

HOUSE No. 2684

The Commonwealth of Massachusetts

PRESENTED BY:

John W. Scibak

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 supporting children and strengthening families.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>John P. Fresolo</i>	<i>16th Worcester</i>
<i>Brian A. Joyce</i>	<i>Norfolk, Bristol, and Plymouth</i>
<i>Matthew A. Beaton</i>	<i>11th Worcester</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>
<i>Shaunna O'Connell</i>	<i>3rd Bristol</i>
<i>Steven L. Levy</i>	<i>4th Middlesex</i>
<i>Michael R. Knapik</i>	
<i>James E. Timilty</i>	
<i>Joyce A. Spiliotis</i>	<i>12th Essex</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>
<i>F. Jay Barrows</i>	<i>1st Bristol</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol, and Middlesex</i>
<i>John J. Binienda</i>	<i>17th Worcester</i>
<i>Thomas M. McGee</i>	<i>Third Essex and Middlesex</i>

<i>Paul Adams</i>	<i>17th Essex</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Kevin J. Kuros</i>	<i>8th Worcester</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>
<i>Carlos Henriquez</i>	<i>5th Suffolk</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Anthony W. Petruccelli</i>	
<i>Aaron Michlewitz</i>	<i>3rd Suffolk</i>
<i>Robert L. Hedlund</i>	
<i>George N. Peterson, Jr.</i>	<i>9th Worcester</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Bradford Hill</i>	<i>4th Essex</i>
<i>Paul K. Frost</i>	<i>7th Worcester</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex, Suffolk, and Essex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>James J. Lyons, Jr.</i>	<i>18th Essex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>William N. Brownsberger</i>	
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>Anne M. Gobi</i>	<i>5th Worcester</i>
<i>Daniel B. Winslow</i>	<i>9th Norfolk</i>
<i>Steven A. Tolman</i>	
<i>Walter F. Timilty</i>	<i>7th Norfolk</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>

HOUSE No. 2684

By Mr. Scibak of South Hadley, a petition (accompanied by bill, House, No. 2684) of John W. Scibak and others relative to supporting children and parental custody. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act supporting children and strengthening families.

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 31 of chapter 208 of the General Laws, as appearing in the most
2 recent edition, is hereby amended by striking out, in the sixth paragraph, the words “When
3 considering the happiness and welfare of the child, the court shall consider whether or not the
4 child’s present or past living conditions adversely affect his physical, mental, moral or emotional
5 health.”.

6 SECTION 2. Section 31 of said chapter 208, as so appearing, is hereby further amended
7 by striking out the seventh, eighth, ninth and tenth paragraphs beginning with the words “Upon
8 the filing of an action . . .” and ending with the words “except as provided for in section 31A.”
9 and inserting in place thereof the following paragraph:-

10 In furtherance of the public policy that the happiness and welfare of children is enhanced
11 by frequent and continuing contact with both of their parents, upon the filing of an action in
12 accordance with this section, section 28 of this chapter or section 32 of chapter 209, the parents

13 shall have temporary shared legal and physical custody of any minor child of the parties. In
14 making an order or judgment relative to the custody of any minor child there shall be a rebuttable
15 presumption that the parents shall have shared legal and physical custody of the minor child.
16 Such presumption may be rebutted by either party by a preponderance of the evidence that the
17 other parent has engaged in a pattern or serious incident of abuse or neglect of the minor child.
18 The court may then enter an order or judgment for sole legal or physical custody for one parent,
19 if the court makes written findings setting forth the specific facts that support a determination
20 that the child would be harmed as a result of shared legal or physical custody and that shared
21 legal or physical custody is not in the best interest of the child. In making any order or judgment
22 concerning the parenting schedule of each parent with any minor child, the rights of the parents
23 shall be equal, absent emergency, abuse or neglect of the child by one of the parents. The court
24 shall maximize the amount of time the child spends with each parent, to the extent possible. A
25 change in the availability of one or both parents to parent any minor child or a change in the
26 developmental stage of any minor child shall be presumed to constitute a material and substantial
27 change in circumstances for the purposes of a complaint or counterclaim seeking to modify a
28 parenting schedule or parenting plan incorporated into a judgment of divorce. This section shall
29 not modify section 31A of chapter 208 of the General Laws.

30 SECTION 3. Section 31 of said chapter 208, as so appearing, is hereby further amended,
31 in the twelfth paragraph, by striking out, in the third sentence, after the words “sole legal” the
32 word “and” and inserting in place thereof the words:- or sole.

33 SECTION 4. Section 31 of said chapter 208, as so appearing, is hereby further amended,
34 in the twelfth paragraph, by inserting after the words “to either parent”, at the end of the third
35 sentence, the following words:- if the court makes written findings setting forth the specific facts

36 that support a determination that the child would be harmed as a result of shared legal or physical
37 custody and that shared legal or physical custody is not in the best interest of the child.

38 SECTION 5. Section 31 of said chapter 208, as so appearing, is hereby further amended,
39 in the twelfth paragraph, by inserting after the words “support of the child.”, at the end of the
40 paragraph, the following words:- The failure of one or both parties, however, to submit a shared
41 custody implementation plan for trial shall not diminish the presumption of joint legal or
42 physical custody, nor shall it affect the child’s right or the parents’ rights to frequent and
43 continuing contact between the child and each parent.

44 SECTION 6. Section 31 of said chapter 208, as so appearing, is hereby further amended
45 by striking out the fourteenth paragraph beginning with the words “An award of shared legal or
46 physical custody . . .” and ending with the words “warranting modification.” and inserting in
47 place thereof the following paragraph:-

48 If the court orders shared physical custody, the court shall at that time issue a child
49 support order or revise its previous order, as appropriate to the circumstances.

50 SECTION 7. Section 31 of said chapter 208, as so appearing, is hereby further amended
51 by inserting, after the word “unless”, in the last paragraph, the following words:- the court makes
52 written findings setting forth the specific facts that support a determination that the child would
53 be harmed as a result of implementation of the agreement and” before the words “specific
54 findings are made by the court indicating that such an order would not be in the best interests of
55 the children.”