

**HOUSE . . . . . No. 1723**

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The Commonwealth of Massachusetts

PRESENTED BY:

***Denise C. Garlick, (BY REQUEST)***

*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 passage of the accompanying:

An Act relative to the treble damages provisions of the wage and hour laws.

PETITION OF:

NAME:

*William J. Okerman*

DISTRICT/ADDRESS:

*100 Meetinghouse Circle*

*Needham, MA 02492*

**HOUSE . . . . . No. 1723**

By Ms. Garlick of Needham (by request), a petition (accompanied by bill, House, No. 1723) of William J. Okerman relative to the treble damages provisions of the wage and hour laws. Labor and Workforce Development.

**The Commonwealth of Massachusetts**

An Act relative to the treble damages provisions of the wage and hour laws.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 WHEREAS, among the purposes of certain sections of Chapters 149 and 151 of Title  
2 XXI of the General Laws, titled “Labor and Industries,” is ensuring that employees receive their  
3 compensation; and

4 WHEREAS, compliance with and the strict enforcement of the Commonwealth’s wage  
5 and hour laws, including those relating to employee compensation, are matters of public policy  
6 of the utmost importance to the well-being of the Commonwealth and its inhabitants; and

7 WHEREAS, among the “responsibilities and functions” of the Attorney General are  
8 “field inspection, investigation and prosecution to enforce all laws pertaining to wages, hours  
9 and working conditions, child labor and workplace safety, and fair competition for bidders on  
10 public construction jobs, including enforcement of the provisions of chapters one hundred and  
11 forty-nine and one hundred and fifty-one of the General Laws.” St. 1993, c. 110, § 331; See, e.g.,  
12 G. L. c. 149, §§ 2, 5, 27C, 148-150, and G. L. c. 151, §§ 3, 15, 19(3); and

13 WHEREAS, Section 27C of Chapter 149 of the General Laws provides, among other  
14 things:

15 Any employer, contractor or subcontractor, or any officer, agent, superintendent, foreman  
16 or employee thereof, or staffing agency or work site employer who without a willful intent to do  
17 so, violates any provision of section 26, 27, 27A, 27B, 27F, 27G, 27H, 148, 148A, 148B or 159C  
18 or section 1A, 1B or 19 of chapter 151, shall be punished by a fine of not more than \$10,000, or  
19 by imprisonment for not more than six months for a first offense, and for a subsequent offense by  
20 a fine of not more than \$25,000 or by imprisonment for not more than one year, or by both such  
21 fine and such imprisonment.

22 G. L. c. 149, § 27C(a)(2); and

23 WHEREAS, in addition to the Attorney General’s enforcement responsibilities and  
24 functions, certain sections of Chapters 149 and 151 of the General Laws provide employees with  
25 a concurrent right to pursue private civil actions against employers for various labor law  
26 violations, including violations of the wage and hour laws. G. L. c. 149, §§ 19B(4), 27, 27F,  
27 27G, 27H, 52D(f), 150, 152A(f), and G. L. c. 151, §§ 1B and 20; and

28 WHEREAS, these private remedies provide for, among other things, treble damages; and

29 WHEREAS, as the Supreme Judicial Court has recognized, “Massachusetts has long-  
30 standing statutes providing for treble damages.” *International Fidelity Ins. Co. v. Wilson*, 387  
31 Mass. 841, 856 n.20 (1983); and

32 WHEREAS, in 1983 the Supreme Judicial Court held as follows with respect to statutes  
33 that provide for awards of multiple damages:

34 4. Multiple damage awards under c. 93A. *Wilson, Sr., Wilson, Jr., and Pignato* also  
35 challenge the trial judge’s method of awarding multiple damages under c. 93A, § 11. They argue  
36 that IFIC is limited to a single award of multiple damages for which they are jointly and  
37 severally liable. We disagree.

38 a. Background. The Legislature first created a private remedy under c. 93A in 1969.  
39 Chapter 93A ties liability for multiple damages to the degree of the defendant’s culpability by  
40 creating two classes of defendants. The first class is those defendants who have committed  
41 relatively innocent violations of the statute’s substantive provisions. These defendants are not  
42 liable for multiple damages. *Linthicum v. Archambault*, 379 Mass. 381, 388 (1979). The second  
43 class is those defendants who have committed “willful or knowing” violations. § 11, *supra*.  
44 Based on the egregiousness of each defendant’s conduct, the trial judge may assess between  
45 double and treble damages. When the Legislature extended the protection of c. 93A to the  
46 business context, it incorporated this scheme concerning multiple damages into § 11. St. 1972, c.  
47 614, § 2.

