

**SENATE . . . . . No. 718**

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**The Commonwealth of Massachusetts**

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 Any stop work order and monetary penalty shall be rescinded if  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

38 thirty days if no action for judicial review of such decision is commenced pursuant to chapter  
39 thirty A. Any person who institutes proceedings for judicial review of the final assessment of a  
40 penalty by the commissioner pursuant to this section, shall place the final amount of the  
41 assessment in an interest-bearing escrow account in the custody of the clerk/magistrate of the  
42 reviewing court. The establishment of such interest-bearing account shall be a condition  
43 precedent to the jurisdiction of the reviewing court unless the party demonstrates in a preliminary  
44 hearing held within twenty days of the filing of the complaint either the presence of a substantial  
45 question for review by the court or an inability to pay. Upon such a demonstration, the court may  
46 grant an extension or waiver of the interest-bearing escrow account or may require, in lieu of  
47 such account, the posting of a bond payable directly to the Commonwealth in the amount of one  
48 hundred and twenty-five per cent of the assessed penalty. If, after judicial review, in the case  
49 where the requirement for an escrow account has been waived, and in the case where a bond has  
50 been posted, the court affirms the penalty in whole or in part, the penalty assessed by the  
51 commissioner shall be paid with interest at the rate set forth in section six C of chapter two  
52 hundred and thirty-one. If, after such review in a case where an interest-bearing escrow account  
53 has been established, the court affirms the penalty in whole or in part, the penalty shall be paid  
54 with accumulated interest from such account. If the court sets aside the penalty the amount  
55 placed in such account or the amount posted for such bond shall be repaid together with any  
56 interest thereon.(3) Any law enforcement agency in the commonwealth shall, at the request of  
57 the commissioner, render any assistance necessary to carry out the provisions of this section,  
58 including but not limited to preventing any employee or other persons from remaining at a place  
59 of employment or job site after a stop work order has taken effect.(4) Any employee affected by  
60 a stop work order pursuant to this section shall be paid at his or her regular rate of pay, but in no

61 event less than the minimum wage as required by state or federal wage and hour laws, whichever  
62 is higher, for the first ten days lost pursuant to such order and any time lost pursuant to this  
63 section not exceeding ten days shall be considered time worked under the provisions of chapter  
64 one hundred and forty-nine.(5) Every state or local licensing agency shall withhold the issuance  
65 or renewal of a license or permit to operate a business or to construct buildings in the  
66 commonwealth for any applicant who has failed to withhold taxes from wages as required by this  
67 chapter, or who is subject to a stop work order. Any employer who is subject to a stop work  
68 order shall notify any state or local licensing agency with whom the employer is dealing of the  
69 existence of any stop work order. If an employer who is subject to a stop work order fails to so  
70 notify the agency and is issued a license or permit, that license or permit shall be deemed void.  
71 (6) Neither the commonwealth nor any of its political subdivisions shall enter into any contract  
72 for the performance of public work with an employer who is not in compliance with his  
73 obligation to withhold and/or pay over taxes from wages as required by this chapter. Any  
74 employer who is seeking in any manner a contract for the performance of work from the  
75 commonwealth or any of its political subdivisions shall notify the commonwealth or political  
76 subdivision of the issuance of any stop work order under this chapter, regardless of whether the  
77 stop work order remains in effect. If an employer who is subject to a stop work order that  
78 remains in effect fails to so notify the commonwealth or political subdivision and is awarded a  
79 contract, that contract shall be deemed void. (7) In addition to being subject to the civil  
80 penalties herein provided, an employer who fails to withhold taxes on wages as required by this  
81 chapter or knowingly misclassifies employees, to avoid withholding taxes on wages, will be  
82 immediately debarred from bidding or participating in any state or municipal funded contracts  
83 for a period of three years and shall when applicable be subject to penalties provided for in

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

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

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

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

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

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

107 (1) Whenever the Secretary of Labor, the commissioner or the designee of either  
108 determines that an employer who is required to contribute to the Unemployment Compensation  
109 Fund as provided for by this chapter has failed to do so, a stop work order shall be served on said  
110 employer, requiring the cessation of all business operations. Such order shall take effect  
111 immediately upon its service upon said employer, unless such employer provides evidence,  
112 satisfactory to the commissioner or his designee, of having made full payment of all required  
113 contributions and pays a civil penalty into the Unemployment Compensation Fund in the  
114 amount of one hundred dollars per day for each day such employer was not in compliance with  
115 this chapter counting the first date of the employer's non-compliance as the first day and date of  
116 payment of the penalty herein provided and of production of evidence of full payment of all  
117 required contributions as the final day. The provision of such civil penalties shall not have any  
118 effect on any other penalties or remedies that may be available under any other provision of  
119 law. (2) Any employer who is aggrieved by the imposition of a stop work order and the  
120 imposition of a civil penalty shall have ten days from the date of its service to appeal such order  
121 or penalty. Any employer who timely files such appeal shall be granted a hearing by the  
122 commissioner or his designee within fourteen days of receipt of appeal. The stop work order  
123 shall not be in effect during the pendency of any timely filed appeal. The commissioner shall  
124 schedule a hearing on any appeal within seven days of the filing of any appeal. The  
125 commissioner shall issue a decision on any appeal within seven days of the date of the hearing.  
126 Any stop work order and monetary penalty shall be rescinded if the commissioner or his  
127 designee finds at the hearing that the employer has at all times been in compliance with this

