HOUSE . . . . . No. 1695

By Mr. Hynes of Marshfield, petition of Frank M. Hynes for legislation to establish employment standards for public employees dealing with bloodborne pathogens. Health Care.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Seven.

AN ACT ESTABLISHING EMPLOYMENT STANDARDS FOR PUBLIC EMPLOYEES DEALING WITH BLOODBORNE PATHOGENS.

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 149 of the General Laws is hereby amended by inserting after section 141A the following section:—

Section 141B. The department shall promulgate rules and regulations concerning bloodborne pathogens which shall be applicable to employees of the commonwealth and any county therein and any city or town which accepts the provisions of this section in order to reduce employees' health risks. Said rules and regulations shall be consistent with and based upon the regulations of the occupational safety and health administration. No rule or regulation promulgated hereunder shall mandate testing for bloodborne pathogens.

SECTION 2. Amend section one of M.G.L. Chapter 111 Definition by adding a new paragraph following line 30:—

"Health care worker," for the purpose of sections 111D, 111E and 111F only shall include, but not be limited to: licensed physician, dentist, registered nurse, licensed practical nurse, physician assistant, psychologist, social worker and other health professional worker, nurses aide, orderly, laboratory technician, emergency medical technician, surgical technician, medical or surgical assistant, dental hygienist, dental assistant, licensed therapist, therapy assistant, psychiatric aide and other health care service

provider, housekeeper, janitor, food service aide, transportation aide, security officer and other ancillary personnel.

SECTION 3. Amend the M.G.L. Chapter 111 by adding the following new sections:—

Section 111D. Protection of health care workers in public employment: Bloodborne Pathogens.

The department shall adopt the Occupational Safety and Health Administration (OSHA) Bloodborne Disease Standard published December 2, 1991, to cover all health care workers employed in any state, county or local entity providing health care services in the Commonwealth not presently covered by said OSHA standard.

Section 111E. Health care worker: exposure; standards.

Any health care worker who, while acting in his or her professional capacity, attends or assists a person or deceased person in in a health care facility licensed under this chapter; in any state,county, or local entity providing health care services: or in any other setting where health care services are provided subject to any law of the Commonwealth, including but not limited to clinics, hospices, schools and home health care service agencies, sustains any exposure to blood or bodily fluids which may be reasonably believed to be carrying bloodborne pathogens capable of transmitting HIV shall provide to his or her employer a report of said exposure which report shall remain confidential. The department shall prepare and distribute, or the health care facility or agency may prepare and distribute in the failure of the department to do so, a standard form for reporting such exposure which shall include, but need not be limited to, the name of the person who believes he or she has had such exposure and the manner in which such exposure occurred. After receiving such a report the employer shall then follow the Occupational Health and Safety Administration (OSHA) Standard on Bloodborne Pathogens published December 2, 1991 regarding reports of exposure to bloodborne pathogens as follows:

A. Following the confidential report of an exposure incident, the employer must make immediately available to the exposed employee, at the employer's expense, a confidential medical evaluation and followup, including at least:

36 1. Documentation of the route(s) of exposure and circumstances
37 under which the exposure incident occurred.
38 2. Identification and documentation of the source individual,
39 unless the employer can establish that identification is prohibited
40 by Section 70 of this chapter.
41 B. The source individual's blood must be tested after written
42 consent pursuant to the provision of Section 70 of this chapter,
43 without cost to that individual, and as soon as feasible to deter-
44 mine HIV infectivity. If consent is not obtained, the employer
45 shall establish that legally required consent cannot be obtained.
46 C. If consent is obtained, test results of the source individual's
47 blood shall be made available to the exposed employee, provided,
48 however, that the identity of the patient suspected of having such
49 disease shall not be released in such response, and shall be kept
50 confidential in accordance with the provisions of section 70, and
51 the employee shall be informed of the applicable laws and regula-
52 tions concerning disclosure of the identity and infectious status of
53 the source individual.
54 D. The exposed employee's blood shall be collected as soon as
55 feasible and tested after his or her consent is obtained. Subsequent
56 to such baseline blood collection and testing, the employer, at his
57 expense, shall collect and test the exposed employee's blood at
58 intervals to be determined by an infectious disease specialist. All
59 collection, testing and related matters shall be done in such a way
60 as to protect the privacy of the employee.
61 E. If the employee consents to baseline blood collection, but
62 does not give consent at that time for HIV serologic testing, the
63 sample shall be preserved for at least 90 days. If within 90 days of
64 the exposure incident the employee elects to have the baseline
65 sample tested, such testing shall be done as soon as feasible and in
66 such a way as to protect the privacy of the employee.
67 F. The employer must, at his expense, provide the employee
68 with post-exposure prophylaxis, when medically indicated, as rec-
69 ommended by the U.S. Public Health Service, appropriate coun-
70 seling and evaluation of reported illnesses.
71 G. The employer shall ensure that the health care professional
72 evaluating an employee after an exposure incident is provided:
73 1. a copy of the OSHA Bloodborne Standard.

2. a description of the exposed employee's duties as they relate to the exposure incident.

3. documentation of the route(s) of exposure and circumstances under which exposure occurred.

4. results of the source individual's blood testing, if available under Section 70 of this chapter.

5. all medical records relevant to the appropriate treatment of the employee, which are the employer's responsibility to maintain.

H. The employer shall provide the employee with a copy of the evaluating health care professional's written opinion within 15 days of the completion of the evaluation.

I. The health care professional's written opinion for post-exposure evaluation and follow-up shall be limited to the employee who has been:

1. informed of the evaluation results.

2. told about any medical conditions resulting from exposure to blood or other potentially infectious materials which require further evaluation or treatment.

J. All other findings or diagnosis shall remain confidential and shall not be included in the written report.

SECTION 4. Amend M.G.L. Chapter 32— Civil Service, by adding new sections:—

Section 94C Disability or death caused by Bloodborne Pathogens; health care workers in public employ; presumption.

Section 95C(1). Notwithstanding the provision of any general or special law to the contrary, any condition of AIDS or any infection resulting in disability or death to a health care worker employed by any state, county or local entity shall, if he or she consented to a baseline collection for HIV serologic testing under section 111E of M.G.L. Chapter 111 which tests negative for HIV, but subsequent collection tests positive for HIV, be presumed to have been suffered in the course of his or her employment The provision of this section shall apply if the disabling or fatal condition is a type which may, in general, result from exposure to known or suspected bloodborne pathogens as determined by the Federal Center for Disease Control (CDC).

17 (1) Nothing herein shall preclude a health care worker for
18 applying for and receiving benefits under any other provisions of
19 the General Laws related to work-incurred injuries and diseases.
20 Section 94D. Extension of benefits for health care workers suf-
21 fering from work related infection of AIDS or HIV. A health care
22 worker employed by state, county or local entity who is deter-
23 mined to be infected with AIDS or HIV shall have the right to
24 continue to work as long as his or her attending physician believes
25 there is no danger to the health care worker or his or her patient.
26 with no loss in salary seniority status, grade or benefits including,
27 but not limited to health insurance Nor shall there by any discrim-
28 ination by the employer against the employee The employee
29 already protected by the Americans with Disabilities Act of 1990
30 shall be further protected by M.G.L. Chapter 6, Section 56, and
31 sections 75 to 84, inclusive.
32 Section 94E. Supplementary Employer Payments for Certain
33 Workers.
34 When a health care worker employed by state, county or local
35 entity has been found to be disabled due to personal injuries, as
36 defined in section 1(7A) of this Chapter, as a result of HIV infec-
37 tion arising out of his employment. as determined in Section 111D
38 of Chapter 111, and Section 94C(1) of this Chapter, the employer
39 shall supplement any workers compensation established under this
40 chapter by an amount equal to the difference between this amount
41 and the worker's average weekly salary.
42 Section 94F. Special Disability Insurance for HIV infected
43 Health Care Workers.
44 Each employer in Massachusetts shall provide a minimum of
45 $500,000 of special disability insurance to any health care worker
46 in his employ who is found to be HIV infected from a work-
47 related exposure. All policies regarding the establishment of diag-
48 nosis of HIV infection shall follow the Standards on Bloodborne
49 Pathogens of the federal Occupational Safety and Health
50 Administration (OSHA) as published on December 2, 1991 and
51 section 111D of M.G.L. Chapter 111.
52 Section 94G. Special life insurance for HIV infected health care
53 workers.
54 Each employer of a health care worker in Massachusetts found
55 to be infected by HIV as a result of a work-related exposure as

