HOUSE DOCKET, NO. 1642 FILED ON: 1/20/2011

HOUSE . . . . . No. 1475

The Commonwealth of Massachusetts

PRESENTED BY:

Paul J. Donato

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 passage of the accompanying:

An Act relative to reciprocal benefits contracts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Paul J. Donato	*35th Middlesex*
James J. Dwyer	*30th Middlesex*
Carlo Basile	*1st Suffolk*
George N. Peterson, Jr.	*9th Worcester*
Angelo M. Scaccia	*14th Suffolk*
John J. Binienda	*17th Worcester*
Ryan C. Fattman	*18th Worcester*
Kevin J. Kuros	*8th Worcester*
Sheila C. Harrington	*1st Middlesex*
Joyce A. Spiliotis	*12th Essex*
Stephen Stat Smith	*28th Middlesex*
Elizabeth A. Poirier	*14th Bristol*
James J. Lyons, Jr.	*18th Essex*
Viriato Manuel deMacedo	*1st Plymouth*

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HOUSE . . . . . No. 1475

By Mr. Donato of Medford, a petition (accompanied by bill, House, No. 1475) of Paul J. Donato and others relative to reciprocal benefits contracts. Public Health.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to reciprocal benefits contracts.

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. Chapter 111 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after Section 72Y the following section:--

Section 72Z. The reciprocal beneficiary (as defined in Section 1 of Chapter 209E) of a patient in a health care facility shall have the right to visit the patient during normal visiting hours, provided the patient does not object.

SECTION 2. Section 8 of Chapter 113 of the General Laws, as so appearing is hereby amended by striking out in lines 24 to 30 inclusive the following:--

(1) the spouse,

(2) an adult son or daughter,

(3) either parent,

(4) an adult brother or sister,

(5) a guardian of the person of the decedent at the time of his death,

(6) any other person authorized or under obligation to dispose of the body.

And inserting in place thereof the following:--

(1) the spouse

17 (2) {the reciprocal beneficiary, as defined in Section 1 of Chapter 209E},

18 (3) an adult son or daughter,

19 (4) either parent,

20 (5) an adult brother or sister,

21 (6) a guardian of the person of the decedent at the time of his death,

22 (7) any other person authorized or under obligation to dispose of the body.

23 SECTION 3. Section 13 of said Chapter 113, as so appearing, is hereby amended by
24 inserting after the word "body" in line 8 the following including the surviving reciprocal
25 beneficiary as defined in Section 1 of Chapter 209E.

26 SECTION 4. Chapter 114, of the General Laws, is hereby amended by inserting after
27 Section 44A the following Section 44B:--

28 (1) Any individual of sound mind who is 18 years of age or older, by completion of a
29 written signed instrument or by preparing of prearranging with any licensed funeral service
30 practitioner, may direct any lawful manner of disposition of the individual's remains. Except as
31 provided under subsection (6) of this section, disposition directions or disposition
32 prearrangements that are prepaid or that are filed with a licensed funeral service practitioner shall
33 not be subject to cancellation or substantial revision.

34 (2) A person within the first applicable listed class among the following listed classes
35 that is available at the time of death or, in the absence of actual notice of a contrary direction by
36 the decedent as described under subsection (1) of this section or actual notice of opposition by
37 completion of a written instrument by a member of the same class or a member of a prior class,
38 may direct any lawful manner of disposition of a decedent's remains by completion of a written
39 instrument:--

40 (1) the spouse,

41 (2) {the reciprocal beneficiary, as defined in Section 1 of Chapter 209E},

42 (3) an adult son or daughter,

43 (4) either parent,

44 (5) an adult brother or sister,

45 (6) a guardian of the person of the decedent at the time of his death.

46 (7) any other person authorized or under obligation to dispose of the body.

