

HOUSE No. 1709

The Commonwealth of Massachusetts

PRESENTED BY:

Tram T. Nguyen

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 to further protect employees through a private right of action.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>1/19/2023</i>

HOUSE No. 1709

By Representative Nguyen of Andover, a petition (accompanied by bill, House, No. 1709) of Tram T. Nguyen for legislation to further protect employees through a private right of action. The Judiciary.

The Commonwealth of Massachusetts

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

An Act to further protect employees through a private right of action.

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, as appearing in the 2020 official edition,
2 is hereby amended by adding the following section:-

3 Section 150D: Private Attorney General Action

4 Definitions, for this section 150D:

5 “Interested Party” means any one or more of the following: 1. Any non-profit
6 organization that advocates for employee rights and protections; or 2. Any labor organization
7 which has as members, or is authorized to represent, employees and which exists in whole or part
8 for the purposes of negotiating with employers concerning wages, hours, or terms and conditions
9 of employment of such employer’s employees; or 3. Any Affected Employee.

10 “Wage Non-payment” means the failure to pay a wage owed to an Affected Employee in
11 violation of any of the following statutes or contract provision: sections 27, 27F-H, 148, 148A,

12 148B, or 150 of the general laws at chapter 149; or section 1, 1A or 1B of the general laws at
13 chapter 151; or any contract provision that required the payment of wages.

14 “Affected Employee” means any employee or former employee where such employee
15 remains due from an employer any Wage Non-payment whatsoever, regardless as to where or
16 the type of labor was performed.

17 In addition to all common law, contract, or other remedies available at law, an Interested
18 Party alleging facts that show probable cause that an employer has engaged in or caused a Wage
19 Non-payment shall have standing and be entitled to bring an action in the name of and on behalf
20 of the Commonwealth and the public, for the use and benefit of same, against such employer to
21 recover damages and penalties stated in this section.

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

23 The representative nature of such an action on behalf of the Commonwealth is not
24 waivable and shall not be deemed a class action, so long as there is at least a common question of
25 law or fact among at least two Affected Employees. Regardless as to whether any Affected
26 Employee’s claim must be arbitrated, the representative action on behalf of the Commonwealth
27 cannot be waived or compelled to arbitration. Further, the Interested Party bringing such
28 representative claim shall not have to wait for an arbitration decision or award before proceeding
29 in court under this section.

30 The Interested Party filing an action under this section shall provide a copy of the
31 complaint for the purposes of notice to the attorney general, within 10 business days of the filing.
32 If the Interested Party prevails in the action, the court shall award treble the Wage Non-payment
33 damages, as liquidated damages, to any Affected Employee who has, following a court approved

34 notice of same, responded to the court within 90 calendar days, affirming an interest in a
35 recovery, which notice shall be interpreted liberally to encourage Affected Employees to respond
36 and affirm such an interest.

37 In addition, the Interested Party may also bring on behalf of the Commonwealth a claim
38 for injunctive and declaratory relief. An Interested Party that prevails in any action filed under
39 this section shall be awarded the costs of the litigation and reasonable attorney fees.

40 A twenty percent surcharge tax on the total amount awarded by the court, including on
41 attorney fees, in addition to other usual income taxes due, on this recovery shall be paid into a
42 wage enforcement fund established by the attorney general. Such fund shall be used by the
43 attorney general to advance payment pending an action under this chapter and upon the attorney
44 general's sole and exclusive discretion, to Affected Employees showing urgent need to obtain
45 unpaid wages to pay housing, heat, or food costs.

46 In addition, the Interested Party who prevails under this section shall be entitled to
47 recover for the Commonwealth penalties, and Wage Non-payments as restitution incurred by
48 each other Affected Employee who did not respond affirming an interest, as follows: For each
49 violation of law, the court shall order the defendant employer to pay into the wage enforcement
50 fund (i) a penalty in the amount of \$50 per violation per pay-period for each unresponsive
51 Affected Employee; and (ii) an amount, payable into the wage enforcement fund, equal to single
52 Wage Non-payment damages, as restitution, incurred for all Wage Non-payments that the
53 defendant employer should have paid to each Affected Employee who did not respond timely to
54 a court approved notice affirming an interest in a recovery; the attorney general shall hold in
55 escrow such amounts until the original statute of limitation period applicable against the

56 defendant employer to expire on such restitution obtained in the event the Affective Employee
57 reconsiders, or is located, and seeks the restitution. But, after such limitations period has expired
58 with no such employee claim, the amount shall escheat to the wage enforcement fund. A
59 defendant employer ordered to pay into the wage enforcement fund as single Wage-Nonpayment
60 damages restitution incurred for labor performed by an Affected Employee who failed to affirm
61 an interest in a recovery shall be entitled to a set-off of such amount paid against a future Wage
62 Non-payment or other wage action filed by or on behalf of such Affected Employee, but no set-
63 off shall apply to the \$50 per pay period penalty.

64 An action filed under this section shall be filed within limitation period of the Wage Non-
65 payment at issue, except that where a Wage Non-payment also includes a violation of contract
66 the Interested Party shall be a third-party beneficiary of the contract, including any public
67 procurement contract, and recovery applicable to that portion of the action shall include amounts
68 due within the limitations period set forth under section 2 of the general laws at chapter 260; for
69 such contract action filed beyond the limitation period of the Wage Non-payment at issue
70 liquidated damages shall not be awarded unless the contract recites otherwise and the court may
71 award fees for such contract provision portion of the action in accord with the contract or its
72 discretion.

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

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

83 As a matter of right the attorney general may intervene as a plaintiff at any time, by
84 notice of same filed with the court or may file an appearance to be served all pleadings and
85 discovery for monitoring. In the event that she intervenes, the attorney general shall thenceforth
86 represent the Commonwealth as plaintiff, not the Interested Party. The Interested Party shall
87 retain party status, if it so chooses, for purposes that may include and not be limited to providing
88 opportunity to the Interested Party to raise its interests or concerns including regarding any
89 settlement proposed or to recover, if appropriate, its reasonable costs and fees incurred. The
90 attorney general shall not settle the matter with the defendant without the participation in all
91 settlement communications with the Interested Party who retained party status and without first
92 obtaining such Interested Party's informed consent which shall not be reasonably withheld.

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