

# HOUSE . . . . . No. 1385

By Messrs. Donato of Medford and Kane of Holyoke, petition of Paul J. Donato and others relative to reciprocal beneficiary contracts. The Judiciary.

## The Commonwealth of Massachusetts

### PETITION OF:

Paul J. Donato	James R. Miceli
Michael F. Kane	Donald F. Humason, Jr.
John P. Fresolo	Christine E. Canavan
Daniel K. Webster	Jeffrey Davis Perry

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO RECIPROCAL BENEFITS CONTRACTS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 111 of the General Laws, as appearing in  
2 the 2004 Official Edition, is hereby amended by inserting after  
3 Section 72Y the following section:—

4 Section 72Z. The reciprocal beneficiary (as defined in Section 1  
5 of Chapter 209E) of a patient in a health care facility shall have the  
6 right to visit the patient during normal visiting hours, provided the  
7 patient does not object.

1 SECTION 2. Section 8 of Chapter 113 of the General Laws, as so  
2 appearing is hereby amended by striking out in lines 24 to 30 inclu-  
3 sive the following:—

4 (1) the spouse,  
5 (2) an adult son or daughter,  
6 (3) either parent,  
7 (4) an adult brother or sister,  
8 (5) a guardian of the person of the decedent at the time of his  
9 death,

10 (6) any other person authorized or under obligation to dispose of  
11 the body.

12 And inserting in place thereof the following:—

13 (1) the spouse,

14 (2) {the reciprocal beneficiary, as defined in Section 1 of Chapter  
15 209E},

16 (3) an adult son or daughter,

17 (4) either parent,

18 (5) an adult brother or sister,

19 (6) a guardian of the person of the decedent at the time of his  
20 death.

21 (7) any other person authorized or under obligation to dispose of  
22 the body.

1 SECTION 3. Section 13 of said Chapter 113, as so appearing, is  
2 hereby amended by inserting after the word “body” in line 8 the  
3 following including the surviving reciprocal beneficiary as defined  
4 in Section 1 of Chapter 209E.

1 SECTION 4. Chapter 114, of the General Laws, is hereby  
2 amended by inserting after Section 44A the following Section  
3 44B:—

4 (1) Any individual of sound mind who is 18 years of age or older,  
5 by completion of a written signed instrument or by preparing of pre-  
6 arranging with any licensed funeral service practitioner, may direct  
7 any lawful manner of disposition of the individual’s remains. Except  
8 as provided under subsection (6) of this section, disposition direc-  
9 tions or disposition prearrangements that are prepaid or that are filed  
10 with a licensed funeral service practitioner shall not be subject to  
11 cancellation or substantial revision.

12 (2) A person within the first applicable listed class among the  
13 following listed classes that is available at the time of death or, in the  
14 absence of actual notice of a contrary direction by the decedent as  
15 described under subsection (1) of this section or actual notice of  
16 opposition by completion of a written instrument by a member of the  
17 same class or a member of a prior class, may direct any lawful  
18 manner of disposition of a decedent’s remains by completion of a  
19 written instrument:—

20 (1) the spouse,

21 (2) {the reciprocal beneficiary, as defined in Section 1 of Chapter  
22 209E},

23 (3) an adult son or daughter,

24 (4) either parent,

25 (5) an adult brother or sister,

26 (6) a guardian of the person of the decedent at the time of his  
27 death,

28 (7) any other person authorized or under obligation to dispose of  
29 the body.

30 (3) The decedent or any person authorized in subsection (2) of  
31 this section to direct the manner of disposition of the decedent's  
32 remains may delegate such authority to any person 18 years of age  
33 or older. Such delegation shall be made by completion of the written  
34 instrument. The signature of the individual delegating his or her  
35 authority shall be required for the completion of the written instru-  
36 ment. The person to whom the authority is delegated shall have the  
37 same authority under subsection (2) of this section as the person del-  
38 egating the authority.

39 (4) If a decedent or the decedent's designee issued more than one  
40 authorization or direction for the disposal of the decedent's remains,  
41 only the most recent authorization or direction shall be binding.

