

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Patrick Joseph Kearney

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 protecting honest employers by creating construction private attorney general actions.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>	<i>1/8/2025</i>

HOUSE No.

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Fourth General Court
(2025-2026)**

An Act protecting honest employers by creating construction private attorney general actions.

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
5 section:

6 a. Construction Industry employment makes more difficult protecting employees
7 against Wage Non-Payment and competing employers against unfair competition based
8 on Wage

9 Non-payment, as employees and employers navigate during single pay-periods multiple
10 construction sites throughout the Commonwealth and neighboring or other states;

11 b. Most construction firms employ fewer than twelve employees inhibiting

12 employees similarly situated to obtain class certification under court rules;

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14 c. An employer's failure to comply with wage payment and related law provides
15 competitive advantage that illegally shaves costs resulting in illegally deflated bids to
16 compete

17 against honest employers, and such illegal conduct harms competition including by way
18 of

19 workers compensation insurance premium evasion –affecting insurance rates and causes
20 payroll

21 tax loss to the Commonwealth increasing the public's tax burdens; and

22 d. Construction Industry higher tier contractors often contract with the lowest price
23 bidder; and

24 e. The public is harmed when higher tier contractors subcontract to business
25 enterprises or lower tier subcontractors that cheat to compete by failing to fully comply
26 with

27 wage payment laws and regulations; and

28 f. The public is harmed when employees lack proper wages on payday, including

29 but not limited to the difficulty for an unpaid employee to meet his or her financial

30 obligations

31 owed to others in the stream of commerce or marketplace causing public harms that
32 include, for

33 example, unpaid rent, mortgages, medical bills and related insurance payments,
34 automobile

35 expenses, and other common living expenses; and

36 g. The public is benefited when:

37 i. Construction competition among bidders is based on honest bid competition as
38 honesty promotes competition; and

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

40 Commonwealth as it best ensures non-complying construction employers will experience

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42 exposure and the consequences when they do not pay their statutory and contractual wage

43 related

44 obligations.

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

46 “Construction Industry” shall have the broadest meaning possible to include but not be

47 limited to drivers delivering construction material to construction sites for employers who

48 primarily deliver such materials, residential contracting services referenced in chapter
49 142A, and

50 any labor performed on private projects that are of a similar type of labor performed on
51 public
52 projects governed by section 27.

53 “Construction Industry Employer” means any person who or entity that, within the 5-year
54 period preceding the date an action under this section was filed: i) contracted to perform
55 work,

56 regardless of contract or subcontract tier level, on a project governed by section 27 of this
57 chapter after having submitted a bid for same and who employed employees who
58 performed

59 labor under that contract; or ii) contracted to perform construction work located in the
60 Commonwealth in excess of \$500,000, regardless of contract or subcontract tier level,
61 and

62 employed Construction Industry employees who performed labor under that contract.

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

- 64 1. Any Construction Industry Employer;
- 65 2. Any trustee acting on behalf of an organization or trust established for the

66 purposes of the Labor Management Cooperation Act of 1978, 29 U.S.C. section 175a,
67 where
68 contributions are made by at least five Construction Industry Employers;

69

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

73 Industry Employers concerning wages, hours, or terms and conditions of employment of
74 such
75 employer's employees; or

76 4. Any organization that represents five or more member firms that are Construction
77 Industry Employers that employed labor on public works project governed by section 27
78 of this
79 chapter or

80 5. Any Affected Employee.

81 "Wage Non-payment" means the failure to pay a wage owed to an Affected Employee in
82 violation of any of the following statutes or contract provision: sections 27, 148, 148A,
83 148B, or

84 150 of the general laws at chapter 149; or section 1A of the general laws at chapter 151;
85 or any
86 contract provision that required the payment of wages on a construction project in accord
87 with
88 rates required under section 27 of chapter 149.

89 “Affected Employee” means any Construction Industry employee or former employee
90 who was employed by an individual or firm named as a defendant employer in an action
91 filed
92 under this section where such employee remains due from such defendant any Wage
93 Non-
94 payment whatsoever, regardless as to where or the type of labor was performed, provided
95 that a
96 substantial part of the Wage Non-payment owed was earned by the employee while
97 performing
98 Construction Industry labor as employee of such defendant.

99 (c) Civil Action: In addition to all common law, contract, or other remedies
100 available at law, an Interested Party alleging facts that show probable cause that an
101 employer has

102 engaged in or caused a Wage Non-payment shall have standing and be entitled to bring
103 an action

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105 in the name of and on behalf of the Commonwealth and the public, for the use and benefit
106 of

107 same, against such employer to recover damages and penalties stated in this section.

108 A civil action filed under this section shall be deemed a private attorney general action.

109 The representative nature of such an action on behalf of the Commonwealth is not

110 waivable and shall not be deemed a class action, so long as there is at least a common

111 question of

112 law or fact among at least two Affected Employees. Regardless as to whether any

113 Affected

114 Employee's claim must be arbitrated, the representative action on behalf of the

115 Commonwealth

116 cannot be waived or compelled to arbitration. Further, the Interested Party bringing such

117 representative claim shall not have to wait for an arbitration decision or award before

118 proceeding

119 in court under this section.