48 b. Legislative intent. The question presented by this case has not been raised previously  
49 under either § 9 or § 11. We begin with the canon of statutory construction that the primary  
50 source of insight into the intent of the Legislature is the language of the statute. *Hoffman v.*  
51 *Howmedica, Inc.*, 373 Mass. 32, 37 (1977). The language of § 11, however, does not yield an  
52 answer. On one hand, the language focuses on the size of the injury and refers to the culpability  
53 of the defendant in an indirect manner. This suggests that the statute be read as requiring joint  
54 and several liability once any one of the defendants commits a “willful or knowing violation.”  
55 On the other hand, joint and several liability would conflict with the clear intent of the statute to  
56 distinguish among different degrees of culpability. Language alone does not tell us which of  
57 these inferences to follow.

58           The language of the statute being inconclusive, we must look to extrinsic sources for  
59 assistance in determining the correct construction of the statute. *Barclay v. DeVeau*, 384 Mass.  
60 676, 680 (1981). One important source is preexisting law, see *Condon v. Haitsma*, 325 Mass.  
61 371, 373 (1950), since the Legislature must be presumed to be aware of the decisions of this  
62 court. In interpreting the language of § 9, we have looked to analogous statutory material and  
63 relevant case law to determine the intent of the Legislature. *Murphy v. Charlestown Sav. Bank*,  
64 380 Mass. 738, 747-750 (1980).

65           We find two distinct bodies of law which are analogous. The first body of law is that  
66 developed under the Clayton Antitrust Act (Act) which provides that “[a]ny person who shall be  
67 injured in his business or property by reason of anything forbidden in the antitrust laws may sue .  
68 . . and shall recover threefold the damages by him sustained.” 15 U.S.C. § 15 (1976 & Supp. V  
69 1981). Under the Act, the trial judge has no discretion to deny the plaintiff treble damages once a  
70 violation – even a merely negligent one – is proved. Liability under the Act is joint and several.  
71 *Texas Indus. v. Radcliff Materials, Inc.*, 451 U.S. 630, 646 (1981). Joint and several liability is  
72 consistent with the Act’s rule that liability does not vary with the degree of the defendant’s  
73 culpability. It is also needed to place a limit on liability for relatively innocent violations of the  
74 Act and to discourage strike suits.

75           Some States have adopted statutes modeled on the Clayton Act. The Massachusetts  
76 Legislature considered, but rejected, such a proposal when it enacted § 9. Senate Doc. No. 211 of  
77 1969 provided that “[a]ny person who purchases goods or services primarily for personal . . .  
78 purposes who suffers any ascertainable loss . . . by the use . . . by a person of a method . . .  
79 declared unlawful by section two . . . may bring an action . . . in equity to recover treble damages  
80 or five hundred dollars, whichever is greater.” This language, which was not adopted, would  
81 have imposed treble damages for all violations of the Act, and joint and several liability would  
82 clearly have been appropriate. 1969 Bulletin of Committee Work, Legislative Record at 6A.

83           We find the analogy to the Clayton Act to be unpersuasive. The Massachusetts  
84 Legislature consciously enacted a rule whereby the defendant’s liability is measured by the  
85 degree of his culpability. This rule completely distinguishes the multiple damage provisions of c.  
86 93A. Engrafting the body of law developed under the Clayton Act on c. 93A would violate the  
87 decision of the Legislature to enact a different type of statute.

88           We find a more apt analogy in our own decisions. We have held that concurrent  
89 wrongdoers are independently liable under statutes designed to impose a penalty. In *Porter v.*  
90 *Sorell*, 280 Mass. 457 (1932), the court considered the meaning of the former G. L. (Ter. Ed.) c.  
91 229, § 5 – a wrongful death statute – which provided that a defendant “shall be liable in damages  
92 in the sum of not less than [\$ 500] or more than [\$ 10,000], to be assessed with reference to the  
93 degree of his culpability.” The court held that the execution in full of a judgment against one  
94 defendant did not release a concurrent wrongdoer. *Sorell*, supra at 463-464. It noted that the  
95 statute levied a penalty and reasoned that the payment by one wrongdoer of his penalty could not

96 extinguish a penalty levied on a second wrongdoer. *Supra* at 463. The court stated that the  
97 Legislature might have provided otherwise, but that it could not “by construction add a limitation  
98 on punishment which the Legislature did not see fit to establish.” *Supra* at 462.

