

SENATE No. 898

The Commonwealth of Massachusetts

PRESENTED BY:

James E. Timilty

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 to combat tax and insurance fraud..

PETITION OF:

NAME:

James E. Timilty

DISTRICT/ADDRESS:

Bristol and Norfolk

SENATE No. 898

By Mr. Timilty, a petition (accompanied by bill, Senate, No. 898) of James E. Timilty for legislation to combat tax and insurance fraud. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 968 OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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 2010 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 aggrieved by the imposition of a stop work order and the imposition of a civil penalty shall have ten days from the date of its service to appeal such order or penalty. Any employer who timely files such appeal shall be granted a hearing by the commissioner or his designee within fourteen days of receipt of appeal. The stop work order shall not be in effect during the pendency of any timely filed appeal. The commissioner shall schedule a hearing on any appeal within seven days of the filing of any appeal. The commissioner shall issue a decision on any appeal within seven days of the date of the hearing. Any stop work order and monetary penalty shall be rescinded if the commissioner or his designee finds at the hearing that the employer has at all times been in compliance with this chapter. If the commissioner or his designee finds at the hearing that the employer did or has not withheld and/or paid over taxes from wages as required by this chapter, the stop work order shall be effective immediately on the conclusion of the hearing and shall remain in effect until such time as the employer provides evidence, satisfactory to the commissioner or his designees, of having made the necessary payment of all amounts due as a result of having failed to withhold and/or pay over taxes and pays a civil penalty into the commonwealth's general funds in the amount of two hundred and fifty dollars per day for each day such employer was not in compliance with this chapter, counting the first date of the employer's non-compliance as the first day and the date of payment of the penalty herein provided and of production of evidence of payment of all amounts due as a result of having failed to withhold taxes as the final day.

A stop work order and any monetary penalties assessed by the commissioner after a hearing as authorized in this section shall be final at the expiration of thirty days if no action for judicial review of such decision is commenced pursuant to chapter thirty A. Any person who institutes proceedings for judicial review of the final assessment of a penalty by the commissioner pursuant to this section, shall place the final amount of the assessment in an interest-bearing escrow account in the custody of the clerk/magistrate of the reviewing court. The establishment of such interest-bearing account shall be a condition precedent to the jurisdiction of the reviewing court unless the party demonstrates in a preliminary hearing held within twenty days of the filing of the complaint either the presence of a substantial question for review by the court or an inability to pay. Upon such a demonstration, the court may grant an extension or waiver of the interest-bearing escrow account or may require, in lieu of such account, the posting of a bond payable directly to the Commonwealth in the amount of one hundred and twenty-five per cent of the assessed penalty. If, after judicial review, in the case where the requirement for an escrow account has been waived, and in the case where a bond has been posted, the court affirms the penalty in whole or in part, the penalty assessed by the commissioner shall be paid with interest at the rate set forth in section six C of chapter two hundred and thirty-one. If, after such review in a case where an interest-bearing escrow account has been established, the court affirms the penalty in whole or in part, the penalty shall be paid with accumulated interest from such account. If the court sets aside the penalty the amount placed in such account or the amount posted for such bond shall be repaid together with any interest thereon.

61 (3) Any law enforcement agency in the commonwealth shall, at the request of the
62 commissioner, render any assistance necessary to carry out the provisions of this section,
63 including but not limited to preventing any employee or other persons from remaining at a place
64 of employment or job site after a stop work order has taken effect.

65 (4) Any employee affected by a stop work order pursuant to this section shall be paid at
66 his or her regular rate of pay, but in no event less than the minimum wage as required by state or
67 federal wage and hour laws, whichever is higher, for the first ten days lost pursuant to such order
68 and any time lost pursuant to this section not exceeding ten days shall be considered time worked
69 under the provisions of chapter one hundred and forty-nine.

