HOUSE . . . . . No. 3771

Text of an amendment (offered by Mr. Michlewitz of Boston), to the engrossed Bill providing for Massachusetts COVID-19 emergency paid sick leave (House, No. 3702). May 18, 2021.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

By striking out all after the enacting clause and inserting in place thereof the following:–

SECTION 1. Section 3 of chapter 81 of the acts of 2020 is hereby amended by striking out the words “solvency account” and inserting in place thereof the following words:- COVID-19 employer relief account.

SECTION 2. Said chapter 81 is hereby further amended by striking out section 6 and inserting in place thereof the following 2 sections:-

SECTION 5A. Section 3 is hereby repealed.

SECTION 6. Section 4 is hereby repealed.

SECTION 3. Said chapter 81 is hereby further amended by inserting after section 9 the following section:-

SECTION 9A. Section 5A shall take effect on August 1, 2021.

SECTION 4. Chapter 9 of the acts of 2021 is hereby amended by striking out section 20 and inserting in place thereof the following section:-

SECTION 20. (a) For calendar years 2021, 2022 and any calendar year in which bonds or notes issued pursuant to section 19 are outstanding, an employer entitled to an experience rate pursuant to section 14 of chapter 151A of the General Laws shall be subject to, shall be assessed and shall pay an unemployment obligation assessment.

(b) Annually, beginning January 1, 2021, the commissioner shall set the unemployment obligation assessment rate at an amount sufficient to both:

(1) Credit the following amounts to the COVID-19 employer relief account which shall be in addition to any amounts deemed necessary by the commissioner for the purposes of paragraph (2):

(i) In calendar year 2021, an amount to be determined by the commissioner, provided, that the amount to be determined shall not be more than $150,000,000;

(ii) In calendar year 2022, an amount to be determined by the commissioner; provided, that the amount to be determined shall not be more than $250,000,000; and

(2) Credit any amount deemed necessary by the commissioner to the Special Contribution Unemployment Compensation Trust Fund established pursuant to section 21 for the following purposes:

(i) principal, interest and any redemption premium on the bonds or notes;

(ii) administrative expenses, credit enhancement fees and other fees, if any, in connection with issuing the bonds or notes;

(iii) all other amounts required to be maintained and paid under the terms of applicable trust agreements or credit enhancement agreements; and

(iv) amounts necessary to establish the ratings on the obligations that are assigned by a nationally recognized rating service at a level determined by the treasurer in the state treasurer's sole discretion.

(c) The rate shall be based on a formula prescribed by rules set forth by the commissioner, using the employer's experience rate. The unemployment obligation assessment rate shall apply to the same wage base to which the employer's unemployment tax applies for the applicable period.

(d) Not less than 30 days following the annual setting of the unemployment obligation assessment rate, the commissioner shall provide written notice to the house and senate committees on ways and means and the joint committee on labor and workforce development. The notice shall include, but not be limited to: (i) the assessment rate; (ii) a description of the formula on which the assessment rate was based; and (iii) the amounts of any outstanding payments associated with bonds issued pursuant to section 19, including the amounts described in clauses (i) to (iv), inclusive, of subsection (b).

(e) The unemployment obligation assessment shall be collected in such manner and at such times as the commissioner shall prescribe, provided that the collection shall occur at least quarterly.

(f) The portion of the unemployment obligation assessment attributable to paragraph (1) of subsection (b) shall be credited to the COVID-19 employer relief account within the Unemployment Compensation Fund. All unemployment obligation assessments attributable to paragraph (2) of subsection (b) shall be credited to the Special Contribution Unemployment Compensation Trust Fund established by section 21A. Receipts from the assessment shall not be

subject to the allowable state tax revenue limitations established by chapter 62F of the General Laws.

