

Acts (2014)

Chapter 144

AN ACT RESTORING THE MINIMUM WAGE AND PROVIDING UNEMPLOYMENT INSURANCE REFORMS

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. Section 11E of chapter 23 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out, in line 2, the words “8 members, 6 of whom” and inserting in place thereof the following words:- 10 members, 8 of whom.

SECTION 2. Said section 11E of said chapter 23, as so appearing, is hereby further amended by inserting after the fourth sentence the following sentence: - The 2 remaining appointive members shall be members of the public who shall be appointed for terms of 3 years.

SECTION 3. Section 11F of said chapter 23, as so appearing, is hereby amended by striking out, in line 3, the word “training” and inserting in place thereof the following word:- standards.

SECTION 4. Section 11G of said chapter 23, as so appearing, is hereby amended by striking out, in line 8, the words “ trade or group of trades” and inserting in place thereof the following words:- occupation or group of occupations.

SECTION 5. Section 11H of said chapter 23, as so appearing, is hereby amended by inserting after the word “apprenticed”, in lines 12 and 13, the following words: - , or in the case of licensed occupations, as required by regulations of the appropriate licensing identity, as applicable.

SECTION 6. Said section 11H of said chapter 23, as so appearing, is hereby further amended by striking out, in line 15, the words “a skilled trade” and inserting in place thereof the following words:- an occupation.

SECTION 7. Said section 11H of said chapter 23, as so appearing, is hereby further amended by inserting after the definition of “Apprentice program sponsor”, the following definition: -

“Department”, the department of labor standards.

SECTION 8. Said section 11H of said chapter 23, as so appearing, is hereby further amended by striking out, in line 29, the words “apprentice training” and inserting in place thereof the following words:- the department.

SECTION 9. Said section 11H of said chapter 23, as so appearing, is hereby further amended by striking out, in line 31, the word “training” and inserting in place thereof the following word:- standards.

SECTION 10. Said section 11H of said chapter 23, as so appearing, is hereby further amended by inserting after the definition of “Division” the following definition: -

“Licensing entity”, a state agency, including the division of professional licensure and the department of public safety that issues licenses to individuals to engage in occupations.

SECTION 11. Said section 11H of said chapter 23, as so appearing, is hereby further amended by striking out, in line 34, the words “trade or”.

SECTION 12. Section 11I of said chapter 23, as so appearing, is hereby amended by inserting after the word “apprenticed”, in line 9, the following words:- , or in the case of licensed trades, as required by

regulation of the licensing entity, as applicable.

SECTION 13. Said section 11I of said chapter 23, as so appearing, is hereby further amended by striking out, in lines 13 and 14, the words “, averaging at least ½ of the rate of pay of a journey person over a similar period”.

SECTION 14. Said section 11I of said chapter 23, as so appearing, is hereby further amended by striking out, in lines 19 and 20, the words “6 months” and inserting in place thereof the following words:- the lesser of (1) 1 year or (2) 25 per cent of the length of the apprentice program from the date.

SECTION 15. Section 11K of said chapter 23, as so appearing, is hereby amended by inserting after the word “learned”, in line 19, the following words:- , or in the case of licensed trades, as required by regulation of the licensing entity, as applicable.

SECTION 16. Section 11T of said chapter 23, as so appearing, is hereby amended by inserting after the figure “10”, in lines 36 and 38, in each instance, the following word:- business.

SECTION 17. Section 11U of said chapter 23, as so appearing, is hereby amended by inserting after the figure “10”, in line 18, the following word:- business.

SECTION 18. Section 11W of said chapter 23, as so appearing, is hereby amended by striking out, in line 4, the figure “\$35”.

SECTION 19. Said section 11W of said chapter 23, as so appearing, is hereby further amended by inserting after the word “prints”, in line 5, the following words:- and such other information.

SECTION 20. Said section 11W of said chapter 23, as so appearing, is hereby further amended by inserting after the word “director”, in line 6, the following words:- , except that a veteran receiving education benefits from the Department of Veterans Affairs under Title 38 of the United States Code shall not be required to pay a fee.

SECTION 21. Said section 11W of said chapter 23, as so appearing, is hereby further amended by striking out, in line 8, the words “of \$35”.

SECTION 22. Said section 11W of said chapter 23, as so appearing, is hereby further amended by striking out, in line 12, the word “deputy”.

SECTION 23. Said chapter 23 is hereby further amended by adding the following section:-

Section 25. (a) There is hereby established a council on the underground economy.

