

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:-

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

14 “Wage theft”, a violation of sections 27, 27F, 27G or 27H, the first sentence of section
15 148, sections 148B, 148C or 152A, subsections (c) or (d) of section 159C, sections 1, 1A, 1B, 2A
16 or 7 of chapter 151, clauses (4) or (5) of section 19 of chapter 151 or section 20 of chapter 151.

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

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

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

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

37 (d) When the attorney general informs the director of the department of unemployment
38 assistance that an employer, person or entity responsible for the payment of contributions under
39 section 14 of chapter 151A committed a wage theft violation or otherwise failed to timely pay
40 wages to an individual, the individual's unemployment benefit shall be calculated under chapter
41 151A as if the wages had been timely paid.

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

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

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

52 Not less than 5 days before the commencement of a stop work order under this section,
53 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.

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

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

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

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

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

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

107 (d) An employee affected by a stop work order pursuant to this section shall be paid for
108 the period the stop work order is in place or the first 10 days the employee was scheduled to
109 work if the stop work order had not been issued, whichever is less by the person or entity that
110 was served the stop work order. Time lost by an employee affected by a stop work order issued
111 pursuant to this section, not exceeding 10 days, shall be considered time worked under chapters
112 149 and 151.

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

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

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

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

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

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

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

135 Section 148I. Whenever facts exist showing that an employer has failed to comply with
136 sections 27, 27F, 27G, 27H, 148, 148A, 148B, 148C, 150, 150C, or 152A of this chapter, or
137 subsection (c) or (d) of section 159C of this chapter, or sections 1, 1A, 1B, 2A, 7, 19 or 20 of
138 chapter 151, relative to wage theft, as that term is defined in section 148 of this chapter, then any
139 3 current or former employees may bring a civil action for wage theft.

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

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

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

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

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

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

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

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

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

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