

SENATE No. 718

The Commonwealth of Massachusetts

PRESENTED BY:

James E. Timilty

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 combat tax and insurance fraud.

PETITION OF:

NAME:

James E. Timilty

DISTRICT/ADDRESS:

Bristol and Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S01099 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO COMBAT TAX AND INSURANCE FRAUD.

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 62B of the General Laws, as appearing in the 2004 Official
2 Edition, is hereby amended by inserting after section 12A the following section: -

3 Section 12B. Failure to withhold taxes on wages; stop work orders; penalties; liens;
4 actions brought by losing bidders

5 (1) Whenever the commissioner or his designee determines that an employer who is
6 required to withhold and pay over taxes on wages as provided for by this chapter has failed to
7 withhold and/or pay over such taxes, a stop work order shall be served on said employer,
8 requiring the cessation of all business operations. Such order shall take effect immediately upon
9 its service upon said employer, unless such employer provides evidence, satisfactory to the
10 commissioner or his designee, of having paid any amounts due as a result of having failed to
11 withhold and/or pay over taxes on wages and pays a civil penalty into the commonwealth's
12 general funds in the amount of one hundred dollars per day for each day such employer was not
13 in compliance with this chapter counting the first date of the employer's non-compliance as the

14 first day and date of payment of the penalty herein provided and of production of evidence of
15 payment of all amounts due as a result of having failed to withhold and/or pay over taxes as the
16 final day. The provision of such civil penalties shall not have any effect on any other penalties
17 or remedies that may be available under any other provision of law.

18 (2) Any employer who is aggrieved by the imposition of a stop work order and the imposition of
19 a civil penalty shall have ten days from the date of its service to appeal such order or penalty.

20 Any employer who timely files such appeal shall be granted a hearing by the commissioner or
21 his designee within fourteen days of receipt of appeal. The stop work order shall not be in effect
22 during the pendency of any timely filed appeal. The commissioner shall schedule a hearing on
23 any appeal within seven days of the filing of any appeal. The commissioner shall issue a
24 decision on any appeal within seven days of the date of the hearing. Any stop work order and
25 monetary penalty shall be rescinded if the commissioner or his designee finds at the hearing that
26 the employer has at all times been in compliance with this chapter. If the commissioner or his
27 designee finds at the hearing that the employer did or has not withheld and/or paid over taxes
28 from wages as required by this chapter, the stop work order shall be effective immediately on the
29 conclusion of the hearing and shall remain in effect until such time as the employer provides
30 evidence, satisfactory to the commissioner or his designees, of having made the necessary
31 payment of all amounts due as a result of having failed to withhold and/or pay over taxes and
32 pays a civil penalty into the commonwealth's general funds in the amount of two hundred and
33 fifty dollars per day for each day such employer was not in compliance with this chapter,
34 counting the first date of the employer's non-compliance as the first day and the date of payment
35 of the penalty herein provided and of production of evidence of payment of all amounts due as a
36 result of having failed to withhold taxes as the final day.

37 A stop work order and any monetary penalties assessed by the commissioner after a hearing as
38 authorized in this section shall be final at the expiration of thirty days if no action for judicial
39 review of such decision is commenced pursuant to chapter thirty A. Any person who institutes
40 proceedings for judicial review of the final assessment of a penalty by the commissioner
41 pursuant to this section, shall place the final amount of the assessment in an interest-bearing
42 escrow account in the custody of the clerk/magistrate of the reviewing court. The establishment
43 of such interest-bearing account shall be a condition precedent to the jurisdiction of the
44 reviewing court unless the party demonstrates in a preliminary hearing held within twenty days
45 of the filing of the complaint either the presence of a substantial question for review by the court
46 or an inability to pay. Upon such a demonstration, the court may grant an extension or waiver of
47 the interest-bearing escrow account or may require, in lieu of such account, the posting of a bond
48 payable directly to the Commonwealth in the amount of one hundred and twenty-five per cent of
49 the assessed penalty. If, after judicial review, in the case where the requirement for an escrow
50 account has been waived, and in the case where a bond has been posted, the court affirms the
51 penalty in whole or in part, the penalty assessed by the commissioner shall be paid with interest
52 at the rate set forth in section six C of chapter two hundred and thirty-one. If, after such review in
53 a case where an interest-bearing escrow account has been established, the court affirms the
54 penalty in whole or in part, the penalty shall be paid with accumulated interest from such
55 account. If the court sets aside the penalty the amount placed in such account or the amount
56 posted for such bond shall be repaid together with any interest thereon.

