contributions to the Family and Employment Security Trust Fund established in section 8 in the
238 form and manner determined by the department; provided, however, that a self-employed person
239 shall be responsible for the full contribution amount paid by an employer and employee jointly.

240 (c) An employer may require an employee to provide up to 50 per cent of the contribution
241 required by this section. An employer may contribute an amount that is greater than the amount
242 contributed by the employee.

243 Section 8. (a) There shall be a Family and Employment Security Trust Fund, which shall
244 be administered by the director exclusively for the purposes of this chapter. The trust fund shall
245 consist of: (i) employer and employee contributions collected pursuant to section 6 together with
246 any interest earned thereon; (ii) property or securities acquired through the use of money
247 belonging to the trust fund together with any earnings of such property and securities; (iii) fines
248 and penalties collected under this chapter; and (iv) other money received from any source,
249 including any grants, gifts, bequests or money authorized by the general court or other party
250 specifically designated to be credited to the trust fund. Money remaining in the fund at the end of
251 a fiscal year shall not revert to the General Fund. Amounts credited to the fund shall not be
252 subject to further appropriation. The trust fund shall maintain an annualized amount of at least
253 140 per cent of the previous year's expenditure.

254 (b) The administration of this fund shall be supported through the fund and the director
255 shall pay all expenses incurred in administering this chapter; provided, however, that the costs of
256 administering the benefits under this chapter shall not exceed 5 per cent of the amount deposited
257 under subsection (a) for each fiscal year.

258 (c) The director shall expend money from the trust fund to provide weekly benefits under
259 section 4. Family and medical leave benefits shall be paid from the trust fund to employees and
260 participating self-employed persons. An employer's bankruptcy or noncompliance with this
261 chapter shall not interfere with an employee's ability to collect family and medical leave benefits
262 under this chapter.

263 Family or medical leave benefits paid from the trust fund to such an employee may be
264 recovered through bankruptcy proceedings or from the noncomplying employer. The director

265 shall institute administrative and legal action to recover family or medical leave benefits paid
266 through the trust fund.

267 (d) To accumulate funds for the payment of family and medical leave benefits and
268 administrative costs, employers and employees and participating self-employed persons shall pay
269 an amount determined by the director and based on the employee's salary or the self-employed
270 person's income. Contributions made under section 7 shall be transmitted to the trust fund in the
271 manner determined by the department.

272 (e) Annually, not later than October 1, the director shall certify to the secretary of labor
273 and workforce development the estimated costs for benefits and administrative services provided
274 by the department for the coming year. Rates of employer contribution to the trust fund shall be
275 adjusted annually consistent with the needs of the operation of the trust fund.

276 (f) An employer to whom the department has sent a request for wage and employment
277 information for an employee claiming family or medical leave benefits shall complete and file
278 that information not later than 10 days after the date the request was sent. If an employer does
279 not respond within those 10 days, that employer may be held liable for any related costs incurred
280 by the department.

281 Section 9. (a) It shall be unlawful for an employer to retaliate by discharging, firing,
282 suspending, expelling, disciplining or in any other manner discriminating against an employee
283 for exercising a right to which such employee is entitled under this chapter or to interfere with
284 the exercise of a right to which such employee is entitled under this chapter.

285 (b) It shall be unlawful for an employer to retaliate by discharging, firing, suspending,
286 expelling, disciplining or in any other manner discriminating against an employee who has filed

287 a complaint or instituted a proceeding or caused a proceeding to be instituted under this section,
288 has testified or is about to testify in an inquiry or proceeding or has given or is about to give
289 information connected to an inquiry or proceeding relating to this chapter.

290 (c) Any negative change in the seniority, status, employment benefits, pay or other terms
291 or conditions of employment of an employee who has been restored to a position pursuant to this
292 chapter that occurs within 6 months of such restoration or of an employee who has participated
293 in proceedings or inquiries pursuant to this section within 6 months of the termination of
294 proceedings shall be presumed to be retaliation under this section.

295 (d) An employee or former employee aggrieved by a violation of this section may, within
296 2 years, institute a civil action in the superior court. A party to the action shall be entitled to a
297 jury trial. All remedies available in common law tort actions shall be available to prevailing
298 plaintiffs and shall be in addition to any legal or equitable relief provided in this section. The
299 court may: (i) issue temporary restraining orders or preliminary or permanent injunctions to
300 restrain continued violations of this section; (ii) reinstate the employee to the same position held
301 before the retaliatory action or to an equivalent position; (iii) reinstate full fringe benefits and
302 seniority rights to the employee; (iv) compensate the employee for 3 times the lost wages,
303 benefits and other remuneration and the interest thereon; and (v) order payment by the employer
304 of reasonable costs and attorneys' fees.

305 (e) Nothing in this section shall be deemed to diminish the rights, privileges or remedies
306 of an employee under any other federal or state law or regulation or under any collective
307 bargaining agreement or employment contract; provided, however, that the institution of a
308 private action in accordance with subsection (d) shall be deemed a waiver by the plaintiff of the

309 rights and remedies available to the plaintiff for the actions of the employer under any other
310 contract, collective bargaining agreement, state law, rule or regulation or under the common law.

311 (f) An employer shall conspicuously display notices reasonably designed to inform its
312 employees of their protection and obligations under this section and use other appropriate means
313 to keep its employees so informed.

314 Section 10. A city, town or authority may adopt this chapter upon a majority vote of the
315 local legislative body or the governing body. For the purposes of this section, a vote of the
316 legislative body shall take place in a city by a vote the city council subject to its charter, in a
317 town by a vote at a town meeting and for an authority by a vote of its governing body.

318 Section 11. The department shall promulgate regulations to implement this chapter.

319 SECTION 4. Subsection (b) of section 4 of chapter 175M of the General Laws, inserted
320 by section 3, is hereby amended by striking out the figure “50” and inserting in place thereof the
321 following figure:- 70.

322 SECTION 5. Said subsection (b) of said section 4 of said chapter 175M is hereby further
323 amended by striking out the figure “70”, inserted by section 4, and inserting in place thereof the
324 following figure:- 90.

325 SECTION 6. The first paragraph of said subsection (b) of said section 4 of said chapter
326 175M is hereby amended by adding the following sentence:- The department shall annually
327 adjust the maximum weekly benefit amount to reflect changes in the United States Bureau of
328 Labor Statistics Consumer Price Index for the Boston-Cambridge-Quincy consolidated
329 metropolitan statistical area or its successor index.

330 SECTION 7. The department of family and medical leave shall promulgate regulations to
331 implement this act not later than January 1, 2018.

332 SECTION 8. Sections 1, 2 and proposed sections 3 to 9, inclusive, of proposed chapter
333 175M of the General Laws shall take effect on January 1, 2019.

334 SECTION 9. Section 4 shall take effect on January 1, 2020.

335

336 SECTION 10. Section 5 and 6 shall take effect on January 1, 2021.