SECTION 5. Said chapter 9 is hereby further amended by inserting after section 21, the following section:-

SECTION 21A. There is hereby established a separate account to be known and referred to as the COVID-19 employer relief account, within the Unemployment Compensation Fund established in section 48 of chapter 151A of the General Laws. Benefits shall be assigned to this account pursuant to section 3 of chapter 81 of the acts of 2020 as amended by this act. Amounts collected pursuant to subsection (b) of section 20 of chapter 9 of the acts of 2021, as amended by this act, or any other amounts designated by the commissioner as defined in section 1 of said chapter 151A as intended for repayment of COVID-19 employer relief account, shall be applied to reduce the balance of this account. Any proceeds of bonds or notes issued pursuant to sections 18, 19, 21 and 23 of said chapter 9 that are deposited into the Unemployment Compensation Fund shall be applied to reduce the balance of the COVID-19 employer relief account. Any remaining balance shall be resolved by incorporating the negative balance into the calculation on September 30, 2022 of the reserve percentage of the Unemployment Trust Fund pursuant to section 14 of said chapter 151A; provided, that the commissioner may make additional adjustments as necessary including to account for debt proceeds that are anticipated but not yet deposited into the Unemployment Compensation Fund. The COVID-19 employer relief account shall be dissolved as of September 30, 2022.

SECTION 6. Said chapter 9 is hereby further amended by inserting after section 28 the following section:-

SECTION 28A. Section 21A shall take effect as of March 10, 2020.

SECTION 7. Said chapter 9 is hereby further amended by inserting after section 29 the following section:-

SECTION 29A. Section 20 shall take effect as of January 1, 2021.

SECTION 8. The following words shall, for the purposes of sections 8 to 12, inclusive, unless the context clearly requires otherwise, have the following meanings:

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

"COVID-19 Massachusetts emergency paid sick leave", paid time-off that is compensated by an employer at the employee's regular rate of pay, and with the same employment benefits to which the employee is entitled from such employer as a term of the employee's employment, for the purposes described in subsection (b) of section 10; provided, however, that in no case shall the employee's hourly compensation be less than that provided under section 1 of chapter 151 of the General Laws, nor shall an employer be required to pay more than $850 per week to an employee.

"Domestic partner", a person not less than 18 years of age who: (i) is dependent upon the employee for support as shown by either unilateral dependence or mutual interdependence that is evidenced by a nexus of factors including, but not limited to: (A) common ownership of real or personal property; (B) common householding; (C) children in common; (D) signs of intent to marry; (E) shared budgeting; and (F) the length of the personal relationship with the employee;

or (ii) has registered as the domestic partner of the employee with any registry of domestic partnerships maintained by the employer of either party, or in any state, county, city, town or village in the United States.

"Employee", any person whose primary place of employment is in the commonwealth and who performs services for an employer for wage, remuneration or other compensation, including employees employed by the commonwealth, its departments, sub-divisions, quasi-public agencies or a municipality, district, political subdivision or its instrumentalities; provided, however, that notwithstanding any general or special law to the contrary, "employee" shall include a family child care provider, as defined in subsection (a) of section 17 of chapter 15D of the General Laws, and a personal care attendant, as defined in section 70 of chapter 118E of the General Laws.

"Employer", any individual, corporation, partnership or other private or public entity, including any agent thereof, who engages the services of an employee for wages, remuneration or other compensation, including, but not limited to, (i) the commonwealth, its departments, sub-divisions or quasi-public agencies; or (ii) a municipality, district, political subdivision or its instrumentalities; provided, however, that the United States government shall not be considered an "employer"; provided further, that an individual employer shall be determined by the federal employer identification number; provided further, that the department of early education and care shall be deemed the employer of family child care providers, as defined in subsection (a) of section 17 of chapter 15D of the General Laws; and provided further, that the PCA quality home care workforce council established in section 71 of chapter 118E of the General Laws shall be the employer of personal care attendants, as defined in section 70 of said chapter 118E.

"Employment benefits", all benefits provided or made available to employees by an employer, including, but not limited to, group life insurance, health insurance, disability insurance, sick leave, annual or vacation leave, educational benefits and pensions.