99           The reasoning of *Porter* has been followed in subsequent cases. In *Arnold v. Jacobs*, 316  
100 Mass. 81, 84 (1944), the court held that the wrongful death statute “does not limit the amount  
101 that can be collected from a number of wrongdoers for one death” since, “as in the criminal law,  
102 each wrongdoer may be made to suffer the maximum penalty, no matter how many are guilty.”  
103 See *Gaudette v. Webb*, 362 Mass. 60, 73-74 n.9 (1972); *O'Connor v. Benson Coal Co.*, 301  
104 Mass. 145, 148 (1938).

105           The analogy to c. 93A is helpful. The multiple damage provisions of c. 93A are designed  
106 to impose a penalty, *Heller v. Silverbranch Constr. Corp.*, 376 Mass. 621, 627-628 (1978), that  
107 varies with the culpability of the defendant. *Linthicum v. Archambault*, 379 Mass. 381, 388  
108 (1979). We believe that the Legislature intended that defendants would be independently liable  
109 for multiple damages under § 11.

110           *International Fidelity Ins. Co. v. Wilson*, 387 Mass. 841, 853-856 (1983) (footnotes  
111 omitted); and

112           WHEREAS, in 1983, the Supreme Judicial Court held with respect to Section 15B (7) of  
113 Chapter 186 of the General Laws, that “the Legislature intends any violation of G. L. c. 186, §§  
114 15B (6) (a), (d), and (e), to result in the imposition of treble damages,” *Mellor v. Berman*, 390  
115 Mass. 275, 283 (1983), and in so holding explained:

116           The language of other multiple damages statutes indicates that where the Legislature  
117 intends to require a finding of bad faith or wilful violations it knows how to include such  
118 requirement. Compare the language of G. L. c. 186, § 15B (7) with G. L. c. 93A, §§ 2, 9, and 11,  
119 as amended, stating that “any person . . . who has been injured by another person’s use or  
120 employment” of “unfair or deceptive practices in the conduct of any trade or commerce” “may  
121 bring an action . . . in the housing court” “for money damages only. Said damages may include  
122 double or treble damages, attorneys’ fees and costs, as herein provided . . .” Compare also G. L.  
123 c. 167, § 63, G. L. c. 137, §§ 1, 2, G. L. c. 242, §§ 4-6, G. L. c. 186, § 15F, G. L. c. 75D, § 14, G.  
124 L. c. 91, § 59A, G. L. c. 140, § 159, G. L. c. 130, §§ 63, 68A, G. L. c. 130, §§ 24, 27, and G. L.  
125 c. 131, § 42, with G. L. c. 165, § 24, G. L. c. 214, § 3A, G. L. c. 231, § 85J, G. L. c. 93, §§ 21,  
126 42, and G. L. c. 272, § 85A.

127           *Mellor v. Berman*, 390 Mass. 275, 282 n.11 (1983); and

128           WHEREAS, in 1985 the General Court created a private remedy under Section 19B of  
129 Chapter 149 of the General Laws that provides:

130 (4) Any person aggrieved by a violation of subsection (2) may institute within three years  
131 of such violation and prosecute in his own name and on his own behalf, or for himself and for  
132 other similarly situated, a civil action for injunctive relief and any damages thereby incurred,  
133 including treble damages for any loss of wages or other benefits. The total awarded damages  
134 shall equal or exceed a minimum of five hundred dollars for each such violation.