57 (3) Any law enforcement agency in the commonwealth shall, at the request of the commissioner,
58 render any assistance necessary to carry out the provisions of this section, including but not
59 limited to preventing any employee or other persons from remaining at a place of employment or

60 job site after a stop work order has taken effect.

61 (4) Any employee affected by a stop work order pursuant to this section shall be paid at his or
62 her regular rate of pay, but in no event less than the minimum wage as required by state or
63 federal wage and hour laws, whichever is higher, for the first ten days lost pursuant to such order
64 and any time lost pursuant to this section not exceeding ten days shall be considered time worked
65 under the provisions of chapter one hundred and forty-nine.

66 (5) Every state or local licensing agency shall withhold the issuance or renewal of a license or
67 permit to operate a business or to construct buildings in the commonwealth for any applicant
68 who has failed to withhold taxes from wages as required by this chapter, or who is subject to a
69 stop work order. Any employer who is subject to a stop work order shall notify any state or local
70 licensing agency with whom the employer is dealing of the existence of any stop work order. If
71 an employer who is subject to a stop work order fails to so notify the agency and is issued a
72 license or permit, that license or permit shall be deemed void.

73 (6) Neither the commonwealth nor any of its political subdivisions shall enter into any contract
74 for the performance of public work with an employer who is not in compliance with his
75 obligation to withhold and/or pay over taxes from wages as required by this chapter. Any
76 employer who is seeking in any manner a contract for the performance of work from the
77 commonwealth or any of its political subdivisions shall notify the commonwealth or political
78 subdivision of the issuance of any stop work order under this chapter, regardless of whether the
79 stop work order remains in effect. If an employer who is subject to a stop work order that
80 remains in effect fails to so notify the commonwealth or political subdivision and is awarded a
81 contract, that contract shall be deemed void.

82 (7) In addition to being subject to the civil penalties herein provided, an employer who fails to

83 withhold taxes on wages as required by this chapter or knowingly misclassifies employees, to
84 avoid withholding taxes on wages, will be immediately debarred from bidding or participating in
85 any state or municipal funded contracts for a period of three years and shall when applicable be
86 subject to penalties provided for in section fourteen.

87 (8) The fact of issuance of workers compensation insurance to an individual shall not be
88 considered in making a determination of whether the individual is an employee for purposes of
89 section 1 of this chapter, or in making the determination called for by subsection 1 above of
90 whether an employer has failed to withhold and/or pay over taxes on wages as required by this
91 chapter, or in determining whether to serve a stop work order.

92 (9) An employer's failure to comply with his reporting obligations under chapter 62E,
93 section 2, with respect to a newly hired employee or entering into an agreement with a contractor
94 for the performance of services shall constitute prima facie evidence of his failure to withhold
95 and/or pay over taxes on wages as required by this chapter, and such failure to comply with
96 chapter 62E, section 2 shall be sufficient to serve a stop work order.

97 (10) The commissioner or his designee shall possess the power to issue a subpoena to
98 any employer commanding the production within seven days of all payroll and any other
99 business records, or copies thereof, that may be relevant to the determination of whether the
100 employer is in compliance with his obligations under this chapter.

101 (14) The Department of Revenue shall provide the Secretary of Labor and the
102 commissioners of the Department of Industrial Accidents and the Division of Unemployment
103 Assistance or their designees full and immediate access to employer reports and notices
104 submitted in accordance with chapter 62E, section 2 with respect to newly hired employees or
105 entering into agreements with contractors for the performance of services

106 SECTION 2. Chapter 151A of the General Laws, as appearing in the 2004 Official
107 Edition, is hereby amended by inserting after section 47B the following section: -

108 Section 41B. Failure to contribute to the Unemployment Compensation Fund; stop work
109 orders; penalties; liens; actions brought by losing bidders

110 (1) Whenever the Secretary of Labor, the commissioner or the designee of either
111 determines that an employer who is required to contribute to the Unemployment Compensation
112 Fund as provided for by this chapter has failed to do so, a stop work order shall be served on said
113 employer, requiring the cessation of all business operations. Such order shall take effect
114 immediately upon its service upon said employer, unless such employer provides evidence,
115 satisfactory to the commissioner or his designee, of having made full payment of all required
116 contributions and pays a civil penalty into the Unemployment Compensation Fund in the
117 amount of one hundred dollars per day for each day such employer was not in compliance with
118 this chapter counting the first date of the employer's non-compliance as the first day and date of
119 payment of the penalty herein provided and of production of evidence of full payment of all
120 required contributions as the final day. The provision of such civil penalties shall not have any
121 effect on any other penalties or remedies that may be available under any other provision of
122 law.

