SENATE . . . . . . . . . . . . . No. 2123

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

SENATE, Thursday, May 1, 2014

The committee on Ways and Means, to whom was referred the House Bill relative to workforce reform (House, No. 4026), reports, in part, a “Bill restoring the minimum wage and providing unemployment insurance reforms” (Senate, No. 2123).

For the committee,
Stephen M. Brewer
The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act restoring the minimum wage and providing unemployment insurance reforms.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to strengthen forthwith the laws relative to labor and workforce development in the commonwealth, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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. Paragraph (2) of subsection (c) of section 189 of chapter 149 of the General Laws, as added by section 109 of chapter 38 of the acts of 2013, is hereby amended by striking out the words “have the same meaning as the term "unemployment insurance taxable wage base” as defined in paragraph (4) of subsection (a) of section 14 of chapter 151A” and inserting in place thereof the following words:- mean $14,000.

SECTION 2. Section 1 of chapter 151 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out, in line 5, the figure “8.00” and inserting in place thereof the following figure:- 9.00.

SECTION 3. Said section 1 of said chapter 151 is hereby further amended by striking out the figure “9.00”, inserted by section 2, and inserting in place thereof the following figure:-

10.00.
SECTION 4. Said section 1 of said chapter 151 is hereby further amended by striking out the figure “10.00”, inserted by section 3, and inserting in place thereof the following figure:-
11.00.

SECTION 5. Said section 1 of said chapter 151, as appearing in the 2012 Official Edition, is hereby further amended by inserting after the second sentence the following sentences:- The minimum wage rate shall be increased annually by the percentage increase, if any, of the consumer price index as calculated for the northeast region for all urban consumers, as published by the Bureau of Labor Statistics of the United States Department of Labor, for the previous 12 month period and rounded up to the nearest 5 cents. The adjusted minimum wage shall be calculated, announced and posted on the department’s website by the commissioner by April 1 of each year and shall become effective as the new minimum wage on January 1 of each year.

SECTION 6. Said section 1 of said chapter 151, as so appearing, is hereby further amended by striking out, in line 12, the figure “.10” and inserting in place thereof the following figure:- .50.

SECTION 7. Section 7 of said chapter 151, as so appearing, is hereby amended by striking out, in lines 30 and 31, the words “the cash wage required to be paid such an employee on July 1, 1999” and inserting in place thereof the following words:- 50 per cent of the minimum wage, established under section 1.

SECTION 8. Paragraph (2) of subsection (r) of section 1 of chapter 151A of the General Laws, as so appearing, is hereby amended by adding the following sentence:- Notwithstanding any general or special law to the contrary, an individual employed as a crewmember on a
commercial fishing vessel shall be deemed to be in total unemployment during any period of
general closing of the individual's employer's fishing vessel due to the employer's inability to
conduct fishing operations as a result of federal fisheries management restrictions and the
individual performs no wage-earning services whatsoever, and for which he receives no
remuneration during those periods of general closing of the individual's employer's fishing
vessel.

SECTION 9. Said section 1 of said chapter 151A, as so appearing, is hereby amended by
striking out, in lines 327 and 338, the word “sixteen” and inserting in place thereof, in each
instance, the following figure:- 20.

SECTION 10. Section 14 of said chapter 151A, as so appearing, is hereby amended by
striking out, in lines 39 and 51, the word “twelve” and inserting in place thereof, in each
instance, the following figure:- 36.

SECTION 11. Said section 14 of said chapter 151A, as so appearing, is hereby further
amended by striking out, in line 56, the words “calendar year” and inserting in place thereof the
following words:- 36 consecutive months.

