

SENATE No. 2207

The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court
(2015-2016)
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SENATE, Thursday, April 7, 2016

The committee on Labor and Workforce Development to whom was referred the petitions (accompanied by bill, Senate, No. 966) of Sal N. DiDomenico, Chris Walsh, Kenneth J. Donnelly, Michael F. Rush and other members of the General Court for legislation to prevent wage theft and promote employer accountability; and (accompanied by bill, House, No. 1748) of Aaron Michlewitz, Kate Hogan and others for legislation to prevent wage theft and promote employer accountability,- reports the accompanying bill (Senate, No. 2207).

For the committee,
Daniel A. Wolf

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act to prevent wage theft and promote employer accountability.

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. Chapter 149 of the general laws, as appearing in the 2014 Official Edition,
2 is hereby amended by inserting after section 148D, the following sections:-

3 Section 148E. Additional definitions

4 For purposes of this chapter and chapter 151, except as otherwise defined with respect to
5 any particular section, the following words shall have the following meanings:

6 “Person” means an individual, partnership, association, corporation, business trust, or any
7 organized group of persons.

8 “Employer” includes any person acting directly or indirectly in the interest of an
9 employer in relation to an employee and includes a public employer.

10 “Employee” means any individual employed by an employer.

11 “Employ” includes to suffer or permit to work.

12 Section 148F. Accountability in labor contracting and subcontracting

13 (a) As used in this section, and in Section 148G the following words have the following
14 meanings:-

15 (1) “Lead company” means a business entity, regardless of its form, that obtains
16 or is provided workers, directly from a labor contractor or indirectly from a subcontractor, to
17 perform labor or services that have a significant nexus with the lead company’s business
18 activities, operations, or purposes.

19 (2) “Labor contractor” means an individual or entity that supplies, either with or
20 without a written contract, directly or indirectly, a lead company with workers to perform labor
21 or services.

22 (3) “Labor subcontractor” means an individual or entity that supplies, either with
23 or without a written contract, directly or indirectly, a labor contractor with workers to perform
24 labor or services

25 (4) “Wage theft” mean any violation of sections 27, 27F, 27G, 27H, 148, 148A,
26 148B, 148C, 150, 150C, or 152A of this chapter, or subsection (c) or (d) of section 159C of this
27 chapter, or sections 1, 1A, 1B, 2A, 7, 19 or 20 of chapter 151, by a lead company, labor
28 contractor, or subcontractor and for all workers employed by the labor contractor or
29 subcontractor to provide labor or services to the lead company.

30 (b) A lead company shall be subject to joint and several civil liability and shall share
31 civil legal responsibility for any wage theft violation.

32 (c) The provisions of subsection (b) of this section are in addition to, and shall be
33 supplemental of, any other basis of liability or requirement established by statute or common
34 law.

35 (d) This section does not prohibit any person from establishing, exercising, or enforcing
36 any otherwise lawful rights or remedies.

37 Section 148G. Stop Work Order

38 (a) On determination by the director of the department of unemployment assistance, or a
39 designee, that any person or entity is employing an employee in violation of section 14 of
40 chapter 151A, the director, or designee may issue a stop work order against the violator requiring
41 the cessation of all business operations of the violator. The stop work order may be issued only
42 against the individual or entity found to be in violation, and only as to the specific place of
43 business or employment for which the violation exists. The stop work order shall be effective
44 when served upon the violator or at the place of business or employment. A stop work order
45 may be served at a place of business or employment by posting a copy of the stop work order in
46 a conspicuous location at the place of business or employment. The stop work order shall
47 remain in effect until the director, or designee issues an order releasing the stop work order upon
48 a finding that the violation has been corrected.

49 (b) On determination by the attorney general, or a designee, that any person or entity is
50 engaging in a wage theft violation, the attorney general, or designee may issue a stop work order
51 against the violator requiring the cessation of all business operations of the violator. The stop
52 work order may be issued only against the individual or entity found to be in violation, and only
53 as to the specific place of business or employment for which the violation exists. The stop work

54 order shall be effective when served upon the violator or at the place of business or employment.
55 A stop work order may be served at a place of business or employment by posting a copy of the
56 stop work order in a conspicuous location at the place of business or employment. The stop
57 work order shall remain in effect until the attorney general, or designee issues an order releasing
58 the stop work order upon a finding that the violation has been corrected.

59 (c) Any violator against which a stop work order is issued pursuant to subsections (a) or
60 (b) of this section may request a hearing. Such request shall be made in writing to the issuing
61 agency not more than ten days after the issuance of such order.

62 (d) Stop work orders and any penalties imposed thereunder against a corporation,
63 partnership, or sole proprietorship shall be effective against any successor entity that has one or
64 more of the same principals or officers as the corporation, partnership, or sole proprietorship
65 against which the stop work order was issued and that is engaged in the same or equivalent trade
66 or activity.

67 (e) Any employee affected by a stop work order pursuant to this section shall be paid for
68 the first ten days lost pursuant to the stop work order, and any time lost pursuant to this section
69 not exceeding ten days shall be considered time worked under chapter 149.

70 (f) The attorney general shall adopt regulations necessary to carry out this subsection.

71 SECTION 2. Section 27C of chapter 149 of the general laws, as appearing in the 2014
72 Official Edition, is hereby amended by inserting after the word "148B," in line 4, and after the
73 word "148B," in line 15, the following word:- , 148F

74 SECTION 3: Section 27C of chapter 149 of the general laws, as appearing in the 2014
75 Official Edition is further amended by deleting in line 159, the words “Civil and .”

76 SECTION 4: Section 27C of Chapter 149 of the general laws, as appearing in the 2014
77 Official Edition, is hereby amended by inserting at the end of the last paragraph, the following: -

78 (d) As a further alternative to initiating criminal proceedings pursuant to subsection (a),
79 the attorney general may file a civil action for injunctive relief, for any damages incurred, and for
80 any lost wages and other benefits on behalf of an employee or multiple, similarly situated
81 employees. If the attorney general prevails in such an action, the employee or employees on
82 whose behalf the attorney general brought the civil action shall be awarded treble damages, as
83 liquidated damages, for any lost wages and other benefits, and the attorney general shall also be
84 awarded the costs of the litigation and reasonable attorneys’ fees.

85 SECTION 5. Section 150 of chapter 149 of the general laws, as appearing in the 2014
86 Official Edition, is hereby amended by inserting after the word “148C” in line 40, the following
87 word – , 148F