HOUSE DOCKET, NO. 1589 FILED ON: 2/18/2011

HOUSE . . . . . No. 3631

The Commonwealth of Massachusetts

PRESENTED BY:

***William C. Galvin*, (BY REQUEST)**

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 passage of the accompanying:

An Act relative to law enforcement and unlawful immigrants within the Commonwealth of Massachusetts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Andrea Goldstein	*14 Canterbury Drive, Canton, MA*

HOUSE DOCKET, NO. 1589 FILED ON: 2/18/2011

HOUSE . . . . . No. 3631

By Mr. Galvin of Canton (by request), a petition (accompanied by bill, House, No. 3631) of Andrea Goldstein relative to law enforcement and unlawful immigrants within the Commonwealth. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to law enforcement and unlawful immigrants within the Commonwealth of Massachusetts.

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. The General Laws are hereby amended by inserting after chapter 274 the following chapter:--

CHAPTER 275

UNLAWFUL IMMIGRATION

Section 1. (a) Notwithstanding any general or special law to the contrary and to the extent permitted by federal law, any natural person who applies for a federal public benefit that is administered by the commonwealth or a political subdivision of the commonwealth and that requires participants to be citizens of the United States, legal residents of the United States or otherwise lawfully present in the United States shall submit at least 1 of the following documents to the entity that administers the federal public benefit demonstrating lawful presence in the United States:

(i) a driver's license or other identification issued by the registry of motor vehicles.

(ii) a birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.

(iii) a United States certificate of birth abroad.

(iv) a United States passport.

17 (v) a foreign passport with a United States visa.

18 (vi) an I–94 Arrival/Departure Record from the federal Department of Homeland
19 Security with a photograph.

20 (vii) a United States citizenship and immigration services employment authorization
21 document or refugee travel document.

22 (viii) a United States certificate of naturalization.

23 (ix) a United States certificate of citizenship.

24 (x) a tribal certificate of Indian blood.

25 (xi) a tribal or bureau of Indian affairs affidavit of birth.

26 (b) For the purposes of administering Medicaid programs, documentation of citizenship
27 and legal residence shall conform with the requirements of Title XIX of the federal Social
28 Security Act.

29 (c) To the extent permitted by federal law, an agency of the commonwealth or political
30 subdivision of the commonwealth may allow tribal members, the elderly and persons with
31 disabilities or incapacity of the mind or body to provide documentation as specified in section
32 6036 of the federal Deficit Reduction Act of 2005, P.L. 109–171, and related federal guidance in
33 lieu of the documentation required by this section.

34 (d) Any person who applies for federal public benefits shall sign a sworn affidavit stating
35 that the documents presented pursuant to subsection (a) are true under penalty of perjury.

36 (e) Failure to report discovered violations of federal immigration law by an employee of
37 an agency of the commonwealth or a political subdivision of the commonwealth that administers
38 any federal public benefit shall be punished by a fine of not more than $750, or by imprisonment
39 in a jail or house of correction for not more than 4 months or both. If that employee's supervisor
40 knew of the failure to report and failed to direct the employee to make the report, the supervisor
41 shall be punished by a fine of not more than $750, or by imprisonment in a jail or house of
42 correction for not more than 4 months or both.

43 (f) This section shall be enforced without regard to race, color, religion, sex, age,
44 disability or national origin.

45 (g) Any person who is a resident of the commonwealth has standing in any district court
46 to bring suit against any agent or agency of the commonwealth or its political subdivisions to
47 remedy any violation of any provision of this section, including an action for mandamus. Courts
48 shall give preference to actions brought under this section over other civil actions or proceedings
49 pending in the court.

50 (h) The court may award court costs and reasonable attorney fees to any person or any
51 official or agency of the commonwealth or a county, city, town or other political subdivision of
52 the commonwealth that prevails by an adjudication on the merits in a proceeding brought
53 pursuant to this section.

54 (i) For the purposes of this section, "federal public benefit" has the same meaning
55 prescribed in 8 U.S.C. section 1611.

56 Section 2. (a) Notwithstanding any general or special law to the contrary and to the extent
57 permitted by federal law, any agency of the commonwealth or a political subdivision of the
58 commonwealth that administers any state or local public benefit shall require each natural person
59 who applies for the state or local public benefit to submit at least 1 of the following documents to
60 the entity that administers the state or local public benefit demonstrating lawful presence in the
61 United States:

62 (i) a driver's license or other identification issued by the registry of motor vehicles.

63 (ii) a birth certificate or delayed birth certificate issued in any state, territory or
64 possession of the United States.

65 (iii) a United States certificate of birth abroad.

66 (iv) a United States passport.

67 (v) a foreign passport with a United States visa.

68 (vi) an I–94 Arrival/Departure Record from the federal Department of Homeland
69 Security with a photograph.

70 (vii) a United States citizenship and immigration services employment authorization
71 document or refugee travel document.

72 (viii) a United States certificate of naturalization.

73 (ix) a United States certificate of citizenship.

74 (x) a tribal certificate of Indian blood.

75 (xi) a tribal or bureau of Indian affairs affidavit of birth.

