

SENATE No. 1148

The Commonwealth of Massachusetts

PRESENTED BY:

Nick Collins

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.

PETITION OF:

NAME:

Nick Collins

DISTRICT/ADDRESS:

First Suffolk

SENATE No. 1148

By Mr. Collins, a petition (accompanied by bill, Senate, No. 1148) of Nick Collins for legislation relative to wage theft. Labor and Workforce Development.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act relative to wage theft.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Add a new section 150D to the general laws at chapter 149, which shall read as follows:

2 Section 150D Construction Industry Private Attorney General Action

3 (a) Whereas, wage law enforcement and honest bid competition are compelling state
4 interest its police powers for enforcement shall include, but not be limited to, this section:

5 •Construction Industry employment makes more difficult protecting employees

6 against Wage Non-Payment and competing employers against unfair competition based
7 on Wage Non-payment, as employees and employers navigate during single pay-periods multiple
8 construction sites throughout the Commonwealth and neighboring or other states;

9 •Most construction firms employ fewer than twelve employees inhibiting employees
10 similarly situated to obtain class certification under court rules;

11 •An employer’s failure to comply with wage payment and related law provides
12 competitive advantage that illegally shaves costs resulting in illegally deflated bids to compete
13 against honest employers, and such illegal conduct harms competition including by way of
14 workers compensation insurance premium evasion –affecting insurance rates and causes payroll
15 tax loss to the Commonwealth increasing the public’s tax burdens; and

16 •Construction Industry higher tier contractors often contract with the lowest price bidder;
17 and

18 •The public is harmed when higher tier contractors subcontract to business enterprises or
19 lower tier subcontractors that cheat to compete by failing to fully The public is harmed when
20 employees lack proper wages on payday, including but not limited to the difficulty for an unpaid
21 employee to meet his or her financial obligations owed to others in the stream of commerce or
22 marketplace causing public harms that include, for example, unpaid rent, mortgages, medical
23 bills and related insurance payments, automobile expenses, and other common living expenses;
24 and

25 •The public is benefited when:

26 i. Construction competition among bidders is based on honest bid competition

27 as honesty promotes competition; and

28 ii. An Interested Party pursues wage law compliance on behalf of the

29 Commonwealth as it best ensures non-complying construction employers will experience
30 exposure and the consequences when they do not pay their statutory and contractual wage related
31 obligations.

32 (b) Definitions, for this section 150D:

33 “Construction Industry” shall have the broadest meaning possible to include but not be
34 limited to drivers delivering construction material to construction sites for employers who
35 primarily deliver such materials, residential contracting services referenced in chapter 142A, and
36 any labor performed on private projects that are of a similar type of labor performed on public
37 projects governed by section 27.

38 “Construction Industry Employer” means any person who or entity that, within the 5-year
39 period preceding the date an action under this section was filed: i) contracted to perform work,
40 regardless of contract or subcontract tier level, on a project governed by section 27 of this
41 chapter after having submitted a bid for same and who employed employees who performed
42 labor under that contract; or ii) contracted to perform construction work located in the
43 Commonwealth in excess of \$500,000, regardless of contract or subcontract tier level, and
44 employed Construction Industry employees who performed labor under that contract.

45 “Interested Party” means any one or more of the following:

46 1.Any Construction Industry Employer;

47 2.Any trustee acting on behalf of an organization or trust established for the purposes of
48 the Labor Management Cooperation Act of 1978, 29 U.S.C. section 175a, where contributions
49 are made by at least five Construction Industry Employers;

50 3.Any labor organization which has as members, or is authorized to represent, employees
51 and which exists in whole or part for the purposes of negotiating with Construction Industry

52 Employers concerning wages, hours, or terms and conditions of employment of such employer's
53 employees; or

54 4. Any organization that represents five or more member firms that are Construction
55 Industry Employers that employed labor on public works project governed by section 27
56 of this chapter or 5. Any Affected Employee.

57 "Wage Non-payment" means the failure to pay a wage owed to an Affected Employee in
58 violation of any of the following statutes or contract provision: sections 27, 148, 148A, 148B, or
59 150 of the general laws at chapter 149; or section 1A of the general laws at chapter 151; or any
60 contract provision that required the payment of wages on a construction project in accord with
61 rates required under section 27 of chapter 149.

62 "Affected Employee" means any Construction Industry employee or former employee
63 who was employed by an individual or firm named as a defendant employer in an action filed
64 under this section where such employee remains due from such defendant any Wage Non-
65 payment whatsoever, regardless as to where or the type of labor was performed, provided that a
66 substantial part of the Wage Non-payment owed was earned by the employee while performing
67 Construction Industry labor as employee of such defendant.

68 (c) Civil Action: In addition to all common law, contract, or other remedies available at
69 law, an Interested Party alleging facts that show probable cause that an employer has engaged in
70 or caused a Wage Non-payment shall have standing and be entitled to bring an action in the
71 name of and on behalf of the Commonwealth and the public, for the use and benefit of same,
72 against such employer to recover damages and penalties stated in this section.