47 (3) The decedent or any person authorized in subsection (2) of this section to direct
48 the manner of disposition of the decedent's remains may delegate such authority to any person
49 18 years of age or older. Such delegation shall be made by completion of the written instrument.
50 The signature of the individual delegating his or her authority shall be required for the
51 completion of the written instrument. The person to whom the authority is delegated shall have
52 the same authority under subsection (2) of this section as the person delegating the authority.

53 (4) If a decedent or the decedent's designee issued more than one authorization or
54 direction for the disposal of the decedent's remains, only the most recent authorization or
55 direction shall be binding.

56 (5) A donation of anatomical gifts under Section 8 of Chapter 113, shall take priority
57 over directions for the disposition of a decedent's remains under this section only if the person
58 making the donation is of a priority under subsection (1) or (2) of this section the same as or
59 higher than the priority of the person directing the disposition of the remains.

60 (6) If the decedent had directed a disposition under subsection (1) of this section and
61 those financially responsible for the disposition are without sufficient funds to pay for such
62 disposition, or the estate of the decedent has insufficient funds to pay for the disposition, or if the
63 direction is unlawful, the direction shall be void and disposition shall be in accordance with the
64 direction provided by those persons given priority in subsection (2) of this section and who agree
65 to be financially responsible.

66 (7) Subject to the provisions of Chapter 113, if disposition of the remains of a
67 decedent has not been directed and authorized under this section within 10 days after the date of
68 the death of the decedent, a public health officer may direction and authorize disposition of the
69 remains.

70 SECTION 5. Section 25 of Chapter 123 of the General Laws, as appearing in the 2004
71 Official Edition, is hereby amended by inserting after the word "relative" in line 6 the
72 following:-- or reciprocal beneficiary as defined in Section 1 of Chapter 209E.

73 SECTION 6. Section 26 of said Chapter 123, as so appearing, is hereby amended by
74 inserting after the word "relative" in lines 41 and 43, in each instance the following:-- reciprocal
75 beneficiary.

76 SECTION 7. Section 27 of said Chapter 123, as so appearing, is hereby amended by
77 inserting after the word "relative" in line 3 the following:-- or reciprocal beneficiary.

78 SECTION 8. Section 30 of said Chapter 123, as so appearing, is hereby amended by
79 inserting after the word "kin" in line 4 the following:-- or reciprocal beneficiary.

80 SECTION 9. Section 35 of said Chapter 123, as so appearing, is hereby amended by
81 inserting after the word "guardian" in line 12 the following:-- reciprocal beneficiary.

82 SECTION 10. Section 108 of Chapter 175 of the General Laws, as so appearing, is
83 hereby amended by inserting after the word "policy holder" in line 32 the following:-- including
84 a reciprocal beneficiary as defined in Section 1 of Chapter 209E.

85 SECTION 11. Section 110, subsection (E) of said Chapter 175, as so appearing, is
86 hereby amended by inserting after the word "thereunder" the following:-- including reciprocal
87 beneficiaries.

88 SECTION 12. Section 110C of said Chapter 175, as so appearing, is hereby amended by
89 inserting after the word "residents" in line 8 the following:-- and reciprocal beneficiaries as
90 defined in Section 1 of Chapter 209E.

91 SECTION 13. Section 110G of said Chapter 175, as so appearing is hereby amended by
92 inserting after the word "dependents" in line 7, 9, 10, 14, 16, 19, 31, 47, in each instance the
93 following:-- or reciprocal beneficiary.

94 SECTION 13A. Section 111G of said Chapter 175, as so appearing, is hereby amended
95 by inserting after the word "age" the following:-- or reciprocal beneficiary as defined in Section
96 1 of Chapter 209E.

97 SECTION 14. Section 113O of said Chapter 175, as so appearing, is hereby amended by
98 inserting after the word "employee" in line 128 the following:-- or reciprocal beneficiary as
99 defined in Section 1 of Chapter 209E.