76 (b) For the purposes of administering Medicaid programs, documentation of citizenship
77 and legal residence shall conform with the requirements of Title XIX of the federal Social
78 Security Act.

79 (c) To the extent permitted by federal law, an agency of the commonwealth or political
80 subdivision of the commonwealth may allow tribal members, the elderly and persons with

81 disabilities or incapacity of the mind or body to provide documentation as specified in section
82 6036 of the federal Deficit Reduction Act of 2005, P.L. 109–171, and related federal guidance in
83 lieu of the documentation required by this section.

84 (d) Any person who applies for state or local public benefits shall sign a sworn affidavit
85 stating that the documents presented pursuant to subsection (a) are true under penalty of perjury.

86 (e) Failure to report discovered violations of federal immigration law by an employee of
87 an agency of the commonwealth or a political subdivision of the commonwealth that administers
88 any state or local public benefit shall be punished by a fine of not more than $750, or by
89 imprisonment in a jail or house of correction for not more than 4 months or both. If that
90 employee's supervisor knew of the failure to report and failed to direct the employee to make the
91 report, the supervisor shall be punished by a fine of not more than $750, or by imprisonment in a
92 jail or house of correction for not more than 4 months or both.

93 (f) This section shall be enforced without regard to race, color, religion, sex, age,
94 disability or national origin.

95 (g) Any person who is a resident of the commonwealth has standing in any district court
96 to bring suit against any agent or agency of the commonwealth or its political subdivisions to
97 remedy any violation of any provision of this section, including an action for mandamus. Courts
98 shall give preference to actions brought under this section over other civil actions or proceedings
99 pending in the court.

100 (h)The court may award court costs and reasonable attorney fees to any person or any
101 official or agency of the commonwealth or a county, city, town or other political subdivision of
102 the commonwealth that prevails by an adjudication on the merits in a proceeding brought
103 pursuant to this section.

104 (i) For the purposes of this section, “state or local public benefit” has the same meaning
105 prescribed in 8 U.S.C. section 1621, except that it does not include commercial or professional
106 licenses, benefits provided by the public retirement systems and plans of this state or services
107 widely available to the general population as a whole.

108 Section 3. (a) No official or agency of the commonwealth or a county, city, town or other
109 political subdivision of the commonwealth may limit or restrict the enforcement of federal
110 immigration laws to less than the full extent permitted by federal law.

111 (b) For any lawful stop, detention or arrest made by a law enforcement official or a law
112 enforcement agency of the commonwealth or a law enforcement official or a law enforcement
113 agency of a county, city, town or other political subdivision of the commonwealth in the
114 enforcement of any other law or ordinance of a county, city or town or the commonwealth where
115 reasonable suspicion exists that the person is an alien and is unlawfully present in the United

116 States, a reasonable attempt shall be made, when practicable, to determine the immigration status
117 of the person, except if the determination may hinder or obstruct an investigation. Any person
118 who is arrested shall have the person's immigration status determined before the person is
119 released. The person's immigration status shall be verified with the federal government pursuant
120 to 8 U.S.C. section 1373(c). A law enforcement official or agency of the commonwealth or a
121 county, city, town or other political subdivision of the commonwealth may not solely consider
122 race, color or national origin in implementing the requirements of this subsection except to the
123 extent permitted by the United States or the constitution of the commonwealth. A person is
124 presumed to not be an alien who is unlawfully present in the United States if the person provides
125 to the law enforcement officer or agency any of the following:

126 (i) a valid driver's license or other identification issued by the registry of motor vehicles;

127 (ii) a valid tribal enrollment card or other form of tribal identification;

128 (iii) if the entity requires proof of legal presence in the United States before issuance, any
129 valid United States federal, state or local government issued identification.

130 (c) If an alien who is unlawfully present in the United States is convicted of a violation of
131 state or local law, on discharge from imprisonment or on the assessment of any monetary
132 obligation that is imposed, the United States immigration and customs enforcement or the United
133 States customs and border protection shall be immediately notified.

134 (d) Notwithstanding any general or special law to the contrary, a law enforcement agency
135 may securely transport an alien who the agency has received verification is unlawfully present in
136 the United States and who is in the agency's custody to a federal facility in the commonwealth or
137 to any other point of transfer into federal custody that is outside the jurisdiction of the law
138 enforcement agency. A law enforcement agency shall obtain judicial authorization before
139 securely transporting an alien who is unlawfully present in the United States to a point of transfer
140 that is outside of the commonwealth.

141 (e) In the implementation of this section, an alien's immigration status may be determined
142 by: (i) a law enforcement officer who is authorized by the federal government to verify or
143 ascertain an alien's immigration status; or (ii) the United States immigration and customs
144 enforcement or the United States customs and border protection pursuant to 8 U.S.C. section
145 1373(c).

