

HOUSE No. 03631

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 bill:

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

William C. Galvin

6th Norfolk

HOUSE No. 03631

By Mr. Galvin of Canton (by request), a petition (accompanied by bill, House, No. 3631) of William C. Galvin 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:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 274 the
2 following chapter:--

3 CHAPTER 275

4 UNLAWFUL IMMIGRATION

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

10 to the entity that administers the federal public benefit demonstrating lawful presence in the
11 United States:

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

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

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

16 (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 Security with a
19 photograph.

20 (vii) a United States citizenship and immigration services employment authorization document
21 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 and legal
27 residence shall conform with the requirements of Title XIX of the federal Social Security Act.

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

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

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

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

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

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

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

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

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

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

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

65 (iv) a United States passport.

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

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

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

71 (viii) a United States certificate of naturalization.

72 (ix) a United States certificate of citizenship.

73 (x) a tribal certificate of Indian blood.

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

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

77 (c) To the extent permitted by federal law, an agency of the commonwealth or political
78 subdivision of the commonwealth may allow tribal members, the elderly and persons with
79 disabilities or incapacity of the mind or body to provide documentation as specified in section
80 6036 of the federal Deficit Reduction Act of 2005, P.L. 109–171, and related federal guidance in
81 lieu of the documentation required by this section.

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

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

89 report, the supervisor shall be punished by a fine of not more than \$750, or by imprisonment in a
90 jail or house of correction for not more than 4 months or both.

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

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

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

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

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

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

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

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

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

128 (c) If an alien who is unlawfully present in the United States is convicted of a violation of state
129 or local law, on discharge from imprisonment or on the assessment of any monetary obligation

130 that is imposed, the United States immigration and customs enforcement or the United States
131 customs and border protection shall be immediately notified.

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

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

143 (f) Except as provided in federal law, officials or agencies of the commonwealth and counties,
144 cities, towns and other political subdivisions of the commonwealth may not be prohibited or in
145 any way be restricted from sending, receiving or maintaining information relating to the
146 immigration status, lawful or unlawful, of any individual or exchanging that information with
147 any other federal, state or local governmental entity for the following official purposes: (i)
148 determining eligibility for any public benefit, service or license provided by any federal, state,
149 local or other political subdivision of the commonwealth; (ii) verifying any claim of residence or
150 domicile if determination of residence or domicile is required under the laws of the
151 commonwealth or a judicial order issued pursuant to a civil or criminal proceeding in the

152 commonwealth; (iii) if the person is an alien, determining whether the person is in compliance
153 with the federal registration laws prescribed by title II, chapter 7 of the federal Immigration and
154 Nationality Act; or (iv) pursuant to 8 U.S.C. section 1373 and 8 U.S.C. section 1644.

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

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

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

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

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

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

182 Section 4. (a) In addition to any violation of federal law, a person is guilty of willful failure to
183 complete or carry an alien registration document if the person is in violation of 8 U.S.C. section
184 1304(e) or 1306(a).

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

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

193 (d) A person who is sentenced pursuant to this section is not eligible for suspension of sentence,
194 probation, pardon, commutation of sentence, or release from confinement on any basis until the

195 sentence imposed by the court has been served or the person is eligible for release as authorized
196 by chapter 127.

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

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

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

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

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

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

214 (b) It shall be unlawful for a person to enter a motor vehicle that is stopped on a street, roadway
215 or highway in order to be hired by an occupant of the motor vehicle and to be transported to

216 work at a different location if the motor vehicle blocks or impedes the normal movement of
217 traffic.

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

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

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

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

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

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

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

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

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

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

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

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

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

255 (d) In the enforcement of this section, an alien's immigration status may be determined by: (i) a
256 law enforcement officer who is authorized by the federal government to verify or ascertain an

257 alien's immigration status; or (ii) the United States immigration and customs enforcement or the
258 United States customs and border protection pursuant to 8 U.S.C. section 1373(c).