42 (5) A donation of anatomical gifts under Section 8 of Chapter  
43 113, shall take priority over directions for the disposition of a dece-  
44 dent's remains under this section only if the person making the dona-  
45 tion is of a priority under subsection (1) or (2) of this section the  
46 same as or higher than the priority of the person directing the dispo-  
47 sition of the remains.

48 (6) If the decedent had directed a disposition under subsection (1)  
49 of this section and those financially responsible for the disposition  
50 are without sufficient funds to pay for such disposition, or the estate  
51 of the decedent has insufficient funds to pay for the disposition, or if  
52 the direction is unlawful, the direction shall be void and disposition  
53 shall be in accordance with the direction provided by those persons  
54 given priority in subsection (2) of this section and who agree to be  
55 financially responsible.

56 (7) Subject to the provisions of Chapter 113, if disposition of the  
57 remains of a decedent has not been directed and authorized under  
58 this section within 10 days after the date of the death of the dece-

59 dent, a public health officer may direct and authorize disposition of  
60 the remains.

1 SECTION 5. Section 25 of Chapter 123 of the General Laws, as  
2 appearing in the 2004 Official Edition, is hereby amended by  
3 inserting after the word “relative” in line 6 the following:— or recip-  
4 rocal beneficiary as defined in Section 1 of Chapter 209E.

1 SECTION 6. Section 26 of said Chapter 123, as so appearing, is  
2 hereby amended by inserting after the word “relative” in lines 41  
3 and 43, in each instance the following:— reciprocal beneficiary.

1 SECTION 7. Section 27 of said Chapter 123, as so appearing, is  
2 hereby amended by inserting after the word “relative” in line 3 the  
3 following:— or reciprocal beneficiary.

1 SECTION 8. Section 30 of said Chapter 123, as so appearing, is  
2 hereby amended by inserting after the word “kin” in line 4 the  
3 following:— or reciprocal beneficiary.

1 SECTION 9. Section 35 of said Chapter 123, as so appearing, is  
2 hereby amended by inserting after the word “guardian” in line 12 the  
3 following:— reciprocal beneficiary.

1 SECTION 10. Section 108 of Chapter 175 of the General Laws,  
2 as so appearing, is hereby amended by inserting after the word “poli-  
3 cyholder” in line 32 the following:— including a reciprocal benefi-  
4 ciary as defined in Section 1 of Chapter 209E.

1 SECTION 11. Section 110, subsection (E), of said Chapter 175,  
2 as so appearing, is hereby amended by inserting after the word  
3 “thereunder” the following:— including reciprocal beneficiaries.

1 SECTION 12. Section 110C of said Chapter 175, as so appearing,  
2 is hereby amended by inserting after the word “residents” in line 8  
3 the following:— and reciprocal beneficiaries as defined in Section 1  
4 of Chapter 209E.

1 SECTION 13. Section 110G of said Chapter 175, as so appearing,  
2 is hereby amended by inserting after the word “dependants” in line  
3 7, 9, 10, 14, 16, 19, 31, 47, in each instance the following:— or reci-  
4 procal beneficiary.

1 SECTION 13A. Section 11G of said Chapter 175, as so  
2 appearing, is hereby amended by inserting after the word “age” in  
3 line\_\_\_\_ the following:— or reciprocal beneficiary as defined in  
4 Section 1 of Chapter 209E.

1 SECTION 14. Section 113O of said Chapter 175, as so appearing,  
2 is hereby amended by inserting after the word “employee” in line  
3 128 the following:— or reciprocal beneficiary as defined in Section  
4 1 of Chapter 209E.

1 SECTION 15. Section 132A of said Chapter 175, as so appearing,  
2 is hereby amended by inserting after the word “children” in line 42  
3 and after the word “members” in line 46 the following:— and sur-  
4 viving reciprocal beneficiaries.

