

**HOUSE . . . . . No. 1226**

---

The Commonwealth of Massachusetts

PRESENTED BY:

***John D. Keenan***

*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 relative to Massachusetts artists, the self employed, small businesses and small nonprofits.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>John D. Keenan</i>	<i>7th Essex</i>
<i>Bruce E. Tarr</i>	
<i>James B. Eldridge</i>	
<i>Susan C. Fargo</i>	
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Michael O. Moore</i>	
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Alice K. Wolf</i>	<i>25th Middlesex</i>

**HOUSE . . . . . No. 1226**

---

By Mr. Keenan of Salem, a petition (accompanied by bill, House, No. 1226) of John D. Keenan and others for legislation to provide access to affordable health insurance for certain self-employed persons. Health Care Financing.

---

The Commonwealth of Massachusetts

—————  
**In the Year Two Thousand Eleven**  
—————

An Act relative to Massachusetts artists, the self employed, small businesses and small nonprofits.

*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: Summary

2

3 Chapter 58 of the Acts of 2006, An Act Providing Access to Affordable, Quality,  
4 Accountable Health Care, is hereby amended to improve access to affordable health insurance  
5 for self-employed

6 people, independent contractors, working artists, part-time workers, and workers who  
7 work part-time jobs and engage in a self-employed enterprise, also known as combined income  
8 individuals. This Act will increase eligibility for the Insurance Partnership for both employers  
9 and individuals; and provide the self-employed more support in accessing the most affordable  
10 insurance option. This Act will also protect and aid small businesses and small nonprofit  
11 organizations.

12

13 SECTION 2: Definition of "Eligible Employee"

14

15 Section 9C of chapter 118E, subsection 1 (as amended by 2006, 58, Sec. 19) under the  
16 definition of

17 "Eligible Employee", is hereby amended by striking subsection (iv) in its entirety.

18

19 SECTION 3: Definition of combination income individual

20

21 Section 9C of said chapter 118E is hereby amended by inserting the following definition:

22 "Combination Income Individual," Individuals with incomes deriving from more than one  
23 income source including 1) part-time employment 2) full-time employment 3) independent  
24 contract work 3) seasonal work 4) self-employment 5) or any other types of income sources not  
25 mentioned.

26

27 SECTION 4: Determining "Income" for combination income individuals and the self-  
28 employed

29

30           Combination Income Individuals and self-employed individuals may incur expenses  
31 associated with

32           the creation of art, learning new skills associated with professional work, inventing new  
33 products or processes for commercial purposes, or other professional pursuits from which the  
34 individual does not derive a majority or any of their overall income.

35

36           Section 9C of chapter 118 is amended by adding the following language: “(5) One of the  
37 methods of income determinations for Combination Income Individuals and self-employed  
38 individuals may be taxable income as defined by the Internal Revenue Code as TOTAL  
39 INCOME as defined TITLE 26, Subtitle A, CHAPTER 1, Subchapter B, PART I, Sec. 63., as  
40 appears on line 22 of the 1040 individual income tax return form and as found in other IRS tax  
41 forms that may be filed by tax payers but is identified by other line numbers on those IRS forms”

42

43           SECTION 5: Eliminating the Self-employment Penalty

44           Amend Section 9C of chapter 118E, subsection 1, by adding the following language after  
45 the words

46           "eligible employer": - nothing in this section shall exclude a self-employed single  
47 individual or self-employed husband and wife from eligibility for programs under Chapter 118H,  
48 provided that all other eligibility criteria have been met in accordance with the definitions in  
49 Chapter 118E as amended.

50

51 SECTION 6 Calculating Fair Share Employees

52 (a) Section 188 of Chapter 149, “Fair Share Employer Contribution,” is amended by  
53 inserting under subsection (c) the following paragraphs:

54

55 (11) For the purpose of the Fair Share Contribution compliance test, an employer may  
56 count employees that have qualifying medical insurance coverage from a spouse, a parent, a  
57 veteran’s plan, Medicare, Medicaid, MassHealth or a plan or plans due to a disability or  
58 retirement towards their qualifying take-up rate as a “Contributing Employer,” as defined by the  
59 Division of Health Care Finance and Policy. Medical insurance coverage from the  
60 Commonwealth Care program may not be counted as qualifying medical insurance coverage  
61 towards the FSC contribution compliance test. The employer is still required to offer insurance  
62 and must keep and maintain proof of their employees’ insurance status.