146 (f) Except as provided in federal law, officials or agencies of the commonwealth and
147 counties, cities, towns and other political subdivisions of the commonwealth may not be
148 prohibited or in any way be restricted from sending, receiving or maintaining information
149 relating to the immigration status, lawful or unlawful, of any individual or exchanging that
150 information with any other federal, state or local governmental entity for the following official
151 purposes: (i) determining eligibility for any public benefit, service or license provided by any

152 federal, state, local or other political subdivision of the commonwealth; (ii) verifying any claim
153 of residence or domicile if determination of residence or domicile is required under the laws of
154 the commonwealth or a judicial order issued pursuant to a civil or criminal proceeding in the
155 commonwealth; (iii) if the person is an alien, determining whether the person is in compliance
156 with the federal registration laws prescribed by title II, chapter 7 of the federal Immigration and
157 Nationality Act; or (iv) pursuant to 8 U.S.C. section 1373 and 8 U.S.C. section 1644.

158 (g) This section does not implement, authorize or establish and shall not be construed to
159 implement, authorize or establish the REAL ID act of 2005, P.L. 109–13, division B, including
160 the use of a radio frequency identification chip.

161 (h) A person who is a legal resident of the commonwealth may bring an action in superior
162 court to challenge any official or agency of the commonwealth or a county, city, town or other
163 political subdivision of the commonwealth that adopts or implements a policy that limits or
164 restricts the enforcement of federal immigration laws, including 8 U.S.C. sections 1373 and
165 1644, to less than the full extent permitted by federal law. If there is a judicial finding that an
166 entity has violated this section, the court shall order that the entity pay a civil penalty of not less
167 than $500 and not more than $5,000 for each day that the policy has remained in effect after the
168 filing of an action pursuant to this subsection.

169 (i) A court shall collect the civil penalty prescribed in subsection (h) of this section and
170 remit the civil penalty to the state treasurer for deposit in the gang and immigration intelligence
171 team enforcement mission fund established by section 13.

172 (j) The court may award court costs and reasonable attorney fees to any person or any
173 official or agency of the commonwealth or a county, city, town or other political subdivision of
174 the commonwealth that prevails by an adjudication on the merits in a proceeding brought
175 pursuant to this section.

176 (k) Except in relation to matters in which the officer is adjudged to have acted in bad
177 faith, a law enforcement officer is indemnified by the law enforcement officer's agency against
178 reasonable costs and expenses, including attorney fees, incurred by the officer in connection with
179 any action, suit or proceeding brought pursuant to this section in which the officer may be a
180 defendant by reason of the officer being or having been a member of the law enforcement
181 agency.

182 (l) This section shall be implemented in a manner consistent with federal laws regulating
183 immigration, protecting the civil rights of all persons and respecting the privileges and
184 immunities of United States citizens.

185 Section 4. (a) In addition to any violation of federal law, a person is guilty of willful
186 failure to complete or carry an alien registration document if the person is in violation of 8
187 U.S.C. section 1304(e) or 1306(a).

188 (b) In the enforcement of this section, an alien's immigration status may be determined
189 by: (i) a law enforcement officer who is authorized by the federal government to verify or
190 ascertain an alien's immigration status and (ii) the United States immigration and customs
191 enforcement or the United States customs and border protection pursuant to 8 U.S.C. section
192 1373(c).

193 (c) A law enforcement official or agency of the commonwealth or a county, city, town or
194 other political subdivision of the commonwealth may not consider race, color or national origin
195 in the enforcement of this section except to the extent permitted by the United States or the
196 constitution of the commonwealth.

197 (d) A person who is sentenced pursuant to this section is not eligible for suspension of
198 sentence, probation, pardon, commutation of sentence, or release from confinement on any
199 basisuntil the sentence imposed by the court has been served or the person is eligible for release
200 as authorized by chapter 127.

201 (e) In addition to any other penalty prescribed by law, the court shall order the person to
202 pay jail costs.

203 (f) This section does not apply to a person who maintains authorization from the federal
204 government to remain in the United States.

205 (g) Any record that relates to the immigration status of a person is admissible in any court
206 without further foundation or testimony from a custodian of records if the record is certified as
207 authentic by the government agency that is responsible for maintaining the record.

208 (h) A violation of this section shall be punished by a fine of not more than $100, or by
209 imprisonment in a jail or house of correction for not more than 20 days for a first offense and 30
210 days for a second or subsequent offense or both such fine and imprisonment.

211 Section 5. Notwithstanding any other law, in the enforcement of any general law relative
212 to the smuggling of human beings for profit or commercial purpose, a law enforcement officer
213 may lawfully stop any person who is operating a motor vehicle if the officer has reasonable
214 suspicion to believe the person is in violation of any civil traffic law.

215 Section 6. (a) It shall be unlawful for an occupant of a motor vehicle that is stopped on a
216 street, roadway or highway to attempt to hire or hire and pick up passengers for work at a
217 different location if the motor vehicle blocks or impedes the normal movement of traffic.

218 (b) It shall be unlawful for a person to enter a motor vehicle that is stopped on a street,
219 roadway or highway in order to be hired by an occupant of the motor vehicle and to be
220 transported to work at a different location if the motor vehicle blocks or impedes the normal
221 movement of traffic.

222 (c) It shall be unlawful for a person who is unlawfully present in the United States and
223 who is an unauthorized alien to knowingly apply for work, solicit work in a public place or
224 perform work as an employee or independent contractor in the commonwealth.

