SENATE DOCKET, NO. 1242 FILED ON: 1/20/2011

SENATE . . . . . No. 518

The Commonwealth of Massachusetts

PRESENTED BY:

Mark C. Montigny

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 shared responsibility in health reform..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Mark C. Montigny	
	☐ *[District]*
	☐

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SENATE . . . . . No. 518

By Mr. Montigny, a petition (accompanied by bill, Senate, No. 518) of Mark C. Montigny for legislation relative to shared responsibility in health reform. Health Care Financing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *550* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act relative to shared responsibility in health reform..

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 secretary of administration and finance and the secretary of health and human services shall implement a health reform employer responsibility revenue program pursuant to this act. The program shall be designed to increase revenue available to fund health programs authorized by chapter 58 of the acts of 2006.

In implementing the program, the secretary of administration and finance and the secretary of health and human services shall implement an option authorized by sections 2, 3, 4 or 5 of this act, or a combination of such options.

Section 2. (a) The secretary of administration and finance and the secretary of health and human services may implement the provisions of this section pursuant to section 1 of this act.

(b) As used in this section, the following words, unless the context clearly requires otherwise, shall have the following meanings:–

"Benefiting employee", an employee who is enrolled in the Commonwealth Care Health Insurance Program established pursuant to chapter 118H of the General Laws.

"Benefiting employer", an employer that employees a benefiting employee and employs 25 or more full-time equivalent employees in the commonwealth.

17 Words used in this section that are defined in subsection (a) of section 188 of chapter 149
18 of the General Laws shall have the meaning ascribed to them by that subsection.

19 (c) The division of health care finance and policy and the department of
20 workforce development shall assess benefiting employers a health benefit compensation payment
21 for each benefiting employee enrolled in the Commonwealth Care Health Insurance Program,
22 subject to the provisions of this section and regulations promulgated by the division. Health
23 benefit compensation payments shall be made quarterly based on enrollment of employees in the
24 Commonwealth Care Health Insurance Program during the quarter. Revenue received under this
25 section shall be credited to the Commonwealth Care Trust Fund established pursuant to section
26 2000 of chapter 29 of the General Laws.

27 (d) The commissioner shall determine the amount of the payment each year.
28 The amount shall be no more than half of the Commonwealth's share of the average per-member
29 cost of the Commonwealth Care Health Insurance Program net of average federal
30 reimbursements.

31 (e) The commissioner shall determine which benefiting employers shall be
32 subject to the payment. The commissioner may exempt employers who employee less than a
33 minimum number of employees set by the commissioner. The commissioner may exempt
34 employers who employee less than a minimum number of benefiting employees set by the
35 commissioner. No employer who employees 25 or fewer full-time equivalent employees shall be
36 subject to the payment. The commissioner may pro-rate the payment required with respect to
37 benefiting employees who work less than 500 hours during a quarter.

38 (f) The commissioner shall establish a hardship exemption process that exempts
39 benefiting employers from the payment due to financial hardship. The commissioner shall
40 establish by regulation criteria for a hardship exemption.

41 (g) Benefiting employers subject to the health benefit compensation payment
42 shall receive a credit against the amount due under this section for any fair share employer
43 contributions paid pursuant to section 188 of chapter 149 of the General Laws.

44 (h) The Commonwealth Health Insurance Connector Authority, the department
45 of revenue and the office of medicaid shall assist the division and the department of workforce
46 development with the administration of this section. The department of revenue shall share
47 information required to administer this subsection with the division of health care finance and
48 policy.

49 (i) The director of unemployment assistance shall collect the payment required
50 under this section and shall implement penalties for employers who fail to make payments as
51 required by this section. In order to reduce the administrative costs of collection of contributions,
52 the director shall, to the extent possible, use any existing procedures that have been implemented

53 by the division of unemployment assistance to collect contributions under section 188 of chapter
54 149 of the General Laws.

55 (j) No employer shall discriminate against any employee or applicant for
56 employment on the basis of the employee's eligibility for or enrollment in the Commonwealth
57 Care Health Insurance Program, or any facts or circumstances relating to a health benefit
58 compensation payment assessed against the employer in relation to the employee. Violation of
59 this subsection shall constitute a per se violation of chapter 93A of the General Laws and shall
60 constitute an unlawful practice under section 4 of chapter 151B of the General Laws.

61 Section 3. (a) The secretary of administration and finance and the secretary of
62 health and human services may implement the provisions of this section pursuant to section 1 of
63 this act.

64 (b) Notwithstanding the provisions of subsection (c) of section 188 of chapter
65 149 of the General Laws, the annual fair share employer contribution established in said section
66 188 shall be increased to take into account the cost to the commonwealth of covering employees
67 of non-contributing employers in the most recent fiscal year on whose behalf health care services
68 were reimbursed in whole or in part by the Commonwealth Care Health Insurance Program.
69 Notwithstanding the $295 per employee limit of clause (10) of said subsection (c), the
70 commissioner of health care finance and policy shall annually determine the increased annual
71 fair share employer contribution pursuant to this subsection.

72 Section 4. (a) The secretary of administration and finance and the secretary of
73 health and human services may implement the provisions of this section pursuant to section 1 of
74 this act.

75 (b) As used in this section, the following words, unless the context clearly
76 requires otherwise, shall have the following meanings:–

77 "Covered employee", an employee as defined in section of chapter 151A of the General
78 Laws of a covered employer, provided that the division of health care finance and policy shall
79 further define covered employee for purposes of this section, which may include, but not be
80 limited to, specifying a minimum number of hours worked, a minimum length of employment, a
81 maximum salary, and the exclusion of those with access to federal or other health programs or
82 health coverage.

