The Commonwealth of Massachusetts

PRESENTED BY:

Tami L. Gouveia

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 statewide COVID-19 rapid testing program to safely re-open our economy.

PETITION OF:

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<tr>
<th>NAME</th>
<th>DISTRICT/ADDRESS</th>
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<tr>
<td>Tami L. Gouveia</td>
<td>14th Middlesex</td>
<td>2/19/2021</td>
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<tr>
<td>James K. Hawkins</td>
<td>2nd Bristol</td>
<td>3/3/2021</td>
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<td>Tricia Farley-Bouvier</td>
<td>3rd Berkshire</td>
<td>3/17/2021</td>
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<td>Patrick Joseph Kearney</td>
<td>4th Plymouth</td>
<td>5/14/2021</td>
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<td>Michelle L. Ciccolo</td>
<td>15th Middlesex</td>
<td>5/14/2021</td>
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<td>Carmine Lawrence Gentile</td>
<td>13th Middlesex</td>
<td>5/17/2021</td>
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<td>Nika C. Elugardo</td>
<td>15th Suffolk</td>
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<td>Carlos González</td>
<td>10th Hampden</td>
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<td>James B. Eldridge</td>
<td>Middlesex and Worcester</td>
<td>5/21/2021</td>
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<td>Natalie M. Higgins</td>
<td>4th Worcester</td>
<td>5/21/2021</td>
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<td>Carol A. Doherty</td>
<td>3rd Bristol</td>
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<td>Erika Uyterhoeven</td>
<td>27th Middlesex</td>
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<td>Michael D. Brady</td>
<td>Second Plymouth and Bristol</td>
<td>7/15/2021</td>
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<td>Mike Connolly</td>
<td>26th Middlesex</td>
<td>12/20/2021</td>
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By Ms. Gouveia of Acton, a petition (accompanied by bill, House, No. 3780) of Tami L. Gouveia and others for legislation to establish a statewide COVID-19 rapid testing program within the Department of Public Health. Covid-19 and Emergency Preparedness and Management.

The Commonwealth of Massachusetts

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

An Act establishing a statewide COVID-19 rapid testing program to safely re-open our economy.

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

SECTION 1. The General Court hereby finds and declares that:

(1) on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic necessitating the worldwide implementation of measures, such as mask wearing, physical distancing, school and business restrictions and closures, frequent handwashing, COVID-19 testing and contact tracing to protect the public’s health and prevent the spread of SARS-CoV-2, also known as COVID-19;

(2) on March 10, 2020, Governor Charles D. Baker declared a state of emergency and has since issued more than 50 orders and accompanying guidelines and mitigation strategies to protect public health and prevent the spread of SARS-CoV-2;
(3) uncertainty due to frequent changes in restrictions and guidance affects the economic stability of businesses and communities, as well as the mental health status and stress levels of individuals and families;

(4) economic instability, mental health strain and other concerns about learning time and quality create mounting pressures to re-open schools for in-person learning and businesses in the commonwealth;

(5) black, indigenous and people of color have been disproportionately impacted by the spread of SARS-CoV-2 and economic consequences of the pandemic in their residential and work communities;

(6) innovative testing and other tools are needed to protect worker health and public health from the spread of SARS-CoV-2, including the spread of new variants, as reopening plans are implemented and the vaccine is being rolled out;

(7) the state’s current Polymerase Chain Reaction, also known as PCR, testing approach requires individuals to quarantine or isolate while awaiting test results, unnecessarily contributing to reduced worker and economic productivity and strain on family functioning and caregiving;

(8) rapid antigen tests: (i) can be self-administered or administered by trained personnel; (ii) can be administered in a high-throughput setting, such as a clinic, in school, in workplaces and congregate care settings; (iii) can be administered at home; (iv) require simple equipment to process; (v) test for COVID-19 contagiousness; (vi) cost an average of $5 per test and some tests cost as low as $1 per test with bulk purchasing; (vii) produce test results in minutes;
(9) the Food and Drug Administration has authorized several rapid test products for over-the-counter use without a prescription for asymptomatic individuals and the Biden administration acknowledges that regular screening with at-home COVID-19 tests can strengthen our prevention efforts;