225 (d) A law enforcement official or agency of the commonwealth or a county, city, town or
226 other political subdivision of the commonwealth may not consider race, color or national origin
227 in the enforcement of this section except to the extent permitted by the United States or the
228 constitution of the commonwealth.

229 (e) In the enforcement of this section, an alien's immigration status may be determined
230 by: (i) A law enforcement officer who is authorized by the federal government to verify or
231 ascertain an alien's immigration status; or (ii) the United States immigration and customs
232 enforcement or the United States customs and border protection pursuant to 8 U.S.C. section
233 1373(c).

234 (f) A violation of this section shall be punished by a fine of not more than $2,500, or by
235 imprisonment in a jail or house of correction for not more than 6 months or both.

236 (g) For the purposes of this section, the following words shall have the following
237 meanings unless the context clearly requires otherwise:-

238 "Solicit", verbal or nonverbal communication by a gesture or a nod that would indicate to
239 a reasonable person that a person is willing to be employed.

240 "Unauthorized alien", an alien who does not have the legal right or authorization under
241 federal law to work in the United States as described in 8 U.S.C. section 1324a(h)(3).

242 Section 7. (a) It is unlawful for a person who is in violation of a criminal offense to:

243 (i) transport or move or attempt to transport or move an alien in the commonwealth, in
244 furtherance of the illegal presence of the alien in the United States, in a means of transportation if
245 the person knows or recklessly disregards the fact that the alien has come to, has entered or
246 remains in the United States in violation of law.

247 (ii) conceal, harbor or shield or attempt to conceal, harbor or shield an alien from
248 detection in any place in the commonwealth, including any building or any means of
249 transportation, if the person knows or recklessly disregards the fact that the alien has come to,
250 has entered or remains in the United States in violation of law.

251 (iii) encourage or induce an alien to come to or reside in the commonwealth if the person
252 knows or recklessly disregards the fact that such coming to, entering or residing in this state is or
253 will be in violation of law.

254 (b) A means of transportation that is used in the commission of a violation of this section
255 is subject to mandatory vehicle immobilization or impoundment.

256 (c) A law enforcement official or agency of the commonwealth or a county, city, town or
257 other political subdivision of the commonwealth may not consider race, color or national origin
258 in the enforcement of this section except to the extent permitted by the United States or the
259 constitution of the commonwealth.

260 (d) In the enforcement of this section, an alien's immigration status may be determined
261 by: (i) a law enforcement officer who is authorized by the federal government to verify or
262 ascertain an alien's immigration status; or (ii) the United States immigration and customs
263 enforcement or the United States customs and border protection pursuant to 8 U.S.C. section
264 1373(c).

265 (e) This section does not apply to a employee of the department of children and families
266 acting in an official capacity or a person who is acting in the capacity of a first responder, an
267 ambulance attendant or an emergency medical technician and who is transporting or moving an
268 alien in the commonwealth.

269 (f) A person who violates this section shall be punished by a fine of not less than $1,000
270 and not more than $2,500, or by imprisonment in a jail or house of correction for not more than 6
271 months or both, except that a violation of this section that involves 10 or more illegal aliens shall
272 be punished by a fine of not less than $1,000 or by imprisonment in a jail or house of correction
273 for not more than 2 years or both for each alien who is involved.

274 Section 8. A law enforcement officer, without a warrant, may arrest a person if the
275 officer has probable cause to believe that the person to be arrested has committed any public
276 offense that makes the person removable from the United States.

277 Section 9. (a) An employer shall not knowingly employ an unauthorized alien. If, in the
278 case when an employer uses a contract, subcontract or other independent contractor agreement to
279 obtain the labor of an alien in the commonwealth, the employer knowingly contracts with an
280 unauthorized alien or with a person who employs or contracts with an unauthorized alien to
281 perform the labor, the employer violates this subsection.

282 (b) The attorney general shall prescribe a complaint form for a person to allege a
283 violation of subsection (a). The complainant shall not be required to list the complainant's social
284 security number on the complaint form or to have the complaint form notarized. On receipt of a
285 complaint on a prescribed complaint form that an employer allegedly knowingly employs an
286 unauthorized alien, the attorney general or district attorney shall investigate whether the
287 employer has violated subsection (a). If a complaint is received but is not submitted on a
288 prescribed complaint form, the attorney general or district attorney may investigate whether the
289 employer has violated subsection (a). This subsection shall not be construed to prohibit the filing
290 of anonymous complaints that are not submitted on a prescribed complaint form. The attorney
291 general or district attorney shall not investigate complaints that are based solely on race, color or
292 national origin. A complaint that is submitted to a district attorney shall be submitted to the

293 district attorney in the county in which the alleged unauthorized alien is or was employed by the
294 employer. The state police or any local law enforcement agency may assist in investigating a
295 complaint. When investigating a complaint, the attorney general or district attorney shall verify
296 the work authorization of the alleged unauthorized alien with the federal government pursuant to
297 8 U.S.C. section 1373(c). A state, county or local official shall not attempt to independently
298 make a final determination on whether an alien is authorized to work in the United States. An
299 alien's immigration status or work authorization status shall be verified with the federal
300 government pursuant to said 8 U.S.C. section 1373(c). A person who knowingly files a false and
301 frivolous complaint under this subsection shall be punished by a fine of not more than $500 or by
302 imprisonment in a jail or house of correction for not more than 30 days or both.