"Family member", the spouse, domestic partner, child, parent or parent of a spouse or domestic partner of the employee, a person who stood in loco parentis to the employee when such employee was a minor child or a grandchild, grandparent or sibling of the employee. For the purposes of this definition, "person who stood in loco parentis" shall not include a person with whom the employee has no personal relationship.

"Health care provider", a health care professional licensed under chapter 112 of the General Laws or any other person licensed under federal or any state law to provide medical care or emergency medical services and authorized to provide such services in the commonwealth.

"Parent", a biological, adoptive, foster or step-parent of an employee or of an employee's spouse or domestic partner, a legal guardian of an employee or other person who stood in loco parentis when the employee or employee's spouse or domestic partner was a minor child.

"Spouse", a person who is married to the employee.

"Telework", a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee's position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work.

SECTION 9. There shall be established a fund known as the COVID-19 Massachusetts Emergency Paid Sick Leave Fund to be administered by the executive office for administration

and finance, or any department or agency thereof designated by the executive office. The purpose of the fund shall be to reimburse eligible employers for the cost of providing employees with COVID-19 Massachusetts emergency paid sick leave. There shall be credited to the fund all amounts that are transferred or authorized to be transferred thereto or directed to be deposited therein, and all amounts received as gifts, grants or contributions for the purposes of the fund, including funds transferred pursuant to section 13. Amounts credited to the fund shall not be subject to appropriation. Money in the fund shall not be considered part of the consolidated net surplus pursuant to section 5C of chapter 29 of the General Laws. Any money transferred from the General Fund and remaining in the fund as of December 31, 2021 and not subject to a filed employer reimbursement application under section 10, shall revert to the General Fund; provided, however, that all money in the fund that was transferred from the General Fund shall revert to the General Fund not later than January 31, 2022. The secretary of administration and finance may direct the comptroller to transfer any unspent federal funds as necessary due to federal requirements for tracking and monitoring federal funds.

SECTION 10. (a)(1) Notwithstanding any general or special law to the contrary, as a result of the outbreak of the 2019 novel coronavirus, also known as COVID-19, as of the effective date of this section, an employer shall provide, subject to section 11, COVID-19 Massachusetts emergency paid sick leave to its employees pursuant to paragraph (3) who are absent from and are unable to work pursuant to subsection (b).

(2) The executive office for administration and finance, or any department or agency thereof designated by the executive office, shall reimburse an employer from the COVID-19 Massachusetts Emergency Paid Sick Leave Fund, established in section 9, for the cost of providing COVID-19 Massachusetts emergency paid sick leave to an employee; provided,

however, that any qualified sick leave wages paid by an employer that are eligible for the tax credit for qualified sick leave wages provided for paid sick and paid family and medical leave under the federal Families First Coronavirus Response Act, P.L. 116-127 or subsequent extensions, including the federal Consolidated Appropriations Act, 2021 and the federal American Rescue Plan Act of 2021, shall not be eligible for reimbursement from said COVID-19 Massachusetts Emergency Paid Sick Leave Fund.

(3) An employer shall provide the following amount of leave for an employee who takes COVID-19 Massachusetts emergency paid sick leave:

(i) an employee who works 40 hours or more per week shall be provided 40 hours of COVID-19 Massachusetts emergency paid sick leave;

(ii) an employee who works less than 40 hours a week, but maintains a regular schedule with consistent hours per week, shall be provided COVID-19 Massachusetts emergency paid sick leave that is equal to the number of hours that such employee works per week, on average over a 14-day period of such regular schedule; or

(iii) for an employee whose schedule and weekly hours worked vary from week to week, such employee shall be provided COVID-19 Massachusetts emergency paid sick leave that: (A) is equal to the average number of hours that the employee was scheduled to work per week over the 6-month period immediately preceding the date on which such employee takes the COVID-19 Massachusetts emergency paid sick leave, including hours for which such employee took leave of any type; or (B) if the employee did not work over such 6-month period, is equal to the reasonable expectation of the employee at the time of hiring of the average number of hours per week that the employee would normally be scheduled to work.