100 SECTION 15. Section 132A of said Chapter 175, as so appearing, is hereby amended by
101 inserting after the word "children" in line 42 and after the word "members" in line 46 the
102 following:-- and surviving reciprocal beneficiaries.

103 SECTION 16. Section 133 of said Chapter 175, as so appearing, is hereby amended by
104 striking out the fourth paragraph and inserting in place thereof the following paragraph:--

105 Any group life insurance policy issued under the provisions of this section, except a
106 policy insuring the lives of debtors in accordance with clause (c) may also insure the dependents
107 of employees, or members or other persons insured thereunder, {including reciprocal
108 beneficiaries}, and the employees or members or other persons {or reciprocal beneficiaries} may
109 contribute part or all of the premium for such insurance. Notwithstanding provision 4 of Section
110 134, only one certificate need be issued for delivery to, an insured person if a statement
111 concerning any dependents' coverage is included in such certificate. Upon termination of the
112 insurance with respect to the spouse {or reciprocal beneficiary}of any employee by reason of the
113 employee's termination of employment or death, the spouse {or reciprocal beneficiary} insured
114 pursuant to this section shall have the same conversion rights as to the insurance on his or her life
115 as is provided for the employee under provision 4 of said Section 134.

116 SECTION 17. Section 134 of said Chapter 175, as so appearing, is hereby amended by
117 inserting after the word “sisters” in line 93 the following:-- or reciprocal beneficiary.

118 SECTION 18. Chapter 184 of the General Laws is hereby amended by inserting after
119 Section 7 the following section:--

120 Section 7A. Every conveyance or devise of lands, or interest therein, made to reciprocal
121 beneficiaries as defined in Section 1 of Chapter 209E, or to executors or trustees, creates a
122 tenancy in common unless it is in some manner clearly and expressly declared in the conveyance
123 or devise that the grantees or devisees take the lands with right of survivorship. Such a
124 declaration of a right to survivorship shall create a joint tenancy with survivorship.

125 SECTION 19. The second paragraph of Section 1 of Chapter 188 of the General Laws,
126 as appearing in the 2004 Official Edition, is hereby amended by striking out the first sentence
127 and inserting in place thereof the following sentence:--

128 For the purposes of this chapter, an owner of a home shall include a sole owner, joint
129 tenant, tenant by the entirety or tenant in common; provided, that only one owner may acquire an
130 estate of homestead in any such home for the benefit of his family {or for the benefit of his
131 reciprocal beneficiary as defined in Section 1 of Chapter 209E}; and provided further, that an
132 estate of homestead may be required on only one principal residence for the benefit of a family
133 {or for the benefit of a reciprocal beneficiary}.

134 SECTION 20. Section 4 of said Chapter 188, as so appearing, is hereby amended by
135 striking out the first sentence and inserting in place thereof the following sentence:--

136 The estate of homestead existing at the death of a person holding a homestead shall
137 continue for the benefit of the surviving spouse and minor children {or reciprocal beneficiary}
138 and shall be held and enjoyed by them, if one of them or a purchaser under Section 8 occupies
139 the premises, until the youngest unmarried child is 18 and until the marriage or death of the
140 spouse {or reciprocal beneficiary}; and if a widow or minor children are entitled to an estate of
141 homestead as provided herein, it may be set off to them in the same manner as dower.

142 SECTION 21. Section 6 of said Chapter 188, as so appearing, is hereby amended by
143 inserting after the word “spouse” in lines 8 and 9, in each instance the following:-- reciprocal
144 beneficiary.

145 SECTION 22. Section 7 of said Chapter 188, as so appearing, is hereby amended by
146 inserting after the word “spouse” in lines 4 and 7, in each instance the following:-- reciprocal
147 beneficiary.

148 SECTION 23. Section 8 of said Chapter 188, as so appearing, is hereby amended by
149 inserting after the word “spouse” in lines 1, 4 and 6, in each instance the following:-- or
150 surviving reciprocal beneficiary.