SECTION 12. Subsection (a) of said section 14 of said chapter 151A, as so appearing, is
hereby amended by striking out paragraph (4) and inserting in place thereof the following
paragraph:-

(4) “Unemployment insurance taxable wage base”, with respect to calendar years
beginning on or after January 1, 2015, the term “unemployment insurance taxable wage base”
shall mean $21,000.
SECTION 13. Said section 14 of said chapter 151A, as so appearing, is hereby further amended by striking out, in lines 68 and 228, the word “twelve” and inserting in place thereof, in each instance, the following figure:- 36.

SECTION 14. Said section 14 of said chapter 151A, as so appearing, is hereby further amended by striking out, in line 167, the words “twelve-months’” and inserting in place thereof the following words:- 36 consecutive month.

SECTION 15. Paragraph (1) of subsection (i) of said section 14 of said chapter 151A, as so appearing, is hereby amended by striking out, in lines 187 and 188, the date “January 1, 2004” and inserting in place thereof the following date:- January 1, 2015.

SECTION 16. Said paragraph (1) of said subsection (i) of said section 14 of said chapter 151A, as so appearing, is hereby further amended by striking out the table and inserting in place thereof the following table:-

**EXPERIENCE RATE TABLE**

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SECTION 17. Said section 14 of said chapter 151A, as so appearing, is hereby further amended by striking out, in lines 197 and 198, the words "but less than 11.0 positive".

SECTION 18. Said section 14 of said chapter 151A, as so appearing, is hereby further amended by striking out, in line 217, the words "but less than 0.5”.

SECTION 19. Said section 14 of said chapter 151A, as so appearing, is hereby further amended by inserting after the word “unit”, in line 282, the following words:- and the transferee continues such organization, trade or business.

SECTION 20. Section 14L of said chapter 151A, as so appearing, is hereby amended by striking out, in line 4, the figure “0.075” and inserting in place thereof the following figure:- 0.05.

SECTION 21. Said section 14L of said chapter 151A, as so appearing, is hereby further amended by striking out, in line 9, the figure “$18,000,000” and inserting in place thereof the following figure:- $22,000,000.

SECTION 22. Said chapter 151A is hereby further amended by inserting after section 14P the following section:-

Section 14Q. The commissioner may enter into an agreement with the United States Department of the Treasury, under 26 U.S.C. § 6402 (f) and 31 CFR § 285.8, to transmit valid, unpaid and overdue unemployment compensation debts, which are owed to the commonwealth, to the United States Department of the Treasury for collection under the Treasury's offset program. If the commissioner chooses to participate in the Treasury's offset program to recover unemployment compensation debt, the commissioner shall adhere to all rules, policies and
guidance as required by the United States Department of the Treasury and the United States Department of Labor in implementing and administering the program. The commissioner may promulgate regulations as needed to implement this section.

SECTION 23. Section 15 of said chapter 151A, as appearing in the 2012 Official Edition, is hereby amended by adding the following subsection:-

(f) If an assessment or any administrative decision upon review thereof has become final and the contributions, payments in lieu of contributions, interest or penalties thereby assessed remain unpaid, the commissioner may refer the unpaid and overdue amount to the United States Department of the Treasury for collection, under 26 U.S.C. § 6402, the Treasury's offset program; provided, that all procedures for notice and opportunity to present evidence as required by 31 CFR § 285.8 have been followed.

SECTION 24. Subsection (b) of section 19A of said chapter 151A, as so appearing, is hereby amended by adding the following sentence:-

An agency or instrumentality of the commonwealth shall not enter into, renew or extend a contract or agreement with any employer to provide goods, services or physical space that has a maximum obligation or value greater than $5,000 to such agency or instrumentality or authorize any tax credit under chapters 62 and 63 in excess of $5,000 unless the employer has submitted a certificate of compliance issued by the department showing that it is current in all its obligations relating to contributions, payments in lieu of contributions and the employer medical assistance contribution established in section 189 of chapter 149.
SECTION 25. Section 24A of said chapter 151A, as so appearing, is hereby amended by striking out, in line 25, the word “sixteen” and inserting in place thereof the following figure:-

20.

