

HOUSE No.

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

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

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
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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
6 imprisonment in jail for not less than 6 months nor more than 2½ years or by a fine of not less than \$1000
7 nor more than \$10000 or both. (b) All applications for workers' compensation coverage shall contain a
8 statement printed on the application that the filing of an application containing false misleading or
9 incomplete information provided for the purpose of avoiding or reducing the insurance premium shall be
10 punishable pursuant to this section. Any application for workers compensation coverage filed by an employer
11 shall contain a sworn statement by the employer attesting to the accuracy of the information submitted and
12 a sworn statement by the insurance agent attesting that the insurance agent explained to the employer or
13 officer the classification codes that are 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
16 premium is charged for workers' compensation coverage and that audits performed by carriers and
17 employers are adequate to ensure all sources of payment to employees subcontractors and independent
18 contractors are reviewed and the accuracy of employee classification verified. Employers in all classes other
19 than the construction class shall be audited biennially. Employers in the construction class generating more

20 than the premium required to be experience rated shall be audited annually. The annual audits required for
21 construction classes shall consist of physical onsite audits. At the completion of an audit the employer or
22 officer of the corporation and the auditor must print and sign their names on an audit document and attach
23 proof of 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,
26 and submit an annual self-audit supported by quarterly contribution reports. The reports shall include a
27 sworn statement by an officer or principal of the employer attesting to the accuracy of the information
28 contained in 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
32 or 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
35 computation and application of an experience rating modification factor said knowing misrepresentation or
36 knowing 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
39 shall indemnify the carrier for all workers' compensation benefits paid to or on behalf of the employee unless
40 the employer establishes that the employee was hired after the filing of the quarterly report in which case
41 the employer and employee shall attest to the fact that the employee was employed by the employer at the
42 time of the injury. Failure of the employer to indemnify the insurer within 21 days after demand by the
43 insurer shall be grounds for the insurer to immediately cancel coverage. The insurer shall be entitled to
44 reasonable attorney's fee if it recovers any portion of the benefits paid in the action.