

SENATE No. 1062

The Commonwealth of Massachusetts

PRESENTED BY:

Viriato M. deMacedo

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

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

An Act relative to wage theft and due process.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Viriato M. deMacedo</i>	<i>Plymouth and Barnstable</i>	
<i>Alan Silvia</i>	<i>7th Bristol</i>	<i>2/1/2019</i>

SENATE No. 1062

By Mr. deMacedo, a petition (accompanied by bill, Senate, No. 1062) of Viriato M. deMacedo and Alan Silvia for legislation relative to wage theft and due process. Labor and Workforce Development.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to wage theft and due process.

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 who commits
8 wage theft as defined in section 148E shall be not more than \$25,000; and provided further.

9 SECTION 3. Chapter 149 of the General Laws is hereby amended by inserting after
10 section 148D the following 4 sections:-

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

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

(b) An employer, except a staffing agency, as defined by section 159C, that is licensed or registered pursuant to sections 46A to 46R, inclusive, of chapter 140, shall provide each employee, not later than 10 days after the commencement of their employment, with written or electronic notice in the language the employer normally uses to communicate employment-related information to the employee, of the following information: (i) the rate or rates of pay (ii) the regular pay day designated by the employer; (iii) the name of the employer, including any “doing business as” names used by the employer; (iv) the physical address of the employer’s and mailing address, if different; (v) the telephone number of the employer; and (vi) the telephone number of the employer.

(c) An employer shall have an affirmative defense under this section if (i) demanding and reviewing sign-in sheets or other evidence of hours worked for all employees and proof of payments to all employees; or (ii) operating for 5 years without a violation under this chapter or chapter 151 and for 5 years; or (iii) providing sufficient evidence of impossibility of performance, not caused by or resulting from a violation of law; or (iv) purchasing a bond from a surety company authorized in the commonwealth, upon notice of violation issued pursuant to subsection (c) in an amount sufficient to cover the amount claimed, or having a bond from a

surety company authorized in the commonwealth sufficient to cover the wages provided to workers wages.

An employer who has not taken the actions specified in this section shall not be subject to any negative or adverse inference as a result of not having completed these actions.

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

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

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

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

Not less than 5 days before the commencement of a stop work order under this section, the director or designee shall notify the person or entity of the intended action and give the

54 person or entity an opportunity to confer with the director or designee in person or through
55 counsel or other representative as to the proposed action. Notice shall be given the person or
56 entity by mail, postage prepaid, to the usual place of business or, if there is no usual place of
57 business, to the last known address.

58 The stop work order may be issued only against the person or entity found to be in
59 violation and only as to the specific place of business or employment for which the violation
60 exists. The stop work order shall be effective 7 business days after it is served upon the violator
61 or the place of business or employment. A stop work order may be served in hand or at a place
62 of business, employment or job site by posting a copy of the stop work order in a conspicuous
63 location. The stop work order shall be in effect, subject to an appeal under subsection (b), until
64 the director or a designee issues an order to release the stop work order upon a finding that the
65 violation has been corrected.

66 (b) A person aggrieved by the imposition of a stop work order issued pursuant to this
67 section shall have 10 days after the date of its service to make a request to the director or
68 designee for a hearing to be held in a manner determined by the director. A person who timely
69 files such an appeal shall be granted a hearing in accordance with chapter 30A not later than 15
70 days after receipt of the appeal. The stop work order shall not be in effect during the pendency of
71 a timely filed appeal.

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

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

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

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

The stop work order may be issued only against the individual or entity found to be in violation, and only as to the specific place of employment for which the violation exists. The stop work order shall be effective 7 business days after it is served upon the violator or the place of business or employment. A stop work order may be served in hand or at a place of business, employment or job site by posting a copy of the stop work order in a conspicuous location. The stop work order shall be in effect, subject to an appeal under subsection (b), until the attorney general or a designee issues an order to release the stop work order upon a finding that the violation has been corrected.