123 (2) Any employer who is aggrieved by the imposition of a stop work order and the imposition of
124 a civil penalty shall have ten days from the date of its service to appeal such order or penalty.
125 Any employer who timely files such appeal shall be granted a hearing by the commissioner or
126 his designee within fourteen days of receipt of appeal. The stop work order shall not be in effect
127 during the pendency of any timely filed appeal. The commissioner shall schedule a hearing on
128 any appeal within seven days of the filing of any appeal. The commissioner shall issue a

129 decision on any appeal within seven days of the date of the hearing. Any stop work order and
130 monetary penalty shall be rescinded if the commissioner or his designee finds at the hearing that
131 the employer has at all times been in compliance with this chapter. If the commissioner or his
132 designee finds at the hearing that the employer did or has not contributed to the Unemployment
133 Compensation Fund as required by this chapter, the stop work order shall be effective
134 immediately on the conclusion of the hearing and shall remain in effect until such time as the
135 employer provides evidence, satisfactory to the commissioner or his designees, of having made
136 the necessary contributions to the Unemployment Compensation Fund and pays a civil penalty
137 into the Fund in the amount of two hundred and fifty dollars per day for each day such employer
138 was not in compliance with this chapter, counting the first date of the employer's non-
139 compliance as the first day and the date of payment of the penalty herein provided and of
140 production of evidence of full payment of all required contributions as the final day.

141 A stop work order and any monetary penalties assessed by the commissioner after a hearing as
142 authorized in this section shall be final at the expiration of thirty days if no action for judicial
143 review of such decision is commenced pursuant to chapter thirty A. Any person who institutes
144 proceedings for judicial review of the final assessment of a penalty by the commissioner
145 pursuant to this section, shall place the final amount of the assessment in an interest-bearing
146 escrow account in the custody of the clerk/magistrate of the reviewing court. The establishment
147 of such interest-bearing account shall be a condition precedent to the jurisdiction of the
148 reviewing court unless the party demonstrates in a preliminary hearing held within twenty days
149 of the filing of the complaint either the presence of a substantial question for review by the court
150 or an inability to pay. Upon such a demonstration, the court may grant an extension or waiver of
151 the interest-bearing escrow account or may require, in lieu of such account, the posting of a bond

152 payable directly to the Unemployment Compensation Fund in the amount of one hundred and
153 twenty-five per cent of the assessed penalty. If, after judicial review, in the case where the
154 requirement for an escrow account has been waived, and in the case where a bond has been
155 posted, the court affirms the penalty in whole or in part, the penalty assessed by the
156 commissioner shall be paid with interest at the rate set forth in section six C of chapter two
157 hundred and thirty-one. If, after such review in a case where an interest-bearing escrow account
158 has been established, the court affirms the penalty in whole or in part, the penalty shall be paid
159 with accumulated interest from such account. If the court sets aside the penalty the amount
160 placed in such account or the amount posted for such bond shall be repaid together with any
161 interest thereon.

162 (3) Any law enforcement agency in the commonwealth shall, at the request of the commissioner,
163 render any assistance necessary to carry out the provisions of this section, including but not
164 limited to preventing any employee or other persons from remaining at a place of employment or
165 job site after a stop work order has taken effect.

166 (4) Any employee affected by a stop work order pursuant to this section shall be paid at his or
167 her regular rate of pay, but in no event less than the minimum wage as required by state or
168 federal wage and hour laws, whichever is higher, for the first ten days lost pursuant to such order
169 and any time lost pursuant to this section not exceeding ten days shall be considered time worked
170 under the provisions of chapter one hundred and forty-nine.

171 (5) In addition to being subject to the civil penalties herein provided, an employer who
172 fails to contribute to the Unemployment Trust Fund as required by this chapter shall be punished
173 by a fine payable into the commonwealth's general funds of not more than three thousand five
174 hundred dollars or by imprisonment for not more than one year, or both. Failure of an employer,

175 after imposition of such fine or imprisonment, to make the required contributions to the
176 Unemployment Trust Fund under this chapter after notice by the department to do so shall, as to
177 each notice, be deemed a further violation in respect thereof, subject to an additional fine and
178 imprisonment. If such employer is a corporation, the president or treasurer or both shall be liable
179 for said punishment. The commissioner or his designee shall have power to bring complaints
180 against employers, including the president and treasurer of a corporation which is an employer,
181 for violations of the provisions of this subsection, and to prosecute the same, and for such
182 purpose may deputize one or more employees of the department to make and prosecute
183 complaints. Complaints under this subsection shall be brought in the district court in which the
184 principal place of business of such employer is situated, or in the district court in whose district
185 such president or treasurer of a corporation resides.

