

HOUSE No. 4162

The Commonwealth of Massachusetts

PRESENTED BY:

David F. DeCoste

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 protecting Massachusetts workers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>David F. DeCoste</i>	<i>5th Plymouth</i>	<i>2/12/2021</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>3/9/2021</i>
<i>Michael J. Soter</i>	<i>8th Worcester</i>	<i>3/4/2021</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>	<i>4/6/2021</i>

HOUSE No. 4162

By Mr. DeCoste of Norwell, a petition (accompanied by bill, House, No. 4162) of David F. DeCoste and others relative to the verification of employment eligibility of employees through the federal employment authorization e-verify program. Labor and Workforce Development.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act protecting Massachusetts workers.

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

1 Chapter 149 of the General Laws is hereby amended by striking out section 19C and
2 inserting in place thereof the following section:-

3 Section 19C. (a) As used in this section, the following words shall, unless the context
4 otherwise requires, have the following meanings:

5 “Agency”, any agency, department, board or commission of the commonwealth, a
6 county, city or town that issues a license for purposes of operating a business.

7 “E-verify program”, the federal employment authorization verification program as jointly
8 administered by the United States Department of Homeland Security and the Social Security
9 Administration or any of its successor programs.

10 “Economic development incentive”, any grant, loan or performance-based incentive from
11 any government entity awarded after January 1, 2022.

12 “Employee”, any person who provides services or labor for an employer for wages or
13 other remuneration, excluding independent contractors.

14 “Employer”, any individual or type of organization that transacts business in the
15 commonwealth, has a license issued by an agency in the commonwealth and employs 1 or more
16 employees in this state. Employer shall include, but not be limited to, the commonwealth, any
17 political subdivision thereof and self-employed persons. In the case of an independent contractor,
18 employer shall mean the independent contractor and shall not mean the person or organization
19 that uses the contract labor.

20 “Government entity”, the commonwealth and any political subdivision thereof that
21 receives and uses tax revenues.

22 “Independent contractor”, any individual or entity that carries on an independent
23 business, that contracts to do a piece of work according to the individual's or entity's own means
24 and methods and that is subject to control only as to results. An independent contractor shall
25 include an individual who performs services and is not an employee pursuant to section 3508 of
26 the Internal Revenue Code. Whether an individual or entity is an independent contractor shall be
27 determined on a case-by-case basis through various factors, including whether the individual or
28 entity:

29 (1) supplies the tools or materials;

30 (2) makes services available to the general public;

31 (3) works or may work for a number of clients at the same time;

32 (4) has an opportunity for profit or loss as a result of labor or service provided;

33 (5) invests in the facilities for work;

34 (6) directs the order or sequence in which the work is completed; or

35 (7) determines the hours when the work is completed.

36 “Intentionally”, with respect to a result or to conduct described in this section defining an
37 offense, that a person’s objective is to cause that result or to engage in that conduct.

38 “Knowingly employ an unauthorized alien”, to act in a manner described in 8 U.S.C.
39 1324a. This term shall be interpreted consistently with said 8 U.S.C. 1324a and any applicable
40 federal rules and regulations.

41 “License”, any agency permit, certificate, approval, registration, charter or similar form
42 of authorization that is required by law and that is issued by any agency for the purposes of
43 operating a business in this state, including, but not limited to:

44 (1) articles of incorporation;

45 (2) certificates of limited partnership under section 8 of chapter 109;

46 (3) grants of authority issued under section 15.03 of chapter 156D; and

47 (4) sales and use tax certificates;

48 But shall not include:

49 (5) licenses issued pursuant to water or environmental regulations; and

50 (6) professional licenses.

51 “Social security number verification service”, the social security number verification
52 service program administered by the Social Security Administration or any of its successor
53 programs.

54 “Unauthorized alien”, as defined by 8 U.S.C. 1324a(h)(3). This term shall be interpreted
55 consistently with said 8 U.S.C. 1324a(h)(3) and any applicable federal rules and regulations.

56 (b)(1) After hiring an employee, an employer shall verify the employment eligibility of
57 the employee through the e-verify program.

58 (2) No employer shall intentionally or knowingly employ an unauthorized alien. If, when
59 an employer uses a contract, subcontract or other independent contractor agreement to obtain the
60 labor of an alien in the state, the employer intentionally or knowingly contracts with an
61 unauthorized alien or with a person who employs or contracts with an unauthorized alien to
62 perform the labor, the employer shall violate this subsection.