1 SECTION 16. Section 133 of said Chapter 175, as so appearing,  
2 is hereby amended by striking out the fourth paragraph and inserting  
3 in place thereof the following paragraph:—  
4 Any group life insurance policy issued under the provisions of  
5 this section, except a policy insuring the lives of debtors in accor-  
6 dance with clause (c) may also insure the dependents of employees,  
7 or members or other persons insured thereunder, {including recip-  
8 rocal beneficiaries}, and the employees or members or other persons  
9 {or reciprocal beneficiaries} may contribute part or all of the pre-  
10 mium for such insurance. Notwithstanding provision 4 of Section  
11 134, only one certificate need be issued for delivery to, an insured  
12 person if a statement concerning any dependents’ coverage is  
13 included in such certificate. Upon termination of the insurance with  
14 respect to the spouse {or reciprocal beneficiary} of any employee by  
15 reason of the employee’s termination of employment or death, the  
16 spouse {or reciprocal beneficiary} insured pursuant to this section  
17 shall have the same conversion rights as to the insurance on his or  
18 her life as is provided for the employee under provision 4 of said  
19 Section 134.

1 SECTION 17. Section 134 of said Chapter 175, as so appearing,  
2 is hereby amended by inserting after the word “sisters” in line 93 the  
3 following:— or reciprocal beneficiary.

1 SECTION 18. Chapter 184 of the General Laws is hereby  
2 amended by inserting after Section 7 the following section:—

3 Section 7A. Every conveyance or devise of lands, or interest  
4 therein, made to reciprocal beneficiaries as defined in Section 1 of  
5 Chapter 209E, or to executors or trustees, creates a tenancy in  
6 common unless it is in some manner clearly and expressly declared  
7 in the conveyance or devise that the grantees or devisees take the  
8 lands with right of survivorship. Such a declaration of a right to sur-  
9 vivorship shall create a joint tenancy with survivorship.

1 SECTION 19. The second paragraph of Section 1 of Chapter 188  
2 of the General Laws, as appearing in the 2004 Official Edition, is  
3 hereby amended by striking out the first sentence and inserting in  
4 place thereof the following sentence:—

5 For the purposes of this chapter, an owner of a home shall include  
6 a sole owner, joint tenant, tenant by the entirety or tenant in  
7 common; provided, that only one owner may acquire an estate of  
8 homestead in any such home for the benefit of his family {or for the  
9 benefit of his reciprocal beneficiary as defined in Section 1 of  
10 Chapter 209E}; and provided further, that an estate of homestead  
11 may be required on only one principal residence for the benefit of a  
12 family {or for the benefit of a reciprocal beneficiary}.

1 SECTION 20. Section 4 of said Chapter 188, as so appearing, is  
2 hereby amended by striking out the first sentence and inserting in  
3 place thereof the following sentence:—

4 The estate of homestead existing at the death of a person holding  
5 a homestead shall continue for the benefit of the surviving spouse  
6 and minor children {or reciprocal beneficiary} and shall be held and  
7 enjoyed by them, if one of them or a purchaser under Section 8  
8 occupies the premises, until the youngest unmarried child is 18 and  
9 until the marriage or death of the spouse {or reciprocal beneficiary};  
10 and if a widow or minor children are entitled to an estate of home-  
11 stead as provided herein, it may be set off to them in the same  
12 manner as dower.

1 SECTION 21. Section 6 of said Chapter 188, as so appearing, is  
2 hereby amended by inserting after the word “spouse” in lines 8 and  
3 9, in each instance the following:— reciprocal beneficiary.

1 SECTION 22. Section 7 of said Chapter 188, as so appearing, is  
2 hereby amended by inserting after the word “spouse” in lines 4 and  
3 7, in each instance the following:— reciprocal beneficiary.

1 SECTION 23. Section 8 of said Chapter 188, as so appearing, is  
2 hereby amended by inserting after the word “spouse” in lines 1, 4  
3 and 6, in each instance the following:— or surviving reciprocal ben-  
4 eficiary.

1 SECTION 24. Said Section 8 of said Chapter 188, as so  
2 appearing, is hereby further amended by inserting after the word  
3 “them” in line 8 the following:— or surviving reciprocal beneficiary.

1 SECTION 25. Section 1 of Chapter 190 of the General Laws, as  
2 so appearing is hereby amended by inserting after the word “wife” in  
3 line 1 the following:— or reciprocal beneficiary as defined in  
4 Section 1 of Chapter 209E.