70 (5) Every state or local licensing agency shall withhold the issuance or renewal of a
71 license or permit to operate a business or to construct buildings in the commonwealth for any
72 applicant who has failed to withhold taxes from wages as required by this chapter, or who is
73 subject to a stop work order. Any employer who is subject to a stop work order shall notify any
74 state or local licensing agency with whom the employer is dealing of the existence of any stop
75 work order. If an employer who is subject to a stop work order fails to so notify the agency and
76 is issued a license or permit, that license or permit shall be deemed void.

77 (6) Neither the commonwealth nor any of its political subdivisions shall enter into any
78 contract for the performance of public work with an employer who is not in compliance with his
79 obligation to withhold and/or pay over taxes from wages as required by this chapter. Any
80 employer who is seeking in any manner a contract for the performance of work from the
81 commonwealth or any of its political subdivisions shall notify the commonwealth or political
82 subdivision of the issuance of any stop work order under this chapter, regardless of whether the
83 stop work order remains in effect. If an employer who is subject to a stop work order that
84 remains in effect fails to so notify the commonwealth or political subdivision and is awarded a
85 contract, that contract shall be deemed void.

86 (7) In addition to being subject to the civil penalties herein provided, an employer who
87 fails to withhold taxes on wages as required by this chapter or knowingly misclassifies
88 employees, to avoid withholding taxes on wages, will be immediately debarred from bidding or
89 participating in any state or municipal funded contracts for a period of three years and shall when
90 applicable be subject to penalties provided for in section fourteen.

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

96 (9) An employer's failure to comply with his reporting obligations under chapter 62E,
97 section 2, with respect to a newly hired employee or entering into an agreement with a contractor

for the performance of services shall constitute prima facie evidence of his failure to withhold and/or pay over taxes on wages as required by this chapter, and such failure to comply with chapter 62E, section 2 shall be sufficient to serve a stop work order.

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

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

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

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

(1) Whenever the Secretary of Labor, the commissioner or the designee of either determines that an employer who is required to contribute to the Unemployment Compensation Fund as provided for by this chapter has failed to do so, a stop work order shall be served on said employer, requiring the cessation of all business operations. Such order shall take effect immediately upon its service upon said employer, unless such employer provides evidence, satisfactory to the commissioner or his designee, of having made full payment of all required contributions and pays a civil penalty into the Unemployment Compensation Fund in the amount of one hundred dollars per day for each day such employer was not in compliance with this chapter counting the first date of the employer's non-compliance as the first day and date of payment of the penalty herein provided and of production of evidence of full payment of all required contributions as the final day. The provision of such civil penalties shall not have any effect on any other penalties or remedies that may be available under any other provision of law.

(2) Any employer who is aggrieved by the imposition of a stop work order and the imposition of a civil penalty shall have ten days from the date of its service to appeal such order or penalty. Any employer who timely files such appeal shall be granted a hearing by the commissioner or his designee within fourteen days of receipt of appeal. The stop work order shall not be in effect during the pendency of any timely filed appeal. The commissioner shall schedule a hearing on any appeal within seven days of the filing of any appeal. The commissioner shall issue a decision on any appeal within seven days of the date of the hearing. Any stop work order and monetary penalty shall be rescinded if the commissioner or his designee finds at the hearing that the employer has at all times been in compliance with this

chapter. If the commissioner or his designee finds at the hearing that the employer did or has not contributed to the Unemployment Compensation Fund as required by this chapter, the stop work order shall be effective immediately on the conclusion of the hearing and shall remain in effect until such time as the employer provides evidence, satisfactory to the commissioner or his designees, of having made the necessary contributions to the Unemployment Compensation Fund and pays a civil penalty into the Fund in the amount of two hundred and fifty dollars per day for each day such employer was not in compliance with this chapter, counting the first date of the employer's non-compliance as the first day and the date of payment of the penalty herein provided and of production of evidence of full payment of all required contributions as the final day.

