HOUSE DOCKET, NO. 603 FILED ON: 1/13/2013

HOUSE . . . . . No. 1778

The Commonwealth of Massachusetts

PRESENTED BY:

Martha M. Walz

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to independent contractors.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Martha M. Walz	*8th Suffolk*
Lori A. Ehrlich	*8th Essex*
Shaunna O'Connell	*3rd Bristol*
Carlos Henriquez	*5th Suffolk*
Cory Atkins	*14th Middlesex*
Peter J. Durant	*6th Worcester*
Aaron Vega	*5th Hampden*
Alice Hanlon Peisch	*14th Norfolk*

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By Ms. Walz of Boston, a petition (accompanied by bill, House, No. 1778) of Martha M. Walz and others relative to labor laws governing certain independent contractors. Labor and Workforce Development.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to independent contractors.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to adjust the requirements for independent contractors, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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. Section 3 of chapter 18B of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the word "commonwealth;", in line 25, the following words:- provided, however, that notwithstanding the provisions of section 148B of chapter 149, a foster care parent licensed by the department shall not be considered an employee of the commonwealth, an employee of the department or an employee of a private placement agency acting on behalf of the commonwealth.

SECTION 2. Section 13 of chapter 19B of the General Laws, as so appearing, is hereby amended by inserting after the fourth paragraph the following paragraph:-

Notwithstanding any provision of law to the contrary, including section 148B of chapter 149, an individual caregiver providing adult foster care or shared living services within the caregiver's home shall not be considered an employee of the commonwealth, an employee of the department or an employee of a private placement agency acting on behalf of the commonwealth.

SECTION 3. Section 148B of chapter 149 of the General Laws, as so appearing, is hereby amended by striking out subsections (b) through (e), inclusive, and inserting in place thereof the following subsections:-

17 (b) An individual whose work is performed primarily in the individual's place of
18 residence or in an office or a studio leased or owned by the individual or his independently
19 established business shall be exempt from the requirements of paragraph (2) of subsection (a)
20 when making a determination under this section. This subsection shall not apply to a person who
21 works for the individual.

22 The exemption provided in this subsection shall not apply to an individual who
23 teleworks.

24 (c) The failure to withhold federal or state income taxes or to pay unemployment
25 compensation contributions or workers compensation premiums with respect to an individual's
26 wages shall not be considered in making a determination under this section.

27 (d) An individual's exercise of the option to secure workers' compensation insurance
28 with a carrier as a sole proprietor or partnership pursuant to subsection (4) of section 1 of chapter
29 152 shall not be considered in making a determination under this section.

30 (e) Notwithstanding the provisions of subsection (a), an individual who has signed a
31 franchise agreement in compliance with the Federal Trade Commission franchise disclosure rule,
32 16 C.F.R. 436.1 through 436.11, inclusive, shall not be considered an employee of the franchisor
33 named in such agreement unless the individual proves the following:

34 (1) any control or direction exercised by the franchisor in connection with the individual's
35 performance of services is more than reasonably necessary to protect the franchisor's trademarks
36 or goodwill;

37 (2) the franchisor's day-to-day business operations overlap with the individual's business
38 operations more than reasonably necessary to protect the franchisor's trademarks or goodwill, or
39 more than reasonably necessary to support the individual pursuant to the terms of the franchise
40 agreement; and

41 (3) any restrictions imposed by the franchisor on the individual's ability to engage in a
42 trade, occupation, profession or business in competition with the franchisor are more than
43 reasonably necessary to protect the franchisor's trademarks, confidential information, or
44 goodwill.

45 (f) Whoever fails to properly classify an individual as an employee according to this
46 section and in so doing fails to comply, in any respect, with chapter 149, or section 1, 1A, 1B,
47 2B, 15 or 19 of chapter 151, or chapter 62B, shall be punished and shall be subject to all of the
48 criminal and civil remedies, including debarment, as provided in section 27C of this chapter.
49 Whoever fails to properly classify an individual as an employee according to this section and in
50 so doing violates chapter 152 shall be punished as provided in section 14 of said chapter 152 and
51 shall be subject to all of the civil remedies, including debarment, provided in section 27C of this

52 chapter. Any entity and the president and treasurer of a corporation and any officer or agent
53 having the management of the corporation or entity shall be liable for violations of this section.

54 (g) Nothing in this section shall limit the availability of other remedies at law or in
55 equity.

56 (h) This section shall not apply to an individual who has been coerced, threatened or
57 intimidated into establishing an independent contractor relationship.