1 SECTION 26. Said Section 1 of said Chapter 190, as so  
2 appearing, is hereby further amended by inserting after the word  
3 “wife” in lines 9 and 17, in each instance the following:— or recip-  
4 rocal beneficiary.

1 SECTION 27. Section 3 of said Chapter 190, as so appearing, is  
2 hereby amended by inserting after the word “children” in line 5 the  
3 following:— or reciprocal beneficiary.

1 SECTION 28. Said Section 3 of said Chapter 190, as so  
2 appearing, is hereby further amended by inserting after the word  
3 “husband” in line 29 the following:— or reciprocal beneficiary.

1 SECTION 29. Chapter 191 of the General Court is hereby  
2 amended by inserting after Section 9 the following section—  
3 Section 9A. The registration of a person as a reciprocal benefi-  
4 ciary, in accordance with Section 5 of Chapter 209E shall act as a

5 revocation of a will made by him previous to registration unless it  
6 appears from the will that it was made in contemplation thereof. If  
7 the will is made in the exercise of a power of appointment and the  
8 real and personal property subject to the appointment would not,  
9 without the appointment, pass to the persons who would have been  
10 entitled to it if it had been the estate and property of the testator  
11 making the appointment and he had died intestate, so much of the  
12 will as makes the appointment shall not be revoked by registration as  
13 a reciprocal beneficiary.

14 If, after executing a will, the testator shall terminate his or her  
15 “Reciprocal Beneficiary Contract,” as provided by Section 6 of  
16 Chapter 209E, such termination shall revoke any disposition or  
17 appointment of property made by the will to the former reciprocal  
18 beneficiary, any provision conferring a general or special power of  
19 appointment on the former reciprocal beneficiary, and any nomina-  
20 tion of the former reciprocal beneficiary, as executor, trustee, conser-  
21 vator or guardian, unless the will shall expressly provide otherwise.  
22 If provisions shall be revoked solely by this section, they shall be  
23 revived by the testator’s re-registration as a party to a new “Recip-  
24 rocal Beneficiary Contract” with the former reciprocal beneficiary.

1 SECTION 30. Chapter 196 of the General Laws is hereby  
2 amended by striking out Section 1 and inserting in place thereof the  
3 following:—

4 Section 1. Articles of apparel and ornaments of the surviving  
5 spouse, minor children {or surviving reciprocal beneficiary, as  
6 defined in Section 1 of Chapter 209E,} of a deceased person shall  
7 belong to them respectively. The surviving spouse {or surviving rec-  
8 iprocal beneficiary} may remain in the house of a deceased spouse  
9 {or deceased reciprocal beneficiary} for not more than six months  
10 next succeeding the death without being chargeable for rent.

1 SECTION 31. Section 2 of said Chapter 196, as appearing in the  
2 2004 Official Edition, is hereby amended by inserting after the word  
3 “spouse” in line 3 the following:— or surviving reciprocal benefi-  
4 ciary.

1 SECTION 32. Section 2 of said Chapter 196, as so appearing, is  
2 hereby further amended by inserting the word “spouse” in line 4,  
3 each time it appears the following:— or reciprocal beneficiary.

1 SECTION 33. Section 3 of said Chapter 196, as so appearing, is  
2 hereby amended by striking out the last sentence and inserting in  
3 place there the following sentence:—  
4 The widow or surviving reciprocal beneficiary shall be entitled  
5 only to his or her share in the residence after deducting the value of  
6 the advancement.

1 SECTION 34. Section 3 of Chapter 201D of the General Laws, as  
2 so appearing, is hereby amended by adding the following:— or  
3 unless both parties are signatories to a valid reciprocal beneficiaries  
4 contract as defined in Section 1 of Chapter 209E.

1 SECTION 35. The third paragraph of Section 7 of said Chapter  
2 201D is hereby amended by adding the following:— or (iii) the ter-  
3 mination of Reciprocal Beneficiary Contract, in accordance with  
4 Section 6 of Chapter 209E, between the principal and his reciprocal  
5 beneficiary, where the reciprocal beneficiary is the principal’s agent  
6 under a health care proxy.