63 (c) The attorney general shall prescribe a complaint form for a person to allege a
64 violation of subsection (b). The complainant shall not be required to list the complainant's social
65 security number on the complaint form or to have the complaint form notarized. On receipt of a
66 complaint on a prescribed complaint form that an employer allegedly failed to verify the
67 employment eligibility of an employee through the e-verify program, or intentionally or
68 knowingly employed an unauthorized alien, the attorney general or district attorney shall
69 investigate whether the employer has violated subsection (b). If a complaint is received but is not
70 submitted on a prescribed complaint form, the attorney general or district attorney may
71 investigate whether the employer has violated subsection (b). This subsection shall not be
72 construed to prohibit the filing of anonymous complaints that are not submitted on a prescribed

73 complaint form. The attorney general or district attorney shall not investigate complaints that are
74 based solely on race, color or national origin. A complaint that is submitted to a district attorney
75 shall be submitted to the district attorney in the county in which the alleged unauthorized alien is
76 or was employed by the employer. The county sheriff or any other local law enforcement agency
77 may assist in investigating a complaint. When investigating a complaint, the attorney general or
78 district attorney shall verify the work authorization of any alleged unauthorized alien with the
79 federal government pursuant to 8 U.S.C. 1373(c). A state, county or local official shall not
80 attempt to independently make a final determination on whether an alien is authorized to work in
81 the United States. An alien's immigration status or work authorization status shall be verified
82 with the federal government pursuant to 8 U.S.C. 1373(c). Whoever knowingly files a false and
83 frivolous complaint shall be punished by a fine of not more than \$500, or by imprisonment of not
84 more than 30 days, or both.

85 (d) If, after an investigation, the attorney general or district attorney determines that the
86 complaint is not false and frivolous:

87 (1) the attorney general or district attorney shall notify the United States Immigration and
88 Customs Enforcement of any unauthorized alien;

89 (2) the attorney general or district attorney shall notify the local law enforcement agency
90 of any unauthorized alien; and

91 (3) the attorney general shall notify the appropriate district attorney to bring an action
92 pursuant to subsection (e) if the complaint was originally filed with the attorney general.

93 (e) An action for a violation of subsection (b) shall be brought against the employer by
94 the district attorney in the county where the violation is alleged to have occurred. The district

95 attorney shall not bring an action against any employer for any violation of subsection (b) that is
96 alleged to have occurred before January 1, 2022.

97 (f) For any action in superior court under this section, the court shall expedite the action,
98 including assigning the hearing at the earliest practicable date.

99 (g) On a finding of a violation of subsection (b):

100 (1) For a first violation, as described in paragraph (3), the court:

101 (i) shall order the employer to terminate the employment of all unauthorized aliens;

102 (ii) shall order the employer to be subject to a 3 year probationary period for the business
103 location where the unauthorized alien performed work. During the probationary period, the
104 employer shall file quarterly reports with the district attorney demonstrating compliance with
105 subsection (b) with respect to each new employee who is hired by the employer at the business
106 location where the violation occurred;

107 (iii) shall order the employer to file a signed sworn affidavit with the district attorney
108 within 3 business days after the order is issued. The affidavit shall state that the employer shall
109 verify the employment eligibility of all new employees through the e-verify program, that the
110 employer has terminated the employment of all unauthorized aliens in the commonwealth and
111 that the employer will not intentionally or knowingly employ an unauthorized alien in the
112 commonwealth. The court shall order the appropriate agencies to suspend all licenses subject to
113 this clause that are held by the employer if the employer fails to file a signed sworn affidavit with
114 the district attorney within 3 business days after the order is issued. All licenses that are
115 suspended under this clause shall remain suspended until the employer files a signed sworn

116 affidavit with the district attorney. Notwithstanding any other general or special law to the
117 contrary, on filing of the affidavit the suspended licenses shall be reinstated immediately by the
118 appropriate agencies. For the purposes of this clause, the licenses subject to suspension shall be
119 all licenses that are held by the employer specific to the business location where the unauthorized
120 alien performed work. If the employer does not hold a license specific to the business location
121 where the violation occurred, but a license is necessary to operate the employer's business in
122 general, the licenses that are subject to suspension shall be all licenses that are held by the
123 employer at the employer's primary place of business. On receipt of the court's order and
124 notwithstanding any other law, the appropriate agencies shall suspend the licenses according to
125 the court's order. The court shall send a copy of the court's order to the attorney general and the
126 attorney general shall maintain the copy pursuant to subsection (h); and

