

SENATE No. 2546

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

SENATE, Thursday, June 7, 2018

The committee on Ways and Means to whom was referred the Senate Bill to prevent wage theft and promote employer accountability (Senate, No. 2327),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2546).

For the committee,
Karen E. Spilka

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

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. Section 27C of chapter 149 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by inserting after the words “subsection (a)”, in line 58, the
3 following words:- , or as an alternative to initiating proceedings related to a violation of sections
4 100, 148E and 150C.

5 SECTION 2. Said section 27C of said chapter 149, as so appearing, is hereby further
6 amended by striking out, in line 73, the words “, except that” and inserting in place thereof the
7 following words:- ; provided, however, that the maximum penalty for an employer, contractor or
8 subcontractor who commits wage theft as defined in section 148E shall be not more than
9 \$25,000; and provided further.

10 SECTION 3. Said section 27C of said chapter 149, as so appearing, is hereby further
11 amended by striking out, in line 159, the words “Civil and criminal” and inserting in place
12 thereof the following word:- Criminal.

13 SECTION 4. Said section 27C of said chapter 149, as so appearing, is hereby further
14 amended by adding the following subsection:-

15 (d) As a further alternative to initiating criminal proceedings pursuant to subsection (a),
16 or as an alternative to initiating proceedings related to a violation of section 148E, the attorney
17 general may file a civil action for injunctive relief, for any damages incurred, and for any lost
18 wages and other benefits on behalf of an employee or multiple, similarly situated employees. If
19 the attorney general prevails in such an action, the employee or employees on whose behalf the
20 attorney general brought the civil action shall be awarded treble damages, as liquidated damages,
21 for any lost wages and other benefits, and the attorney general shall also be awarded the costs of
22 the litigation and reasonable attorneys' fees.

23 SECTION 5. Chapter 149 of the General Laws is hereby amended by inserting after
24 section 148D the following 4 sections:-

25 Section 148E. (a) As used in this section and sections 148F to 148H, inclusive, the
26 following words shall have the following meanings unless the context clearly indicates
27 otherwise:-

28 "Labor contractor", a person or entity who obtains, engages or provides 1 or more
29 individuals to perform labor, with or without a written contract, directly or indirectly, to a lead
30 contractor or from a labor subcontractor.

31 "Labor subcontractor", a person or entity who engages or provides 1 or more individuals
32 to perform labor, with or without a written contract, directly or indirectly, to a labor contractor.

33 “Lead contractor”, a business, regardless of form, that obtains, engages or is provided
34 with 1 or more individuals, directly from a labor contractor or indirectly from a labor
35 subcontractor, to perform labor that has a significant nexus with the lead contractor’s business
36 activities, operations or purposes.

37 “Wage theft”, a violation of sections 27, 27F, 27G or 27H, the first sentence of section
38 148, sections 148B, 148C or 152A, subsections (c) or (d) of section 159C, sections 1, 1A, 1B, 2A
39 or 7 of chapter 151, clauses (4) or (5) of section 19 of chapter 151 or section 20 of chapter 151.

40 (b) An employer, except a staffing agency, as defined by section 159C, that is licensed or
41 registered pursuant to sections 46A to 46R, inclusive, of chapter 140, shall provide each
42 employee, not later than 10 days after the commencement of their employment, with written
43 notice in the language the employer normally uses to communicate employment-related
44 information to the employee, of the following information: (i) the rate or rates of pay and the
45 basis for those rates, whether paid by the hour, shift, day, week, salary, piece, commission or
46 otherwise, including methods of calculation for overtime, if applicable; (ii) allowances, if any,
47 claimed as part of the minimum wage, including meal, tip or lodging allowances; (iii) the regular
48 pay day designated by the employer; (iv) the name of the employer, including any “doing
49 business as” names used by the employer; (v) the physical address of the employer’s main office
50 or principal place of business and mailing address, if different; (vi) the telephone number of the
51 employer; and (vii) the name, address, and telephone number of the employer’s workers’
52 compensation insurance carrier.