The council shall coordinate joint efforts to combat the underground economy and employee misclassification, including efforts to: (1) foster compliance with the law by educating business owners and employees about applicable requirements; (2) conduct targeted investigations and enforcement actions against violators; (3) protect the health, safety and benefit rights of workers; and (4) restore competitive equality for law-abiding businesses. For the purposes of this section, the term “underground economy” shall mean any individual or business that deals in cash or uses other means to conceal its true tax liability from government licensing, regulatory and taxing agencies, including, but not limited to, tax evasion or fraud, misclassification of employees, wage theft or the unreported payment of wages.

(b) The council shall consist of 17 members including: the secretary of labor and workforce development, or a designee, who shall serve as the chair; the director of the department of unemployment assistance, or a designee; the director of the department of industrial accidents, or a designee; the director of labor standards, or a designee; the commissioner of revenue, or a designee; the chief of the attorney general's fair labor division, or a designee; the commissioner of public safety, or a designee; the director of professional licensure, or a designee; the executive director of the insurance fraud bureau, or a designee; and 8 persons appointed by the governor who represent government agencies. The council may create and

appoint members to a subcommittee made up of members representing business, organized labor, not-for-profit organizations, government, the legislature and any political subdivision thereof including municipal governments, to solicit input.

(c) The council shall:

(1) facilitate timely information sharing among state agencies in order to advise or refer matters of potential investigative interest;

(2) identify those industries and sectors where the underground economy and employee misclassification are most prevalent and target council members' investigative and enforcement resources against those sectors, including through the formation of joint investigative and enforcement teams;

(3) assess existing investigative and enforcement methods, both in the commonwealth and in other jurisdictions, and develop and recommend strategies to improve those methods;

(4) encourage businesses and individuals to identify violators by soliciting information from the public, facilitating the filing of complaints and enhancing the available mechanisms by which workers can report suspected violations;

(5) solicit the cooperation and participation of district attorneys and other relevant enforcement agencies, including the insurance fraud bureau, and establish procedures for referring cases to prosecuting authorities as appropriate;

(6) work cooperatively with employers, labor and community groups to diminish the size of the underground economy and reduce the number of employee misclassifications by, among other means, disseminating educational materials regarding the applicable laws, including the legal distinctions between independent contractors and employees, and increasing public awareness of the harm caused by the underground economy and employee misclassification;

(7) work cooperatively with federal, state and local social services agencies to provide assistance to vulnerable populations that have been exploited by the underground economy and employee misclassification, including, but not limited, to immigrant workers;

(8) identify potential regulatory or statutory changes that would strengthen enforcement efforts, including any changes needed to resolve existing legal ambiguities or inconsistencies, as well as potential legal procedures for facilitating individual enforcement efforts; and

(9) consult with representatives of business and organized labor, members of the general court, community groups and other agencies to discuss the activities of the council and its members and ways of improving its effectiveness.

(d) The council shall file an annual report with the governor and the clerks of the house of representatives and senate summarizing the council's activities during the preceding year. The report shall, without limitation: (1) describe the council's efforts and accomplishments during the year; (2) identify any administrative or legal barriers impeding the more effective operation of the council, including any barriers to information sharing or joint action; (3) propose, after consultation with representatives of business and organized labor, members of the general court and other agencies, appropriate administrative, legislative or regulatory changes to strengthen the council's operations and enforcement efforts and reduce or eliminate any barriers to those efforts; and (4) identify successful preventative mechanisms for reducing the extent of the underground economy and employee misclassification, thereby reducing the need for greater enforcement. Reports of the council shall be made available on the webpage of the executive office of labor and workforce development.

SECTION 24. Section 21 of chapter 62C of the General Laws, as appearing in the 2012 Official Edition,

is hereby amended by striking out, in lines 158 to 160, inclusive, the words “Joint Enforcement Task Force on the Underground Economy and Employee Misclassification, established by Executive Order 499,” and inserting in place thereof the following words:- council on the underground economy established by section 25 of chapter 23.

SECTION 25. Section 1 of chapter 62D of the General Laws is hereby amended by inserting after the definition of “Department”, inserted by section 61 of chapter 38 of the acts of 2013, the following definition:-

“Federal tax refund payment”, any overpayment of federal taxes to be refunded to the person making the overpayment after the Internal Revenue Service makes the appropriate credits as provided in the Internal Revenue Code at 26 U.S.C. § 6402(a) and 26 CFR § 301.6402-3(a)(6)(i) for any liabilities for any federal tax on the part of the person who made the overpayment.