128 chapter. If the commissioner or his designee finds at the hearing that the employer did or has not  
129 contributed to the Unemployment Compensation Fund as required by this chapter, the stop work  
130 order shall be effective immediately on the conclusion of the hearing and shall remain in effect  
131 until such time as the employer provides evidence, satisfactory to the commissioner or his  
132 designees, of having made the necessary contributions to the Unemployment Compensation  
133 Fund and pays a civil penalty into the Fund in the amount of two hundred and fifty dollars per  
134 day for each day such employer was not in compliance with this chapter, counting the first date  
135 of the employer's non-compliance as the first day and the date of payment of the penalty herein  
136 provided and of production of evidence of full payment of all required contributions as the final  
137 day. A stop work order and any monetary penalties assessed by the commissioner after a hearing  
138 as authorized in this section shall be final at the expiration of thirty days if no action for judicial  
139 review of such decision is commenced pursuant to chapter thirty A. Any person who institutes  
140 proceedings for judicial review of the final assessment of a penalty by the commissioner  
141 pursuant to this section, shall place the final amount of the assessment in an interest-bearing  
142 escrow account in the custody of the clerk/magistrate of the reviewing court. The establishment  
143 of such interest-bearing account shall be a condition precedent to the jurisdiction of the  
144 reviewing court unless the party demonstrates in a preliminary hearing held within twenty days  
145 of the filing of the complaint either the presence of a substantial question for review by the court  
146 or an inability to pay. Upon such a demonstration, the court may grant an extension or waiver of  
147 the interest-bearing escrow account or may require, in lieu of such account, the posting of a bond  
148 payable directly to the Unemployment Compensation Fund in the amount of one hundred and  
149 twenty-five per cent of the assessed penalty. If, after judicial review, in the case where the  
150 requirement for an escrow account has been waived, and in the case where a bond has been

151 posted, the court affirms the penalty in whole or in part, the penalty assessed by the  
152 commissioner shall be paid with interest at the rate set forth in section six C of chapter two  
153 hundred and thirty-one. If, after such review in a case where an interest-bearing escrow account  
154 has been established, the court affirms the penalty in whole or in part, the penalty shall be paid  
155 with accumulated interest from such account. If the court sets aside the penalty the amount  
156 placed in such account or the amount posted for such bond shall be repaid together with any  
157 interest thereon.(3) Any law enforcement agency in the commonwealth shall, at the request of  
158 the commissioner, render any assistance necessary to carry out the provisions of this section,  
159 including but not limited to preventing any employee or other persons from remaining at a place  
160 of employment or job site after a stop work order has taken effect.(4) Any employee affected by  
161 a stop work order pursuant to this section shall be paid at his or her regular rate of pay, but in no  
162 event less than the minimum wage as required by state or federal wage and hour laws, whichever  
163 is higher, for the first ten days lost pursuant to such order and any time lost pursuant to this  
164 section not exceeding ten days shall be considered time worked under the provisions of chapter  
165 one hundred and forty-nine.

166 (5) In addition to being subject to the civil penalties herein provided, an employer who  
167 fails to contribute to the Unemployment Trust Fund as required by this chapter shall be punished  
168 by a fine payable into the commonwealth's general funds of not more than three thousand five  
169 hundred dollars or by imprisonment for not more than one year, or both. Failure of an employer,  
170 after imposition of such fine or imprisonment, to make the required contributions to the  
171 Unemployment Trust Fund under this chapter after notice by the department to do so shall, as to  
172 each notice, be deemed a further violation in respect thereof, subject to an additional fine and  
173 imprisonment. If such employer is a corporation, the president or treasurer or both shall be liable



174 for said punishment. The commissioner or his designee shall have power to bring complaints  
175 against employers, including the president and treasurer of a corporation which is an employer,  
176 for violations of the provisions of this subsection, and to prosecute the same, and for such  
177 purpose may deputize one or more employees of the department to make and prosecute  
178 complaints. Complaints under this subsection shall be brought in the district court in which the  
179 principal place of business of such employer is situated, or in the district court in whose district  
180 such president or treasurer of a corporation resides.(6) Every state or local licensing agency shall  
181 withhold the issuance or renewal of a license or permit to operate a business or to construct  
182 buildings in the commonwealth for any applicant who has failed to contribute to the  
183 Unemployment Compensation Fund as required by this chapter, or who is subject to a stop work  
184 order. Any employer who is subject to a stop work order shall notify any state or local licensing  
185 agency with whom the employer is dealing of the existence of any stop work order. If an  
186 employer who is subject to a stop work order fails to so notify the agency and is issued a license  
187 or permit, that license or permit shall be deemed void. (7) Neither the commonwealth nor any  
188 of its political subdivisions shall enter into any contract for the performance of public work with  
189 an employer who is not in compliance with its obligation to contribute to the Unemployment  
190 Compensation Fund as required by this chapter. Any employer who is seeking in any manner a  
191 contract for the performance of work from the commonwealth or any of its political subdivisions  
192 shall notify the commonwealth or political subdivision of the issuance of any stop work order  
193 under this chapter, regardless of whether the stop work order remains in effect. If an employer  
194 who is subject to a stop work order that remains in effect fails to so notify the commonwealth or  
195 political subdivision and is awarded a contract, that contract shall be deemed void. (8) Any  
196 judgments obtained by the department requiring employer contributions or other payments into

