

HOUSE No. 4909

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

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 SECTION 1. Chapter 152 of the General Laws is hereby amended by inserting after
2 section 25U the following section:-

3 Section 25V. (a)(1) An employer who knowingly submits an application for workers'
4 compensation coverage that contains false misleading or incomplete information provided for the
5 purpose of avoiding or reducing the insurance premium shall be punished by imprisonment in
6 jail or a house of correction for not more than 2½ years or by imprisonment in a state prison for
7 not more than 5 years or by a fine of not less than \$1,000 nor more than \$10,000, or both such
8 fine and imprisonment.

9 (2) All applications for workers' compensation coverage shall contain a statement printed
10 on the application that the filing of an application containing false misleading or incomplete
11 information provided for the purpose of avoiding or reducing the insurance premium shall be
12 punishable pursuant to this section. An application for workers compensation coverage filed by
13 an employer shall contain a sworn statement by the employer attesting to the accuracy of the
14 information submitted and a sworn statement by the insurance agent attesting that the insurance

15 agent explained to the employer or officer the classification codes that are used for premium
16 calculations.

17 (b) The division of insurance shall promulgate rules and regulations establishing the
18 minimum requirements for payroll verification audits and employee classifications. Minimum
19 requirements for payroll verification audits shall ensure that the appropriate premium is charged
20 for workers' compensation coverage and that audits performed by carriers and employers are
21 adequate to ensure all sources of payment to employees subcontractors and independent
22 contractors are reviewed and the accuracy of employee classification verified. Employers in all
23 classes shall be audited biennially; provided, however, that employers in the construction class
24 generating more than the premium required to be experience rated shall be audited annually, and
25 such annual audits shall consist of physical onsite audits. At the completion of an audit the
26 employer or officer of the corporation and the auditor must print and sign their names on an audit
27 document and attach proof of identification to the audit document.

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

33 (d)(1) Employers shall make available all records necessary for the payroll verification
34 audit and permit the auditor to make a physical inspection of the employer's operation. If an
35 employer fails to provide reasonable access to all records necessary for a payroll verification

36 audit the employer shall pay a penalty to the carrier or self-insurer of 3 times the most recent
37 estimated annual premium.

38 (2) It shall be considered a violation of chapter 93A if the employer: (i) understates or
39 conceals payroll; (ii) knowingly misrepresents or knowingly conceals employee duties so as to
40 avoid proper classification for premium calculations; or (iii) misrepresents or conceals
41 information pertinent to the computation and application of an experience rating modification
42 factor.

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

51 SECTION 2. Section 55A of said chapter 152, as appearing in the 2008 Official Edition,
52 is hereby amended by inserting after the word "against", in line 6, the following words:- (iv) a
53 violation of section 25V.