1 SECTION 36. Section 17 of said Chapter 201D, as so appearing,  
2 is hereby amended by inserting after the word “principal” in line 3  
3 the following:— or reciprocal beneficiary as defined in Section 1 of  
4 Chapter 209E.

1 SECTION 36a. Section 1 of Chapter 228 of the General Laws, as  
2 so appearing, is hereby amended by adding after the word  
3 “guardian” in line \_\_\_\_\_ the following:— or reciprocal beneficiary  
4 as defined in Section 1 of Chapter 209E.

1 SECTION 37. The General Laws are hereby amended by  
2 inserting after Chapter 209D the following chapter:—

3 **CHAPTER 209E.**  
4 **RECIPROCAL BENEFICIARY CONTRACTS.**

1 SECTION 1. As used in this chapter the following words, unless  
2 the context requires otherwise, shall have the following meanings:—  
3 “Former reciprocal beneficiary” a party to a prior “Reciprocal  
4 Beneficiary Contract” which has since been terminated in accor-  
5 dance with Section 6.  
6 “Notice of Termination of Reciprocal Beneficiary Contract” a  
7 form, signed by a party to a valid “Reciprocal Beneficiary Contract”  
8 indicating his or her intention to terminate the operation of a “Recip-  
9 rocal Beneficiary Contract” and filed in accordance with Section 6.  
10 “Reciprocal beneficiary” an adult who meets the eligibility  
11 requirements as defined in Section 2 and who is a party to a valid  
12 “Reciprocal Beneficiary Contract.”  
13 “Reciprocal Beneficiary Contract” a form, signed by two eligible  
14 adults, who meet the requirements of Section 2, and registered in  
15 accordance with Section 5, indicating the contractual agreement  
16 between the two adults to share certain rights and benefits enumer-  
17 ated in the Act.  
18 “Secretary” the Secretary of State.

1 SECTION 2. In order to enter into a valid “Reciprocal Benefi-  
2 ciary Contract,” it shall be necessary that:—  
3 a. each of the parties be at least 18 years of age and legally com-  
4 petent;  
5 b. each of the parties be a legal resident of the Commonwealth;  
6 c. neither of the parties be married, nor a party to another “Recip-  
7 rocal Beneficiary Contract”;  
8 d. the parties be legally prohibited from marrying one another  
9 under Chapter 207 of the General Laws;  
10 e. consent of either party to the “Reciprocal Beneficiary Contract”  
11 has not been obtained by force, duress, or fraud;  
12 f. “Reciprocal Beneficiary Contract” form must be signed by both  
13 parties and filed as specified in Section 5.

1 SECTION 3. The Secretary of State may promulgate rules and  
2 regulations regarding the implementation of this chapter.

1 SECTION 4. Forms:—  
2 a. The Secretary shall prepare and make available the form enti-  
3 tled “Reciprocal Beneficiary Contract”. This form shall state the

- 4 eligibility requirements, and require each person who wants to  
5 become a party to a “Reciprocal Beneficiary Contract” to:—
- 6 1) state that he or she desires to enter into a legally binding con-  
7 tractual agreement to share certain benefits and obligations enumer-  
8 ated in this chapter;
  - 9 2) state that he or she meets the requirements of Section 2 at the  
10 time the form is signed and notarized;
  - 11 3) provide a mailing address;
  - 12 4) provide a social security number;
  - 13 5) sign the form with a declaration that representations made  
14 therein are true, correct, and contain no material omissions of fact to  
15 the best knowledge and belief of each declarant;
  - 16 6) have a notary public certify both signatures;
  - 17 7) file the document with the secretary.
- 18 b. The secretary shall also prepare and make available the form  
19 entitled “Notice of Termination of Reciprocal Beneficiary Contract”.  
20 This form shall require each person who wants to terminate a valid  
21 “Reciprocal Beneficiary Contract” to:—
- 22 1) Provide the date and the registration number of the original  
23 “Reciprocal Beneficiary Contract”;
  - 24 2) State that he, she or they desire to terminate the operation of  
25 the existing “Reciprocal Beneficiary Contract”;
  - 27 3) Provide both parties most recent mailing addresses;
  - 28 4) Provide both parties social security numbers;
  - 29 5) Sign the form with a declaration that representations made  
30 there are true, correct, and contain no material omissions of fact to  
31 the best knowledge and belief of the declarant(s);
  - 32 6) Have a notary public certify his, her or their signatures(s);
  - 33 7) File the document with the secretary.

