

HOUSE No. 1846

The Commonwealth of Massachusetts

PRESENTED BY:

Michael J. Rodrigues

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to provide incentives for productive workers compensation audits.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|----------------------|---------------------------|
| Michael J. Rodrigues | 8th Bristol |
| Thomas M. McGee | Third Essex and Middlesex |
| Michael F. Kane | 5th Hampden |

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 5027 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO PROVIDE INCENTIVES FOR PRODUCTIVE WORKERS COMPENSATION AUDITS.

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

1 Chapter 152 of the General Laws as appearing in the 2006 Official Edition is hereby amended by
2 inserting after section 25U the following section: Section 25V.

3 (1)(a) Any employer who knowingly submits an application for workers' compensation coverage that contains
4 false misleading or incomplete information provided for the purpose of avoiding or reducing the insurance
5 premium shall be punished by imprisonment in the state prison for not more than 5 years or by imprisonment
6 in jail for not less than 6 months nor more than 2½ years or by a fine of not less than \$1000 nor more than
7 \$10000 or both. (b) All applications for workers' compensation coverage shall contain a statement printed on
8 the application that the filing of an application containing false misleading or incomplete information provided
9 for the purpose of avoiding or reducing the insurance premium shall be punishable pursuant to this section.
10 Any application for workers compensation coverage filed by an employer shall contain a sworn statement by
11 the employer attesting to the accuracy of the information submitted and a sworn statement by the insurance
12 agent attesting that the insurance agent explained to the employer or officer the classification codes that are
13 used for premium calculations.

14 (2) The division of insurance shall the minimum requirements for payroll verification audits and employee
15 classifications. Minimum requirements for payroll verification audits shall ensure that the appropriate premium
16 is charged for workers' compensation coverage and that audits performed by carriers and employers are
17 adequate to ensure all sources of payment to employees subcontractors and independent contractors are
18 reviewed and the accuracy of employee classification verified. Employers in all classes other than the
19 construction class shall be audited biennially. Employers in the construction class generating more than the
20 premium required to be experience rated shall be audited annually. The annual audits required for construction
21 classes shall consist of physical onsite audits. At the completion of an audit the employer or officer of the

22 corporation and the auditor must print and sign their names on an audit document and attach proof of
23 identification to the audit document.

24 (3) Each employer shall annually submit a copy of any quarterly contribution reports required by the division
25 of unemployment assistance pursuant to section 45 of chapter 151A at the end of each year to the carrier, and
26 submit an annual self-audit supported by quarterly contribution reports. The reports shall include a sworn
27 statement by an officer or principal of the employer attesting to the accuracy of the information contained in
28 the report.

29 (4)(a) Employers shall make available all records necessary for the payroll verification audit and permit the
30 auditor to make a physical inspection of the employer's operation. If an employer fails to provide reasonable
31 access to all records necessary for a payroll verification audit the employer shall pay a penalty to the carrier or
32 self-insurer of three times the most recent estimated annual premium. (b) If an employer understates or
33 conceals payroll knowingly misrepresents or knowingly conceals employee duties so as to avoid proper
34 classification for premium calculations or misrepresents or conceals information pertinent to the computation
35 and application of an experience rating modification factor said knowing misrepresentation or knowing
36 concealment shall be considered a violation of chapter 93A.

37 (5) If an employee suffering a compensable injury was not reported as earning wages on the last quarterly
38 contribution report filed with the division of unemployment assistance before the accident the employer shall
39 indemnify the carrier for all workers' compensation benefits paid to or on behalf of the employee unless the
40 employer establishes that the employee was hired after the filing of the quarterly report in which case the
41 employer and employee shall attest to the fact that the employee was employed by the employer at the time of
42 the injury. Failure of the employer to indemnify the insurer within 21 days after demand by the insurer shall be
43 grounds for the insurer to immediately cancel coverage. The insurer shall be entitled to reasonable attorney's
44 fee if it recovers any portion of the benefits paid in the action.