



1 Beacon Street, 16th Floor
Boston, MA 02108

www.aimnet.org | 617.262.1180 | fax 617.536.6785

October 16, 2017

Representative Paul Brodeur, House Chair
Senator Jason M. Lewis, Senate Chair
Members of the Joint Committee on Labor & Workforce Development

Dear Chairman Brodeur, Lewis and Members of the Committee.

On behalf of thousands of AIM members, we wish to express our support for S.995, An Act regarding treble damages currently pending before this committee. AIM has provided testimony to this committee previously and would like to remind the committee of [AIM's 2009 testimony](#), which included former Governor Deval Patrick's communication to the legislature to correct this law.

AIM filed this legislation as part of AIM's 2017-2018 legislative agenda and appreciates the leadership of those that sponsored this legislation. AIM urges the committee to provide S.995 with a favorable report.

AIM urges the legislature to reform the state's treble damages law, because it establishes a culture of enforcement which insinuates that every Massachusetts business behaves in an illegal fashion and should be punished or threatened with the use of the existing law should the businesses make a mistake.

The Massachusetts law on treble damages is regularly cited as one of the key negatives regarding the Commonwealth's business climate.

S.995, would provide judges with discretion when awarding treble damages for the loss of wages and other benefits, as well as costs of litigation and attorneys' fees for aggrieved employees, rather than mandating treble damages in all cases, including those involving honest mistakes. Right now it is mandatory and the Attorney General's Office can leverage the law in enforcement proceedings.

As background, Associated Industries of Massachusetts (AIM) strongly opposed the Treble Damages Act passed last session dealing with the mandatory award of treble damages in cases involving wage disputes. Despite strong opposition by AIM and the entire business community, Governor Patrick allowed the bill to become law without his signature, even after it was re-enacted by the Legislature without his amendment that would have protected employers acting in good faith from unfair punitive treble damages for any violation of the state's wage act.

Many wage issues arise without malice from honest error or from uncertainties about employment status rather than from deliberate malfeasance or reckless disregard on the part of employers; this new law is an extreme example of legislative insensitivity to employer concerns.

The complexity of wage disputes gives rise to legitimate differences of opinion between employers and employees. By previously requiring a finding of evil motive or reckless indifference on the part of the employer, the court made a legitimate distinction between employers who make honest mistakes and those who deliberately harm employees.

AIM believes that judicial discretion in the matter of the payment of wages is appropriate and urges this committee to let the decision of the court stand.

S.995, would restore the previous language that employees are not entitled to automatic awards of treble damages unless the employer has engaged in conduct that is “outrageous” or if said conduct arises from an evil motive or from reckless indifference to the rights of others. An employee claiming to be aggrieved by a willful violation and who prevails in such an action shall be awarded triple damages, as liquidated damages, for any loss of wages and other benefits; and the employee shall also be awarded the costs of the litigation and reasonable attorneys' fees.

AIM appreciates the committee’s consideration of this testimony and stands ready to provide further assistance to members of this committee and legislative sponsors working on this legislation.

Should you have any questions, please contact me directly at 617-262-1180.

Sincerely,

A handwritten signature in cursive script that reads "Bradley A. MacDougall".

Bradley A. MacDougall
Vice President for Government Affairs
Associated Industries of Massachusetts (AIM)