53 (c) A lead contractor shall be subject to joint and several civil liability with a labor
54 contractor and a labor subcontractor for wage theft if: (i) the civil action is filed not later than 1

55 year after the date of the wage theft; and (ii) written notice of the alleged violation to be raised in
56 that action is provided to the lead contractor, labor contractor and labor subcontractor, if
57 applicable, not less than 30 days before the filing of a civil action for wage theft under this
58 section against a lead contractor; provided, however, that said notice shall provide a detailed
59 description of the nature of the alleged violation, including specific information regarding what
60 allegedly occurred and the amount of wages that are allegedly owed.

61 A written offer and payment in full of all such wages allegedly owed during the 30 day
62 period by a lead contractor, labor contractor or labor subcontractor shall be a defense to any
63 future civil action based upon the same allegation.

64 A lead contractor, labor contractor or labor subcontractor that is jointly and severally
65 liable under this subsection but is not found to have committed wage theft shall not be
66 considered a wage theft violator.

67 A lead contractor shall not be jointly and severally liable for a claim of wage theft if the
68 lead contractor has fewer than 25 workers, including those hired directly by the lead contractor
69 and those obtained or provided by a labor contractor or labor subcontractor, or if the wage theft
70 violation occurs at a specific place of business and employment where the lead contractor
71 receives 5 or fewer workers from a labor contractor or labor subcontractors at all given times.

72 (d) For purposes of this section, a labor contractor or a labor subcontractor shall
73 indemnify a lead contractor for any wages, damages, interest, penalties or attorneys' fees owed
74 by the lead contractor as a result of the labor contractor's or labor subcontractor's wage theft. For
75 purposes of this section, a labor subcontractor shall indemnify a labor contractor for any wages,

76 damages, interest, penalties or attorneys' fees owed by the labor contractor as a result of the
77 labor subcontractor's wage theft.

78 (e) A person or entity that has been found to have committed wage theft in the previous 5
79 years shall notify a lead contractor or labor contractor prior to entering into an agreement to
80 engage or provide 1 or more individuals, directly or indirectly, to a lead contractor or labor
81 contractor.

82 A lead contractor that was jointly and severally liable under subsection (c) but was not the
83 entity that committed the wage theft shall not be required to provide notice under this subsection.

84 (f) A lead contractor shall have an affirmative defense under this section if the lead
85 contractor, labor contractor or labor subcontractor has taken actions, specific to the wage theft
86 allegation, to protect against wage theft by a person or entity from whom they obtain, engage or
87 are provided with 1 or more individuals, directly from a labor contractor or indirectly from a labor
88 subcontractor, to perform labor that has a significant nexus with the lead contractor's business
89 activities, operations or purposes, by: (i) demanding and reviewing sign-in sheets or other
90 evidence of hours worked for all employees and proof of payments to all employees; (ii) operating
91 for 5 years without a violation under this chapter or chapter 151 and for 5 years without
92 contracting, directly or indirectly, with a labor contractor or labor subcontractor who has
93 committed a wage theft violation, and the attorney general determines that probable cause does
94 not exist that a wage theft occurred; or (iii) purchasing a bond from a surety company authorized
95 in the commonwealth, upon notice of violation issued pursuant to subsection (c) in an amount
96 sufficient to cover the amount claimed, or having a bond from a surety company authorized in

97 the commonwealth sufficient to cover the wages provided to workers, directly or indirectly, by a
98 labor contractor or labor subcontractor to the lead contractor.

99 A lead contractor, labor contractor or labor subcontractor who has not taken the actions
100 specified in this section shall not be subject to any negative or adverse inference as a result of not
101 having completed these actions.

102 (g) When a lead contractor receives notice from the attorney general or a court order or
103 judgment that a labor contractor or labor subcontractor has failed to pay wages to a person
104 performing labor for the lead contractor, the lead contractor may withhold or cause to be
105 withheld from any payment due to the noncompliant labor contractor or labor subcontractor the
106 amount indicated by the attorney general or court order or judgment as sufficient to satisfy the
107 unpaid wages.

108 (h) When the attorney general informs the director of the department of unemployment
109 assistance that an employer, person or entity responsible for the payment of contributions under
110 section 14 of chapter 151A committed a wage theft violation or otherwise failed to timely pay
111 wages to an individual, the individual's unemployment benefit shall be calculated under chapter
112 151A as if the wages had been timely paid.