(10) the Centers for Disease Control and Prevention and the National Institutes of Health recently launched an at-home rapid antigen testing pilot program and voluntary, community-based, government-funded testing programs have been piloted in New York, San Francisco, Philadelphia, the United Kingdom, Germany, Austria, Denmark and other locations with promising results; and

(11) children will not be vaccinated until the end of 2021, the new variants are spreading in the commonwealth, and between 1/3 and up to 3/4 of SARS-CoV-2 infections are asymptomatic;

SECTION 2. As used in this act, the following terms shall, unless the context clearly requires otherwise, have the following meanings:-

“BIPOC”, black, indigenous and people of color.

“Board”, the Rapid Antigen Testing Advisory Board established pursuant to section 3.

“Community spread”, occurs when individuals become infected with COVID-19 without any known contact with a sick person.

“Department”, the department of public health.

“Entrance screening for COVID-19”, screening that is required by employers, government agencies, schools, institutions of public higher education, stores, sports and
entertainment venues, airports and transportation hubs, borders and ports of entry, prisons, congregate care settings, homeless shelters and long-term care organizations before employees, volunteers, contract workers, patrons, students or visitors may enter the facility.

“Polymerase Chain Reaction test” or “PCR test”, a test conducted by specially trained staff using swabbing or other sample collection methods and laboratory testing equipment for medical diagnostic purposes. PCR tests identify small amounts of viral genetic material with high degrees of specificity, but in many cases, individuals may no longer be infectious for COVID-19.

“Population screening for COVID-19”, screening in which more than half of the population self-administers rapid antigen tests 2 to 3 times a week at home or through other accessible locations, including, but not limited to: schools, institutions of public higher education, workplaces, congregate care settings, community health centers, community organizations, mobile clinics and faith-based institutions, among others in order to reduce the spread of SARS-CoV-2, including emerging variants.

“Public health surveillance”, the ongoing and systematic collection, analysis and interpretation of health-related data essential to informing the decision-making of those responsible for planning, implementing, communicating and evaluating interventions to prevent and control the spread of disease or injury. Public health surveillance programs directly measure what is going on in the population and inform the need for adjustments in interventions in order to protect the public’s health from disease or injury.

“Rapid antigen test”, a test used for screening and public health surveillance purposes in which self-administered shallow anterior nasal swabs are used to detect proteins, also known as
antigens, on the surface of the virus. Rapid antigen tests are up to 90 per cent sensitive for
detecting the peak of infection in a person with high levels of the virus and are effective at
identifying individuals who are contagious. Rapid antigen tests can be conducted at home, at
entrances to buildings, at point-of-care locations and at the offices of healthcare and other
providers.

SECTION 3. (a) There is hereby established a Rapid Antigen Testing Advisory Board.
The board shall:

(1) research existing community-based antigen testing models, in the United States and globally, and make evidence-informed recommendations to the department on implementing a statewide rapid antigen testing program;

(2) research entrance screening policies, in the United States and globally, and make evidence-informed recommendations to the department on developing guidelines for public and private establishments to implement rapid antigen entrance screening policies and practices; and

(3) make recommendations to the department on signage, radio, television and digital advertising and other media and outreach strategies to inform the public about the locally-run, community-based rapid antigen testing program.