SECTION 26. Chapter 149 of the General Laws is hereby amended by inserting after section 6 the following section:-

Section 6½. (a) This section shall apply to places of employment subject to section 28 of chapter 7. The department and the personnel administrator, after consulting with the advisory board established by subsection (b), shall jointly adopt regulations that shall provide at least the level of protection to employees as are provided under the federal Occupational Safety and Health Act of 1970, 29 U.S.C. chapter 15, including standards and provisions of the general duty clause contained in said chapter 15. In the absence of a state regulation, the department shall apply the applicable provisions of that act.

(b) The governor shall appoint an occupational health and safety hazard advisory board consisting of: the secretary of labor and workforce development or a designee, who shall serve as the co-chairperson; the personnel administrator or a designee, who shall serve as co-chairperson; the director of the division of labor standards or a designee; the secretary of administration and finance or a designee; the director of the office of employee relations or a designee; the commissioner of public health or a designee; the director of industrial accidents or a designee; 4 representatives from labor unions representing the employees of the commonwealth; 1 representative from a community-based health and safety advocacy organization; and 1 member of the faculty of the department of work environment at the University of Massachusetts, Lowell. The advisory board shall evaluate injury and illness data, recommend training and implementation of safety and health measures, monitor the effectiveness of safety and health programs and determine where additional resources are needed to protect the safety and health of employees of the commonwealth.

(c) The attorney general may bring a civil action for declaratory or injunctive relief to enforce this section.

SECTION 27. Subsection (a) of section 189 of chapter 149 of the General Laws, inserted by section 109 of chapter 38 of the acts of 2013, is hereby amended by striking out the figure “.36” and inserting in place thereof the following figure:- .34.

SECTION 28. 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 29. Said section 1 of said chapter 151 is hereby further amended by striking out the figure “9.00”, inserted by section 28, and inserting in place thereof the following figure:- 10.00.

SECTION 30. Said section 1 of said chapter 151 is hereby further amended by striking out the figure “10.00”, inserted by section 29, and inserting in place thereof the following figure:- 11.00.

SECTION 31. 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 32. Section 2A of said chapter 151, as so appearing, is hereby amended by striking out, in line 5, the words “one dollar and sixty cents” and inserting in place thereof the following figure:- \$8.00.

SECTION 33. Section 7 of said chapter 151, as so appearing, is hereby amended by inserting after the word “apprentices”, in line 20, the following words:- except for seasonal camp counselors and counselor trainees,

SECTION 34. Said section 7 of said chapter 151, as so appearing, is hereby further amended by striking out, in lines 30 and 31, inclusive, the words “the cash wage required to be paid such an employee on July 1, 1999” and inserting in place thereof the following figure:- \$3.00.

SECTION 35. Said section 7 of said chapter 151, as so appearing, is hereby further amended by striking out the figure “\$3.00”, inserted by section 34, and inserting in place thereof the following figure:- \$3.35.

SECTION 36. Said section 7 of said chapter 151, as so appearing, is hereby further amended by striking out the figure “\$3.35”, inserted by section 35, and inserting in place thereof the following figure:- \$3.75.

SECTION 37. Paragraph (2) of subsection (r) of section 1 of chapter 151A of the General Laws, as appearing in the 2012 Official Edition, 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 the individual receives no remuneration during those periods of general closing of the individual's employer's fishing vessel.

SECTION 38. Said section 1 of said chapter 151A, as so appearing, is hereby further amended by adding the following subsection:-

(dd) “Unemployment compensation debt” shall have the same meaning as “covered unemployment compensation debt” in 26 U.S.C. § 6402(f)(4).

SECTION 39. Said section 1 of said chapter 151A, as so appearing, is hereby further 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 40. Section 6A of said chapter 151A, as so appearing, is hereby amended by striking out, in line 12, the word “or”.

SECTION 41. Said section 6A of said chapter 151A, as so appearing, is hereby further amended by striking out, in line 17, the word “week.” and inserting in place thereof the following words:- week; or

(7) an election official or election workers if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than \$1,000.

SECTION 42. Section 8A of said chapter 151A, as so appearing, is hereby amended by striking out, in lines 9 and 10 the words “twenty thousand dollars” and inserting in place thereof the following figure:- \$40,000.

SECTION 43. Said section 8A of said chapter 151A, as so appearing, is hereby further amended by striking out, in line 15, the words “twenty thousand dollars” and inserting in place thereof the following figure:- \$40,000.

SECTION 44. Subsection (b) of said section 8A of said chapter 151A, as so appearing, is hereby further amended by adding the following paragraph:-

Employers who exceed the thresholds specified in this section in a single quarter shall again be eligible

for exemption from this chapter provided they do not exceed said thresholds in any of the remaining and subsequent calendar year.