(4) An employee eligible for COVID-19 Massachusetts emergency paid sick leave shall be eligible for leave that is compensated by the employer, while maintaining the same employment benefits to which the employee is entitled as a term of employment by an employer to an employee; provided, however, that no employee shall be entitled to receive, and no employer shall be eligible for reimbursement for such employee for, COVID-19 Massachusetts emergency paid sick leave in excess of $850 per week.

(5) An employer who pays an employee for COVID-19 Massachusetts emergency paid sick leave shall, subject to clause (2), be reimbursed by the executive office for administration and finance, or any department or agency thereof, in consultation with the department of revenue, from the COVID-19 Massachusetts Emergency Paid Sick Leave Fund by submitting, by a time and in a form and manner prescribed by the executive office for administration and finance, or any department or agency thereof designated by the executive office, an application as provided in paragraph (1) of subsection (e). The executive office, or any department or agency thereof, shall provide such reimbursements directly to eligible employers in a timely manner after receiving an application from an employer.

(6) An employee's COVID-19 Massachusetts emergency paid sick leave shall terminate at the beginning of the employee's next scheduled work shift immediately following the termination of the need for COVID-19 Massachusetts emergency paid sick leave under subsection (b).

(b) An employer shall provide COVID-19 Massachusetts emergency paid sick leave to an employee for the following reasons related to the outbreak of the 2019 novel coronavirus, also known as COVID-19:

(1) An employee's need to: (i) self-isolate and care for oneself because of the employee's COVID-19 diagnosis; (ii) seek or obtain medical diagnosis, care or treatment for COVID-19 symptoms; or (iii) obtain immunization related to COVID-19 or the employee is recovering from an injury, disability, illness or condition related to such immunization;

(2) An employee's need to care for a family member who: (i) is self-isolating due to a COVID-19 diagnosis; or (ii) needs medical diagnosis, care or treatment for COVID-19 symptoms;

(3) A quarantine order, or other determination by a local, state or federal public official, a health authority having jurisdiction, the employee's employer or a health care provider that the employee's presence on the job or in the community would jeopardize the health of others because of the employee's exposure to COVID-19 or exhibiting of symptoms, regardless of whether the employee has been diagnosed with COVID-19;

(4) An employee's need to care for a family member due to a quarantine order, or other determination by a local, state or federal public official, a health authority having jurisdiction, the family member's employer or a health care provider that the family member's presence on the job or in the community would jeopardize the health of others because of the family member's exposure to COVID-19, regardless of whether the family member has been diagnosed with COVID-19; or

(5) An employee's inability to telework because the employee has been diagnosed with COVID-19 and the symptoms inhibit the ability of the employee to telework.

(c)(1) COVID-19 Massachusetts emergency paid sick leave provided by an employer may be reduced by the amount of wages or wage replacement that an employee receives for that

period under any government program or law. COVID-19 Massachusetts emergency paid sick leave shall not be reduced by and shall be in addition to all job protected time off, paid and unpaid, that the employer is required provide to employees: (i) under section 148C of chapter 149 of the General Laws; (ii) under any existing policy or program of the employer; (iii) pursuant to a collectively bargained agreement between the employer and a collective bargaining representative of an employee; or (iv) under federal law, to the extent permitted by that federal law; provided, however, said COVID-19 Massachusetts emergency paid sick leave may be reduced if the aggregate amount an employee would receive would exceed the employee's average weekly wage. An employer shall not require an employee to use other paid leave provided by the employer to the employee before the employee uses the COVID-19 Massachusetts emergency paid sick leave, unless federal law requires otherwise.

(2) An employee may use COVID-19 Massachusetts emergency paid sick leave on an intermittent basis and in hourly increments.