SECTION 26. Section 25 of said chapter 151A, as so appearing, is hereby amended by striking out, in lines 112 to 114, inclusive, the words “and in each of said weeks has earned an amount equivalent to or in excess of the individual’s weekly benefit amount after the individual has left work” and inserting in place thereof the following words:- and has earned an amount equivalent to or in excess of 8 times the individual’s weekly benefit amount after the individual has left work.

SECTION 27. Subsection (e) of said section 25 of said chapter 151A, as so appearing, is hereby amended by inserting after the fourth paragraph the following paragraph:-

Notwithstanding any general or special law to the contrary, no disqualification shall be imposed if an individual establishes to the satisfaction of the commissioner that the individual is employed as a crewmember of a commercial fishing vessel and is unable to work for a period of time due to the general closing of the individual's employer’s fishing vessel for that period of time as a result of the employer’s inability to conduct fishing operations because of federal fisheries management restrictions.

SECTION 28. Said chapter 151A is hereby further amended by inserting after section 28A the following section:-

Section 28B. For the purposes of this section the term “person of influence” shall mean a corporate officer, partner or owner of an employing unit, a person who has more than a 5 per
cent equitable or debt interest in an employing unit or an immediate family member of such
individuals.

If an employee, who is a person of influence, receives an unemployment benefit under
this chapter and during the same benefit year resumes or returns to work for the same employing
unit, then there shall be a rebuttable presumption that the employee’s unemployment was due to
circumstances within the employee’s control and all benefits paid to the employee during the
benefit year shall be considered an overpayment, which the employee shall repay.

SECTION 29. Subsection (b) of section 29 of said chapter 151A, as appearing in the
2012 Official Edition, is hereby amended by adding the following sentence:-

Nothing in this subsection shall cause a full denial of benefits solely because an
individual left a part time job, which supplemented primary full-time employment, during the
individual’s base period prior to being deemed in partial unemployment.

SECTION 30. The second paragraph of subsection (a) of section 38 of said chapter
151A, as so appearing, is hereby amended by inserting after the third sentence the following
sentence:- If an employer responds within 10 days after such notice was mailed, the
commissioner shall have a final determination of the matter within 30 days, unless good cause
exists, in which case the commissioner shall send written notice to both the claimant and the
employer that good cause exists for the matter not to be decided within 30 days; provided,
however, that said written notice shall explain such good cause.

SECTION 31. Subsection (a) of section 39 of said chapter 151A, as so appearing, is
hereby amended by striking out the second sentence and inserting in place thereof the following
sentence:- The commissioner shall give notice of such determination, together with the reasons
for such determination, to the claimant within 30 days of filing the claim, unless good cause exists, in which case the commissioner shall send written notice to both the claimant and the employer explaining such good cause.

SECTION 32. Said chapter 151A is hereby further amended by inserting after section 47A the following section:-

Section 47B. (a) No employer shall discharge, discipline, penalize or in any manner discriminate against any employee because: (i) the employee has filed a claim or instituted or caused to be instituted a proceeding alleging unemployment fraud by the employer; (ii) the employee has testified or is about to testify in any such proceeding alleging unemployment fraud by the employer; or (iii) the employee exercised a right in a matter alleging unemployment fraud, regardless of whether the right was exercised for the employee’s benefit or the benefit of a third party.

(b) Any employee or former employee aggrieved by a violation of this section may, within 2 years, institute a civil action in the superior court. Each party to the action shall be entitled to a jury trial. In addition to any legal or equitable relief provided herein, all remedies available in common law tort actions shall be available to prevailing plaintiffs. The court may: (i) issue a temporary restraining order or preliminary or permanent injunction to restrain a continued violation of this section; (ii) reinstate the employee to the same position held before the retaliatory action or to an equivalent position; (iii) reinstate full fringe benefits to the employee; (iv) compensate the employee for 3 times the lost wages, benefits and other remuneration and interest thereon; and (v) order payment by the employer of reasonable costs and attorneys’ fees.
(c) (1) In an action brought by an employee under subsection (b), if the court finds
the action was without basis in law or in fact, the court may award reasonable attorneys’ fees and
court costs to the employer.