1 SECTION 5. Two people who meet the criteria set out in Section  
2 2 of this chapter may register their contractual agreement to become  
3 reciprocal beneficiaries by filing a completed, signed and notarized  
4 “Reciprocal Beneficiary Contract” form with the secretary.

5 The secretary shall set and collect a fee for filing the “Reciprocal  
6 Beneficiary Contract” form, which shall be deposited in the General  
7 Fund.

8 Upon the receipt of a completed, signed, notarized “Reciprocal  
9 Beneficiary Contract” form and the filing fee, the secretary shall

10 register the contractual agreement, assign the parties a registration  
11 number and forward a copy of the “Reciprocal Beneficiary Con-  
12 tract” from to each party named on the form by first class mail. A  
13 signed and notarized “Reciprocal Beneficiary Contract” form shall  
14 constitute a public record.

15 The secretary shall maintain a record of each “Reciprocal Benefi-  
16 ciary Contract” form filed with the secretary. The secretary may  
17 make the information contained in the “Reciprocal Beneficiary Con-  
18 tract” form available to such state or federal agencies as may be  
19 required by state or federal law.

20 The secretary shall maintain a process whereby “Reciprocal Ben-  
21 efiary Contracts” and marriage licenses are cross-referenced for  
22 the purpose of this chapter.

1 SECTION 6. Either party to a “Reciprocal Beneficiary Contract”  
2 may terminate the agreement by filing a completed, signed, nota-  
3 rized “Notice of Termination of Reciprocal Beneficiary Contract”  
4 with the secretary.

5 Upon receipt of a completed, signed, notarized “Notice of Termi-  
6 nation of Reciprocal Beneficiary Contract” form and the filing fee,  
7 the secretary shall register the “Notice of Termination of Reciprocal  
8 Beneficiary Contract” form and forward a copy of the “Notice of  
9 Termination of Reciprocal Beneficiary Contract” form to each par-  
10 ty’s most recently known address by first class mail. Termination of  
11 the “Reciprocal Beneficiary Contract” shall become effective 30  
12 days after the date of Notice is registered by the secretary, unless the  
13 party or parties filing the Notice of Termination withdraw the termi-  
14 nation form by notifying the secretary in writing.

15 The secretary shall set and collect a fee for filing the “Notice of  
16 Termination of Reciprocal Beneficiary Contract” form, which shall  
17 be deposited into the General Fund. The secretary shall also main-  
18 tain a record of each filed “Notice of Termination of Reciprocal  
19 Beneficiary Contract” form, cross referenced with marriage licenses  
20 for the purpose of this chapter.

21 When a marriage license is issued to either party to a “Reciprocal  
22 Beneficiary Contract, or when a party to a “Reciprocal Beneficiary  
23 Contract” enters into a marriage, the “Reciprocal Beneficiary Con-  
24 tract” shall be deemed terminated and the rights and obligations pro-  
25 vided to the parties under this chapter shall no longer be available.

1 SECTION 7. Upon registration of the “Reciprocal Beneficiary  
2 Contract” form, “Reciprocal Beneficiary” rights and obligations  
3 shall be limited to the provisions contained in this chapter. Such pro-  
4 visions shall be narrowly interpreted, and nothing in this chapter  
5 shall be construed nor implied to create or extend rights or benefits  
6 not specifically provided here.

1 SECTION 8. If any provision of this chapter, or the application  
2 thereof to any person or circumstance is held invalid, the invalidity  
3 does not affect other provisions or applications of the chapter, which  
4 can be given effect without the invalid provision or application, and  
5 to this end the provisions of this chapter are severable.