

SENATE No. 2484

Senate, October 19, 2023 -- Text of the Senate amendment to the House Bill relative to salary range transparency (House, No. 4109) (being the text of Senate, No. 2468, printed as amended)

The Commonwealth of Massachusetts

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

1 SECTION 1. Chapter 9 of the General Laws is hereby amended by adding the following
2 section:-

3 Section 32. (a) As used in this section, the words “annual report”, “covered employer”,
4 “EEO-1 data report”, “EEO-3 data report”, “EEO-4 data report”, “EEO-5 data report” and “wage
5 data report” shall have the same meanings as defined in section 105E of chapter 149 unless the
6 context clearly requires otherwise.

7 (b)(1) Annually, not later than May 1, the state secretary shall provide to the executive
8 office of labor and workforce development the EEO-1 data reports of each covered employer for
9 the prior calendar year.

10 (2) Not later than May 1 of each even-numbered year, the state secretary shall provide to
11 the executive office of labor and workforce development the EEO-3 data reports and EEO-5 data
12 reports of each covered employer, as applicable, covering the prior 2 calendar years.

13 (3) Not later than May 1 of each odd-numbered year, the state secretary shall provide to
14 the executive office of labor and workforce development the EEO-4 data reports of each covered
15 employer, as applicable, covering the prior 2 calendar years.

16 (c)(1) The state secretary shall accept wage data reports filed by covered employers
17 subject to the filing requirements of an EEO-1 data report as a separate supplement to their
18 annual report, which shall be filed at the same time as the covered employer’s annual report;
19 provided, however, that the filing of an annual report by a covered employer shall not be rejected
20 on the basis of an incomplete or omitted wage data report.

21 (2) The state secretary shall accept wage data reports filed by covered employers subject
22 to the filing requirements of an EEO-3 data report, EEO-4 data report or EEO-5 data report
23 through the least restrictive means available including, but not limited to, web portals, email
24 submissions or paper forms and reports by covered employers may be submitted through a web
25 portal, email submission or paper form.

26 (3) The state secretary may establish a web portal, sample email submission or paper
27 form to facilitate the submission of the wage data reports by covered employers.

28 (d) Wage data reports in the custody of the state secretary shall not be considered public
29 records as defined by clause Twenty-sixth of section 7 of chapter 4 and shall not be subject to
30 chapter 66 or chapter 66A.

31 SECTION 2. Chapter 23 of the General Laws is hereby amended by adding the following
32 section:-

33 Section 27. (a) As used in this section, the following words shall have the following
34 meanings unless the context clearly requires otherwise:

35 “Aggregate wage data report”, a report reflecting aggregate data from wage data reports,
36 collected from covered employers pursuant to subsection (c) of section 32 of chapter 9 and

37 provided to the executive office of labor and workforce development by the state secretary
38 pursuant to subsection (b) of said section 32 of said chapter 9; provided, however, that an
39 “aggregate wage data report” shall be separated by the following industries consistent with the
40 North American Industry Classification System:

41 (i) agriculture, forestry, fishing and hunting;

42 (ii) mining;

43 (iii) utilities;

44 (iv) construction;

45 (v) manufacturing;

46 (vi) wholesale trade;

47 (vii) retail trade;

48 (viii) transportation and warehousing;

49 (ix) information;

50 (x) finance and insurance;

51 (xi) real estate rental and leasing;

52 (xii) professional, scientific and technical services;

53 (xiii) management of companies and enterprises;

54 (xiv) administrative support and waste management and remediation services;

- 55 (xv) education services;
- 56 (xvi) health care and social assistance;
- 57 (xvii) arts, entertainment and recreation;
- 58 (xviii) accommodation and food services;
- 59 (xix) public administration; and
- 60 (xx) other services.

61 “EEO-1 data report”, as defined in section 105E of chapter 149.

62 “EEO-3 data report”, as defined in section 105E of chapter 149.

63 “EEO-4 data report”, as defined in section 105E of chapter 149.

64 “EEO-5 data report”, as defined in section 105E of chapter 149.

65 “Wage data report”, as defined in section 105E of chapter 149.

66 (b) The executive office of labor and workforce development shall publish on its website
67 aggregate wage data reports consisting of data received pursuant to subsection (c) of section
68 105E of chapter 149 as follows:

69 (i) annually, not later than July 31, an aggregate wage data report consisting of data from
70 all EEO-1 data reports;

71 (ii) in every even-numbered calendar year, not later than July 31, an aggregate wage data
72 report consisting of data from all EEO-3 data reports and EEO-5 data reports; and

73 (iii) in every odd-numbered calendar year, not later than July 31, an aggregate wage data
74 report consisting of data from all EEO-4 data reports.