303 (c) If, after an investigation, the attorney general or district attorney determines that the
304 complaint is not false and frivolous:

305 (i) the attorney general or district attorney shall notify the United States immigration and
306 customs enforcement of the unauthorized alien;

307 (ii) the attorney general or district attorney shall notify the local law enforcement agency
308 of the unauthorized alien; and

309 (iii) the attorney general shall notify the appropriate district attorney to bring an action
310 pursuant to subsection (d) if the complaint was originally filed with the attorney general.

311 (d) An action for a violation of subsection (a) shall be brought against the employer by
312 the district attorney in the county where the unauthorized alien employee is or was employed by
313 the employer. The district attorney shall not bring an action against any employer for any
314 violation of subsection (a) that occurs before January 1, 2008. A second violation of this section
315 shall be based only on an unauthorized alien who is or was employed by the employer after an
316 action has been brought for a violation of subsection (a) or subsection (a) of section 10.

317 (e) For any action in superior court under this section, the court shall expedite the action,
318 including assigning the hearing at the earliest practicable date.

319 (f) On a finding of a violation of subsection (a):

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

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

322 (ii) shall order the employer to be subject to a 3 year probationary period for the business
323 location where the unauthorized alien performed work. During the probationary period the
324 employer shall file quarterly reports with the district attorney of each new employee who is hired
325 by the employer at the business location where the unauthorized alien performed work;

326 (iii) shall order the employer to file a signed sworn affidavit with the district attorney
327 within 3 business days after the order is issued. The affidavit shall state that the employer has
328 terminated the employment of all unauthorized aliens in the commonwealth and that the
329 employer will not intentionally or knowingly employ an unauthorized alien in the
330 commonwealth. The court shall order the appropriate agencies to suspend all licenses subject to
331 this clause that are held by the employer if the employer fails to file a signed sworn affidavit with
332 the district attorney within 3 business days after the order is issued. All licenses that are
333 suspended for failure to file a signed sworn affidavit shall remain suspended until the employer
334 files a signed sworn affidavit with the district attorney. Notwithstanding any general or special
335 law to the contrary, on filing of the affidavit the suspended licenses shall be reinstated
336 immediately by the appropriate agencies. For the purposes of this clause, the licenses that are
337 subject to suspension are all licenses that are held by the employer specific to the business
338 location where the unauthorized alien performed work. If the employer does not hold a license
339 specific to the business location where the unauthorized alien performed work, but a license is
340 necessary to operate the employer's business in general, the licenses that are subject to
341 suspension are all licenses that are held by the employer at the employer's primary place of
342 business. On receipt of the court's order and notwithstanding any general or special law to the
343 contrary, the appropriate agencies shall suspend the licenses according to the court's order. The
344 court shall send a copy of the court's order to the attorney general and the attorney general shall
345 maintain the copy pursuant to subsection (g); and

346 (iv) may order the appropriate agencies to suspend all licenses described in clause (iii) of
347 this paragraph that are held by the employer for not to exceed 10 business days. The court shall
348 base its decision to suspend under this clause on any evidence or information submitted to it
349 during the action for a violation of this subsection and shall consider the following factors, if
350 relevant: the number of unauthorized aliens employed by the employer; any prior misconduct by
351 the employer; the degree of harm resulting from the violation; whether the employer made good
352 faith efforts to comply with any applicable requirements; the duration of the violation; the role of
353 the directors, officers or principals of the employer in the violation; and any other factors the
354 court deems appropriate.

355 (2) For a second violation, as described in paragraph (3), the court shall order the
356 appropriate agencies to permanently revoke all licenses that are held by the employer specific to
357 the business location where the unauthorized alien performed work. If the employer does not
358 hold a license specific to the business location where the unauthorized alien performed work, but
359 a license is necessary to operate the employer's business in general, the court shall order the
360 appropriate agencies to permanently revoke all licenses that are held by the employer at the
361 employer's primary place of business. On receipt of the order and notwithstanding any other law,
362 the appropriate agencies shall immediately revoke the licenses.

363 (3) The violation shall be considered:

364 (i) A first violation by an employer at a business location if the violation did not occur
365 during a probationary period ordered by the court under this subsection or subsection (f) of
366 section 10 for that employer's business location.

367 (ii) A second violation by an employer at a business location if the violation occurred
368 during a probationary period ordered by the court under this subsection or subsection (f) of
369 section 10 for that employer's business location.

370 (g) The attorney general shall maintain copies of court orders that are received pursuant
371 to subsection (f) and shall maintain a database of the employers and business locations that have
372 a first violation of subsection (a) and make the court orders available on the attorney general's
373 website.

374 (h) On determining whether an employee is an unauthorized alien, the court shall
375 consider only the federal government's determination pursuant to 8 U.S.C. section 1373(c). The
376 federal government's determination creates a rebuttable presumption of the employee's lawful
377 status. The court may take judicial notice of the federal government's determination and may
378 request the federal government to provide automated or testimonial verification pursuant to said
379 8 U.S.C. section 1373(c).

