HOUSE DOCKET, NO. 830 FILED ON: 1/19/2011

HOUSE . . . . . No. 532

The Commonwealth of Massachusetts

PRESENTED BY:

Michael F. Kane

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:

An Act to provide incentives for productive workers compensation audits.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael F. Kane	*5th Hampden*
Michael J. Rodrigues	☐ *[District]* ☐
Tackey Chan	*2nd Norfolk*
James T. Welch	☐ *[District]* ☐

HOUSE DOCKET, NO. 830 FILED ON: 1/19/2011

HOUSE . . . . . No. 532

By Mr. Kane of Holyoke, a petition (accompanied by bill, House, No. 532) of Michael F. Kane and others for legislation to provide incentives for productive workers' compensation audits. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *1846* OF 2009-2010.]

The Commonwealth of Massachusetts

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:

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

(1)(a) Any employer who knowingly submits an application for workers' compensation coverage that contains false misleading or incomplete information provided for the purpose of avoiding or reducing the insurance premium shall be punished by imprisonment in the state prison for not more than 5 years or by imprisonment 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 $10000 or both. (b) All applications for workers' compensation coverage shall contain a statement printed on the application that the filing of an application containing false misleading or incomplete information provided for the purpose of avoiding or reducing the insurance premium shall be punishable pursuant to this section. Any application for workers compensation coverage filed by an employer shall contain a sworn statement by the employer attesting to the accuracy of the information submitted and a sworn statement by the insurance agent attesting that the insurance agent explained to the employer or officer the classification codes that are used for premium calculations.

(2) The division of insurance shall the minimum requirements for payroll verification audits and employee classifications. Minimum requirements for payroll verification audits shall ensure that the appropriate premium is charged for workers' compensation coverage and that

19 audits performed by carriers and employers are adequate to ensure all sources of payment to
20 employees subcontractors and independent contractors are reviewed and the accuracy of
21 employee classification verified. Employers in all classes other than the construction class shall
22 be audited biennially. Employers in the construction class generating more than the premium
23 required to be experience rated shall be audited annually. The annual audits required for
24 construction classes shall consist of physical onsite audits. At the completion of an audit the
25 employer or officer of the corporation and the auditor must print and sign their names on an audit
26 document and attach proof of identification to the audit document.

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

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

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