SECTION 45. Section 14 of said chapter 151A, as so appearing, is hereby amended by striking out, in lines 39 and 40, the words “employer’s total taxable payroll for the period of twelve consecutive months ending on” and inserting in place thereof the following words:- average of the employer’s total taxable payroll for the 3 years prior to.

SECTION 46. Said section 14 of said chapter 151A, as so appearing, is hereby further amended by striking out, in lines 49 to 51, inclusive, the words “total taxable payrolls reported by all employers whose experience rate is determined under paragraph (1) of subsection (i), for the period of twelve consecutive months ending on” and inserting in place thereof the following words:- average of the total taxable payrolls reported by all employers whose experience rate is determined pursuant to paragraph (1) of subsection (i), for the 3 years preceding.

SECTION 47. Said section 14 of said chapter 151A, as so appearing, is hereby further amended by striking out, in lines 55 and 56, the words “total payrolls reported by all employers liable for contributions under section fourteen for the calendar year” and inserting in it place thereof the following words:- the average of the total payrolls reported by all employers liable for contributions pursuant to section 14 for the 3 years.

SECTION 48. 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 “\$15,000”.

SECTION 49. Paragraph (1) of subsection (h) of said section 14 of said chapter 151A, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- The commissioner shall determine each employer’s total taxable wages for the 3 year period immediately preceding the applicable computation date for the purpose of determining the employer’s experience rate for the next succeeding calendar year.

SECTION 50. Said subsection (h) of said section 14 of said chapter 151A, as so appearing, is hereby further amended by striking out, in lines 174 to 176, inclusive, the words “commissioner shall determine the total taxable wages of all employers in the commonwealth, whose experience rate is determined under paragraph (1) of subsection (i) during the calendar year” and inserting in place thereof the following words:- commissioner shall determine the total taxable wages of all employers in the commonwealth, whose experience rate is determined pursuant to paragraph (1) of subsection (i) for the 3 year period.

SECTION 51. 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 52. 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
UNEMPLOYMENT COMPENSATION FUND RESERVE PERCENTAGE

	A	B	C	D	E	F	G
	1.65% and over	1.5% or more but less than 1.65%	1.2% or more but less than 1.5%	0.9% or more but less than 1.2%	0.6% or more but less than 0.9%	0.3% or more but less than 0.6%	less than 0.3%
Employer Account Reserve Percentage	-	-	-	-	-	-	-
POS % 17 or more	0.56	0.64	0.73	0.83	0.94	1.07	1.21
16.0	0.64	0.73	0.83	0.95	1.08	1.22	1.39
15.0	0.73	0.83	0.94	1.07	1.21	1.38	1.57
14.0	0.81	0.92	1.04	1.18	1.34	1.53	1.73
13.5	0.97	1.10	1.25	1.42	1.61	1.83	2.08
13.0	1.05	1.19	1.35	1.54	1.75	1.99	2.26
12.5	1.13	1.28	1.46	1.66	1.89	2.14	2.43
12.0	1.21	1.37	1.56	1.77	2.01	2.29	2.60
11.5	1.29	1.47	1.67	1.89	2.15	2.45	2.78
11.0	1.37	1.56	1.77	2.01	2.29	2.6	2.96
10.5	1.45	1.65	1.87	2.13	2.42	2.75	3.12
10.0	1.53	1.74	1.98	2.25	2.56	2.91	3.3
9.5	1.61	1.83	2.08	2.36	2.69	3.05	3.47
9.0	1.7	1.93	2.19	2.49	2.82	3.21	3.65
8.5	1.78	2.02	2.29	2.61	2.96	3.37	3.82
8.0	1.85	2.10	2.39	2.72	3.09	3.51	3.99
7.5	1.94	2.20	2.5	2.84	3.23	3.67	4.17
7.0	2.02	2.30	2.61	2.96	3.37	3.82	4.35
6.5	2.09	2.38	2.71	3.08	3.50	3.97	4.51
6.0	2.17	2.47	2.81	3.20	3.63	4.13	4.69
5.5	2.25	2.56	2.91	3.31	3.76	4.28	4.86
5.0	2.34	2.66	3.02	3.43	3.90	4.43	5.04
4.5	2.42	2.75	3.13	3.55	4.04	4.59	5.21
4.0	2.50	2.84	3.23	3.67	4.17	4.74	5.38
3.5	2.58	2.93	3.33	3.79	4.30	4.89	5.56
3.0	2.67	3.03	3.44	3.91	4.44	5.05	5.74
2.5	2.75	3.12	3.54	4.02	4.57	5.20	5.90
2.0	2.82	3.21	3.65	4.14	4.71	5.35	6.08
1.5	2.9	3.3	3.75	4.26	4.84	5.50	6.25
1.0	2.98	3.39	3.85	4.38	4.98	5.65	6.43
0.5	3.06	3.48	3.96	4.5	5.11	5.81	6.60
0.0	3.14	3.57	4.06	4.61	5.24	5.96	6.77
-	-	-	-	-	-	-	-
NEG % 0.0 or less	4.22	4.79	5.45	6.19	7.03	7.99	9.08
-1.0	4.58	5.21	5.92	6.72	7.64	8.68	9.86
-3.0	4.95	5.63	6.39	7.27	8.26	9.38	10.66
-5.0	5.32	6.04	6.86	7.8	8.86	10.07	11.44
-7.0	5.68	6.46	7.34	8.34	9.48	10.77	12.23
-9.0	6.05	6.87	7.81	8.88	10.09	11.46	13.02
-11.0	6.42	7.29	8.29	9.42	10.70	12.16	13.81
-13.0	6.78	7.71	8.76	9.95	11.31	12.85	14.6
-15.0	7.15	8.13	9.24	10.49	11.93	13.55	15.39
-17.0	7.52	8.54	9.71	11.03	12.53	14.24	16.18
-19.0	7.88	8.96	10.18	11.57	13.15	14.94	16.97
-21.0	8.25	9.37	10.65	12.11	13.76	15.63	17.76
-23.0 or less	8.62	9.79	11.13	12.65	14.37	16.33	18.55