380 (i) For the purposes of this section, proof of verifying the employment authorization of an
381 employee through the e-verify program creates a rebuttable presumption that an employer did
382 not knowingly employ an unauthorized alien.

383 (j) For the purposes of this section, an employer that establishes that it has complied in
384 good faith with the requirements of 8 U.S.C. section 1324a(b) establishes an affirmative defense
385 that the employer did not knowingly employ an unauthorized alien. An employer is considered to
386 have complied with the requirements of said 8 U.S.C. section 1324a(b), notwithstanding an
387 isolated, sporadic or accidental technical or procedural failure to meet the requirements, if there
388 is a good faith attempt to comply with the requirements.

389 (k) It is an affirmative defense to a violation of subsection (a) that the employer was
390 entrapped. To claim entrapment, the employer must admit by the employer's testimony or other
391 evidence the substantial elements of the violation. An employer who asserts an entrapment
392 defense has the burden of proving the following by a preponderance of the evidence:

393 (i) the idea of committing the violation started with law enforcement officers or their
394 agents rather than with the employer;

395 (ii) the law enforcement officers or their agents urged and induced the employer to
396 commit the violation; and

397 (iii) the employer was not predisposed to commit the violation before the law
398 enforcement officers or their agents urged and induced the employer to commit the violation.

399 (l) An employer does not establish entrapment if the employer was predisposed to violate
400 subsection (a) and the law enforcement officers or their agents merely provided the employer
401 with an opportunity to commit the violation. It is not entrapment for law enforcement officers or
402 their agents merely to use a ruse or to conceal their identity. The conduct of law enforcement
403 officers and their agents may be considered in determining if an employer has proven
404 entrapment.

405 Section 10. (a) An employer shall not intentionally employ an unauthorized alien. If, in
406 the case when an employer uses a contract, subcontract or other independent contractor
407 agreement to obtain the labor of an alien in this state, the employer intentionally contracts with
408 an unauthorized alien or with a person who employs or contracts with an unauthorized alien to
409 perform the labor, the employer violates this subsection.

410 (b) The attorney general shall prescribe a complaint form for a person to allege a
411 violation of subsection (a). The complainant shall not be required to list the complainant's social
412 security number on the complaint form or to have the complaint form notarized. On receipt of a
413 complaint on a prescribed complaint form that an employer allegedly intentionally employs an
414 unauthorized alien, the attorney general or district attorney shall investigate whether the
415 employer has violated subsection (a). If a complaint is received but is not submitted on a
416 prescribed complaint form, the attorney general or district attorney may investigate whether the
417 employer has violated subsection (a). This subsection shall not be construed to prohibit the filing
418 of anonymous complaints that are not submitted on a prescribed complaint form. The attorney
419 general or district attorney shall not investigate complaints that are based solely on race, color or
420 national origin. A complaint that is submitted to a district attorney shall be submitted to the
421 district attorney in the county in which the alleged unauthorized alien is or was employed by the
422 employer. The state police or any local law enforcement agency may assist in investigating a
423 complaint. When investigating a complaint, the attorney general or district attorney shall verify
424 the work authorization of the alleged unauthorized alien with the federal government pursuant to
425 8 U.S.C. section 1373(c). A state, county or local official shall not attempt to independently
426 make a final determination on whether an alien is authorized to work in the United States. An
427 alien's immigration status or work authorization status shall be verified with the federal
428 government pursuant to said 8 U.S.C. section 1373(c). A person who knowingly files a false and
429 frivolous complaint under this subsection shall be punished by a fine of not more than $500 or by
430 imprisonment in a jail or house of correction for not more than 30 days or both.

431 (c) If, after an investigation, the attorney general or district attorney determines that the
432 complaint is not false and frivolous:

433 (i) the attorney general or district attorney shall notify the United States immigration and
434 customs enforcement of the unauthorized alien;

435 (ii) The attorney general or district attorney shall notify the local law enforcement agency
436 of the unauthorized alien; and

437 (iii) the attorney general shall notify the appropriate district attorney to bring an action
438 pursuant to subsection (d) if the complaint was originally filed with the attorney general.

439 (d) An action for a violation of subsection (a) shall be brought against the employer by
440 the district attorney in the county where the unauthorized alien employee is or was employed by
441 the employer. The district attorney shall not bring an action against any employer for any
442 violation of subsection (a) that occurs before January 1, 2008. A second violation of this section
443 shall be based only on an unauthorized alien who is or was employed by the employer after an
444 action has been brought for a violation of subsection (a) or subsection (a) of section 9.

445 (e) For any action in superior court under this section, the court shall expedite the action,
446 including assigning the hearing at the earliest practicable date.