(b) A person or entity aggrieved by the imposition of a stop work order shall have 10 days from the date of its service to make a request for a hearing to be held in a manner determined by the attorney general. A person or entity that timely files such an appeal shall be granted a hearing in accordance with chapter 30A within 14 days of receipt of the appeal. The stop work order shall not be in effect during the pendency of a timely filed appeal.

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

(d) An employee affected by a stop work order pursuant to this section shall be paid for the period the stop work order is in place or the first 10 days the employee was scheduled to work if the stop work order had not been issued, whichever is less by the person or entity that was served the stop work order. Time lost by an employee affected by a stop work order issued pursuant to this section, not exceeding 10 days, shall be considered time worked under chapters 149 and 151.

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

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

determined by the attorney general; and (iii) funds from public or private sources, including, but not limited to, gifts, grants, donations, rebates and settlements received by the commonwealth that are specifically designated to be credited to the fund.

The attorney general may expend money from the fund to: (i) a worker owed wages due to wage theft if all other options for recovery have been exhausted or substantial hardship will result to the worker prior to exhaustion of options for recovery; (ii) worker outreach and education to prevent wage theft.

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

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

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

Section 148I. Whenever facts exist showing that an employer has failed to comply with sections 27, 27F, 27G, 27H, 148, 148A, 148B, 148C, 150, 150C, or 152A of this chapter, or subsection (c) or (d) of section 159C of this chapter, or sections 1, 1A, 1B, 2A, 7, 19 or 20 of chapter 151, relative to wage theft, as that term is defined in section 148 of this chapter, then any 3 current or former employees may bring a civil action for wage theft.

(a) At least ninety days prior to bringing a civil action under this subsection, the 3 persons shall provide a written demand for relief, identifying the claimant and reasonably describing the alleged wage theft and the injury suffered, by certified mail, return receipt requested, to their employer. Any employer receiving such a demand for relief who, within thirty days of the mailing or delivery of the demand for relief, makes a written tender of settlement which is rejected by the claimant may, in any subsequent action, file the written tender and an affidavit concerning its rejection and thereby limit any recovery to the relief tendered if the court finds that the relief tendered was reasonable in relation to the injury actually suffered by the petitioner. After the expiration of thirty days after delivery of the notice to the employer and any other prospective defendant, the 3 current or former employees may file a civil action for wage theft.

(b) Any person receiving a demand for relief for lost wages who, within thirty days of the mailing or delivery of the demand for relief, makes a written tender of settlement which is rejected by the claimant may, in any subsequent action, file the written tender and an affidavit concerning its rejection and thereby limit any recovery to the relief tendered if the court finds that the relief tendered was reasonable in relation to the injury actually suffered by the claimant. If a full settlement is offered and rejected, the person offering the settlement would have an affirmative defense and should be entitled to attorney's fees and costs.

(c) If the court dismisses an action brought pursuant to this section, then the court may award to an employer or any other defendant reasonable attorneys' fees and costs. If the court makes a finding that any action brought pursuant to this section was frivolous, an employer or any other defendant shall be entitled to an additional one times its reasonable attorneys' fees and costs as liquated damages.

(d) In any action brought pursuant to this section, Plaintiffs shall prove any violation of this chapter by a preponderance of the evidence. An employer or any other defendant shall be liable for all amounts which should have been paid by the employer.

(e) If the court dismisses an action brought pursuant to this section or Section 150 of this chapter, then the court may award to the defendant reasonable attorneys' fees and costs. If the court makes a finding that the action was frivolous, the defendant shall be entitled to an additional one times reasonable attorneys' fees and costs awarded as liquidated damages.

(f) Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this chapter.

(g) Actions under this subsection shall be commenced within 3 years after the cause of action accrues.

SECTION 4. Section 150C of said chapter 149, as appearing in the 2016 Official Edition, is hereby amended by striking out, in line 9, the words "one thousand dollars," and inserting in place thereof the following words: - \$1,000 or shall be subject to a civil citation or order as provided in section 27C.

SECTION 5. This act shall supersede any municipal ordinance regarding wage and hour laws.

SECTION 6. This act shall take effect on July 1, 2021.