113 (i) The attorney general shall enforce this section, and may obtain injunctive or
114 declaratory relief. Violation of this section shall be subject to paragraphs (1), (2), (4) and (7) of
115 subsection (b) of section 27C, and subsection (d) of section 27C, except in cases where the lead
116 contractor, labor contractor or labor subcontractor provides payment in full during the 30 day
117 notice period for any wages allegedly owed, as described in subsection (c), or a lead contractor
118 successfully raises an affirmative defense, as described in subsection (f).

119 (j) No person or entity shall by contract or any other means be exempted from
120 subsections (a), (b), (c), (e), (f), (g), (h), (i) or (j) or from sections 148F or 148G. Nothing in this
121 chapter shall limit the availability of other remedies at law or equity.

122 (k) The attorney general may promulgate regulations to implement this section.

123 Section 148F. (a) Notwithstanding sections 15 and 47 of chapter 151A, if the director of
124 the department of unemployment assistance, or a designee, determines that a person or entity is
125 failing to make contributions required by section 14 of chapter 151A, the director or designee
126 may issue a stop work order to an employing unit and the officer or agent of the employing unit,
127 requiring the cessation of all business operations of the violator as to the specific place of
128 business and employment for which the violation exists.

129 Not less than 5 days before the commencement of a stop work order under this section,
130 the director or designee shall notify the person or entity of the intended action and give the
131 person or entity an opportunity to confer with the director or designee in person or through
132 counsel or other representative as to the proposed action. Notice shall be given the person or
133 entity by mail, postage prepaid, to the usual place of business or, if there is no usual place of
134 business, to the last known address.

135 The stop work order may be issued only against the person or entity found to be in
136 violation and only as to the specific place of business or employment for which the violation
137 exists. The stop work order shall be effective 72 hours after it is served upon the violator or the
138 place of business or employment. A stop work order may be served in hand or at a place of
139 business, employment or job site by posting a copy of the stop work order in a conspicuous
140 location. The stop work order shall be in effect, subject to an appeal under subsection (b), until

141 the director or a designee issues an order to release the stop work order upon a finding that the
142 violation has been corrected.

143 (b) A person aggrieved by the imposition of a stop work order issued pursuant to this
144 section shall have 10 days after the date of its service to make a request to the director or
145 designee for a hearing to be held in a manner determined by the director. A person who timely
146 files such an appeal shall be granted a hearing in accordance with chapter 30A not later than 30
147 days after receipt of the appeal. The stop work order shall not be in effect during the pendency of
148 a timely filed appeal.

149 (c) A stop work order imposed against a person or entity shall be effective against any
150 successor person or entity that: (i) has at least 1 of the same principals or officers as the person or
151 entity against whom the stop work order was issued; and (ii) is engaged in the same or equivalent
152 trade or activity as the person or entity for which the stop work order was imposed.

153 (d) An employee affected by a stop work order pursuant to this section shall be paid for
154 the period the stop work order is in place or the first 10 days the employee was scheduled to
155 work if the stop work order had not been issued, whichever is less by the person or entity that
156 was served the stop work order. Time lost by an employee affected by a stop work order
157 pursuant to this section, not exceeding 10 days, shall be considered time worked under chapters
158 149 and 151. Subsection (b) of section 148E shall not apply to wages due and payable under this
159 subsection.

160 (e) The department of unemployment assistance may promulgate regulations to
161 implement this section.

162 Section 148G. (a) Upon a determination by the attorney general, or a designee, that any
163 person or entity is engaging in a wage theft violation, the attorney general, or designee, may
164 issue a stop work order to an employing unit and the officer or agent of the employing unit,
165 requiring the cessation of all business operations of the violator as to the specific place of
166 business and employment for which the violation exists.

167 Not less than 5 days before the commencement of a stop work order under this section,
168 the attorney general shall notify the person or entity of the intended action and give the person or
169 entity an opportunity to confer with the attorney general in person or through counsel or other
170 representative as to the proposed action. Notice shall be given to the person or entity by mail,
171 postage prepaid, to the usual place of business, or if there is no usual place of business, to the last
172 known address.