186 (6) Every state or local licensing agency shall withhold the issuance or renewal of a license or
187 permit to operate a business or to construct buildings in the commonwealth for any applicant
188 who has failed to contribute to the Unemployment Compensation Fund as required by this
189 chapter, or who is subject to a stop work order. Any employer who is subject to a stop work
190 order shall notify any state or local licensing agency with whom the employer is dealing of the
191 existence of any stop work order. If an employer who is subject to a stop work order fails to so
192 notify the agency and is issued a license or permit, that license or permit shall be deemed void.

193 (7) Neither the commonwealth nor any of its political subdivisions shall enter into any contract
194 for the performance of public work with an employer who is not in compliance with its
195 obligation to contribute to the Unemployment Compensation Fund as required by this
196 chapter. Any employer who is seeking in any manner a contract for the performance of work
197 from the commonwealth or any of its political subdivisions shall notify the commonwealth or

198 political subdivision of the issuance of any stop work order under this chapter, regardless of
199 whether the stop work order remains in effect. If an employer who is subject to a stop work
200 order that remains in effect fails to so notify the commonwealth or political subdivision and is
201 awarded a contract, that contract shall be deemed void.

202 (8) Any judgments obtained by the department requiring employer contributions or other
203 payments into the Unemployment Compensation Fund, and any penalties due pursuant to the
204 service of a stop work order under this section shall, until collected, constitute a lien upon the
205 entire interest of the employer, legal or equitable, in any property, real or personal, tangible or
206 intangible; provided, however, that such lien shall be subordinate to claims for unpaid wages and
207 any prior recorded liens; and provided, further, that no lien created by this section shall be valid
208 against a subsequent purchaser or mortgagee in good faith and for value of real or personal
209 property from or of such employer, or against a subsequent attaching creditor, unless, with
210 respect to real estate of the employer, a notice of such lien is recorded in the registry of deeds for
211 the county where such real estate is located, and, with respect to personal property of the
212 employer, said notice is recorded with the clerk of the city or town where such personal property
213 is located. Such lien shall be considered a tax due and owing to the commonwealth, which may
214 be collected through the procedures provided for by chapter 62C.

215 (9)(a) Any person or firm that loses a competitive bid for a contract including but not limited to
216 construction, repair, remodeling, alteration, conversion, modernization, replacement or
217 renovation of a building, roadway or structure may bring an action for damages against another
218 person who is awarded the contract for which the bid was made, if the other person was awarded
219 the contract because of cost advantages achieved by violating the provisions of sections 13 and
220 14 of this chapter or by the deliberate misclassification of employees for the purpose of avoiding

221 contributions to the Unemployment Compensation Fund.

222 (b) A person or firm bringing an action under this section must establish a violation of said
223 subsection or chapters by a preponderance of the evidence. Upon establishing that the violation
224 occurred, the person bringing the action shall recover, as liquidated damages, ten percent of the
225 total amount bid on the contract.

226 (c) An action under this subsection shall be commenced within one year from the date when the
227 contract is awarded.

228 (d) No plaintiff shall be allowed to recover any amounts under this subsection if said plaintiff
229 was in violation of sections 13 and 14 of this chapter at the time of making the bid on the
230 contract.

231 (e) In any action under this section, the prevailing plaintiff shall be entitled to an award of
232 reasonable attorneys fees and costs.

233 (10) In addition to being subject to the civil penalties herein provided, an employer who fails to
234 contribute to the Unemployment Compensation Fund as required by this chapter or knowingly
235 misclassifies employees, to avoid contributions to the Fund, will be immediately debarred from
236 bidding or participating in any state or municipal funded contracts for a period of three years and
237 shall when applicable be subject to penalties provided for in section fourteen.

238 (11) The fact of issuance of workers compensation insurance to an individual shall not be
239 considered in making a determination of whether the individual is performing service in
240 employment for purposes of section 2 of this chapter, or in making the determination called for
241 by subsection 1 above of whether an employer has failed to contribute to the Unemployment
242 Compensation Fund as required by this chapter, or in determining whether to serve a stop work
243 order.