151 SECTION 24. Said Section 8 of said Chapter 188, as so appearing, is hereby further
152 amended by inserting after the word "them" in line 8 the following:-- or surviving reciprocal
153 beneficiary.

154 SECTION 25. Section 1 of Chapter 190 of the General Laws, as so appearing is hereby
155 amended by inserting after the word "wife" in line 1 the following:-- or reciprocal beneficiary as
156 defined in Section 1 of Chapter 209E.

157 SECTION 26. Said Section 1 of said Chapter 190, as so appearing, is hereby further
158 amended by inserting after the word "wife" in lines 9 and 17, in each instance the following:--
159 or reciprocal beneficiary.

160 SECTION 27. Section 3 of said Chapter 190, as so appearing, is hereby amended by
161 inserting after the word "children" in line 5 the following:-- or reciprocal beneficiary.

162 SECTION 28. Said Section 3 of said Chapter 190, as so appearing, is hereby further
163 amended by inserting after the word "husband" in line 29 the following:-- or reciprocal
164 beneficiary.

165 SECTION 29. Chapter 191 of the General Court is hereby amended by inserting after
166 Section 9 the following section—

167 Section 9A. The registration of a person as a reciprocal beneficiary, in accordance with
168 Section 5 of Chapter 209E shall act as a revocation of a will made by him previous to registration
169 unless it appears from the will that it was made in contemplation thereof. If the will is made in
170 the exercise of a power of appointment and the real and personal property subject to the
171 appointment would not, without the appointment, pass to the persons who would have been
172 entitled to it if it had been the estate and property of the testator making the appointment and he
173 had died intestate, so much of the will as makes the appointment shall not be revoked by
174 registration as a reciprocal beneficiary

175 If, after executing a will, the testator shall terminate his or her "Reciprocal Beneficiary
176 Contract," as provided by Section 6 of Chapter 209E, such termination shall revoke any
177 disposition or appointment of property made by the will to the formal reciprocal beneficiary, any
178 provision conferring a general or special power of appointment on the former reciprocal
179 beneficiary, and any nomination of the former reciprocal beneficiary, as executor, trustee,
180 conservator or guardian, unless the will shall expressly provide otherwise. If provisions shall be
181 revoked solely by this section, they shall be revived by the testator's re-registration as a party to
182 a new "Reciprocal Beneficiary Contract" with the former reciprocal beneficiary.

183 SECTION 30. Chapter 196 of the General Laws is hereby amended by striking out
184 Section 1 and inserting in place thereof the following:--

185 Section 1. Articles of apparel and ornaments of the surviving spouse, minor children {or
186 surviving reciprocal beneficiary, as defined in Section 1 of Chapter 209E} of a deceased person
187 shall belong to them respectively. The surviving spouse {or surviving reciprocal beneficiary}
188 may remain in the house of a deceased spouse {or deceased reciprocal beneficiary} for not more
189 than six months next succeeding the death without being chargeable for rent.

190 SECTION 31. Section 2 of said Chapter 196, as appearing in the 2004 Official Edition,
191 is hereby amended by inserting after the word "spouse" in line 3 the following:-- or surviving
192 reciprocal beneficiary.

193 SECTION 32. Section 2 of said Chapter 196, as so appearing, is hereby further amended
194 by inserting the word "spouse" in line 4, each time it appears the following:-- or reciprocal
195 beneficiary.

196 SECTION 33. Section 3 of said Chapter 196, as so appearing, is hereby amended by
197 striking out the last sentence and inserting in place thereof the following sentence:--

198 The widow or surviving reciprocal beneficiary shall be entitled only to his or her share in
199 the residence after deducting the value of the advancement.

200 SECTION 34. Section 3 of Chapter 201D of the General Laws, as so appearing, is
201 hereby amended by adding the following:-- or unless both parties are signatories to a valid
202 reciprocal beneficiaries contract as defined in Section 1 of Chapter 209E.