SECTION 53. 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 54. 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 55. 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 56. 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:- 0.056.

SECTION 57. 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 58. Said chapter 151A, as so appearing, is hereby further amended by inserting after section 14P the following section:-

Section 14Q. The commissioner may enter into an agreement with the Secretary of the Department of Treasury, pursuant to 26 U.S.C. section 6402(f) and 31 CFR section 285.8, to transmit valid, unpaid, and overdue unemployment compensation debts to the Financial Management Service, a bureau of the United States Department of the Treasury, for collection by offset of federal tax refund payments through the treasury offset program. If the commissioner chooses to participate in the treasury 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 such regulations as needed to implement this section.

SECTION 59. Section 15 of said chapter 151A, as so appearing, 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 director may refer the unpaid and overdue amount to the Secretary of the United States Department of Treasury for collection pursuant of 26 U.S.C. section 6402(f), the treasury offset program; provided, that all procedures for notice and opportunity to present evidence as required by 31 CFR section 285.8 have been followed.

SECTION 60. 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 the agency or instrumentality or authorize any tax credit pursuant to chapter 62 or 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 61. 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 62. 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 63. 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 64. Said chapter 151A is hereby further amended by inserting after section 28A the following section:-

Section 28B. If an employee, who is a corporate officer, partner or owner of an employing unit, or is a person who has more than a 5 per cent equitable or debt interest in an employing unit or is an immediate family member of such individual, receives an unemployment benefit pursuant to this chapter and, during the same benefit year, resumes or returns to work for the same employing unit, then the department may determine that the employee's unemployment was due to circumstances within the employee's control and may seek repayment of any overpaid benefits.

SECTION 65. 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 66. Said chapter 151A is hereby amended by striking out section 29D, as so appearing, and inserting in place thereof the following section:-

Section 29D. (a) As used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Affected unit", a specified plant, department, shift or other definable unit that includes 2 or more workers to which an approved worksharing plan applies.

"Director", the director of the department or the director's authorized representative.

"Health and retirement benefits", health benefits, and retirement benefits provided by an employer under a defined benefit pension plan as defined in 26 U.S.C. section 414(j), or contributions under a defined contribution plan as defined in section 26 U.S.C. 414(i), which are incidents of employment in addition to the cash remuneration earned.

"Unemployment compensation", the unemployment benefits payable under this chapter other than worksharing benefits, including any amounts payable pursuant to an agreement under any Federal law providing for compensation, assistance or allowances with respect to unemployment.

"Usual weekly hours of work", the usual hours of work for full-time or regular part-time employees in the affected unit when that unit is operating on its regular basis, not to exceed 40 hours and not including hours of overtime work.

"Worksharing benefits", the unemployment benefits payable to employees in an affected unit under an approved worksharing plan, as distinguished from the unemployment benefits otherwise payable under the unemployment compensation provisions of this chapter.