(b) The board shall consist of the following 18 members: 1 member appointed by the Coalition for Local Public Health, who shall be the head of a member organization and shall serve as chair; 5 members to be appointed jointly by the speaker of the house of representative and the senate president, 1 of whom shall have expertise in rapid antigen testing, 1 of whom shall have expertise in health equity, 1 of whom shall have expertise in implementation science, 1 of whom shall have expertise in infectious diseases and 1 of whom shall have expertise in privacy.
and data reporting; 1 member to be appointed by the Black Economic Council of Massachusetts, Inc.; 1 member to be appointed by the Latino Health Institute, Inc.; 1 member to be appointed by the Massachusetts School Nurse Organization, Inc.; 1 member to be appointed by the district director of the Boston district office of the United States Small Business Administration; 1 member to be appointed by the Massachusetts Coalition for Occupational Safety and Health, Inc.; 1 member to be appointed by The Massachusetts League of Community Health Centers, Inc.; 1 member to be appointed by the Massachusetts Teachers Association; 1 member to be appointed by the Massachusetts Immigrant and Refugee Advocacy Coalition, Inc.; 1 member to be appointed by the Massachusetts chapter of the National Association of Social Workers, Inc.; 1 member to be appointed by the Greater Boston Interfaith Organization, Inc.; 1 member to be appointed by Prisoners’ Legal Services of Massachusetts; and 1 member appointed by the Arc of Massachusetts.

In making appointments to the board, preference shall be given to appoint BIPOC individuals and those from low-income, indigenous and immigrant communities.

(c) The board shall hold its first meeting within 30 days of effective date of this act. The board shall make recommendations and submit a report to the department, the COVID-19 response command center, the joint committee on COVID-19 and emergency preparedness and management, the joint committee on public health, the clerks of the house of representatives and the senate within 60 days of its first meeting. The report shall include: (i) recommendations on a comprehensive, voluntary and locally-run, community-based antigen testing program, including options for providing test kits and training residents and employees at locally trusted institutions, organizations, businesses and faith-based organizations; (ii) recommendations on a comprehensive, accessible, linguistically and culturally appropriate, inclusive communications
plan; and (iii) process and outcomes monitoring plans and key metrics, such as number of tests distributed, number of follow-up PCR tests conducted after a positive rapid antigen test result, number and percent of tests conducted by county, community and location type and number of infections prevented. The purpose of the communications plan is to inform the commonwealth’s diverse population of the: (i) purpose and public health benefits of rapid antigen testing; (ii) where and how to access free tests; (iii) how to use the tests at-home, in schools, in workplaces, and in other settings; and (iv) what to do if the test result is positive. The board shall make recommendations to guide implementation of accessible communications strategies, including, but not limited to: (i) information tables at community festivals, fairs, events, and community meetings; (ii) outreach through trusted institutions, popular opinion leaders and trusted political figures who represent racially and ethnically diverse populations; (iii) disbursement of low literacy fliers and brochures that are translated and disseminated into the top ten most frequently spoken languages in the state, as well as through print, radio, digital and television media.

(d) The board shall meet monthly to monitor implementation of the rapid antigen testing program and to make recommendations to the department on adjustments to be made to the program. The board shall disband within 30 days following the termination of the governor’s March 10, 2020 declaration of a state of emergency. Within 90 days after the termination of the state of emergency, the department shall submit a report detailing process and outcomes measures, as well as key metrics, including, but not limited to: the number of tests distributed; the number of follow-up PCR tests conducted after a positive rapid antigen test result; the number and percent of tests conducted by county, community, and location type; and the number of infections prevented as a result of rapid antigen testing.
SECTION 4. (a) The department shall develop guidelines for the implementation of locally-run, community-based, voluntary antigen testing based on the direct recommendations made by the board. The guidelines shall include information on: (1) appropriate testing frequency; (2) how to recruit and train supporters who can to train others to perform testing; (3) how to build local support for and individual commitment to interpreting results responsibly; (4) how to connect individuals with confirmatory PCR testing as needed; (5) how to ensure safe and private reporting of testing results to local public health departments and as well as to individuals; (6) how to ensure that results are reported appropriately to health departments to support pandemic response efforts; (7) how to help individuals isolate and obtain financial and other support; and (8) determine which metrics trigger changes in testing frequency. The guidelines shall encourage, rather than discourage testing. The guidelines shall include information on how best to implement a local testing program that provides easy access to all residents in the commonwealth. Guidelines shall include metrics that may indicate the need to change the frequency of rapid antigen testing, such as the number or percentage of positive tests in a school or workplace environment occurring within a certain period of time.