83 "Covered employer", an employing unit as defined in section 1 of chapter 151A of the
84 General Laws that employs 25 or more full-time equivalent employees in the commonwealth,
85 provided that the division of health care finance and policy shall further define covered employer
86 for purposes of this section.

87 “Health care expenditure”, any amount paid by a covered employer to its covered
88 employees or to a third party on behalf of its covered employees for the purpose of providing
89 health care services for covered employees or reimbursing the cost of such services for its
90 covered employees, including, but not limited to (1) reimbursement by such covered employer to
91 its covered employees for expenses incurred in the purchase of health care services; (2) payments
92 by a covered employer to a third party for the purpose of providing health care services for
93 covered employees; (3) costs incurred by a covered employer in the direct delivery of health care
94 services to its covered employees; and (4) payments by a covered employer to the
95 commonwealth pursuant to section 188 of chapter 149 of the General Laws, and (5) payments by
96 a covered employer to the commonwealth, which shall be credited to the Commonwealth Care
97 Trust Fund established pursuant to section 2000 of chapter 29 of the General Laws.
98 Notwithstanding any other provision of this section, “health care expenditure” shall not include
99 any payment made directly or indirectly for workers’ compensation or Medicare benefits.

100 “Health care expenditure rate”, the amount of health care expenditure that a covered
101 employer shall be required to make for each hour paid for each of its covered employees each
102 quarter, as determined by regulation by the division of health care finance and policy. In setting
103 the health care expenditure rate, the division may establish different rates for covered employers
104 with different amounts of employees.

105 “Required health care expenditure”, the total health care expenditure that a covered
106 employer is required to make every quarter for all its covered employees.

107 (c) Covered employers shall make required health care expenditures to or on
108 behalf of their covered employees each quarter pursuant to this subsection. The division of health
109 care finance and policy and the department of workforce development shall promulgate
110 regulations to implement the provisions of this subsection.

111 (d) The required health care expenditure for a covered employer shall be
112 calculated by multiplying the total number of hours paid for each of its covered employees
113 during the quarter by the applicable health care expenditure rate. In determining whether a
114 covered employer has made its required health care expenditures, payments to or on behalf of a
115 covered employee shall not be considered if they exceed the number of hours paid for the
116 covered employee during the quarter multiplied by the applicable health care expenditure rate.

117 (e) The division of health care finance and policy shall establish a hardship
118 exemption process that exempts covered employers from the required health care expenditure
119 due to financial hardship. The commissioner shall establish by regulation criteria for a hardship
120 exemption.

121 (f) The director of unemployment assistance shall collect any payments made
122 to the commonwealth under this section. The director shall determine penalties for late payment
123 and failure to pay any required health care expenditure, reporting forms and procedures, and

124 other matters as the director may determine. In order to reduce the administrative costs of
125 collection of contributions, the director shall, to the extent possible, use any existing procedures
126 that have been implemented by the division of unemployment assistance to collect contributions
127 under section 188 of chapter 149 of the General Laws.

128 Section 5. (a) The secretary of administration and finance and the secretary of
129 health and human services may implement the provisions of this section pursuant to section 1 of
130 this act.

131 (b) Each employer who employs more than 25 employees and is subject to the
132 provisions of 14, 14A, or 14C of chapter 151A of the General Laws shall pay, in the same
133 manner and at the same times as the director of workforce development prescribes for the
134 contribution required by section 14, an employer responsibility contribution. For employers with
135 fewer than 100 employees the contribution shall be computed by multiplying the wages paid its
136 employees by the employer responsibility contribution rate of 5 per cent. For employers with 100
137 or more employees the contribution shall be computed by multiplying the wages paid its
138 employees by the employer responsibility contribution rate of 7 per cent. The receipts from these
139 contributions shall be paid to the director and shall be credited to the Commonwealth Care Trust
140 Fund established pursuant to section 2000 of chapter 29 of the General Laws.

141 (c) For the purposes of this section, “wages” shall not include that part of
142 remuneration which, after remuneration equal to the employer responsibility wage base with
143 respect to employment with such employer has been paid to an individual during the calendar
144 year, is paid to such individual during the year. For the purposes of this section, the employer
145 responsibility wage base shall be equal to the maximum wage base as determined by 42 USC
146 430 for each year.

147 (d) Except where inconsistent with the provisions of this section, the terms and
148 conditions of chapter 151A of the General Laws that apply to the payment of and the collection
149 of contributions shall apply to the same extent to the payment of and the collection of the
150 employer responsibility contributions required by this section; provided, however, said
151 contributions shall be reduced by an amount equal to the employer's health care expenditures,
152 provided that said contribution shall not be less than zero. For the purposes of this section, health
153 care expenditures shall mean any amount paid by an employer to its employees or a dependent of
154 an employee or to a third party on behalf of its employees or their dependents for the purpose of
155 providing health care services for employees or their dependents or reimbursing the cost of such
156 services for its employees or their dependents, including, but not limited to (1) reimbursement
157 by such employer to its employees for expenses incurred in the purchase of health care services;
158 (2) payments by a employer to a third party for the purpose of providing health care services for
159 employees or their dependents; and (3) costs incurred by a employer in the direct delivery of
160 health care services to its employees or their dependents.

161 (e) The director, in consultation and cooperation with the commissioner of
162 revenue, shall promulgate regulations to enforce the provisions of this section. The regulations
163 shall include reasonable exemptions, including exemptions for substantial hardship, penalties for
164 late payment and failure to pay, reporting forms and procedures, and other matters as the director
165 may determine.