"Worksharing plan", a plan submitted by an employer, for approval by the director, under which the employer requests the payment of worksharing benefits to workers in an affected unit of the employer to avert layoffs.

(b) An employer wishing to participate in a worksharing program shall submit a signed written worksharing plan and application form to the director for approval; provided, however, that an employer having an account reserve percentage that is negative as of the most recent computation date shall not be eligible to participate. The director shall develop an application form to request approval of a worksharing plan and an approval process. Any application, whether for initial approval, approval following 1 or more disapprovals, for modification or for participation in another worksharing plan after the expiration or termination of an approved plan, shall include: (1) The affected unit or units covered by the plan, including the number of full-time or part-time workers in such unit, the percentage of workers in the affected unit covered by the plan, identification of each individual employee in the affected unit by name, social security number and the employer's unemployment tax account number and any other information required by the

director to identify plan participants.

(2) A description of how workers in the affected unit will be notified of the employer's participation in the worksharing program if such application is approved, including how the employer will notify those workers in a collective bargaining unit, as well as any workers in the affected unit who are not in a collective bargaining unit. If the employer will not provide advance notice to workers in the affected unit, the employer shall explain in a statement in the application why it is not feasible to provide such notice.

(3) A requirement that the employer identify the usual weekly hours of work for employees in the affected unit and the specific percentage by which their hours will be reduced during all weeks covered by the plan. An application shall specify the percentage of reduction for which a worksharing application may be approved which shall be not less than 10 per cent and not more than 60 per cent. If the plan includes any week for which the employer regularly provides no work due to a holiday or other plant closing, then such week shall be identified in the application.

(4) Certification by the employer that, if the employer provides health and retirement benefits to any employee whose usual weekly hours of work are reduced under the program, such benefits will continue to be provided to employees participating in the worksharing program under the same terms and conditions as though the usual weekly hours of work of such employee had not been reduced or to the same extent as other employees not participating in the worksharing program.

For defined benefit retirement plans, the hours that are reduced under the worksharing plan shall be credited for purposes of participation, vesting and accrual of benefits as though the usual weekly hours of work had not been reduced. The dollar amount of employer contributions to a defined contribution plan that are based on a percentage of compensation may be less due to the reduction in the employee's compensation.

Notwithstanding the above, an application may contain the required certification when a reduction in health and retirement benefits scheduled to occur during the duration of the plan will be applicable equally to employees who are not participating in the worksharing program and to those employees who are participating.

(5) Certification by the employer that the aggregate reduction in work hours is in lieu of temporary or permanent layoffs, or both. The application shall include an estimate of the number of workers who would have been laid off in the absence of the worksharing plan. The plan shall not serve as a subsidy of seasonal employment during the off season, nor as a subsidy of temporary part-time or intermittent employment.

(6) Agreement by the employer to: (i) furnish reports to the director relating to the proper conduct of the plan; (ii) allow the director or the director's authorized representatives access to all records necessary to approve or disapprove the plan application, and after approval of a plan, to monitor and evaluate the plan; and (iii) follow any other directives the director deems necessary for the agency to implement the plan and that are consistent with the requirements for plan applications.

(7) Certification by the employer that participation in the worksharing plan and its implementation are consistent with the employer's obligations under applicable federal and state laws.

(8) The effective date and duration of the plan, which shall expire not later than the end of the twelfth full calendar month after the effective date.

(9) The written approval by the collective bargaining agent for each collective bargaining agreement for each affected unit included in the plan.

(10) Any other provision added to the application by the director that the United States Secretary of Labor determines to be appropriate for purposes of a worksharing program.

(c) The director shall approve or disapprove a worksharing plan in writing within 15 days of its receipt

and promptly communicate the decision to the employer. The disapproval shall be final, but the employer may submit another worksharing plan for approval not earlier than 7 days from the date of the disapproval.

(d) A worksharing plan shall be effective on the date that is mutually agreed upon by the employer and the director, which shall be specified in the notice of approval to the employer. The plan shall expire on the date specified in the notice of approval, which shall be either the date at the end of the twelfth full calendar month after its effective date or an earlier date mutually agreed upon by the employer and the director; provided, however, that if a worksharing plan is revoked by the director pursuant to subsection (e), the plan shall terminate on the date specified in the director's written order of revocation. An employer may terminate a worksharing plan at any time upon written notice to the director. Upon receipt of such notice from the employer, the director shall promptly notify each employee of the affected unit of the termination date. An employer may submit a new application to participate in another worksharing plan at any time after the expiration or termination date.