(2) An employee shall not be assessed attorneys’ fees under paragraph (1) if, after
exercising reasonable and diligent efforts after filing a suit, the employee moves to dismiss the
action against the employer, or files a notice agreeing to a voluntary dismissal, within a
reasonable time after determining that the employer would not be found liable for damages.

(d) Nothing in this section shall be deemed to diminish the rights, privileges or remedies
of any employee under any other federal or state law or regulation, or under any collective
bargaining agreement or employment contract; except that the institution of a private action in
accordance with subsection (b) shall be deemed a waiver by the plaintiff of the rights and
remedies available to the employee, for the actions of the employer, under any other contract,
collective bargaining agreement, state law, rule or regulation or under common law.

SECTION 33. Subsection (a) of section 62A of said chapter 151A, as appearing in the
2012 Official Edition, is hereby amended by adding the following paragraph:-
The department shall conduct not less than 1 public hearing each year to seek the input of
employers in the commonwealth. The hearing shall be held at a time and location designated to
maximize employer participation. Not fewer than 20 days prior to a public hearing the
commissioner shall conspicuously post notice of the time and location of the hearing on the
official website of the department and send notice, electronically or otherwise, to: members of
the general court; every employer with an account with the department; the Massachusetts
Chamber of Commerce, Inc., the Greater Boston Chamber of Commerce; the Massachusetts
SECTION 34. Section 69B of said chapter 151A, as so appearing, is hereby amended by adding the following paragraph:- In addition to any other remedy provided by this chapter, the commissioner may request that the amount payable to the department by an individual, which is the result of an overpayment of unemployment benefits, be recouped under the United States Department of the Treasury's offset program in accordance with section 14Q; provided, that said decision has become final under 430 CMR 6.12.

SECTION 35. Section 71 of said chapter 151A, as so appearing, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

Notice of any such redetermination shall be promptly given to the parties entitled to notice of the original determination, in the manner prescribed in this chapter with respect to notice of an original determination. If the amount of benefits would be increased upon such redetermination an appeal therefrom solely with respect to the matters involved in such increase may be filed in the manner and subject to the limitations provided in sections 39 to 40, inclusive. If the amount of benefits would be decreased upon such redetermination, the matters involved in such decrease shall be subject to review in connection with an appeal by the claimant thereon or from any determination upon a subsequent claim for benefits which may be affected in amount or duration by such redetermination. Any proposed decrease or increase of the amount of benefits based upon such a redetermination shall not take effect if any party seeks timely review under subsection (b) of section 39. Subject to the same limitations and for the same reasons, the commissioner may reconsider the determination in any case in which a decision has been
rendered by the board of review or a court, and may apply to said board or such court which rendered such decision to revoke or modify such decision and the board of review or court may affirm, modify or revoke such decision.

SECTION 36. Notwithstanding section 14 of chapter 151A of the General Laws, for calendar year 2015, the experience rate of an employer qualifying under subsection (b) of said section 14 of said chapter 151A shall be the rate in column “C” in paragraph (1) of subsection (i) of said section 14 of said chapter 151A.