73 A civil action filed under this section shall be deemed a private attorney general action.
74 The representative nature of such an action on behalf of the Commonwealth is not waivable and
75 shall not be deemed a class action, so long as there is at least a common question of law or fact
76 among at least two Affected Employees. Regardless as to whether any Affected Employee’s
77 claim must be arbitrated, the representative action on behalf of the Commonwealth cannot be
78 waived or compelled to arbitration. Further, the Interested Party bringing such representative
79 claim shall not have to wait for an arbitration decision or award before proceeding in court under
80 this section.

81 The Interested Party filing an action under this section shall provide a copy of the
82 complaint for the purposes of notice to the attorneys general, within 10 business days of the
83 filing. If the Interested Party prevails in the action, the court shall award treble the Wage Non-
84 payment damages, as liquidated damages, to any Affected Employee who has, following a court
85 approved notice of same, responded to the court within 90 calendar days, affirming an interest in
86 a recovery, which notice shall be interpreted liberally to encourage Affected Employees to
87 respond and affirm such an interest.

88 A twenty percent surcharge tax on the total amount awarded by the court-including on
89 attorney fees, in addition to other usual income taxes due, on this recovery shall be paid into a
90 wage enforcement fund established by the attorney general. Such fund shall be used by the
91 attorney general to enforce wage laws, educate the public, particularly employers and employees,
92 about wage law obligations and rights, and when the attorney general deems the fund is
93 sufficiently funded, to advance some payment by loan pending an action under this section and
94 upon the attorney general’s sole and exclusive discretion, to an Affected Employee showing
95 urgent need to obtain unpaid wages to pay housing, heat, or food costs.

96 In addition, the Interested Party who prevails under this section shall be entitled to
97 recover for the Commonwealth penalties, and Wage Non-payments as restitution incurred by
98 each other Affected Employee who did not respond affirming an interest, as follows: For each
99 violation of law, the court shall order the defendant employer to pay into the wage enforcement
100 fund (i) a penalty in the amount of \$50 per violation per pay-period for each unresponsive
101 Affected Employee; and (ii) an amount, payable into the wage enforcement fund, equal to single
102 Wage Non-payment damages, as restitution, incurred for all Wage Non-payments that the
103 defendant employer should have paid to each Affected Employee who did not respond timely to
104 a court approved notice affirming an interest in a recovery; the attorney general shall hold in
105 escrow such amounts until the original statute of limitation period applicable against the
106 defendant employer to expire on such restitution obtained in the event the Affected Employee
107 reconsiders and seeks the restitution. But, after such limitations period has expired with no such
108 employee claim, the amount shall escheat to the wage enforcement fund.

109 A defendant employer ordered to pay into the wage enforcement fund as single Wage-
110 Nonpayment damages restitution incurred for labor performed by an Affected Employee who
111 failed to affirm an interest in a recovery shall be entitled to a set-off of such amount paid against
112 a future Wage Non-payment or other wage action filed by or on behalf of such Affected
113 Employee, but no set-off shall apply to the \$50 per pay period penalty. In addition, the Interested
114 Party may also bring on behalf of the Commonwealth a claim for injunctive and declaratory
115 relief. An Interested Party that prevails in any action filed under this section shall be awarded the
116 costs of the litigation and reasonable attorney fees.

117 An action filed under this section shall be filed within limitation period of the Wage Non-
118 payment at issue, except that where a Wage Non-payment also includes a violation of contract

119 the Interested Party shall be a third-party beneficiary of the contract, including any public
120 procurement contract, and recovery applicable to that portion of the action shall include amounts
121 due within the limitations period set forth under section 2 of the general laws at chapter 260; for
122 such contract action filed beyond the limitation period of the Wage Non-payment at issue
123 liquidated damages shall not be awarded unless the contract recites otherwise and the court may
124 award fees for such contract provision portion of the action in accord with the contract or its
125 discretion.

126 On the trial no defense for failure to pay as required, other than the attachment of wages
127 by trustee process or a valid assignment thereof or a valid set-off against the same, or the absence
128 of the employee from his regular place of labor at the time of payment, or an actual tender to
129 such employee at the time of payment of the wages so earned by him, shall be valid. The
130 defendant shall not set up as a defense a payment of wages made or offered after the action under
131 this section has been filed.

132 Attorney General Intervention. As a matter of right the attorney general may intervene as
133 a plaintiff at any time, including post trial, by notice of same filed with the court or may file an
134 appearance to be served all pleadings and discovery for monitoring. In the event that she
135 intervenes, the attorney general shall thenceforth represent the Commonwealth as plaintiff, not
136 the Interested Party. If the Interested Party shall retain party status, if it so chooses, for purposes
137 that may include and not be limited to providing opportunity to the Interested Party to raise its
138 interests or concerns including regarding any settlement proposed or to recover, if appropriate,
139 its reasonable costs and fees incurred. The attorney general shall not settle the matter with the
140 defendant without the participation in all settlement communications with the Interested Party

141 who retained party status and without first obtaining such Interested Party's informed consent
142 which shall not be reasonably withheld.

143 Nothing in this section shall be deemed as an exclusive remedy and this section shall not
144 affect the rights of the attorney general or any other person to pursue additional or other remedies
145 available by way of other laws or available actions.