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

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

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

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

276 (b) The attorney general shall prescribe a complaint form for a person to allege a violation of
277 subsection (a). The complainant shall not be required to list the complainant's social security
278 number on the complaint form or to have the complaint form notarized. On receipt of a

279 complaint on a prescribed complaint form that an employer allegedly knowingly employs an
280 unauthorized alien, the attorney general or district attorney shall investigate whether the
281 employer has violated subsection (a). If a complaint is received but is not submitted on a
282 prescribed complaint form, the attorney general or district attorney may investigate whether the
283 employer has violated subsection (a). This subsection shall not be construed to prohibit the filing
284 of anonymous complaints that are not submitted on a prescribed complaint form. The attorney
285 general or district attorney shall not investigate complaints that are based solely on race, color or
286 national origin. A complaint that is submitted to a district attorney shall be submitted to the
287 district attorney in the county in which the alleged unauthorized alien is or was employed by the
288 employer. The state police or any local law enforcement agency may assist in investigating a
289 complaint. When investigating a complaint, the attorney general or district attorney shall verify
290 the work authorization of the alleged unauthorized alien with the federal government pursuant to
291 8 U.S.C. section 1373(c). A state, county or local official shall not attempt to independently
292 make a final determination on whether an alien is authorized to work in the United States. An
293 alien's immigration status or work authorization status shall be verified with the federal
294 government pursuant to said 8 U.S.C. section 1373(c). A person who knowingly files a false and
295 frivolous complaint under this subsection shall be punished by a fine of not more than \$500 or by
296 imprisonment in a jail or house of correction for not more than 30 days or both.

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

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

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

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

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

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

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

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

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

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

320 (iii) shall order the employer to file a signed sworn affidavit with the district attorney within 3
321 business days after the order is issued. The affidavit shall state that the employer has terminated

322 the employment of all unauthorized aliens in the commonwealth and that the employer will not
323 intentionally or knowingly employ an unauthorized alien in the commonwealth. The court shall
324 order the appropriate agencies to suspend all licenses subject to this clause that are held by the
325 employer if the employer fails to file a signed sworn affidavit with the district attorney within 3
326 business days after the order is issued. All licenses that are suspended for failure to file a signed
327 sworn affidavit shall remain suspended until the employer files a signed sworn affidavit with the
328 district attorney. Notwithstanding any general or special law to the contrary, on filing of the
329 affidavit the suspended licenses shall be reinstated immediately by the appropriate agencies. For
330 the purposes of this clause, the licenses that are subject to suspension are all licenses that are held
331 by the employer specific to the business location where the unauthorized alien performed work.
332 If the employer does not hold a license specific to the business location where the unauthorized
333 alien performed work, but a license is necessary to operate the employer's business in general,
334 the licenses that are subject to suspension are all licenses that are held by the employer at the
335 employer's primary place of business. On receipt of the court's order and notwithstanding any
336 general or special law to the contrary, the appropriate agencies shall suspend the licenses
337 according to the court's order. The court shall send a copy of the court's order to the attorney
338 general and the attorney general shall maintain the copy pursuant to subsection (g); and
339 (iv) may order the appropriate agencies to suspend all licenses described in clause (iii) of this
340 paragraph that are held by the employer for not to exceed 10 business days. The court shall base
341 its decision to suspend under this clause on any evidence or information submitted to it during
342 the action for a violation of this subsection and shall consider the following factors, if relevant:
343 the number of unauthorized aliens employed by the employer; any prior misconduct by the
344 employer; the degree of harm resulting from the violation; whether the employer made good

345 faith efforts to comply with any applicable requirements; the duration of the violation; the role of
346 the directors, officers or principals of the employer in the violation; and any other factors the
347 court deems appropriate.

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

356 (3) The violation shall be considered:

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

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

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

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

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

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

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

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

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

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

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

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

403 (b) The attorney general shall prescribe a complaint form for a person to allege a violation of
404 subsection (a). The complainant shall not be required to list the complainant's social security
405 number on the complaint form or to have the complaint form notarized. On receipt of a
406 complaint on a prescribed complaint form that an employer allegedly intentionally employs an
407 unauthorized alien, the attorney general or district attorney shall investigate whether the
408 employer has violated subsection (a). If a complaint is received but is not submitted on a
409 prescribed complaint form, the attorney general or district attorney may investigate whether the