197 the Unemployment Compensation Fund, and any penalties due pursuant to the service of a stop  
198 work order under this section shall, until collected, constitute a lien upon the entire interest of the  
199 employer, legal or equitable, in any property, real or personal, tangible or intangible; provided,  
200 however, that such lien shall be subordinate to claims for unpaid wages and any prior recorded  
201 liens; and provided, further, that no lien created by this section shall be valid against a  
202 subsequent purchaser or mortgagee in good faith and for value of real or personal property from  
203 or of such employer, or against a subsequent attaching creditor, unless, with respect to real estate  
204 of the employer, a notice of such lien is recorded in the registry of deeds for the county where  
205 such real estate is located, and, with respect to personal property of the employer, said notice is  
206 recorded with the clerk of the city or town where such personal property is located. Such lien  
207 shall be considered a tax due and owing to the commonwealth, which may be collected through  
208 the procedures provided for by chapter 62C.(9)(a) Any person or firm that loses a competitive  
209 bid for a contract including but not limited to construction, repair, remodeling, alteration,  
210 conversion, modernization, replacement or renovation of a building, roadway or structure may  
211 bring an action for damages against another person who is awarded the contract for which the bid  
212 was made, if the other person was awarded the contract because of cost advantages achieved by  
213 violating the provisions of sections 13 and 14 of this chapter or by the deliberate  
214 misclassification of employees for the purpose of avoiding contributions to the Unemployment  
215 Compensation Fund.(b) A person or firm bringing an action under this section must establish a  
216 violation of said subsection or chapters by a preponderance of the evidence. Upon establishing  
217 that the violation occurred, the person bringing the action shall recover, as liquidated damages,  
218 ten percent of the total amount bid on the contract. (c) An action under this subsection shall be  
219 commenced within one year from the date when the contract is awarded.(d) No plaintiff shall be

220 allowed to recover any amounts under this subsection if said plaintiff was in violation of sections  
221 13 and 14 of this chapter at the time of making the bid on the contract.(e) In any action under this  
222 section, the prevailing plaintiff shall be entitled to an award of reasonable attorneys fees and  
223 costs.(10) In addition to being subject to the civil penalties herein provided, an employer who  
224 fails to contribute to the Unemployment Compensation Fund as required by this chapter or  
225 knowingly misclassifies employees, to avoid contributions to the Fund, will be immediately  
226 debarred from bidding or participating in any state or municipal funded contracts for a period of  
227 three years and shall when applicable be subject to penalties provided for in section fourteen.(11)  
228 The fact of issuance of workers compensation insurance to an individual shall not be considered  
229 in making a determination of whether the individual is performing service in employment for  
230 purposes of section 2 of this chapter, or in making the determination called for by subsection 1  
231 above of whether an employer has failed to contribute to the Unemployment Compensation Fund  
232 as required by this chapter, or in determining whether to serve a stop work order.

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

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

242 (14) The Department of Revenue shall provide the commissioner or his designee full and  
243 immediate access to employer reports and notices submitted in accordance with chapter 62E,  
244 section 2 with respect to newly hired employees or entering into agreements with contractors for  
245 the performance of services . (15) The Secretary of Labor, the commissioner or the designee of  
246 either shall refer all determinations of failures to comply with the obligations of this chapter to  
247 the Department of Revenue and to the Attorney General for additional enforcement action.

248 SECTION 3. Section 25C of chapter 152 of the General Laws, as appearing in the 2004  
249 Official Edition, is hereby amended by striking out subsection (1) and inserting in place thereof  
250 the following subsection: - “(1)Whenever the Secretary of Labor, the commissioner or the  
251 designee of either determines that an employer who is required to provide for the payment to his  
252 employees of the compensation provided for by this chapter has failed to do so, a stop work  
253 order shall be served on said employer, requiring the cessation of all business operations. Such  
254 order shall take effect immediately upon its service upon said employer, unless such employer  
255 provides evidence, satisfactory to the commissioner or his designee, of having secured any  
256 necessary insurance or self-insurance and pays a civil penalty into the private employer trust  
257 fund in the amount of one hundred dollars per day for each day such employer was not in  
258 compliance with this chapter counting the first date of the employer’s non-compliance as the  
259 first day and date of payment of the penalty herein provided and of production of evidence of  
260 insurance or self-insurance as the final day. The provision of such civil penalties shall not have  
261 any effect on any other penalties or remedies that may be available under any other provision of  
262 law.”