(e) The director may revoke approval of a worksharing plan for good cause at any time, including upon the request of any of the affected unit's employees. The revocation order shall be in writing and shall specify the reasons for the revocation and the date the revocation is effective.

The director may periodically review the operation of each employer's worksharing plan to assure that no good cause exists for revocation of the approval of the plan. Good cause shall include, but not be limited to, failure to comply with the assurances given in the plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the worksharing plan and violation of any criteria on which approval of the plan was based.

(f) An employer may request a modification of an approved plan by filing a written request with the director. The request shall identify the specific provisions proposed to be modified and provide an explanation of why the proposed modification is appropriate for the worksharing plan. The director shall approve or disapprove the proposed modification in writing within 15 days of receipt and promptly communicate the decision to the employer.

The director may approve a request for modification of the plan based on conditions that have changed since the plan was approved; provided that the modification is consistent with and supports the purposes for which the plan was initially approved. A modification shall not extend the expiration date of the original plan, and the director shall promptly notify the employer whether the plan modification has been approved and, if approved, the effective date of the modification.

No employer shall be required to request approval of a plan modification from the director if the change is not substantial, but the employer shall report every change to the plan to the director promptly and in writing. The director may terminate an employer's plan if the employer fails to meet this reporting requirement. If the director determines that the reported change is substantial, the director shall require the employer to request a modification to the plan.

(g) An individual may receive worksharing benefits for any week provided, that the individual is monetarily eligible for unemployment compensation, not otherwise disqualified for unemployment compensation and:

(1) During the week, the individual is employed as a member of an affected unit under an approved worksharing plan, which was approved prior to that week and the plan is in effect during the week for which worksharing benefits are claimed.

(2) Notwithstanding any provision of this chapter related to availability for work and actively seeking work, the individual is available for the individual's usual hours of work with the worksharing employer,

which may include, for purposes of this section, participating in training to enhance job skills that is approved by the director such as employer-sponsored training or training funded under the Workforce Investment Act of 1998, Public Law 105-220.

(3) Notwithstanding any general or special law to the contrary, an individual covered by a worksharing plan shall be considered unemployed in any week during the duration of such plan if the individual's remuneration as an employee in an affected unit is reduced based on a reduction of the individual's usual weekly hours of work under an approved worksharing plan.

(h)(1) The worksharing weekly benefit amount shall be the product of the regular weekly unemployment compensation amount for a week of total unemployment multiplied by the percentage of reduction in the individual's usual weekly hours of work.

(2) An individual may be eligible for worksharing benefits or unemployment compensation, as appropriate, except that no individual shall be eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established for regular unemployment compensation, nor shall an individual be paid worksharing benefits for more than 52 weeks under a worksharing plan.

(3) The worksharing benefits paid to an individual shall be deducted from the maximum entitlement amount of regular unemployment compensation established for that individual's benefit year.

(4) Provisions applicable to unemployment compensation claimants shall apply to worksharing claimants to the extent that they are not inconsistent with worksharing provisions. An individual who files an initial claim for worksharing benefits shall receive a monetary determination.

(5) This paragraph shall apply to individuals who work for both a worksharing employer and another employer during weeks covered by the approved worksharing plan:

(i) If the combined hours of work in a week for both employers does not result in a reduction of at least 10 per cent or, if higher, the minimum percentage of reduction required to be eligible for a worksharing benefit as provided in this section, of the usual weekly hours of work with the worksharing employer, the individual shall not be entitled to benefits under this section.

(ii) If the combined hours of work for both employers results in a reduction equal to or greater than 10 per cent; or, if higher, the minimum percentage reduction required to be eligible for a worksharing benefit as provided in state law, of the usual weekly hours of work for the worksharing employer, the worksharing benefit amount payable to the individual shall be reduced for that week and shall be determined by multiplying the weekly unemployment benefit amount for a week of total unemployment by the percentage by which the combined hours of work have been reduced by 10 per cent or, if higher, the minimum percentage reduction required to be eligible for a worksharing benefit as provided in this section, or more of the individual's usual weekly hours of work. A week for which benefits are paid under this clause shall be reported as a week of worksharing.

(iii) If an individual worked the reduced percentage of the usual weekly hours of work for the worksharing employer and is available for all of the individual's usual hours of work with the worksharing employer, and the individual did not work any hours for the other employer, either because of the lack of work with that employer or because the individual is excused from work with the other employer, the individual shall be eligible for worksharing benefits for that week. The benefit amount for such week shall be calculated as provided in subsection (i).