SECTION 37. Notwithstanding section 14 of chapter 151A of the General Laws, for calendar year 2016, the experience rate of an employer qualifying under subsection (b) of said section 14 of said chapter 151A shall be the rate which appears in column “A” of paragraph (1) of subsection (i) of said section 14 of said chapter 151A; provided however, if the rate appearing in said column “A” is projected to result in a balance in the Unemployment Compensation Fund of less than $250,000,000, or greater as needed to ensure the minimum solvency of the Unemployment Compensation Fund, at the end of calendar year 2016, then the secretary of labor and workforce development shall submit a report to the clerks of the house of representatives and senate, the house and senate chairs of the joint committee on labor and workforce development and the house and senate chairs of the committees on ways and means, not later than December 31, 2015, with recommendations on the necessary rate change according to the rates set under said paragraph (1) of said subsection (i) of said section 14 of said chapter 151A to maintain an end of calendar year 2016 balance of $250,000,000, or greater as needed to ensure the minimum solvency of the Unemployment Compensation Fund; provided, further that said recommended rate change shall not exceed the rate set forth in column “C” of said paragraph (1) of said subsection (i) of said section 14 of said chapter 151A.
SECTION 38. Notwithstanding section 14 of chapter 151A of the General Laws, for calendar year 2017, the experience rate of an employer qualifying under subsection (b) of said section 14 of said chapter 151A shall be the rate in column “C” in paragraph (1) of subsection (i) of said section 14 of said chapter 151A.

SECTION 39. The department of unemployment assistance shall investigate the feasibility of and design a pilot program to provide skills training internships with employers in the commonwealth for residents who are unemployed and are receiving unemployment insurance benefits under chapter 151A of the General Laws.

The department shall file a report with the clerks of the senate and house of representatives, not later than January 2, 2015, which: (i) reviews existing federal and state laws, regulations and policies governing eligibility for unemployment insurance, unpaid internships, wages and hours and workers’ compensation insurance; (ii) develops a pilot program, which complies with applicable laws and regulations; (iii) outlines eligibility requirements for persons and businesses to participate in the pilot program; (iv) investigates procedures to ensure that interns do not displace or adversely affect the wages, hours or other benefits held by existing employees; (v) recommends specific industries or businesses in the commonwealth for participation in the pilot program; (vi) examines methods or incentives to encourage participation in the pilot program; (vii) considers benchmarks and reporting standards to measure successful outcomes; and (viii) explores any other measures it deems necessary for a skills training internship pilot program, including the cost of implementation.

SECTION 40. (a) There shall be a special commission to conduct an investigation and study of the activities and efficacy of the adjudication of unemployment insurance claims by the
department of unemployment assistance. The commission shall consist of the following 11
members: 2 members appointed by the state auditor, both of whom shall have experience with
the adjudication of unemployment disputes and 1 of whom shall serve as the chair; the house and
senate chairs of the joint committee on labor and workforce development; 1 member of the
senate or their designee, who shall be appointed by the minority leader of the senate; 1 member
of the house of representatives or their designee, who shall be appointed by the minority leader
of the house of representatives; the director of the department of unemployment assistance, or a
designee; the president of the Massachusetts Taxpayer’s Foundation, or a designee; the executive
vice-president of the Massachusetts AFL-CIO, or a designee; an executive vice-president of
Associated Industries of Massachusetts, or a designee; and the executive director of the
Massachusetts Municipal Association, or a designee.

(b) The study shall include, but shall not be limited to: (1) the number of claims received
by the department of unemployment assistance quarterly since January 1, 2010 and the resulting
status of each claim, including, but not be limited to (i) the results of any initial determination
about the claim, (ii) the results of any appeal from the initial determination, (iii) the number of
rulings reversed through the appeals and review process, (iv) the number of claims arising under
clauses (1) and (2) of subsection (e) of section 25 of chapter 151A of the General Laws and (v)
the number of claims settled in favor of the claimant and in favor of the employer;

(2) the average length of time of the appeal and review process from initial determination
to final disposition;

(3) the procedures used by the department to hire and train new employees who
implement sections 39 through 41, inclusive, of said chapter 151A, including a determination as
to whether or not employment procedures, under section 9K of chapter 23 of the General Laws, have been followed; and

(4) recommendations of the commission relative to: (i) procedures through which the department may produce a quarterly report of the number of active claims and the status of said claims to be posted on the department’s website; (ii) procedures through which any current backlog of cases may be fairly and efficiently resolved and avoided in future department proceedings; (iii) procedures through which oversight and quality control principles may be implemented to ensure the continuing prompt, equitable and transparent application of current law by the commissioner and the board of review; (iv) a complete review of the current statutes and regulations relative to the implementation of chapter 151A of the General Laws and any recommendations as to possible legislative reforms and streamlined procedures, including, but not limited to, recommendations and procedures for the uniform and effective implementation of section 25 of said chapter 151A.