120 The Interested Party filing an action under this section shall provide a copy of the

121 complaint for the purposes of notice to the attorneys general, within 10 business days of
122 the
123 filing. If the Interested Party prevails in the action, the court shall award treble the Wage
124 Non-
125 payment damages, as liquidated damages, to any Affected Employee who has, following
126 a court
127 approved notice of same, responded to the court within 90 calendar days, affirming an
128 interest in
129 a recovery, which notice shall be interpreted liberally to encourage Affected Employees
130 to
131 respond and affirm such an interest. A twenty percent surcharge tax on the total amount
132 awarded
133 by the court-including on attorney fees, in addition to other usual income taxes due, on
134 this
135 recovery shall be paid into a wage enforcement fund established by the attorney general.
136 Such
137 fund shall be used by the attorney general to enforce wage laws, educate the public,
138 particularly
139 employers and employees, about wage law obligations and rights, and when the attorney
140 general

141 deems the fund is sufficiently funded, to advance some payment by loan pending an
142 action under

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144 this section and upon the attorney general’s sole and exclusive discretion, to an Affected
145 Employee showing urgent need to obtain unpaid wages to pay housing, heat, or food
146 costs.

147 In addition, the Interested Party who prevails under this section shall be entitled to
148 recover for the Commonwealth penalties, and Wage Non-payments as restitution incurred
149 by

150 each other Affected Employee who did not respond affirming an interest, as follows: For
151 each

152 violation of law, the court shall order the defendant employer to pay into the wage
153 enforcement

154 fund (i) a penalty in the amount of \$50 per violation per pay-period for each unresponsive
155 Affected Employee; and (ii) an amount, payable into the wage enforcement fund, equal to
156 single

157 Wage Non-payment damages, as restitution, incurred for all Wage Non-payments that the
158 defendant employer should have paid to each Affected Employee who did not respond
159 timely to

160 a court approved notice affirming an interest in a recovery; the attorney general shall hold
161 in
162 escrow such amounts until the original statute of limitation period applicable against the
163 defendant employer to expire on such restitution obtained in the event the Affective
164 Employee
165 reconsiders and seeks the restitution. But, after such limitations period has expired with
166 no such
167 employee claim, the amount shall escheat to the wage enforcement fund. A defendant
168 employer
169 ordered to pay into the wage enforcement fund as single Wage-Nonpayment damages
170 restitution
171 incurred for labor performed by an Affected Employee who failed to affirm an interest in
172 a
173 recovery shall be entitled to a set-off of such amount paid against a future Wage Non-
174 payment or
175 other wage action filed by or on behalf of such Affected Employee, but no set-off shall
176 apply to
177 the \$50 per pay period penalty. In addition, the Interested Party may also bring on behalf
178 of the

179 Commonwealth a claim for injunctive and declaratory relief. An Interested Party that
180 prevails in
181 any action filed under this section shall be awarded the costs of the litigation and
182 reasonable
183 attorney fees.

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185 An action filed under this section shall be filed within limitation period of the Wage Non-
186 payment at issue, except that where a Wage Non-payment also includes a violation of
187 contract
188 the Interested Party shall be a third-party beneficiary of the contract, including any public
189 procurement contract, and recovery applicable to that portion of the action shall include
190 amounts
191 due within the limitations period set forth under section 2 of the general laws at chapter
192 260; for
193 such contract action filed beyond the limitation period of the Wage Non-payment at issue
194 liquidated damages shall not be awarded unless the contract recites otherwise and the
195 court may
196 award fees for such contract provision portion of the action in accord with the contract or
197 its

198 discretion.

199 On the trial no defense for failure to pay as required, other than the attachment of wages

200 by trustee process or a valid assignment thereof or a valid set-off against the same, or the

201 absence

202 of the employee from his regular place of labor at the time of payment, or an actual

203 tender to

204 such employee at the time of payment of the wages so earned by him, shall be valid. The

205 defendant shall not set up as a defense a payment of wages made or offered after the

206 action under

207 this section has been filed.

208 The superior court shall have jurisdiction to hear an action filed under this section

209 regardless as to the amount in controversy. Any provision in this section found to be

210 unenforceable or invalid shall not affect other provisions in this section which shall

211 remain valid

212 and enforceable.

213 Attorney General Intervention: As a matter of right the attorney general may

214 intervene as a plaintiff at any time, including post trial, by notice of same filed with the

215 court or

216 may file an appearance to be served all pleadings and discovery for monitoring. In the
217 event that

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219 she intervenes, the attorney general shall thenceforth represent the Commonwealth as
220 plaintiff,

221 not the Interested Party. The Interested Party shall retain party status, if it so chooses, for
222 purposes that may include and not be limited to providing opportunity for the Interested
223 Party to

224 raise its interests or concerns including regarding any settlement proposed or to recover,
225 if

226 appropriate, its reasonable costs and fees incurred. The attorney general shall not settle
227 the matter

228 with the defendant without the participation in all settlement communications with the
229 Interested

230 Party who retained party status and without first obtaining such Interested Party's
231 informed

232 consent which shall not be reasonably withheld.

233 Nothing in this section shall be deemed as an exclusive remedy and this section shall not

234 affect the rights of the attorney general or any other person to pursue additional or other
235 remedies
236 available by way of other laws or available actions.