173 The stop work order may be issued only against the individual or entity found to be in
174 violation, and only as to the specific place of business and employment for which the violation
175 exists. The stop work order shall be effective 72 hours after it is served upon the violator or the
176 place of business or employment. A stop work order may be served in hand or at a place of
177 business, employment or job site by posting a copy of the stop work order in a conspicuous
178 location. The stop work order shall be in effect, subject to an appeal under subsection (b), until
179 the attorney general or a designee issues an order to release the stop work order upon a finding
180 that the violation has been corrected.

181 (b) A person or entity aggrieved by the imposition of a stop work order shall have 10
182 days from the date of its service to make a request for a hearing to be held in a manner
183 determined by the attorney general. A person or entity that timely files such an appeal shall be

184 granted a hearing in accordance with chapter 30A not later than 30 days after receipt of the
185 appeal. The stop work order shall not be in effect during the pendency of a timely filed appeal.

186 (c) A stop work order imposed under this section against a person or entity shall be
187 effective against a successor person or entity that: (i) has at least 1 of the same principals or
188 officers as the person or entity against whom the stop work order was issued; and (ii) is engaged
189 in the same or equivalent trade or activity as the person or entity for which the stop work order
190 was imposed.

191 (d) An employee affected by a stop work order pursuant to this section shall be paid for
192 the period the stop work order is in place or the first 10 days the employee was scheduled to
193 work if the stop work order had not been issued, whichever is less by the person or entity that
194 was served the stop work order. Time lost by an employee affected by a stop work order issued
195 pursuant to this section, not exceeding 10 days, shall be considered time worked under chapters
196 149 and 151. Subsection (b) of section 148E shall not apply to wages due and payable under this
197 subsection.

198 (e) The attorney general may promulgate regulations to implement this section.

199 Section 148H. There shall be a Wage Theft Compensation Trust Fund. The fund shall be
200 administered by the attorney general. The purpose of the fund shall be to provide compensation
201 related to wage theft. The fund shall consist of amounts credited to the fund from: (i) revenue
202 from appropriations or other monies authorized by the general court and specifically designated
203 to be credited to the fund; (ii) wage theft fines collected under section 27C of section 149, as
204 determined by the attorney general; and (iii) funds from public or private sources, including, but

205 not limited to, gifts, grants, donations, rebates and settlements received by the commonwealth
206 that are specifically designated to be credited to the fund.

207 The attorney general may expend money from the fund to: (i) a worker owed wages due
208 to wage theft if all other options for recovery have been exhausted or substantial hardship will
209 result to the worker prior to exhaustion of options for recovery; (ii) a lead contractor who acted
210 in good faith, has not previously violated a provision of chapter 149 or chapter 151 and has been
211 found jointly and severally liable for a wage theft claim but not personally responsible for the
212 wage theft and cannot recover from the violator, despite an indemnification provision established
213 under subsection (d) of section 148E, and who has paid in full the wages owed; and (iii) worker
214 outreach and education to prevent wage theft.

215 Money remaining in the fund at the close of a fiscal year shall not revert to the General
216 Fund and shall be available for expenditure in subsequent fiscal years. No expenditure made
217 from the fund shall cause the fund to become deficient at any point during a fiscal year.

218 Annually, not later than March 1, the attorney general shall report on the activities of the
219 fund to the clerks of the senate and the house of representatives, the joint committee on labor and
220 workforce development and the chairs of the senate and house committees on ways and means.
221 The report shall include: (i) expenditures made from the fund; (ii) amounts credited to the fund;
222 and (iii) any unexpended balance remaining in the fund.

223 The attorney general may promulgate regulations necessary to carry out this section.

224 SECTION 6. Section 150C of said chapter 149, as appearing in the 2016 Official
225 Edition, is hereby amended by striking out, in line 9, the words “one thousand dollars,” and

226 inserting in place thereof the following words:- \$1,000 or shall be subject to a civil citation or
227 order as provided in section 27C.

228 SECTION 7. Said section 150C of said chapter 149, as so appearing, is hereby further
229 amended by adding the following sentence:- The president and treasurer of a corporation and
230 any officers or agents having the management of such corporation shall be considered the
231 employers of the employees of the corporation for the purposes of this section.

232 SECTION 8. This act shall take effect on July 1, 2019.