244 (12) An employer's failure to comply with his reporting obligations under chapter 62E,
245 section 2, with respect to a newly hired employee or entering into an agreement with a contractor
246 for the performance of services shall constitute prima facie evidence of his failure to contribute
247 to the Unemployment Compensation Fund as required by this chapter, and such failure to
248 comply with chapter 62E, section 2 shall be sufficient to serve a stop work order.

249 (13) The Secretary of Labor, the commissioner or the designee of either shall possess the
250 power to issue a subpoena to any employer commanding the production within seven days of all
251 payroll and any other business records, or copies thereof, that may be relevant to the
252 determination of whether the employer is in compliance with his obligations under this chapter.

253 (14) The Department of Revenue shall provide the commissioner or his designee full and
254 immediate access to employer reports and notices submitted in accordance with chapter 62E,
255 section 2 with respect to newly hired employees or entering into agreements with contractors for
256 the performance of services .

257 (15) The Secretary of Labor, the commissioner or the designee of either shall refer all
258 determinations of failures to comply with the obligations of this chapter to the Department of
259 Revenue and to the Attorney General for additional enforcement action.

260 SECTION 3. Section 25C of chapter 152 of the General Laws, as appearing in the 2004
261 Official Edition, is hereby amended by striking out subsection (1) and inserting in place thereof
262 the following subsection: - "(1)Whenever the Secretary of Labor, the commissioner or the
263 designee of either determines that an employer who is required to provide for the payment to his
264 employees of the compensation provided for by this chapter has failed to do so, a stop work
265 order shall be served on said employer, requiring the cessation of all business operations. Such
266 order shall take effect immediately upon its service upon said employer, unless such employer

267 provides evidence, satisfactory to the commissioner or his designee, of having secured any
268 necessary insurance or self-insurance and pays a civil penalty into the private employer trust
269 fund in the amount of one hundred dollars per day for each day such employer was not in
270 compliance with this chapter counting the first date of the employer's non-compliance as the
271 first day and date of payment of the penalty herein provided and of production of evidence of
272 insurance or self-insurance as the final day. The provision of such civil penalties shall not have
273 any effect on any other penalties or remedies that may be available under any other provision of
274 law.”

275 SECTION 4. Subsection (2) of said section 25C of chapter 152 of the General Laws, as
276 so appearing in, is hereby further amended by striking out the first paragraph and inserting in
277 place thereof the following paragraph: - “Any employer who is aggrieved by the imposition of a
278 stop work order and the imposition of a civil penalty shall have ten days from the date of its
279 service to appeal such order or penalty. Any employer who timely files such appeal shall be
280 granted a hearing by the commissioner or his designee within fourteen days of receipt of appeal.
281 The stop work order shall not be in effect during the pendency of any timely filed appeal. The
282 commissioner shall schedule a hearing on any appeal within seven days of the filing of any
283 appeal. The commissioner shall issue a decision on any appeal within seven days of the date of
284 the hearing. Any stop work order and monetary penalty shall be rescinded if the commissioner
285 or his designee finds at the hearing that the employer has at all times been in compliance with
286 this chapter. If the commissioner or his designee finds at the hearing that the employer did or has
287 not provided for all insurance or self-insurance required by this chapter, the stop work order shall
288 be effective immediately on the conclusion of the hearing and shall remain in effect until such
289 time as the employer provides evidence, satisfactory to the commissioner or his designees, of

290 having secured any necessary insurance or self-insurance and pays a civil penalty into the private
291 employer trust fund in the amount of two hundred and fifty dollars per day for each day such
292 employer was not in compliance with this chapter, counting the first date of the employer's non-
293 compliance as the first day and the date of payment of the penalty herein provided and of
294 production of evidence of insurance or self-insurance as the final day.”

295 SECTION 5. Said section 25C of chapter 152 of the General Laws, as so appearing in, is
296 hereby further amended by inserting after the words “shall be paid”, in line 68, and the following
297 words: - “at his or her regular rate of pay, but in no event less than the minimum wage as
298 required by state or federal wage and hour laws, whichever is higher,”.

299 SECTION 6. Said section 25C of chapter 152 of the General Laws, as so appearing in, is
300 hereby further amended by inserting after the word “fine”, in line 74, and the following words: -
301 “payable into the Commonwealth’s general funds”.