135 St. 1985, c. 587; and

136 WHEREAS, according to the Supreme Judicial Court in *International Fidelity Ins. Co. v.*  
137 *Wilson*, the General Court must be presumed to have been aware of the Supreme Judicial Court's  
138 *International Fidelity Ins. Co. v. Wilson* and *Mellor v. Berman* decisions when it created the  
139 private remedy for Section 19B of Chapter 149 of the General Laws by enacting Chapter 587 of  
140 the Acts of 1985. *International Fidelity Ins. Co. v. Wilson*, 387 Mass. 841, 854 (1983); and

141 WHEREAS, pursuant to the Supreme Judicial Court's holding in *International Fidelity*  
142 *Ins. Co. v. Wilson*, the General Court modeled the private remedy of Section 19B of Chapter 149  
143 of the General Laws created by Chapter 587 of the Acts of 1985 on the Clayton Act by virtue of  
144 the fact that it did not enact in the statute "a rule whereby the defendant's liability [for treble  
145 damages] is measured by the degree of his culpability," which according to the Supreme Judicial  
146 Court's clear and unambiguous holding in *International Fidelity Ins. Co. v. Wilson* means that  
147 the General Court must have intended that under the private remedy of Section 19B of Chapter  
148 149 of the General Laws as enacted in 1985 "the trial judge has no discretion to deny the plaintiff  
149 treble damages once a violation – even a merely negligent one – is proved" and that "treble  
150 damages [must be] imposed for all violations," *International Fidelity Ins. Co. v. Wilson*, 387  
151 Mass. 841, 854, 855 (1983), and which according to the Supreme Judicial Court's clear and  
152 unambiguous holding in *Mellor v. Berman* must mean that the General Court intended that under  
153 the private remedy of Section 19B of Chapter 149 of the General Laws as enacted in 1985 "the  
154 [General Court] intends any violation of [Section 19B of Chapter 149 of the General Laws] to  
155 result in the imposition of treble damages [for any loss of wages or other benefits]." *Mellor v.*  
156 *Berman*, 390 Mass. 275, 283 (1983); and

157 WHEREAS, in 1993 the General Court created a private remedy under Section 27 of  
158 Chapter 149 of the General Laws that provided:

159 Any employee claiming to be aggrieved by a violation of this section may, at the  
160 expiration of ninety days after the filing of a complaint with the attorney general, or sooner, if  
161 the attorney general assents in writing, and within three years of such violation, institute and  
162 prosecute in his own name and on his own behalf, or for himself and for others similarly situated,  
163 a civil action for injunctive relief and any damages incurred, including treble damages for any  
164 loss of wages and other benefits."

165 St. 1993, c. 110, § 173; and

166 WHEREAS, in 1993 the General Court created a private remedy under Section 27F of  
167 Chapter 149 of the General Laws that provides:

168 Any employee claiming to be aggrieved by a violation of this section may, at the  
169 expiration of ninety days after the filing of a complaint with the attorney general, or sooner, if  
170 the attorney general assents in writing, and within three years of such violation, institute and  
171 prosecute in his own name and on his own behalf, or for himself and for others similarly situated,  
172 a civil action for injunctive relief and any damages incurred, including treble damages for any  
173 loss of wages and other benefits.

174 St. 1993, c. 110, § 177; and

175 WHEREAS, in 1993 the General Court created a private remedy under Section 27G of  
176 Chapter 149 of the General Laws that provided:

177 Any employee claiming to be aggrieved by a violation of this section may, at the  
178 expiration of ninety days after the filing of a complaint with the attorney general, or sooner, if  
179 the attorney general assents in writing, and within three years of such violation, institute and  
180 prosecute in his own name and on his own behalf, or for himself and for others similarly situated,  
181 a civil action for injunctive relief and any damages incurred, including treble damages for any  
182 loss of wages and other benefits.

183 St. 1993, c. 110, § 178; and

184 WHEREAS, in 1993 the General Court created a private remedy under Section 27H of  
185 Chapter 149 of the General Laws that provided:

186 Any employee claiming to be aggrieved by a violation of this section may, at the  
187 expiration of ninety days after the filing of a complaint with the attorney general, or sooner, if  
188 the attorney general assents in writing, and within three years of such violation, institute and  
189 prosecute in his own name and on his own behalf, or for himself and for others similarly situated,  
190 a civil action for injunctive relief and any damages incurred, including treble damages for any  
191 loss of wages and other benefits.

192 St. 1993, c. 110, § 179; and

193 WHEREAS, in 1993 the General Court created a private remedy under Section 150 of  
194 Chapter 149 of the General Laws that provided:

195 Any employee claiming to be aggrieved by a violation of section one-hundred and forty-  
196 eight, one-hundred and forty-eight B, one-hundred and fifty C, one-hundred and fifty-two and  
197 one-hundred and fifty-two A may, at the expiration of ninety days after the filing of a complaint  
198 with the attorney general, or sooner, if the attorney general assents in writing, and within three  
199 years of such violation, institute and prosecute in his own name and on his own behalf, or for

200 himself and for others similarly situated, a civil action for injunctive relief and any damages  
201 incurred, including treble damages for any loss of wages and other benefits.