(c) The commission may request from all state agencies such information and assistance as the commission may require. The commission shall report the results of its investigation and study, together with drafts of legislation, if any, necessary to carry out its recommendations, by filing the same with the clerks of the senate and house of representatives, who shall forward the same to the joint committee on labor and workforce development and the house and senate committees on ways and means on or before December 31, 2014. The report shall be made available to the public on the general court’s website.

SECTION 41. There shall be a special commission created to conduct an investigation and a study on the impact of unemployment on: (i) unemployment claimants who are over the age of 40; (ii) unemployment claimants experiencing long-term unemployment; and (iii)
unemployment claimants over the age of 40 experiencing long-term unemployment. For the
purposes of this section, the term “long-term unemployment” shall mean unemployment lasting
longer than 27 weeks.

The commission shall consist of 15 members: the house and senate chairs of the joint
committee on economic development and emerging technologies, who shall serve as co-chairs of
the commission; the house and senate chairs of the joint committee on labor and workforce
development; the secretary of labor and workforce development or a designee; the secretary of
housing and economic development or a designee; the secretary of elder affairs or a designee; a
representative of the federal reserve bank of Boston; the attorney general or a designee; a
representative of Operation A.B.L.E. of Greater Boston; a representative of the Massachusetts
Association of Chamber of Commerce Executives; 1 member who shall be appointed by the
governor who shall be a health care expert with a specialty in gerontology; a representative from
the National Association of Elder Law Attorneys or a designee; and 2 members associated with
universities, each of whom shall have expertise in economics and employment and 1 of whom
shall be appointed by the minority leader of the senate and 1 of whom shall be appointed by the
minority leader of the house of representatives. The commission shall consult with a
representative of a regional employment board for each county of the commonwealth, a
representative of the AARP, the United States department of labor, employment and training
division and the Sloan Center on Aging and Work at Boston College.

The study shall include, but not be limited to: (i) the economic and social cost of older,
long-term unemployed or both older and long-term unemployed workers; (ii) an analysis of the
unemployment system of the commonwealth specific to the effectiveness of existing laws and
programs in providing retraining or re-employment opportunities to older, long-term
unemployed or both older and long-term unemployed workers; (iii) the effect of the length of
unemployment on the older worker; and (iv) the likelihood that the older worker will be offered
job retraining opportunities and return to full employment. The commission shall make
recommendations for possible changes to programming for older, long-term unemployed or both
older and long-term unemployed workers, including an outline of possible pilot programs or
supplemental unemployment programs focused on older, long-term unemployed or both older
and long-term unemployed workers.

The commission shall report the results of its investigation and study, together with drafts
of legislation, if needed, to implement its recommendations, by filing the report with the clerks
of the senate and house of representatives, the joint committee on economic development and
emerging technologies, the joint committee on labor and workforce development, the joint
committee on elder affairs and the house and senate committees on ways and means, not later
than January 31, 2015.

SECTION 42. Sections 1, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21 and 36 shall take
effect on January 1, 2015.

SECTION 43. Sections 2, 6 and 7 shall take effect on July 1, 2014.

SECTION 44. Section 3 shall take effect on July 1, 2015.

SECTION 45. Sections 4 and 5 shall take effect on July 1, 2016.

SECTION 46. Section 37 shall take effect on January 1, 2016.

SECTION 47. Section 38 shall take effect on January 1, 2017.
SECTION 48. Unless otherwise provided, this act shall take effect 6 months after the effective date of this act.