203 SECTION 35. The third paragraph of Section 7 of said Chapter 201D is hereby amended
204 by adding the following:-- or (iii) the termination of Reciprocal Beneficiary Contract, in
205 accordance with Section 6 of Chapter 209E, between the principal and his reciprocal beneficiary,
206 where the reciprocal beneficiary is the principal's agent under a health care proxy.

207 SECTION 36. Section 17 of said Chapter 201D, as so appearing, is hereby amended by
208 inserting after the word "principal" in line 3 the following:-- or reciprocal beneficiary as defined
209 in Section 1 of Chapter 209E.

210 SECTION 36a. Section 1 of Chapter 228 of the General Laws, as so appearing, is hereby
211 amended by adding after the word "guardian" the following:-- or reciprocal beneficiary as
212 defined in Section 1 of Chapter 209E.

213 SECTION 37. The General Laws are hereby amended by inserting after Chapter 209D
214 the following chapter:--

215 CHAPTER 209E

216 RECIPROCAL BENEFICIARY CONTRACTS.

217 SECTION 1. As used in this chapter the following words, unless the context requires
218 otherwise, shall have the following meanings:--

219 "Former reciprocal beneficiary" a party to a prior "Reciprocal Beneficiary Contract"
220 which has since been terminated in accordance with Section 6.

221 "Notice of Termination of Reciprocal Beneficiary Contract" a form, signed by a party to
222 a valid "Reciprocal Beneficiary Contract" indicating his or her intention to terminate the
223 operation of a "Reciprocal Beneficiary Contract" and filed in accordance with Section 6.

224 "Reciprocal beneficiary" an adult who meets the eligibility requirements as defined in
225 Section 2 and who is a party to a valid "Reciprocal Beneficiary Contract."

226 "Reciprocal Beneficiary Contract" a form, signed by two eligible adults, who meet the
227 requirements of Section 2, and registered in accordance with Section 5, indicating the contractual
228 agreement between the two adults to share certain rights and benefits enumerated in the Act.

229 "Secretary" the Secretary of State.

230 SECTION 2. In order to enter into a valid "Reciprocal Beneficiary Contract," it shall be
231 necessary that:--

232 a. each of the parties be at least 18 years of age and legally competent;

233 b. each of the parties be a legal resident of the Commonwealth;

234 c. neither of the parties be married, nor a party to another "Reciprocal Beneficiary
235 Contract";

236 d. the parties be legally prohibited from marrying one another under Chapter 207 of
237 the General Laws;

238 e. consent of either party to the "Reciprocal Beneficiary Contract" has not been
239 obtained by force, duress, or fraud;

240 f. "Reciprocal Beneficiary Contract" form must be signed by both parties and filed
241 as specified in Section 5.

242 SECTION 3. The Secretary of State may promulgate rules and regulations regarding the
243 implementation of this chapter.

244 SECTION 4. Forms:--

245 a. The Secretary shall prepare and make available the form entitled "Reciprocal
246 Beneficiary Contract". This form shall state the eligibility requirements, and require each person
247 who wants to become a party to a "Reciprocal Beneficiary Contract" to:--

248 1). State that he or she desires to enter into a legally binding contractual agreement to
249 share certain benefits and obligations enumerated in this chapter;

250 2). State that he or she meets the requirements of Section 2 at the time the form is
251 signed and notarized;

252 3). Provide a mailing address;

253 4). Provide a social security number;

254 5). Sign the form with a declaration that representations made therein are true,
255 correct, and contain no material omissions of fact to the best knowledge and belief of each
256 declarant;

257 6). Have a notary public certify both signatures;

258 7). File the document with the Secretary.