(6) An individual who is not provided any work during a week by the worksharing employer, or any other employer, and who is otherwise eligible for unemployment compensation shall be eligible for the amount of regular unemployment compensation to which the individual would otherwise be eligible.

(7) An individual who is not provided any work by the worksharing employer during a week, but who works for another employer and is otherwise eligible may be paid unemployment compensation for that week subject to the disqualifying income and other provisions applicable to claims for regular compensation.

(i) Worksharing benefits shall be charged to employers' experience rating accounts in the same manner as unemployment compensation is charged pursuant to this chapter. Employers liable for payments in lieu of contributions shall have worksharing benefits attributed to service in their employ in the same manner as unemployment compensation is attributed.

(j) An individual who has received all of the worksharing benefits or combined unemployment compensation and worksharing benefits available in a benefit year shall be considered an exhaustee for purposes of extended benefits, as provided in section 30A, and if otherwise eligible pursuant to those provisions, shall be eligible to receive extended benefits.

(k) The director may utilize any remedies provided by this chapter to recover worksharing benefits that were improperly paid as a result of information that was substantially misleading or that contained a material misrepresentation of fact and was submitted to the director in connection with the approval, modification or implementation of a worksharing plan.

SECTION 67. Section 47 of said chapter 151A, as so appearing, is hereby amended by inserting after the fourth paragraph the following paragraph:-

The receipt of any notice of termination of employment or of any substantial alteration in the terms of employment within 6 months after an employee has provided evidence in connection with a claim for benefits under this chapter, or has testified at any hearing conducted under this chapter, shall create a rebuttable presumption that such notice or other action is a reprisal against the employee for providing evidence. Such presumption shall be rebutted only by clear and convincing evidence that such employer's action was not a reprisal against the employee and that the employer had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action was taken, regardless of the employee's providing evidence in connection with a claim for benefit under this chapter. An employing unit found to have threatened, coerced or taken reprisal against any employee pursuant to this paragraph shall rescind any adverse alteration in the terms of employment for such employee and shall offer reinstatement to any terminated employee and shall also be liable for damages and costs of the suit, including a reasonable attorney's fee.

SECTION 68. Section 53A of said chapter 151A, as so appearing, is hereby amended by striking out, in line 5, the words "and (2)", and inserting in place thereof the following words:- , (2) withdrawn for payment of fees authorized under the treasury offset program described in section 14Q and paid to the Financial Management Service, a bureau of the Department of the Treasury, and (3).

SECTION 69. Subsection (a) of section 62A of said chapter 151A, as so, is hereby amended by adding the following paragraph:-

The department shall conduct at least 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 Taxpayers Association, Associated Industries of Massachusetts, Inc.; and the National Federation of Independent Business.

SECTION 70. 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 resulting from an overpayment of unemployment benefits which has become final as specified in 430 CMR 6.12 be set off against any federal tax refund payment owed such individual by the United States Department of Treasury, in accordance with the requirements of the treasury offset program pursuant to section 14Q.

SECTION 71. Section 33 of chapter 152 of the General Laws, as so appearing, is hereby amended by striking out, in line 2, the words “four thousand dollars” and inserting in place thereof the following words:- 8 times the average weekly wage in the commonwealth as determined pursuant to subsection (a) of section 29 of chapter 151A.

SECTION 72. Notwithstanding section 14 of chapter 151A of the General Laws, for calendar years 2015, 2016 and 2017 the experience rate of an employer qualifying therefor under subsection (b) of said section 14 of said chapter 151A shall be the rate which appears in column “C” of paragraph (1) of subsection (i) of said section 14 of said chapter 151A.

SECTION 73. The department of unemployment assistance shall notify all employers of the experience rate not later than January 31st of each calendar year.

SECTION 74. 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 pursuant to 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 June 30, 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 75. (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; and (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 June 30, 2015. The report shall be made available to the public on the general court's website.

SECTION 76. There shall be a special commission to conduct an investigation and 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, 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 Administration 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 77. Sections 28, 31, 32, 33, 34, 48, 51, 52, 53, 54, 56, 57 and 72 shall take effect on January 1, 2015.

SECTION 78. Sections 45, 46, 47, 49 and 50 shall take effect for unemployment insurance rates calculated for the calendar year beginning January 1, 2018.

SECTION 79. Sections 29 and 35 shall take effect on January 1, 2016.

SECTION 80. Sections 30 and 36 shall take effect on January 1, 2017.

SECTION 81. Unless otherwise provided, this act shall take effect 6 months after the effective date of this act.

Approved, June 26, 2014.

