

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Patrick M. O'Connor

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:

Patrick M. O'Connor

DISTRICT/ADDRESS:

First Plymouth and Norfolk

SENATE 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 SECTION 1. Chapter 149 of the General Laws is hereby amended by inserting after
2 Section 150C the following section:-

3 150D. Construction Industry Private Attorney General Action

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

7 a. Construction Industry employment makes more difficult protecting employees
8 against Wage Non-Payment and competing employers against unfair competition based
9 on Wage
10 Non-payment, as employees and employers navigate during single pay-periods multiple
11 construction sites throughout the Commonwealth and neighboring or other states;

12 b. Most construction firms employ fewer than twelve employees inhibiting
13 employees similarly situated to obtain class certification under court rule

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

43 obligations.

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

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

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

47 primarily deliver such materials, residential contracting services referenced in chapter

48 142A, and

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

52 “Construction Industry Employer” means any person who or entity that, within the 5-year
53 period preceding the date an action under this section was filed: i) contracted to perform
54 work,
55 regardless of contract or subcontract tier level, on a project governed by section 27 of this
56 chapter after having submitted a bid for same and who employed employees who
57 performed

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

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

- 63 1. Any Construction Industry Employer;
- 64 2. Any trustee acting on behalf of an organization or trust established for the
65 purposes of the Labor Management Cooperation Act of 1978, 29 U.S.C. section 175a,
66 where
67 contributions are made by at least five Construction Industry Employers;

68

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

71 Construction

72 Industry Employers concerning wages, hours, or terms and conditions of employment of
73 such

74 employer's employees; or

75 4. Any organization that represents five or more member firms that are Construction

76 Industry Employers that employed labor on public works project governed by section 27

77 of this

78 chapter or;

79 5. Any Affected Employee.

80 "Wage Non-payment" means the failure to pay a wage owed to an Affected Employee in

81 violation of any of the following statutes or contract provision: sections 27, 148, 148A,

82 148B, or

83 150 of the general laws at chapter 149; or section 1A of the general laws at chapter 151;

84 or any

85 contract provision that required the payment of wages on a construction project in accord

86 with

87 rates required under section 27 of chapter 149.

88 “Affected Employee” means any Construction Industry employee or former employee

89 who was employed by an individual or firm named as a defendant employer in an action

90 filed

91 under this section where such employee remains due from such defendant any Wage

92 Non-

93 payment whatsoever, regardless as to where or the type of labor was performed, provided

94 that a

95 substantial part of the Wage Non-payment owed was earned by the employee while

96 performing

97 Construction Industry labor as employee of such defendant.

98 (c) Civil Action: In addition to all common law, contract, or other remedies

99 available at law, an Interested Party alleging facts that show probable cause that an

100 employer has

101 engaged in or caused a Wage Non-payment shall have standing and be entitled to bring

102 an action

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

104 of

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

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

107 The representative nature of such an action on behalf of the Commonwealth is not
108 waivable and shall not be deemed a class action, so long as there is at least a common question of
109 law or fact among at least two Affected Employees. Regardless as to whether any Affected
110 Employee's claim must be arbitrated, the representative action on behalf of the Commonwealth
111 cannot be waived or compelled to arbitration. Further, the Interested Party bringing such
112 representative claim shall not have to wait for an arbitration decision or award before
113 proceeding
114 in court under this section.

115 The Interested Party filing an action under this section shall provide a copy of the
116 complaint for the purposes of notice to the attorneys general, within 10 business days of
117 the
118 filing. If the Interested Party prevails in the action, the court shall award treble the Wage
119 Non-
120 payment damages, as liquidated damages, to any Affected Employee who has, following
121 a court
122 approved notice of same, responded to the court within 90 calendar days, affirming an
123 interest in
124 a recovery, which notice shall be interpreted liberally to encourage Affected Employees
125 to

126 respond and affirm such an interest. A twenty percent surcharge tax on the total amount
127 awarded

128 by the court-including on attorney fees, in addition to other usual income taxes due, on
129 this

130 recovery shall be paid into a wage enforcement fund established by the attorney general.