75 SECTION 3. Section 1 of chapter 149 of the General Laws, as appearing in the 2022
76 Official Edition, is hereby amended by striking out, in lines 31 and 32, the words “one hundred
77 and five A to one hundred and five C, inclusive” and inserting in place thereof the following
78 words:- 105A to 105C, inclusive, 105E and 105F.

79 SECTION 4. Said section 1 of said chapter 149, as so appearing, is hereby further
80 amended by striking out, in lines 39 and 40, the words “one hundred and five A to one hundred
81 and five C, inclusive” and inserting in place thereof the following words:- 105A to 105C,
82 inclusive, 105E and 105F.

83 SECTION 5. Said chapter 149 is hereby further amended by inserting after section 105D
84 the following 2 sections:-

85 Section 105E. (a) As used in this section, the following words shall have the following
86 meanings unless the context clearly requires otherwise:

87 “Annual report”, an annual report to be filed by a covered employer with the state
88 secretary pursuant to section 45 of chapter 108A, section 63 of chapter 109, sections 12 and 48
89 of chapter 156C, section 16.22 of chapter 156D or any other applicable law or regulation.

90 “Covered employer”, an employer: (i) with not less than 100 full-time employees in the
91 commonwealth at any time during the prior calendar year; and (ii) subject to the federal filing
92 requirements of a wage data report.

93 “EEO-1 data report”, a completed copy of all required components of an employer’s
94 Employer Information Report, as issued by the United States Equal Employment Opportunity
95 Commission, including any successor report containing the same or substantially similar
96 workforce demographic and pay data categorized by race, ethnicity, sex and job category.

97 “EEO-3 data report”, a completed copy of all required components of a local union’s
98 Local Union Report, as issued by the United States Equal Employment Opportunity
99 Commission, including any successor report containing the same or substantially similar
100 workforce demographic and pay data categorized by race, ethnicity, sex and job category.

101 “EEO-4 data report”, a completed copy of a State and Local Governmental Information
102 Report, as issued by the United States Equal Employment Opportunity Commission, including
103 any successor report containing the same or substantially similar workforce demographic and
104 pay data categorized by race, ethnicity, sex and job category.

105 “EEO-5 data report”, a completed copy of an Elementary-Secondary Staff Information
106 Report, as issued by the United States Equal Employment Opportunity Commission, including
107 any successor report containing the same or substantially similar workforce demographic and
108 pay data categorized by race, ethnicity, sex and job category.

109 “State secretary”, as defined in chapter 9.

110 “Wage data report”, an EEO-1, EEO-3, EEO-4 or EEO-5 data report.

111 (b)(1) At the time of filing its annual report, a covered employer, subject to federal EEO-
112 1 data report filing requirements, shall submit to the state secretary a copy of its EEO-1 data

113 report covering the prior calendar year as a separate supplement to its annual report pursuant to
114 section 32 of chapter 9.

115 (2) In each even-numbered year, a covered employer, subject to federal EEO-3 or EEO-5
116 data report filing requirements, shall submit to the state secretary a copy of its EEO-3 data report
117 or EEO-5 data report, as applicable, covering the prior 2 calendar years pursuant to section 32 of
118 chapter 9.

119 (3) In each odd-numbered year, a covered employer, subject to federal EEO-4 data report
120 filing requirements, shall submit to the state secretary a copy of its EEO-4 data report covering
121 the prior 2 calendar years pursuant to section 32 of chapter 9.

122 (c) Annually, not later than May 1, the state secretary shall submit to the executive office
123 of labor and workforce development the wage data reports of each covered employer for the
124 prior calendar year pursuant to section 32 of chapter 9.

125 (d) Wage data reports in the custody of the secretary of labor and workforce development
126 shall not be considered public records as defined by clause Twenty-sixth of section 7 of chapter 4
127 and shall not be subject to chapter 66 or chapter 66A; provided, however, that the publishing of
128 aggregate wage data reports, as defined in section 27 of chapter 23, by the executive office of
129 labor and workforce development on its website pursuant to said section 27 of said chapter 23
130 shall be considered public records as defined by said clause Twenty-sixth of said section 7 of
131 said chapter 4.

132 (e)(1) The attorney general shall have the exclusive jurisdiction to enforce this section
133 and may obtain injunctive or declaratory relief for this purpose. Any covered employer who
134 violates this section shall be punished by a warning for the first offense, by a fine of not more

135 than \$500 for the second offense and by a fine of not more than \$1,000 for the third offense. A
136 fourth or subsequent offense shall be subject to paragraphs (1) and (2) of subsection (b) of
137 section 27C.

138 (2) No violation of this section shall be construed to carry treble damages pursuant to
139 section 150.