A stop work order and any monetary penalties assessed by the commissioner after a hearing as authorized in this section shall be final at the expiration of thirty days if no action for judicial review of such decision is commenced pursuant to chapter thirty A. Any person who institutes proceedings for judicial review of the final assessment of a penalty by the commissioner pursuant to this section, shall place the final amount of the assessment in an interest-bearing escrow account in the custody of the clerk/magistrate of the reviewing court. The establishment of such interest-bearing account shall be a condition precedent to the jurisdiction of the reviewing court unless the party demonstrates in a preliminary hearing held within twenty days of the filing of the complaint either the presence of a substantial question for review by the court or an inability to pay. Upon such a demonstration, the court may grant an extension or waiver of the interest-bearing escrow account or may require, in lieu of such account, the posting of a bond payable directly to the Unemployment Compensation Fund in the amount of one hundred and twenty-five per cent of the assessed penalty. If, after judicial review, in the case where the requirement for an escrow account has been waived, and in the case where a bond has been posted, the court affirms the penalty in whole or in part, the penalty assessed by the commissioner shall be paid with interest at the rate set forth in section six C of chapter two hundred and thirty-one. If, after such review in a case where an interest-bearing escrow account has been established, the court affirms the penalty in whole or in part, the penalty shall be paid with accumulated interest from such account. If the court sets aside the penalty the amount placed in such account or the amount posted for such bond shall be repaid together with any interest thereon.

(3) Any law enforcement agency in the commonwealth shall, at the request of the commissioner, render any assistance necessary to carry out the provisions of this section, including but not limited to preventing any employee or other persons from remaining at a place of employment or job site after a stop work order has taken effect.

(4) Any employee affected by a stop work order pursuant to this section shall be paid at his or her regular rate of pay, but in no event less than the minimum wage as required by state or federal wage and hour laws, whichever is higher, for the first ten days lost pursuant to such order

and any time lost pursuant to this section not exceeding ten days shall be considered time worked under the provisions of chapter one hundred and forty-nine.

(5) In addition to being subject to the civil penalties herein provided, an employer who fails to contribute to the Unemployment Trust Fund as required by this chapter shall be punished by a fine payable into the commonwealth's general funds of not more than three thousand five hundred dollars or by imprisonment for not more than one year, or both. Failure of an employer, after imposition of such fine or imprisonment, to make the required contributions to the Unemployment Trust Fund under this chapter after notice by the department to do so shall, as to each notice, be deemed a further violation in respect thereof, subject to an additional fine and imprisonment. If such employer is a corporation, the president or treasurer or both shall be liable for said punishment. The commissioner or his designee shall have power to bring complaints against employers, including the president and treasurer of a corporation which is an employer, for violations of the provisions of this subsection, and to prosecute the same, and for such purpose may deputize one or more employees of the department to make and prosecute complaints. Complaints under this subsection shall be brought in the district court in which the principal place of business of such employer is situated, or in the district court in whose district such president or treasurer of a corporation resides.

(6) Every state or local licensing agency shall withhold the issuance or renewal of a license or permit to operate a business or to construct buildings in the commonwealth for any applicant who has failed to contribute to the Unemployment Compensation Fund as required by this chapter, or who is subject to a stop work order. Any employer who is subject to a stop work order shall notify any state or local licensing agency with whom the employer is dealing of the existence of any stop work order. If an employer who is subject to a stop work order fails to so notify the agency and is issued a license or permit, that license or permit shall be deemed void.

(7) Neither the commonwealth nor any of its political subdivisions shall enter into any contract for the performance of public work with an employer who is not in compliance with its obligation to contribute to the Unemployment Compensation Fund as required by this chapter. Any employer who is seeking in any manner a contract for the performance of work from the commonwealth or any of its political subdivisions shall notify the commonwealth or political subdivision of the issuance of any stop work order under this chapter, regardless of whether the stop work order remains in effect. If an employer who is subject to a stop work order that remains in effect fails to so notify the commonwealth or political subdivision and is awarded a contract, that contract shall be deemed void.

