

SENATE No. 2574

Senate, June 21, 2018 – Text of the Senate Bill to prevent wage theft and promote employer accountability (being the text of Senate document number 2546, printed as amended)

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 and third sentences
38 and the fourth paragraph of section 148, sections 148B or 148C, the fourth sentence of section
39 150, section 152A, subsections (c) or (d) of section 159C, sections 1, 1A, 1B, 2A or 7 of chapter
40 151, clauses (4) or (5) of section 19 of chapter 151 or section 20 of chapter 151.

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

54 (c) A lead contractor shall be subject to joint and several civil liability with a labor
55 contractor and a labor subcontractor for wage theft if: (i) the civil action is filed not later than 1
56 year after the date of the wage theft; and (ii) written notice of the alleged violation to be raised in
57 that action is provided to the lead contractor, labor contractor and labor subcontractor, if
58 applicable, not less than 30 days before the filing of a civil action for wage theft under this
59 section against a lead contractor; provided, however, that said notice shall provide a detailed
60 description of the nature of the alleged violation, including specific information regarding what
61 allegedly occurred and the amount of wages that are allegedly owed. A successor entity to any
62 lead contractor, labor contractor or labor subcontractor subject to liability under this section shall
63 also be liable under this section if that entity: (i) has 1 or more of the same principals or officers
64 as the person or entity subject to liability; and (ii) is engaged in the same or equivalent trade or
65 activity as the person or entity subject to liability.

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

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

72 A lead contractor shall not be jointly and severally liable for a claim of wage theft if the
73 lead contractor has fewer than 11 workers, including those hired directly by the lead contractor
74 and those obtained or provided by a labor contractor or labor subcontractor, or if the wage theft

75 violation occurs at a specific place of business and employment where the lead contractor
76 receives 5 or fewer workers from a labor contractor or labor subcontractors at all given times.

77 (d) For purposes of this section, a labor contractor or a labor subcontractor shall
78 indemnify a lead contractor for any wages, damages, interest, penalties or attorneys' fees owed
79 or incurred by the lead contractor as a result of the labor contractor's or labor subcontractor's
80 wage theft. For purposes of this section, a labor subcontractor shall indemnify a labor contractor
81 for any wages, damages, interest, penalties or attorneys' fees owed by the labor contractor as a
82 result of the labor subcontractor's wage theft.

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

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

90 (f) A lead contractor shall have an affirmative defense to liquidated damages and
91 attorneys' fees and costs under this section if the lead contractor, labor contractor or labor
92 subcontractor has taken actions, specific to the wage theft allegation, to protect against wage theft
93 by a person or entity from whom they obtain, engage or are provided with 1 or more individuals,
94 directly from a labor contractor or indirectly from a labor subcontractor, to perform labor that has
95 a significant nexus with the lead contractor's business activities, operations or purposes, by: (i)
96 demanding and reviewing sign-in sheets or other evidence of hours worked for all employees and

97 proof of payments to all employees; (ii) operating for 5 years without a violation under this
98 chapter or chapter 151 and for 5 years without contracting, directly or indirectly, with a labor
99 contractor or labor subcontractor who has committed a wage theft violation, and the attorney
100 general determines that probable cause does not exist that a wage theft occurred; (iii) providing
101 sufficient evidence of impossibility of performance, not caused by or resulting from a violation
102 of law; or (iv) purchasing a bond from a surety company authorized in the commonwealth, upon
103 notice of violation issued pursuant to subsection (c) in an amount sufficient to cover the amount
104 claimed, or having a bond from a surety company authorized in the commonwealth sufficient to
105 cover the wages provided to workers, directly or indirectly, by a labor contractor or labor
106 subcontractor to the lead contractor and the entity that secured the bond demonstrates that the
107 bond secured has been used to cover wages owed under the wage theft claim.

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

111 (g) When a lead contractor receives notice from the attorney general or a court order or
112 judgment that a labor contractor or labor subcontractor has failed to pay wages to a person
113 performing labor for the lead contractor, the lead contractor may either: (i) provide the unpaid
114 wages directly to the person performing labor for the lead contractor; or (ii) withhold or cause to
115 be withheld from any payment due to the noncompliant labor contractor or labor subcontractor
116 the amount indicated by the attorney general or court order or judgment as sufficient to satisfy
117 the unpaid wages.

118 (h) When the attorney general informs the director of the department of unemployment
119 assistance that an employer, person or entity responsible for the payment of contributions under
120 section 14 of chapter 151A committed a wage theft violation or otherwise failed to timely pay
121 wages to an individual, the individual's unemployment benefit shall be calculated under chapter
122 151A as if the wages had been timely paid.