140 Section 105F. (a) As used in this section, the following words shall have the following
141 meanings unless the context clearly requires otherwise:

142 “Covered employer”, any employer, public or private, that employs 25 or more
143 employees in the commonwealth.

144 “Pay range”, the salary range or hourly wage range that the covered employer reasonably
145 and in good faith expects to pay for a particular and specific employment position at that time.

146 “Posting”, any advertisement or job posting intended to recruit job applicants for a
147 particular and specific employment position, including, but not limited to, recruitment done
148 directly by a covered employer or indirectly through a third party.

149 (b) A covered employer or its agent shall disclose the pay range for a particular and
150 specific employment position in the posting of the position.

151 (c) A covered employer or its agent shall provide the pay range for a particular and
152 specific employment position to an employee who is offered a promotion or transfer to a new
153 position with different job responsibilities.

154 (d) A covered employer or its agent shall provide the pay range for a particular and
155 specific employment position to an employee holding such position or to an applicant for such
156 position upon request.

157 (e) It shall be unlawful for a covered employer to discharge or in any other manner
158 retaliate or discriminate against any employee or applicant because the employee or applicant
159 has: (i) taken action to enforce their rights pursuant to this section; (ii) made a complaint to their
160 employer, an agent of their employer or the attorney general regarding an alleged violation of
161 this section; (iii) instituted, or caused to be instituted, any proceeding under this section; or (iv)
162 testified or is about to testify in any such proceeding.

163 (f)(1) The attorney general shall have the exclusive jurisdiction to enforce subsections (b)
164 to (d), inclusive, and may obtain injunctive or declaratory relief for this purpose. Any covered
165 employer who violates this section shall be punished by a warning for the first offense, by a fine
166 of not more than \$500 for the second offense and by a fine of not more than \$1,000 for the third
167 offense. A fourth or subsequent offense shall be subject to paragraphs (1) and (2) of subsection
168 (b) of section 27C.

169 (2) For enforcement pursuant to paragraph (1), multiple violations within a 48-hour
170 period of subsections (b) to (d), inclusive, shall have a rebuttable presumption that such offenses
171 constitute a single offense attributed to a single act or set of related actions.

172 (3) No violation of this section shall be construed to carry treble damages pursuant to
173 section 150.

174 SECTION 6. Not later than 6 months after the effective date of this act, the attorney
175 general shall conduct a public awareness campaign to provide information to covered employers

176 regarding the requirements of sections 105E and 105F of chapter 149 of the General Laws,
177 which shall include, but not be limited to, making information available on the attorney general's
178 website and otherwise informing covered employers of said sections 105E and 105F of said
179 chapter 149.

180 SECTION 7. (a)(1) Not later than May 1, 2024, the state secretary shall provide the
181 executive office of labor and workforce development with initial EEO-1, EEO-3 and EEO-5 data
182 reports pursuant to paragraphs (1) and (2) of subsection (b) of section 32 of chapter 9 of the
183 General Laws, as inserted by section 1.

184 (2) Not later than May 1, 2025, the state secretary shall provide the executive office of
185 labor and workforce development with initial EEO-4 data reports pursuant to paragraph (3) of
186 subsection (b) of section 32 of chapter 9 of the General Laws, as inserted by section 1.

187 (b)(1) Not later than July 31, 2024, the executive office of labor and workforce
188 development shall publish the first aggregate wage data reports pursuant to clauses (i) and (ii) of
189 subsection (b) of section 27 of chapter 23 of the General Laws, as inserted by section 2.

190 (2) Not later than July 31, 2025, the executive office of labor and workforce development
191 shall publish the first aggregate wage data report pursuant to clause (iii) of subsection (b) of
192 section 27 of chapter 23 of the General Laws, as inserted by section 2.

193 (c)(1) Beginning in calendar year 2024, covered employers subject to EEO-1, EEO-3 and
194 EEO-5 data report requirements shall submit the first reports to the state secretary pursuant to
195 paragraphs (1) and (2) of subsection (b) of section 105E of chapter 149 of the General Laws, as
196 inserted by section 5.

197 (2) Beginning in calendar year 2025, covered employers subject to EEO-4 data report
198 requirements shall submit the first report to the state secretary pursuant to paragraph (3) of
199 subsection (b) of section 105E of chapter 149 of the General Laws, as inserted by section 5.

200 SECTION 8. For the first 2 years after the effective date of sections 105E and 105F of
201 chapter 149 of the General Laws, as inserted by section 5, a covered employer shall have 2
202 business days after notice of a violation to cure any defect before a fine is imposed.

203 SECTION 9. Section 105F of chapter 149 of the General Laws, as inserted by section 5,
204 shall take effect 1 year after the effective date of this act.