202 St. 1993, c. 110, § 182; and

203 WHEREAS, in 1993 the General Court amended the existing private remedy under  
204 Section 1B of Chapter 151 of the General Laws, which prior to being so amended had provided  
205 that “if any person is paid by an employer less than such overtime rate of compensation [required  
206 by Section 1A of Chapter 151], such person may recover in a civil action the full amount of such  
207 overtime rate of compensation less any amount actually paid to him or her by the employer,” G.  
208 L. c. 151, § 1B, as inserted by St. 1962, c. 371, by inserting after the word “action” the words  
209 “three times”, so that upon being so amended Section 1B of Chapter 151 provided that “if any  
210 person is paid by an employer less than such overtime rate of compensation [required by Section  
211 1A of Chapter 151], such person may recover in a civil action three times the full amount of such  
212 overtime rate of compensation less any amount actually paid to him or her by the employer.” St.  
213 1993, c. 110, § 183; and

214 WHEREAS, in 1993 the General Court amended the existing private remedy under  
215 Section 20 of Chapter 151 of the General Laws, which prior to being so amended had provided  
216 that “[i]f any person is paid by an employer less than the minimum fair wage to which such  
217 person is entitled under or by virtue of a minimum fair wage regulation, or less than one dollar  
218 and eighty-five cents per hour in any manufacturing occupation or in any other occupation not  
219 covered by a minimum fair wage regulation; such person may recover in a civil action the full  
220 amount of such minimum wage less any amount actually paid to him or her by the employer,” G.  
221 L. c. 151, § 20, as amended through St. 1973, c. 1192, § 17, by inserting after the word “action”  
222 the words “three times”, so that upon being so amended Section 20 of Chapter 151 provided that  
223 “[i]f any person is paid by an employer less than the minimum fair wage to which such person is  
224 entitled under or by virtue of a minimum fair wage regulation, or less than one dollar and eighty-  
225 five cents per hour in any manufacturing occupation or in any other occupation not covered by a  
226 minimum fair wage regulation; such person may recover in a civil action three times the full  
227 amount of such minimum wage less any amount actually paid to him or her by the employer.” St.  
228 1993, c. 110, § 185; and

229 WHEREAS, according to the Supreme Judicial Court’s holding in *International Fidelity*  
230 *Ins. Co. v. Wilson*, the General Court must be presumed to have been aware of the Supreme  
231 Judicial Court’s decisions in *International Fidelity Ins. Co. v. Wilson* and *Mellor v. Berman*  
232 when it created private remedies under Sections 27, 27F, 27G, 27H, and 150 of Chapter 149 of  
233 the General Laws by enacting Sections 173, 177, 178, 179, and 182 of Chapter 110 of the Acts of  
234 1993, respectively, and when it amended the private remedies under Sections 1B and 20 of  
235 Chapter 151 of the General Laws by enacting Sections 183 and 185 of Chapter 110 of the Acts of  
236 1993, respectively. *International Fidelity Ins. Co. v. Wilson*, 387 Mass. 841, 854 (1983); and

237 WHEREAS, as with the private remedy of Section 19B of Chapter 149 of the General  
238 Laws created by Chapter 587 of the Acts of 1985, and pursuant to the Supreme Judicial Court’s  
239 holding in *International Fidelity Ins. Co. v. Wilson*, the General Court modeled the private  
240 remedies of Sections 27, 27F, 27G, 27H, and 150 of Chapter 149 of the General Laws as inserted  
241 by Sections 173, 177, 178, 179, and 182 of Chapter 110 of the Acts of 1993, respectively, and  
242 the private remedies of Sections 1B and 20 of Chapter 151 of the General Laws as amended by  
243 Sections 183 and 185 of Chapter 110 of the Acts of 1993, respectively, on the Clayton Act by  
244 virtue of the fact that it did not enact in any of said statutes “a rule whereby the defendant’s  
245 liability [for treble damages] is measured by the degree of his culpability,” which according to  
246 the Supreme Judicial Court’s clear and unambiguous holding in *International Fidelity Ins. Co. v.*  
247 *Wilson* must mean that the General Court must have intended that under said private remedies,  
248 “the trial judge has no discretion to deny the plaintiff treble damages once a violation – even a  
249 merely negligent one – is proved” and that “treble damages [must be] imposed for all violations,”  
250 *International Fidelity Ins. Co. v. Wilson*, 387 Mass. 841, 854, 855 (1983), and which according  
251 to the Supreme Judicial Court’s clear and unambiguous holding in *Mellor v. Berman* must mean  
252 that the General Court must have intended that under said private remedies “the [General Court]  
253 intends any violation of [the substantive provisions of the statutes] to result in the imposition of  
254 treble damages.” *Mellor v. Berman*, 390 Mass. 275, 283 (1983); and