determined by the Standard on Bloodborne Pathogens of the federal Occupational Safety and Health Administration and section 111E of M.G.L. Chapter 111 shall provide him or her with a life insurance policy equal to twice the workers most recent annual salary and to include so-called reverse-life provisions when available.

SECTION 5. Chapter 152 is amended by adding the following new sections—

Section 75C. Disability or death caused by Bloodborne pathogens infection; health care workers; presumption.

(1) Notwithstanding the provision of any general or special law to the contrary, any condition of AIDS or HIV infection resulting in disability or death to a health care worker shall, if he or she consented to a baseline collection for HIV serologic testing under section 111 E of M.G.L. Chapter 111 which tests negative for HIV, but subsequent collection tests positive for HIV, be presumed to have been suffered in the course of his or her employment. The provision of this section shall apply only if the disabling or fatal condition is a type which may, in general, result from exposure to known or suspected bloodborne pathogens as determined by the Federal Center for Disease Control (CDC).

(2) Nothing herein shall preclude a health care worker from applying for and receiving benefits under any other provision of the General Laws related to work-incurred injuries and diseases.

Section 75D. Extension of benefits for health care workers suffering from work-related infection of AIDS, or HIV. A health care worker who is determined to be infected with AIDS or HIV shall have the right to continue to work as long as his or her attending physician believes there is no danger to the health care worker or his or her patient with no loss in salary, seniority status or benefits, including, but not limited to health insurance. The employer shall continue to pay his share of the employee's health insurance premium after the employee can no longer work due to AIDS or HIV infection. Nor shall there by any discrimination by the employer against the employee. The employee already protected by the Americans with Disabilities Act of 1990 shall be further protected by M.G.L. Chapter 6, Section 56, and sections 75 to 84, inclusive.

33 Section 75E. Supplementary Employer Payments for Certain
34 Workers.
35 When a health care worker has been found to be disabled due to
36 personal injuries as defined in section 1(7A) of this Chapter, as a
37 result of HIV infection arising out of his employment, as deter-
38 mined in Section 111E of Chapter 111, and Section 75C of this
39 Chapter. the employer shall supplement any workers compensa-
40 tion established under this chapter by an amount equal to the dif-
41 ference between this amount and the worker's average weekly
42 salary.
43 Section 75F. Special Disability Insurance for HIV infected
44 Health Care Workers.
45 Each employer in Massachusetts shall provide a minimum of
46 $500,000 or Special disability insurance to any health care worker
47 in his employ who is found to be infected from a Bloodborne
48 Pathogen work-related exposure. All policies regarding the estab-
49 lishment of diagnosis of HIV infection shall follow the Standards
50 on Bloodborne Pathogens of the federal Occupational Health and
51 Safety Administration (OSHA) as published on December 2, 1991
52 and section 111E of M.G.L. Chapter 111.
53 Section 75G. Special life insurance for HIV infected health care
54 workers.
55 Each employer of a health care worker in Massachusetts found
56 to be infected by HIV as a result of a work-related exposure as
57 determined by the Standard on Bloodborne Pathogens of the fed-
58 eral Occupational Safety and Health Administration and Section
59 111E of M.G.L. Chapter 111 shall provide him or her with a life
60 insurance policy equal to twice the worker's most recent annual
61 salary and to include so-called reverse-life provisions when
62 available.