SENATE DOCKET, NO. 79 FILED ON: 1/14/2011

SENATE . . . . . No. 955

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 adoption of the accompanying bill:

An Act relative to uninsurance employment fraud..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael J. Rodrigues	

SENATE DOCKET, NO. 79 FILED ON: 1/14/2011

SENATE . . . . . No. 955

By Mr. Rodrigues, petition (accompanied by bill, Senate, No. 955) of Rodrigues for legislation relative to unemployment insurance fraud [Joint Committee on Labor and Workforce Development].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1842* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to uninsurance employment fraud..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 151A, as appearing in the 2002 Official Edition, is hereby amended by inserting after section 69D, the following section:-

Section 69E. In addition to any other remedy provided by this chapter, the commissioner may utilize the procedures specified below for the collection of any outstanding obligation where: (1) the obligation has become final as determined under section 69D; (2) the obligation arose as a result of the obligor's failure to knowingly and willfully furnish accurate information concerning any material fact, including amounts of remuneration received; and (3) the obligor has failed to satisfy the obligation or make payment arrangements acceptable to the commissioner within thirty days after notice that such obligation has become final and is due.

10 (a) The commissioner may file with the clerk of the municipal court department of the
11 city of Boston or in the district court department in the judicial district where the obligor lives or
12 is employed a certificate or a copy thereof under the commissioner's official seal stating: the
13 name and address of the obligor, the amount owed, including interest and penalties assessed
14 pursuant to subsection (a) of section 69, and in default, and that the obligation has become final.
15 The commissioner also shall provide information concerning the obligor's weekly benefit amount
16 as referenced in subsection (c).

17 (b) Upon receipt of the certificate specified in subsection (a), the clerk shall send written
18 notice, first class mail, to the obligor at the address listed in the certificate that the certificate has
19 been filed and the clerk shall enter into the judgment records of the court the name of the obligor
20 mentioned in the certificate, the amount owed and in default and the date such certificate is filed.
21 The clerk shall issue an execution at the request of the commissioner or the commissioner's agent
22 or attorney, in the same manner as a duly entered judgment of the court. No filing fee shall be
23 paid by the commissioner for the filing of a certificate.

24 (c) Every judgment issued pursuant to subsection (b) shall include an assignment to the
25 department of a portion of the obligor's salaries, wages, earnings, or other periodic income, in an
26 aggregate amount sufficient to comply with the judgment as limited by section 34 of chapter 235.
27 The periodic amount of the assignment shall be the lesser of the obligor's weekly unemployment
28 insurance benefit amount in effect at the time the obligation arose or the maximum amount
29 permitted by 15 USCA § 1673(a); provided, however, that where more than one weekly benefit
30 amount was in effect, the periodic amount shall be the lesser of the average of all such weekly
31 benefit amounts or such maximum amount; provided further, that the obligor may within ten
32 days following the date of the mailing of a notice of assignment petition the court for a

33 modification. The court shall consider the amount owed, the income and reasonable expenses of
34 the obligor and other factors which the court finds to be relevant to the ability to repay the
35 amount owed.

36 (d) If an assignment is in effect under subsection (c) but cannot be implemented because
37 obligor has no employer, the obligor shall notify the commissioner as soon as employment is
38 obtained and the commissioner shall transfer the assignment to such employer.

39 (e) An employer shall send the amount required by the assignment to the commissioner
40 within three days after the day the obligor is paid. The employer may deduct from the obligor's
41 earnings a sum not exceeding $1 per pay period as reimbursement for costs incurred and may
42 submit to the commissioner one check covering all its employees whose earnings are assigned
43 along with a statement enumerating each employee's obligation and amount paid.

44 (f) The assignment shall begin on the first payment of income that occurs more than three
45 days after the employer receives notice of the assignment and shall continue until the obligor
46 leaves that employment or the employer is notified by the commissioner that the assignment
47 should be terminated.

48 (g) When the obligor changes employers, the obligor shall notify the commissioner
49 within three days after beginning the new employment, and shall notify the new employer of the
50 assignment. The commissioner shall then transfer the assignment to the new employer.

51 (h) Assignments pursuant to this section shall terminate when the underlying obligation
52 terminates and all arrears are paid.

53 (i) If an employer fails to comply with an order of assignment executed pursuant to this
54 section, the court may upon report of the commissioner summon the employer to appear in court
55 and show cause why he should not be held in civil contempt for failure to obey said order.

56 (j) An employer shall not discipline, discharge, demote, suspend, threaten, harass, deny
57 promotion to, or in any other manner discriminate against an employee because of an assignment
58 executed or threatened pursuant to this section. Any employer who violates this section shall be
59 liable in a civil action, action for contempt or other appropriate proceeding to such employee for
60 all wages and employment benefits lost by the employee from the time of the unlawful
61 discipline, suspension or discharge to the period of reinstatement.

62 (k) An employer who violates subsection (j) shall be liable for such damages or equitable
63 relief as a court shall deem appropriate, including reinstatement with the same seniority status
64 such employee would have had but for the discrimination, two times the amount of back pay,
65 interest on the back pay, and compensation for any special damages sustained as a result of the
66 discrimination. In addition, the defendant shall be required to pay litigation costs and reasonable
67 attorney's fees. An employee may bring an action in the appropriate superior court department or
68 the superior court department of Suffolk County for the relief provided in this subsection.