447 (f) On a finding of a violation of subsection (a):

448 (1) For a first violation, as described in paragraph (3) of this subsection, the court shall:

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

450 (ii) order the employer to be subject to a 5 year probationary period for the business
451 location where the unauthorized alien performed work. During the probationary period the
452 employer shall file quarterly reports with the district attorney of each new employee who is hired
453 by the employer at the business location where the unauthorized alien performed work; and

454 (iii) order the appropriate agencies to suspend all licenses described in clause (iv) that are
455 held by the employer for a minimum of 10 days. The court shall base its decision on the length of
456 the suspension under this subdivision on any evidence or information submitted to it during the
457 action for a violation of this subsection and shall consider the following factors, if relevant: the
458 number of unauthorized aliens employed by the employer; any prior misconduct by the
459 employer; the degree of harm resulting from the violation; whether the employer made good
460 faith efforts to comply with any applicable requirements; the duration of the violation; the role of
461 the directors, officers or principals of the employer in the violation; andany other factors the
462 court deems appropriate; (iv) order the employer to file a signed sworn affidavit with the district
463 attorney. The affidavit shall state that the employer has terminated the employment of all
464 unauthorized aliens in the commonwealth and that the employer will not intentionally or
465 knowingly employ an unauthorized alien in the commonwealth. The court shall order the
466 appropriate agencies to suspend all licenses subject to this clause that are held by the employer if
467 the employer fails to file a signed sworn affidavit with the district attorney within 3 business
468 days after the order is issued. All licenses that are suspended for failing to file a signed sworn
469 affidavit shall remain suspended until the employer files a signed sworn affidavit with the district

470 attorney. For the purposes of this clause, the licenses that are subject to suspension are all
471 licenses that are held by the employer specific to the business location where the unauthorized
472 alien performed work. If the employer does not hold a license specific to the business location
473 where the unauthorized alien performed work, but a license is necessary to operate the
474 employer's business in general, the licenses that are subject to suspension are all licenses that are
475 held by the employer at the employer's primary place of business. On receipt of the court's order
476 and notwithstanding any other law, the appropriate agencies shall suspend the licenses according
477 to the court's order. The court shall send a copy of the court's order to the attorney general and
478 the attorney general shall maintain the copy pursuant to subsection (g).

479 (2) For a second violation, as described in paragraph (3), the court shall order the
480 appropriate agencies to permanently revoke all licenses that are held by the employer specific to
481 the business location where the unauthorized alien performed work. If the employer does not
482 hold a license specific to the business location where the unauthorized alien performed work, but
483 a license is necessary to operate the employer's business in general, the court shall order the
484 appropriate agencies to permanently revoke all licenses that are held by the employer at the
485 employer's primary place of business. On receipt of the order and notwithstanding any other law,
486 the appropriate agencies shall immediately revoke the licenses.

487 (3) The violation shall be considered:

488 (i) A first violation by an employer at a business location if the violation did not occur
489 during a probationary period ordered by the court under this subsection or subsection (f) of
490 section 9 for that employer's business location.

491 (ii) A second violation by an employer at a business location if the violation occurred
492 during a probationary period ordered by the court under this subsection or subsection (f) of
493 section 9 for that employer's business location.

494 (g) The attorney general shall maintain copies of court orders that are received pursuant
495 to subsection (f) and shall maintain a database of the employers and business locations that have
496 a first violation of subsection (a) and make the court orders available on the attorney general's
497 website.

498 (h) On determining whether an employee is an unauthorized alien, the court shall
499 consider only the federal government's determination pursuant to 8 U.S.C. section 1373(c). The
500 federal government's determination creates a rebuttable presumption of the employee's lawful
501 status. The court may take judicial notice of the federal government's determination and may
502 request the federal government to provide automated or testimonial verification pursuant to said
503 8 U.S.C. section 1373(c).

504 (i) For the purposes of this section, proof of verifying the employment authorization of an
505 employee through the e-verify program creates a rebuttable presumption that an employer did
506 not intentionally employ an unauthorized alien.

507 (j) For the purposes of this section, an employer that establishes that it has complied in
508 good faith with the requirements of 8 U.S.C. section 1324a(b) establishes an affirmative defense
509 that the employer did not intentionally employ an unauthorized alien. An employer is considered
510 to have complied with the requirements of said 8 U.S.C. section 1324a(b), notwithstanding an
511 isolated, sporadic or accidental technical or procedural failure to meet the requirements, if there
512 is a good faith attempt to comply with the requirements.

513 (k) It is an affirmative defense to a violation of subsection (a) that the employer was
514 entrapped. To claim entrapment, the employer must admit by the employer's testimony or other
515 evidence the substantial elements of the violation. An employer who asserts an entrapment
516 defense has the burden of proving the following by a preponderance of the evidence:

517 (i) the idea of committing the violation started with law enforcement officers or their
518 agents rather than with the employer;

519 (ii) the law enforcement officers or their agents urged and induced the employer to
520 commit the violation; and

521 (iii) the employer was not predisposed to commit the violation before the law
522 enforcement officers or their agents urged and induced the employer to commit the violation.

523 (l) An employer does not establish entrapment if the employer was predisposed to violate
524 subsection (a) and the law enforcement officers or their agents merely provided the employer
525 with an opportunity to commit the violation. It is not entrapment for law enforcement officers or
526 their agents merely to use a ruse or to conceal their identity. The conduct of law enforcement
527 officers and their agents may be considered in determining if an employer has proven
528 entrapment.

529 Section 11. (a) For the purposes of this subsection, the following words shall have the
530 following meaning unless the context clearly requires otherwise:-

531 “Economic development incentive”, any grant, loan or performance-based incentive from
532 any government entity that is awarded after September 30, 2008. Economic development
533 incentive does not include any tax provision under chapters 58 to 65C, inclusive.