259

260 b. The Secretary shall also prepare and make available the form entitled "Notice of
261 Termination of Reciprocal Beneficiary Contract". This form shall require each person who
262 wants to terminate a valid "Reciprocal Beneficiary Contract" to:--

263 1). Provide the date and the registration number of the original "Reciprocal
264 Beneficiary Contract";

265 2). State that he, she or they desire to terminate the operation of the existing
266 "Reciprocal Beneficiary Contract";

267 3). Provide both parties most recent mailing addresses;

268 4). Provide both parties social security numbers;

269 5). Sign the form with a declaration that representations made there are true, correct,
270 and contain no material omissions of fact to the best knowledge and belief of the declarant(s);

271 6) Have a notary public certify his, her or their signature(s);

272 7) File the document with the Secretary.

273 SECTION 5. Two people who meet the criteria set out in Section 2 of this chapter may
274 register their contractual agreement to become reciprocal beneficiaries by filing a completed,
275 signed and notarized "Reciprocal Beneficiary Contract" from with the Secretary.

276 The Secretary shall set and collect a fee for filing the "Reciprocal Beneficiary
277 Contract" form, which shall be deposited in the General Fund.

278 Upon receipt of a completed, signed, notarized "Reciprocal Beneficiary Contract"
279 form and the filing fee, the Secretary shall register the contractual agreement, assign the parties a
280 registration number and forward a copy of the "Reciprocal Beneficiary Contract" form to each
281 party named on the form by first class mail. A signed and notarized "Reciprocal Beneficiary
282 Contract" form shall constitute a public record.

283 The Secretary shall maintain a record of each "Reciprocal Beneficiary Contract"
284 form filed with the Secretary. The Secretary may make the information contained in the
285 "Reciprocal Beneficiary Contract" form available to such state or federal agencies as may be
286 required by state or federal law.

287 The Secretary shall maintain a process whereby "Reciprocal Beneficiary
288 Contracts" and marriage licenses are cross-referenced for the purpose of this chapter.

289 SECTION 6. Either party to a "Reciprocal Beneficiary Contract" may terminate the
290 agreement by filing a completed, signed, notarized "Notice of Termination of Reciprocal
291 Beneficiary Contract" with the Secretary.

292 Upon receipt of a completed, signed, notarized "Notice of Termination of
293 Reciprocal Beneficiary Contract" form and the filing fee, the Secretary shall register the "Notice
294 of Termination of Reciprocal Beneficiary Contract " form and forward a copy of the "Notice of
295 Termination of Reciprocal Beneficiary Contract" form to each party's most recently know
296 address by first class mail. Termination of the "Reciprocal Beneficiary Contract" shall become
297 effective 30 days after the date of Notice is registered by the Secretary, unless the party or parties
298 filing the Notice of Termination withdraw the termination form by notifying the Secretary in
299 writing.

300 The Secretary shall set and collect a fee for filing the "Notice of Termination of
301 Reciprocal Beneficiary Contract" form which shall be deposited into the General Fund. The
302 Secretary shall also maintain a record of each filed "Notice of Termination of Reciprocal
303 Beneficiary Contract" form, cross referenced with marriage licenses for the purpose of this
304 chapter.

305 When a marriage license is issued to either party to a "Reciprocal Beneficiary
306 Contract" or when a party to a "Reciprocal Beneficiary Contract" enters into a marriage, the
307 "Reciprocal Beneficiary Contract" shall be deemed terminated and the rights and obligations
308 provided to the parties under this chapter shall no longer be available.

309 SECTION 7. Upon registration of the "Reciprocal Beneficiary Contract" form,
310 "Reciprocal Beneficiary" rights and obligations shall be limited to the provisions contained in
311 this chapter. Such provisions shall be narrowly interpreted, and nothing in this chapter shall be
312 construed nor implied to create or extend rights or benefits no specifically provided here.

313 SECTION 8. If any provisions of this chapter, or the application thereof to any person or
314 circumstance is held invalid, the invalidity does not affect other provisions of applications of the
315 chapter, which can be given effect without the invalid provision or application, and to this end
316 the provisions of this chapter are severable.