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

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

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

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

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

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

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

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

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

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

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

447 (iii) order the appropriate agencies to suspend all licenses described in clause (iv) that are held by
448 the employer for a minimum of 10 days. The court shall base its decision on the length of the
449 suspension under this subdivision on any evidence or information submitted to it during the
450 action for a violation of this subsection and shall consider the following factors, if relevant: the
451 number of unauthorized aliens employed by the employer; any prior misconduct by the
452 employer; the degree of harm resulting from the violation; whether the employer made good

453 faith efforts to comply with any applicable requirements; the duration of the violation; the role of
454 the directors, officers or principals of the employer in the violation; and any other factors the
455 court deems appropriate; (iv) order the employer to file a signed sworn affidavit with the district
456 attorney. The affidavit shall state that the employer has terminated the employment of all
457 unauthorized aliens in the commonwealth and that the employer will not intentionally or
458 knowingly employ an unauthorized alien in the commonwealth. The court shall order the
459 appropriate agencies to suspend all licenses subject to this clause that are held by the employer if
460 the employer fails to file a signed sworn affidavit with the district attorney within 3 business
461 days after the order is issued. All licenses that are suspended for failing to file a signed sworn
462 affidavit shall remain suspended until the employer files a signed sworn affidavit with the district
463 attorney. For the purposes of this clause, the licenses that are subject to suspension are all
464 licenses that are held by the employer specific to the business location where the unauthorized
465 alien performed work. If the employer does not hold a license specific to the business location
466 where the unauthorized alien performed work, but a license is necessary to operate the
467 employer's business in general, the licenses that are subject to suspension are all licenses that are
468 held by the employer at the employer's primary place of business. On receipt of the court's order
469 and notwithstanding any other law, the appropriate agencies shall suspend the licenses according
470 to the court's order. The court shall send a copy of the court's order to the attorney general and
471 the attorney general shall maintain the copy pursuant to subsection (g).

472 (2) For a second violation, as described in paragraph (3), the court shall order the appropriate
473 agencies to permanently revoke all licenses that are held by the employer specific to the business
474 location where the unauthorized alien performed work. If the employer does not hold a license
475 specific to the business location where the unauthorized alien performed work, but a license is

476 necessary to operate the employer's business in general, the court shall order the appropriate
477 agencies to permanently revoke all licenses that are held by the employer at the employer's
478 primary place of business. On receipt of the order and notwithstanding any other law, the
479 appropriate agencies shall immediately revoke the licenses.

480 (3) The violation shall be considered:

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

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

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

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

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

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

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

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

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

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

516 (l) An employer does not establish entrapment if the employer was predisposed to violate
517 subsection (a) and the law enforcement officers or their agents merely provided the employer

518 with an opportunity to commit the violation. It is not entrapment for law enforcement officers or
519 their agents merely to use a ruse or to conceal their identity. The conduct of law enforcement
520 officers and their agents may be considered in determining if an employer has proven
521 entrapment.

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

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

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

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

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

534 (c) In addition to any other requirement for an employer to receive an economic development
535 incentive from a government entity, the employer shall register with and participate in the e-
536 verify program. Before receiving the economic development incentive, the employer shall
537 provide proof to the government entity that the employer is registered with and is participating in
538 the e-verify program. If the government entity determines that the employer is not complying

539 with this subsection, the government entity shall notify the employer by certified mail of the
540 government entity's determination of noncompliance and the employer's right to appeal the
541 determination. On a final determination of noncompliance, the employer shall repay all monies
542 received as an economic development incentive to the government entity within 30 days of the
543 final determination.

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

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

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

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

558 Section 13. The gang and immigration intelligence team enforcement mission fund is
559 established consisting of monies deposited pursuant to section 3 and monies appropriated by the
560 legislature. The executive office of public safety and security shall administer the fund. Monies

561 in the fund are subject to legislative appropriation and shall be used for gang and immigration
562 enforcement and for county jail reimbursement costs relating to illegal immigration.

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

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

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

571 Section 15. (a) There is hereby established a joint border security advisory committee consisting
572 of the following members: (i) the president of the senate or the president's designee; (ii) the
573 speaker of the house of representatives or the speaker's designee; (iii) 2 members of the house of
574 representatives who are appointed by the speaker of the house of representatives;(iv) 2 members
575 of the senate who are appointed by the president of the senate; and (v) 6 members who are
576 appointed by the governor.

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

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

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

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

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

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

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

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

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

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

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