(d) The employee shall provide notice to the employer of the need for COVID-19 Massachusetts emergency paid sick leave as soon as practicable or foreseeable. After the first workday an employee receives COVID-19 Massachusetts emergency paid sick leave, an employer may require the employee to follow reasonable notice procedures in order to continue receiving COVID-19 Massachusetts emergency paid sick leave. An employer shall not require, as a condition of an employee's taking COVID-19 Massachusetts emergency paid sick leave, that the employee search for or find a replacement worker to cover the hours during which the employee is using COVID-19 Massachusetts emergency paid sick leave.

(e)(1) Applications for reimbursements from an eligible employer from the COVID-19 Massachusetts Emergency Paid Sick Leave Fund shall be in a form prescribed by the executive office for administration and finance, or any department or agency thereof designated by the executive office, and shall include, but not be limited to, a copy of a written request for COVID-19 Massachusetts emergency paid sick leave from the employee to the employer, in which the employee provides: (i) the employee's name; (ii) the date or dates for which leave is requested and taken; (iii) a statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and (iv) a statement that the employee is unable to work, including by means of telework, for such reason.

In the case of a leave request based on a quarantine order or self-quarantine advice, the statement from the employee shall also include: (i) the name of the governmental entity ordering quarantine or the name of the health care provider advising self-quarantine; and (ii) if the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee.

(2) The executive office for administration and finance, or any department or agency thereof designed by the executive office, may require an employer to maintain records sufficient to document the employees to whom it made qualifying leave payments and shall prescribe regulations or other guidance necessary for the reimbursement, including the process for the imposition of penalties for false or deliberating misleading statements under chapter 62C of the General Laws. Information necessary for the administration of the reimbursement provided to the executive office for administration and finance, or any department or agency thereof, may be disclosed to the executive office for administration and finance and any department or agency thereof designated by the executive office. The disclosure of such information shall not be

subject to the prohibition provided by paragraph (a) of section 21 of chapter 62C of the General Laws, provided that any documents so disclosed shall remain confidential and not thereby become public record.

(3) Health information related to COVID-19 Massachusetts emergency paid sick leave possessed by an employer regarding an employee or employee's family member shall: (i) be maintained on a separate form and in a separate file from other personnel information; (ii) be treated as confidential medical records; (iii) not be disclosed except to the affected employee or with the express permission of the affected employee; and (iv) be kept confidential in accordance with any other state or federal law.

(f) It shall be unlawful for any employer to interfere with, restrain or deny an employee's ability to take COVID-19 Massachusetts emergency paid sick leave, including, but not limited to, using an employee's taking of COVID-19 Massachusetts emergency paid sick leave as a negative factor in any employment action, such as an evaluation, promotion, disciplinary action or termination, or otherwise subjecting an employee to discipline or taking any other adverse action against an employee for the use of COVID-19 Massachusetts emergency paid sick leave.

(g) It shall be unlawful for any employer to take any adverse action against an employee because the employee opposes practices believed to be in violation of this section, or because the employee supports the exercise of rights of another employee under this section, including, but not limited to: (i) filing an action, or instituting or causing to be instituted any proceeding under or related to this section; (ii) providing or intending to provide any information in connection

with any inquiry or proceeding related to this section; or (iii) testifying or intending to testify in any inquiry or proceeding related to this section.

(h) Nothing in this section shall be construed to: (i) discourage employers, including the commonwealth, its departments, sub-divisions or quasi-public agencies or a municipality, district, political subdivision or its instrumentalities from adopting or retaining job-protected paid time off policies that are more generous than policies set out in this section; (ii) diminish or impair the obligation of an employer to comply with any contract, collective bargaining agreement or any employment benefit program or plan in effect on the effective date of this section that provides to employees greater job-protected paid time off rights than the rights established under this section; or (iii) pre-empt the power of a municipality, district, political subdivision or its instrumentalities from adopting or retaining job-protected paid time off policies consistent with or more generous than policies that comply with the requirements of this section.