63

64 SECTION 7: Mitigation and Waiver of Employer’s Fair Share Contribution and Related  
65 Liabilities

66

67 Chapter 149 : Section 188 Fair Share Employer Contribution is amended by inserting

68

69 (f) The Division of Unemployment Assistance and the Division of Health Care Finance  
70 and Policy may waive or mitigate an employer’s Fair Share Contributions, Free Rider

71 Surcharges, fines, interest, and related fees when collection would bankrupt a business owner or  
72 business, or force the business to close.

73

74 (g) The Division of Health Care Finance and Policy shall create and implement a  
75 hardship appeal and waiver process for employers for the Fair Share Contribution (“FSC”)  
76 requirement and will direct the Division of Unemployment Assistance to waive or reduce an  
77 employer’s fair share contributions, fines, interest, or related fees if the collection of such  
78 moneys will cause business closure, bankruptcy of the employer’s business or of the employer’s  
79 personal finances. Pending an appeal decision, the Division of Unemployment Assistance shall  
80 not continue to accrue or collect interest, penalties or fees on the Fair Share Contribution once a  
81 business has entered into a payment agreement. DUA shall notify all businesses at least thirty  
82 days in advance of an audit both verbally and by certified mail of the FSC hardship appeal and  
83 waiver process.

84

85 (h) The Division of Health Care Finance and Policy shall create and implement a  
86 hardship appeal and waiver process for employers for the Free Rider Surcharge. The  
87 Commonwealth Health Insurance Connector Authority, DUA and DHCFP will post  
88 downloadable versions of the FSC and Free Rider Surcharge hardship and waiver processes and  
89 relevant forms on their websites in an easy to find place and shall make available hardcopies of  
90 the instructions and forms. These forms shall be sent by DUA and DHCFP to all employers that  
91 are past due on payments regarding the Fair Share Contributions or Free Rider Surcharge.

92

93 (i) The FSC and Free Rider Surcharge appeals and waiver processes shall also take the  
94 following into consideration when determining when to waive or mitigate any fair share  
95 contribution or Free Rider Surcharge moneys owed by employers:

96

97 (1) If the employer is experiencing hardship such as but not limited to eviction, utility  
98 shut off, a medical emergency, death in their immediate family, a sickness or a short term  
99 disability that prevents the employer from working or running their business.

100

101 (2) If the employer's business has experienced a major disaster either natural or manmade  
102 such as but not limited to a fire, flooding, major wind damage, major theft, or the long term loss  
103 of electricity, water, or heat due to storms or other such causes.

104

105 (3) If the employer's business is a nonprofit organization that has a valid IRS letter of  
106 determination, the Division of Unemployment Assistance and the Division of Health Care  
107 Finance and Policy shall determine and acknowledge if any of moneys held by the business are  
108 bound by legal contractual obligations and therefore prohibits the employer from using said  
109 moneys to pay their assessed fines, interest, and related fees for the FSC and the Free Rider  
110 Surcharge.

111

112 (4) If the employer made a good faith effort to comply with Chapter 149: Section 188  
113 during the first year of the implementation of Chapter 58 or during their first year of business,  
114 whichever occurred last.

115

116 (j) If an employer is found liable for the Fair Share Contribution and/or the Free Rider  
117 Surcharge and if the employer relied on a paid/contracted outside third party's error, the third  
118 party will be entirely responsible for the said financial obligations.

119

120 (k) DUA or any entity of the Commonwealth shall not take any funds out of an  
121 employer's bank account if the employer has filed a FSC appeal, hardship appeal/waiver or is in  
122 the process of mediation and is awaiting a decision.

123

124 (l) The Division of Unemployment Assistance shall not allow their audit department  
125 staff to answer the Division of Unemployment Assistance helpline or to staff the Division of  
126 Unemployment Assistance help centers. Nor shall the Division of Unemployment Assistance's  
127 help center staff share customer information with the audit department staff. No information  
128 recorded by the helpline may be used in an audit proceeding or be used to initiate an audit.

129

130 (m) For the purposes of Chapter 149: Section 188, an offer of insurance shall mean that  
131 the company has a group health insurance plan that is active or has made an offer of a group  
132 health insurance plan that can be put in place on the first day of the month that an eligible

133 employee requests it. The offer of health insurance must be from an insurance carrier that is  
134 licensed by DOI to conduct business in the Commonwealth. All offers of group health insurance  
135 must have the date of the when request was made and the date or dates the plan can be activated.

136

137 (n) The Division of Health Care Finance and Policy, the Commonwealth Health  
138 Insurance Connector Authority, and the Division of Unemployment Assistance shall hold joint  
139 quarterly meetings with the small businesses and small nonprofit advocates. The meetings times  
140 and places must be posted on their websites at least two weeks prior to the meeting.