131 Such

132 fund shall be used by the attorney general to enforce wage laws, educate the public,
133 particularly

134 employers and employees, about wage law obligations and rights, and when the attorney
135 general

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

138 this section and upon the attorney general's sole and exclusive discretion, to an Affected

139 Employee showing urgent need to obtain unpaid wages to pay housing, heat, or food
140 costs.

141 In addition, the Interested Party who prevails under this section shall be entitled to

142 recover for the Commonwealth penalties, and Wage Non-payments as restitution incurred
143 by

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

146 violation of law, the court shall order the defendant employer to pay into the wage
147 enforcement
148 fund (i) a penalty in the amount of \$50 per violation per pay-period for each unresponsive
149 Affected Employee; and
150 (ii) an amount, payable into the wage enforcement fund, equal to single
151 Wage Non-payment damages, as restitution, incurred for all Wage Non-payments that the
152 defendant employer should have paid to each Affected Employee who did not respond
153 timely to
154 a court approved notice affirming an interest in a recovery; the attorney general shall hold
155 in
156 escrow such amounts until the original statute of limitation period applicable against the
157 defendant employer to expire on such restitution obtained in the event the Affective
158 Employee
159 reconsiders and seeks the restitution. But, after such limitations period has expired with
160 no such
161 employee claim, the amount shall escheat to the wage enforcement fund. A defendant
162 employer
163 ordered to pay into the wage enforcement fund as single Wage-Nonpayment damages
164 restitution

165 incurred for labor performed by an Affected Employee who failed to affirm an interest in
166 a
167 recovery shall be entitled to a set-off of such amount paid against a future Wage Non-
168 payment or
169 other wage action filed by or on behalf of such Affected Employee, but no set-off shall
170 apply to
171 the \$50 per pay period penalty. In addition, the Interested Party may also bring on behalf
172 of the
173 Commonwealth a claim for injunctive and declaratory relief. An Interested Party that
174 prevails in
175 any action filed under this section shall be awarded the costs of the litigation and
176 reasonable
177 attorney fees.

178
179 An action filed under this section shall be filed within limitation period of the Wage Non-
180 payment at issue, except that where a Wage Non-payment also includes a violation of
181 contract
182 the Interested Party shall be a third-party beneficiary of the contract, including any public

183 procurement contract, and recovery applicable to that portion of the action shall include
184 amounts
185 due within the limitations period set forth under section 2 of the general laws at chapter
186 260; for
187 such contract action filed beyond the limitation period of the Wage Non-payment at issue
188 liquidated damages shall not be awarded unless the contract recites otherwise and the
189 court may
190 award fees for such contract provision portion of the action in accord with the contract or
191 its
192 discretion.
193 On the trial no defense for failure to pay as required, other than the attachment of wages
194 by trustee process or a valid assignment thereof or a valid set-off against the same, or the
195 absence
196 of the employee from his regular place of labor at the time of payment, or an actual
197 tender to
198 such employee at the time of payment of the wages so earned by him, shall be valid. The
199 defendant shall not set up as a defense a payment of wages made or offered after the
200 action under
201 this section has been filed.

202 The superior court shall have jurisdiction to hear an action filed under this section
203 regardless as to the amount in controversy. Any provision in this section found to be
204 unenforceable or invalid shall not affect other provisions in this section which shall
205 remain valid
206 and enforceable.

207 Attorney General Intervention: As a matter of right the attorney general may
208 intervene as a plaintiff at any time, including post trial, by notice of same filed with the
209 court or

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

212 she intervenes, the attorney general shall thenceforth represent the Commonwealth as
213 plaintiff,

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

217 raise its interests or concerns including regarding any settlement proposed or to recover,
218 if

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

221 with the defendant without the participation in all settlement communications with the
222 Interested

223 Party who retained party status and without first obtaining such Interested Party's
224 informed

225 consent which shall not be reasonably withheld.

226 Nothing in this section shall be deemed as an exclusive remedy and this section shall not
227 affect the rights of the attorney general or any other person to pursue additional or other
228 remedies

229 available by way of other laws or available actions.