(b) The program shall make rapid antigen testing kits available free of charge to individuals at convenient locations, including, but not limited to: pop-up sites, mobile clinics, pharmacies, drug stores, bodegas, grocery stores, community centers, doctor’s offices, vaccination sites, community health centers, hospitals, skilled nursing facilities, prisons and correctional facilities, congregate care settings, homeless shelters, faith organizations, local government offices, organizations serving elders, social service organizations, government agencies, schools, colleges and universities, summer camps, local housing authorities and transportation hubs, including commuter rail, Logan Airport, bus stations and the subway. The
department shall also devise plans for mailing rapid antigen testing kits to individuals and households.

(c) The cost of rapid antigen testing kits, including shipping, will be covered by insurance companies and with funds dispersed through the General Fund. Grant funded programs may also be created for the purposes of ensuring local access to testing kits.

SECTION 5. The department shall devise guidelines for entrance screening, including the use of temperature checks, screening questions and rapid antigen testing.

The department guidelines shall be incorporated into any entrance screening policy developed by restaurants, indoor workplaces, indoor recreational facilities, social service agencies, government agencies, schools, institutions of public higher education, places of worship, congregant care settings, homeless shelters, prisons and correctional facilities and other establishments that intend to implement an entrance policy that includes rapid antigen testing. Entities that devise an entrance screening policy may ask entrants if they have experienced any symptoms for COVID-19 in the past 48 hours. An entrance screening policy may require a temperature check and a negative rapid antigen test before entry is allowed. The entrance screening policy must rely on guidance developed by the department and be prominently displayed on the entity’s website, social media sites and in the front entryway of the establishment in multiple languages. The entrance screening policy shall not discriminate because of race, color, religion, national origin, ancestry, sex, sexual orientation or gender identity. A violation of this section shall be a violation of section 98 of chapter 272 of the General Laws.
SECTION 6. Pursuant to chapter 151B of the General Laws, workplace retaliation against any worker and discrimination against any individual who tests positive using a rapid antigen test is strictly prohibited. All local testing policies or program guidelines developed pursuant to section 4 shall include an anti-discrimination clause and an anti-retaliation clause.

SECTION 7. Within 1 day of the effective date of this act, the commissioner of the department and the governor shall take any necessary actions to facilitate the acquisition of Clinical Laboratory Improvement Amendment certificates for multi-site use, including in all public and private schools, institutions of public higher education, places of employment, governmental institutions, indoor dining and recreational facilities, places of worship and other locations and facilities where a public health surveillance or entrance screening plan is warranted.

SECTION 8. To support public health efforts, manufacturers of rapid antigen tests located in the commonwealth will be prioritized for the sale and distribution of rapid antigen test kits to organizations, institutions and municipalities located and doing business inside the commonwealth, unless a contractual agreement has been made with entities outside the United States and territories for sales and distribution of rapid antigen test kits. The commonwealth will explore efforts to negotiate bulk purchases of high quality rapid antigen tests from manufacturers for distribution within the commonwealth.

SECTION 9. Notwithstanding any general or special law to the contrary, the implementation of rapid antigen test programs under this act shall be consistent with chapter 150E of the General Laws or any agreements entered into in accordance with said chapter 150E.
SECTION 10. There shall be established on the books of the commonwealth the Rapid Antigen Testing Trust Fund to be administered by the commissioner of the department. There shall be credited to the fund all revenues or other financing sources directed to the fund by appropriation and any income derived from the investing of all amounts credited to the fund. Monies credited to the fund may be expended by the commissioner, without further appropriation, for rolling out the rapid antigen testing program.

SECTION 11. Section 8 shall be repealed upon federal approval of rapid antigen testing for public health surveillance and asymptomatic purposes.