127 (iv) may order the appropriate agencies to suspend all licenses described in clause (iii)
128 that are held by the employer for not longer than 10 business days. The court shall base its
129 decision to suspend on any evidence or information submitted to the court during the action for a
130 violation and shall consider the following factors, if relevant:

131 (A) number of unauthorized aliens employed by the employer;

132 (B) prior misconduct by the employer;

133 (C) degree of harm resulting from the violation;

134 (D) whether the employer made good faith efforts to comply with any applicable
135 requirements;

136 (E) duration of the violation;

137 (F) role of the directors, officers or principals of the employer in the violation; and

138 (G) other factors the court deems appropriate.

139 (2) For a second violation, as described in paragraph (3), the court shall order the
140 appropriate agencies to permanently revoke all licenses that are held by the employer specific to
141 the business location where the violation occurred. If the employer does not hold a license
142 specific to the business location where the violation occurred, but a license is necessary to
143 operate the employer's business in general, the court shall order the appropriate agencies to
144 permanently revoke all licenses that are held by the employer at the employer's primary place of
145 business. On receipt of the order and notwithstanding any other law, the appropriate agencies
146 shall immediately revoke the licenses.

147 (3) The violation shall be considered:

148 (i) A first violation by an employer at a business location if the violation did not occur
149 during a probationary period ordered by the court under this subsection for that employer's
150 business location.

151 (ii) A second violation by an employer at a business location if the violation occurred
152 during a probationary period ordered by the court under this subsection for that employer's
153 business location.

154 (h) The attorney general shall maintain copies of court orders that are received pursuant
155 to subsection (g), shall maintain a database of the employers and business locations that have a
156 first violation of subsection (b) and make the court orders available on the attorney general's
157 website.

158 (i) On determining whether an employee is an unauthorized alien, the court shall consider
159 only the federal government's determination pursuant to 8 U.S.C. 1373(c). The federal
160 government's determination shall create a rebuttable presumption of the employee's lawful status.
161 The court may take judicial notice of the federal government's determination and may request the
162 federal government to provide automated or testimonial verification pursuant to 8 U.S.C.
163 1373(c).

164 (j) For the purposes of this section, proof of verifying the employment authorization of an
165 employee through the e-verify program creates a rebuttable presumption that an employer did
166 not intentionally or knowingly employ an unauthorized alien.

167 (k) For the purposes of this subsection, an employer that establishes that it has complied
168 in good faith with the requirements of 8 U.S.C. 1324a(b) establishes an affirmative defense that
169 the employer did not intentionally or knowingly employ an unauthorized alien. An employer is
170 considered to have complied with the requirements of 8 U.S.C. 1324a(b), notwithstanding an
171 isolated, sporadic or accidental technical or procedural failure to meet the requirements, if there
172 is a good faith attempt to comply with the requirements.

173 (l) This section shall not be construed to require an employer to take any action that the
174 employer believes in good faith would violate federal or state law.

175 (m) In addition to any other requirement for an employer to receive an economic
176 development incentive from a government entity, the employer shall register with and participate
177 in the e-verify program. Before receiving the economic development incentive, the employer
178 shall provide proof to the government entity that the employer is registered with and is
179 participating in the e-verify program. If the government entity determines that the employer is

180 not complying with this subsection, the government entity shall notify the employer by certified
181 mail of the government entity's determination of noncompliance and the employer's right to
182 appeal the determination. On a final determination of noncompliance, the employer shall repay
183 all monies received as an economic development incentive to the government entity within 30
184 days of the final determination.

185 (n) Every 3 months the attorney general shall request from the United States Department
186 of Homeland Security a list of employers from the commonwealth that are registered with the e-
187 verify program. On receipt of the list of employers, the attorney general shall make the list
188 available on the attorney general's website.

189 (o) The attorney general shall develop a statewide random auditing program to inspect
190 employers for compliance with the provisions of this section and shall promulgate regulations
191 governing the implementation of the audit program.