

SENATE No. 1009

The Commonwealth of Massachusetts

PRESENTED BY:

Eileen M. Donoghue

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 providing a safe harbor for self-employed individuals.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>	
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>	<i>2/1/2017</i>
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>	<i>2/3/2017</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>2/14/2017</i>

SENATE No. 1009

By Ms. Donoghue, a petition (accompanied by bill, Senate, No. 1009) of Eileen M. Donoghue, Jennifer L. Flanagan, Sheila C. Harrington and Bruce E. Tarr for legislation to provide a safe harbor for self-employed individuals. Labor and Workforce Development.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act providing a safe harbor for self-employed individuals.

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 148B of Chapter 149 of the General Laws, as appearing in the 2014 Official
2 Edition, is hereby amended by inserting after the paragraph designation “(a)”, the following
3 numeral:- “(1)”.

4 Said Section 148B of Chapter 149 is hereby further amended by inserting after the word
5 and punctuation “performed.” the following:-

6 (a)(2) An individual or business entity who contracts to perform work or provide a
7 service for the benefit of another shall be considered to have satisfied test (2) in (a)(1) above if:

8 (1) The individual or business entity has pre-registered as a payroll-taxpaying entity with
9 the department of revenue and attested that said registration is being provided “voluntarily and
10 free from coercion by any person or entity” and satisfies at least 6 of the following 11
11 requirements:

12 (i) chooses when and how to do the work, chooses the tool and techniques, and uses
13 additional individuals or not at his or her discretion; exercises discretion and independent
14 judgment with respect to matters of significance;

15 (ii) already possesses the skills required for the specific work or service;

16 (iii) possesses fixed ongoing costs that are incurred regardless of whether work is
17 currently being performed or incurs unreimbursed expenses in connection with the work or
18 services provided;

19 (iv) has significant investment in the facilities, tools, equipment or site where the work is
20 performed;

21 (v) is generally free to seek other business opportunities, advertise and promote the
22 services, and be available to others;

23 (vi) is paid a flat rate or fixed fee for the project;

24 (vii) can make a profit or suffer a loss on the project,

25 (viii) possesses a written contract describing the relationship;

26 (ix) is not provided with employee-type benefits such as insurance, a pension plan,
27 vacation pay, or sick pay;

28 (x) is expected to work for a limited period of time;

29 and (xi) is able to represent the work as his or her own or retain rights to the work
30 product; or

31 (2) the individual or business entity is conducting business in a franchise relationship
32 subject to the rules and regulations of the Federal Trade Commission, and the relationship
33 complies with those rules and regulations; or

34 (3) a court has determined that the application of test (2) in (a)(1) for that individual or
35 business entity's industry is preempted by federal law.