Any employer with a COVID-19 sick leave policy not required by this act who makes available an amount of COVID-19 sick leave sufficient to meet the requirements of this act that may be used for the purposes and conditions consistent with and substantially similar to COVID-19 Massachusetts emergency paid sick leave under this act, shall not be required to provide additional COVID-19 Massachusetts emergency paid sick leave under this act.

(i) Not later than 7 days after the effective date of this section, the executive office of labor and workforce development, in consultation with the executive office for administration and finance, shall prepare and provide to employers notice of this section in English and in other languages required under clause (iii) of subsection (d) of section 62A of chapter 151A of the General Laws. Employers shall post this notice in a conspicuous location accessible to

employees in every establishment where employees with rights under this section work and shall provide a copy to their employees; provided, however, that in cases where the employer does not maintain a physical workplace, or an employee teleworks or performs work through a web-based platform, notification shall be sent via electronic communication or a conspicuous posting in the web-based platform.

(j) The executive office of labor and workforce development, in consultation with the executive office for administration and finance and the executive office of health and human services, shall develop and implement a multilingual outreach program to inform employers, employees and health care providers about the availability of COVID-19 Massachusetts emergency paid sick leave.

(k) The executive office for administration and finance, or any department or agency thereof designated by the executive office, shall issue a report on the COVID-19 Massachusetts emergency paid sick leave program. The report shall include, but not be limited to: (i) aggregate information on the number of employees who were provided COVID-19 Massachusetts emergency paid sick leave; (ii) the average amount paid to employees who were provided COVID-19 Massachusetts emergency paid sick leave; (iii) the average length of COVID-19 Massachusetts emergency paid sick leave; (iv) the employers who received reimbursements from the COVID-19 Massachusetts Emergency Paid Sick Leave Fund established in section 9; (v) the average amount of each reimbursement of the employer; and (vi) the total amount of reimbursements received by each employer. The report shall not include any identifying information of an individual employee. The report shall be filed with the clerks of the house of representatives and the senate and the joint committee on labor and workforce development not later than January 1, 2022.

SECTION 11. COVID-19 Massachusetts emergency paid sick leave shall be available to an employee under section 10 until: (i) 15 days after notification from the executive office for administration and finance to employers that applications totaling $60,000,000 have been submitted, or an alternative total identified by the executive office for administration and finance as reasonably indicating that the total cost of the program will approach $75,000,000 in 15 days; or (ii) September 30, 2021, whichever first occurs. Upon notification from the executive office for administration and finance, employers may continue to claim for costs incurred prior to issuance of the notice.

Notwithstanding the transfer required under section 13, if the availability of COVID-19 Massachusetts emergency paid sick leave terminates under clause (i) of this section, the secretary of administration and finance shall direct the comptroller to transfer funds in excess of the transfer required under said section 13, if necessary to cover eligible reimbursements for COVID-19 Massachusetts emergency paid sick leave wages paid after the exhaustion of the $75,000,000 from the fund under said clause (i).

SECTION 12. The secretary for administration and finance, or any department or agency thereof designated by the secretary, may promulgate regulations or other guidance necessary for the implementation of this act.

SECTION 13. Not later than 10 days after the effective date of this act, the secretary of administration and finance shall direct the comptroller to transfer $75,000,000 to the COVID-19 Massachusetts Emergency Paid Sick Leave Fund established in section 9 from amongst federal funds received by the commonwealth in response to the public health emergency caused by COVID-19 to the extent such funds are available for the uses allowed by said COVID-19

Massachusetts Emergency Paid Sick Leave Fund under relevant federal requirements; provided, however, that if the secretary of administration and finance certifies to the comptroller that no such funds are available, the secretary shall direct the comptroller to transfer $75,000,000 from other funding sources, including the General Fund. The secretary may direct the comptroller to schedule the transfers in 1 or more transactions.

SECTION 14. Section 1 shall take effect as of March 10, 2020.