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

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

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

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

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

145 The stop work order may be issued only against the person or entity found to be in
146 violation and only as to the specific place of business or employment for which the violation
147 exists. The stop work order shall be effective 72 hours after it is served upon the violator or the
148 place of business or employment. A stop work order may be served in hand or at a place of
149 business, employment or job site by posting a copy of the stop work order in a conspicuous
150 location. The stop work order shall be in effect, subject to an appeal under subsection (b), until
151 the director or a designee issues an order to release the stop work order upon a finding that the
152 violation has been corrected.

153 (b) A person aggrieved by the imposition of a stop work order issued pursuant to this
154 section shall have 10 days after the date of its service to make a request to the director or
155 designee for a hearing to be held in a manner determined by the director. A person who timely
156 files such an appeal shall be granted a hearing in accordance with subsection (b) of section 39 of
157 chapter 151A not later than 30 days after receipt of the appeal. The stop work order shall not be
158 in effect during the pendency of a timely filed appeal.

159 (c) A stop work order imposed against a person or entity shall be effective against any
160 successor person or entity that: (i) has at least 1 of the same principals or officers as the person or

161 entity against whom the stop work order was issued; and (ii) is engaged in the same or equivalent
162 trade or activity as the person or entity for which the stop work order was imposed.

163 (d) An employee affected by a stop work order pursuant to this section shall be paid for
164 the period the stop work order is in place or the first 10 days the employee was scheduled to
165 work if the stop work order had not been issued, whichever is less by the person or entity that
166 was served the stop work order. Time lost by an employee affected by a stop work order
167 pursuant to this section, not exceeding 10 days, shall be considered time worked under chapters
168 149 and 151. Subsection (b) of section 148E shall not apply to wages due and payable under this
169 subsection.

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

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

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

183 The stop work order may be issued only against the individual or entity found to be in
184 violation, and only as to the specific place of business and employment for which the violation
185 exists. The stop work order shall be effective 48 hours after it is served upon the violator or the
186 place of business or employment; provided, however, that no stop work order shall take effect
187 prior to the conclusion of the business day after the day on which the order is served. A stop
188 work order may be served in hand or at a place of business, employment or job site by posting a
189 copy of the stop work order in a conspicuous location. The stop work order shall be in effect,
190 subject to an appeal under subsection (b), until the attorney general or a designee issues an order
191 to release the stop work order upon a finding that the violation has been corrected.

192 (b) A person or entity aggrieved by the imposition of a stop work order shall have 10
193 days from the date of its service to make a request for a hearing to be held in a manner
194 determined by the attorney general. A person or entity that timely files such an appeal shall be
195 granted a hearing in accordance with chapter 30A not later than 21 days after receipt of the
196 appeal. The stop work order shall not be in effect during the pendency of a timely filed appeal.

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

202 (d) An employee affected by a stop work order pursuant to this section shall be paid for
203 the period the stop work order is in place or the first 10 days the employee was scheduled to
204 work if the stop work order had not been issued, whichever is less by the person or entity that

205 was served the stop work order. Time lost by an employee affected by a stop work order issued
206 pursuant to this section, not exceeding 10 days, shall be considered time worked under chapters
207 149 and 151. Subsection (b) of section 148E shall not apply to wages due and payable under this
208 subsection.

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

210 Section 148H. There shall be a Wage Theft Compensation Trust Fund. The fund shall be
211 administered by the attorney general. The purpose of the fund shall be to provide compensation
212 related to wage theft. The fund shall consist of amounts credited to the fund from: (i) revenue
213 from appropriations or other monies authorized by the general court and specifically designated
214 to be credited to the fund; (ii) wage theft fines collected under section 27C of section 149, as
215 determined by the attorney general; and (iii) funds from public or private sources, including, but
216 not limited to, gifts, grants, donations, rebates and settlements received by the commonwealth
217 that are specifically designated to be credited to the fund.

218 The attorney general may expend money from the fund to: (i) a worker owed wages due
219 to wage theft if all other options for recovery have been exhausted or substantial hardship will
220 result to the worker prior to exhaustion of options for recovery; (ii) a lead contractor who acted
221 in good faith, has not previously violated a provision of chapter 149 or chapter 151 and has been
222 found jointly and severally liable for a wage theft claim but not personally responsible for the
223 wage theft and cannot recover from the violator, despite an indemnification provision established
224 under subsection (d) of section 148E, and who has paid in full the wages owed; (iii) a lead
225 contractor who raises a successful affirmative defense under subsection (f) of section 148E but

226 paid in full wages owed due to wage theft; and (iv) worker outreach and education to prevent
227 wage theft.

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

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

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

237 SECTION 6. Section 150C of said chapter 149, as appearing in the 2016 Official
238 Edition, is hereby amended by striking out, in line 9, the words “one thousand dollars,” and
239 inserting in place thereof the following words:- \$1,000 or shall be subject to a civil citation or
240 order as provided in section 27C.

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

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