(8) Any judgments obtained by the department requiring employer contributions or other payments into the Unemployment Compensation Fund, and any penalties due pursuant to the service of a stop work order under this section shall, until collected, constitute a lien upon the entire interest of the employer, legal or equitable, in any property, real or personal, tangible or intangible; provided, however, that such lien shall be subordinate to claims for unpaid wages and

any prior recorded liens; and provided, further, that no lien created by this section shall be valid against a subsequent purchaser or mortgagee in good faith and for value of real or personal property from or of such employer, or against a subsequent attaching creditor, unless, with respect to real estate of the employer, a notice of such lien is recorded in the registry of deeds for the county where such real estate is located, and, with respect to personal property of the employer, said notice is recorded with the clerk of the city or town where such personal property is located. Such lien shall be considered a tax due and owing to the commonwealth, which may be collected through the procedures provided for by chapter 62C.

(9) (a) Any person or firm that loses a competitive bid for a contract including but not limited to construction, repair, remodeling, alteration, conversion, modernization, replacement or renovation of a building, roadway or structure may bring an action for damages against another person who is awarded the contract for which the bid was made, if the other person was awarded the contract because of cost advantages achieved by violating the provisions of sections 13 and 14 of this chapter or by the deliberate misclassification of employees for the purpose of avoiding contributions to the Unemployment Compensation Fund.

(b) A person or firm bringing an action under this section must establish a violation of said subsection or chapters by a preponderance of the evidence. Upon establishing that the violation occurred, the person bringing the action shall recover, as liquidated damages, ten percent of the total amount bid on the contract.

(c) An action under this subsection shall be commenced within one year from the date when the contract is awarded.

(d) No plaintiff shall be allowed to recover any amounts under this subsection if said plaintiff was in violation of sections 13 and 14 of this chapter at the time of making the bid on the contract.

(e) In any action under this section, the prevailing plaintiff shall be entitled to an award of reasonable attorneys fees and costs.

(10) In addition to being subject to the civil penalties herein provided, an employer who fails to contribute to the Unemployment Compensation Fund as required by this chapter or knowingly misclassifies employees, to avoid contributions to the Fund, will be immediately debarred from bidding or participating in any state or municipal funded contracts for a period of three years and shall when applicable be subject to penalties provided for in section fourteen.

(11) The fact of issuance of workers compensation insurance to an individual shall not be considered in making a determination of whether the individual is performing service in employment for purposes of section 2 of this chapter, or in making the determination called for by subsection 1 above of whether an employer has failed to contribute to the Unemployment

242 Compensation Fund as required by this chapter, or in determining whether to serve a stop work
243 order.

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

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

253 (14) The Department of Revenue shall provide the commissioner or his designee full and
254 immediate access to employer reports and notices submitted in accordance with chapter 62E,
255 section 2 with respect to newly hired employees or entering into agreements with contractors for
256 the performance of services .

257 (15) The Secretary of Labor, the commissioner or the designee of either shall refer all
258 determinations of failures to comply with the obligations of this chapter to the Department of
259 Revenue and to the Attorney General for additional enforcement action.

260 SECTION 3. Section 25C of chapter 152 of the General Laws, as appearing in the 2004
261 Official Edition, is hereby amended by striking out subsection (1) and inserting in place thereof
262 the following subsection: -

263 “(1)Whenever the Secretary of Labor, the commissioner or the designee of either
264 determines that an employer who is required to provide for the payment to his employees of the
265 compensation provided for by this chapter has failed to do so, a stop work order shall be served
266 on said employer, requiring the cessation of all business operations. Such order shall take effect
267 immediately upon its service upon said employer, unless such employer provides evidence,
268 satisfactory to the commissioner or his designee, of having secured any necessary insurance or
269 self-insurance and pays a civil penalty into the private employer trust fund in the amount of one
270 hundred dollars per day for each day such employer was not in compliance with this chapter
271 counting the first date of the employer's non-compliance as the first day and date of payment of
272 the penalty herein provided and of production of evidence of insurance or self-insurance as the
273 final day. The provision of such civil penalties shall not have any effect on any other penalties
274 or remedies that may be available under any other provision of law.”