302 SECTION 7. Said section 25C of chapter 152 of the General Laws, as so appearing in, is
303 hereby further amended by striking the words “one thousand five hundred” in inserting in place
304 thereof the following words: - “three hundred five thousand.”

305 SECTION 8. Said section 25C of chapter 152 of the General Laws, as so appearing in, is
306 hereby further amended by striking subsection (6) and inserting in place thereof the following
307 subsection: - “(6) Every state or local licensing agency shall withhold the issuance or renewal of
308 a license or permit to operate a business or to construct buildings in the commonwealth for any
309 applicant who has not produced acceptable evidence of compliance with the insurance coverage
310 required by this chapter by changing the period at the end of the provision to a comma, and
311 adding the following: “or who is subject to a stop work order. Any employer who is subject to a
312 stop work order shall notify any state or local licensing agency with whom the employer is

313 dealing of the existence of any stop work order. If an employer who is subject to a stop work
314 order fails to so notify the agency and is issued a license or permit, that license or permit shall be
315 deemed void.”

316 SECTION 9. Said section 25C of chapter 152 of the General Laws, as so appearing in, is
317 hereby further amended by striking out subsection (7) and inserting in place thereof the
318 following subsection: - (7) Neither the commonwealth nor any of its political subdivisions shall
319 enter into any contract for the performance of public work until acceptable evidence of
320 compliance with the insurance requirements of this chapter have been presented to the
321 contracting authority. Any employer who is seeking in any manner a contract for the
322 performance of work from the commonwealth or any of its political subdivisions shall notify the
323 commonwealth or political subdivision of the issuance of any stop work order under this chapter,
324 regardless of whether the stop work order remains in effect. If an employer who is subject to a
325 stop work order that remains in effect fails to so notify the commonwealth or political
326 subdivision and is awarded a contract, that contract shall be deemed void.

327 SECTION 10. Subsection (8) of said section 25C of chapter 152 of the General Laws, as
328 so appearing in, is hereby further amended by adding at the end thereof the following sentence: -
329 “Such lien shall be considered a tax due and owing to the commonwealth, which may be
330 collected through the procedures provided for by chapter 62C.”

331 SECTION 11. Said section 25C of chapter 152 of the General Laws, as so appearing in,
332 is hereby further amended by striking out, in lines 129 and 130, the words: - “or fifteen thousand
333 dollars, whichever is lesser.”

334 SECTION 12. Subsection (9) of said section 25C of chapter 152 of the General Laws, as
335 so appearing in, is hereby further amended by striking out paragraph (e) and inserting in place

336 thereof the following paragraph: - (e) In any action under this section, the prevailing plaintiff
337 shall be entitled to an award of reasonable attorneys fees and costs.

338 SECTION 13. Said section 25C of chapter 152 of the General Laws, as so appearing in,
339 is hereby further amended by inserting the following subsections: -

340 (11) An employer's compliance with his obligation to provide for the payment to his
341 employees of the compensation provided for by this chapter shall not be excused by the fact of
342 the issuance of workers compensation insurance to any individual, and the fact of issuance of
343 such insurance shall not be considered in making a determination of whether the individual is an
344 employee for purposes of chapter 149, section 148B, or in making the determination called for
345 by subsection 1 above of whether an employer has failed to provide for the payment to his
346 employees of the compensation provided for by this chapter, or in determining whether to serve a
347 stop work order.

348 (12) An employer's failure to comply with his reporting obligations under chapter 62E,
349 section 2, with respect to a newly hired employee or entering into an agreement with a contractor
350 for the performance of services shall constitute prima facie evidence of his failure to comply
351 with his obligation to provide for the payment to his employees of the compensation provided
352 for by this chapter, and such failure to comply with chapter 62E, section 2 shall be sufficient to
353 serve a stop work order.

354 (13) The Secretary of Labor, the commissioner or the designee of either shall possess the
355 power to issue a subpoena to any employer commanding the production within seven days of all
356 payroll and any other business records, or copies thereof, that may be relevant to the
357 determination of whether the employer is in compliance with his obligations under this chapter.

358 (14) The Department of Revenue shall provide the commissioner or his designee full and
359 immediate access to employer reports and notices submitted in accordance with chapter 62E,
360 section 2 with respect to newly hired employees or entering into agreements with contractors for
361 the performance of services .

362 (15) The Secretary of Labor, the commissioner or the designee of either shall refer all
363 determinations of failures to comply with the obligations of this chapter to the Department of
364 Revenue and to the Attorney General for additional enforcement action.