534 “E-verify program”, the federal program designed to allow employers to determine the
535 eligibility of their employees to work in the United States.

536 “Government entity”, the commonwealth and any political subdivision of the
537 commonwealth that receives and uses tax revenues.

538 (b) Every employer, after hiring an employee, shall verify the employment eligibility of
539 the employee through the federal e-verify program and shall keep a record of the verification for
540 the duration of the employee's employment or at least 3 years, whichever is longer.

541 (c) In addition to any other requirement for an employer to receive an economic
542 development incentive from a government entity, the employer shall register with and participate
543 in the e-verify program. Before receiving the economic development incentive, the employer
544 shall provide proof to the government entity that the employer is registered with and is
545 participating in the e-verify program. If the government entity determines that the employer is
546 not complying with this subsection, the government entity shall notify the employer by certified
547 mail of the government entity's determination of noncompliance and the employer's right to
548 appeal the determination. On a final determination of noncompliance, the employer shall repay
549 all monies received as an economic development incentive to the government entity within 30
550 days of the final determination.

551 (d) Every 3 months, the attorney general shall request from the federal Department of
552 Homeland Security a list of employers from the commonwealth that are registered with the e-
553 verify program. On receipt of the list of employers, the attorney general shall make the list
554 available on the attorney general's website.

555 Section 12. A law enforcement officer shall cause the removal and either immobilization
556 or impoundment of a vehicle if the officer determines that a person is driving the vehicle while
557 any of the following applies:

558 (i) in furtherance of the illegal presence of an alien in the United States and in violation
559 of a criminal offense, the person is transporting or moving or attempting to transport or move an
560 alien in this state in a vehicle if the person knows or recklessly disregards the fact that the alien
561 has come to, has entered or remains in the United States in violation of law;

562 (ii) the person is concealing, harboring or shielding or attempting to conceal, harbor or
563 shield from detection an alien in this state in a vehicle if the person knows or recklessly
564 disregards the fact that the alien has come to, entered or remains in the United States in violation
565 of law.

566 Section 13. The gang and immigration intelligence team enforcement mission fund is
567 established consisting of monies deposited pursuant to section 3 and monies appropriated by the
568 legislature. The executive office of public safety and security shall administer the fund. Monies
569 in the fund are subject to legislative appropriation and shall be used for gang and immigration
570 enforcement and for county jail reimbursement costs relating to illegal immigration.

571 Section 14. (a) The terms of this act regarding immigration shall be construed to have the
572 meanings given to them under federal immigration law.

573 (b) This chapter shall be implemented in a manner consistent with federal laws regulating
574 immigration, protecting the civil rights of all persons and respecting the privileges and
575 immunities of United States citizens.

576 (c) Nothing in this chapter shall implement or shall be construed or interpreted to
577 implement or establish the REAL ID act of 2005, P.L. 109–13, division B, including the use of a
578 radio frequency identification chip.

579 Section 15. (a) There is hereby established a joint border security advisory committee
580 consisting of the following members: (i) the president of the senate or the president's designee;
581 (ii) the speaker of the house of representatives or the speaker's designee; (iii) 2 members of the
582 house of representatives who are appointed by the speaker of the house of representatives;(iv) 2
583 members of the senate who are appointed by the president of the senate; and (v) 6 members who
584 are appointed by the governor.

585 (b) Committee members are not eligible to receive compensation for committee activities
586 but may be eligible for reimbursement of expenses.

587 (c) The president and the speaker of the house of representatives shall each appoint a
588 cochairperson of the committee.

589 (d) The commission shall meet on the call of the 2 cochairpersons, but no more
590 frequently than monthly.

591 (e) The committee may: (i) take testimony and other evidence regarding the international
592 border with Mexico; (ii) analyze border crossing statistics; (iii) analyze related crime statistics;
593 (iv) make recommendations designed to increase border security; and (v) make other
594 recommendations deemed essential by the committee.

595 (f) The committee may use the services of legislative staff as required.

596 (g) Beginning November 30, 2012 and each month thereafter, the commission shall
597 submit a written report of its findings and recommendations to the speaker of the house of
598 representatives, the president of the senate and the governor. The commission shall provide a
599 copy of the report to the secretary of state.

600 (h) Notwithstanding any general or special law to the contrary, the committee may vote
601 to go into executive session to take testimony or evidence it considers sensitive or confidential in
602 nature, which if released could compromise the security or safety of law enforcement or military
603 personnel or a law enforcement or national guard law enforcement support operation.

604 SECTION 2. Section 15 of chapter 275 is hereby repealed.

605 SECTION 3. (a) Notwithstanding any general or special law to the contrary, the attorney
606 general shall act at the direction of the governor in any challenge in a state or federal court to this
607 act and any amendments to this act.

608 (b) Notwithstanding any general or special law to the contrary, the governor may direct
609 counsel other than the attorney general to appear on behalf of the commonwealth to defend any
610 challenge to this act and any amendments to this act.

611 SECTION 4. Section 2 shall take effect on December 31, 2015.