255 WHEREAS, on July 31, 2000, the Supreme Judicial Court held as follows with respect to  
256 awards of treble damages under Section 1B of Chapter 151 of the General Laws as amended by  
257 Section 183 of Chapter 110 of the Acts of 1993:

258 5. Treble damages. Because we hold that Lane Bryant did not violate G. L. c. 151, § 1A,  
259 Goodrow’s cross appeal from the denial of her claim of treble damages is moot. However, the  
260 issue is likely to arise in the class action, trial of which has been severed from the trial of  
261 Goodrow’s individual claim, so we express our opinion on the matter.

262 General Laws c. 151, § 1B, provides in relevant part that, “if any person is paid by an  
263 employer less than such overtime rate of compensation [required by § 1A], such person may  
264 recover in a civil action three times the full amount of such overtime rate of compensation less  
265 any amount actually paid to him or her by the employer.” Goodrow contends that, in light of the  
266 fact that the Legislature declined to require a showing of intent or wilfulness with respect to the  
267 treble damages provision, the plain meaning of the word “may” in the context of this sentence is  
268 that an employee illegally deprived of overtime compensation is permitted but not required to  
269 bring a civil action in which, if successful, she is entitled to recover treble damages. The word  
270 “may,” argues Goodrow, therefore relates to a plaintiff’s option to initiate a civil action for  
271 damages rather than to the amount of damages recoverable under the statute. We disagree.

272 Multiple damages such as the treble damages at issue here “are ‘essentially punitive in  
273 nature.’ ” *Fontaine v. Ebtac Corp.*, 415 Mass. 309, 322 (1993), quoting *McEvoy Travel Bur., Inc.*  
274 *v. Norton Co.*, 408 Mass. 704, 717 (1990). See *Kansallis Fin. Ltd. v. Fern*, 421 Mass. 659, 672

275 (1996). They are allowed only when expressly authorized by statute, *Flesner v. Technical*  
276 *Communications Corp.*, 410 Mass. 805, 813 (1991), and are ordinarily applied by the Legislature  
277 “against those defendants with a higher degree of culpability than that sufficient to ground  
278 simple liability.” See *Kansallis Fin. Ltd.*, *supra*. Punitive damages may be awarded for conduct  
279 that is “outrageous, because of the defendant’s evil motive or his reckless indifference to the  
280 rights of others.” *Dartt v. Browning-Ferris Indus., Inc.* (Mass.), 427 Mass. 1, 17a, (1998),  
281 quoting Restatement (Second) of Torts § 908(2) (1979). In the instant case, the judge found that,  
282 in light of the uncertainty of the state of the law in Massachusetts and the fact that Lane Bryant  
283 relied on the advice of counsel and followed law and procedures apparently sanctioned  
284 elsewhere, there was “no legal or equitable basis” on which to impose multiple damages. We  
285 agree. We find nothing in the record to support a finding that Lane Bryant intentionally or  
286 wilfully violated Massachusetts law or that its conduct was “evil in motive” or showed a  
287 “reckless indifference to the rights of others,” and we therefore decline to award treble damages.  
288 To do otherwise absent evidence of heightened culpability would very likely constitute an  
289 “arbitrary or irrational deprivation[ ] of property,” *TXO Prod. Corp. v. Alliance Resources Corp.*,  
290 509 U.S. 443 (1993) (Kennedy, J., concurring), and thus would be constitutionally  
291 impermissible. There was no error.

292

293           *Goodrow v. Lane Bryant, Inc.*, 432 Mass. 165, 178-179 (2000); and

294           WHEREAS, according to the Supreme Judicial Court’s holding in *International Fidelity*  
295 *Ins. Co. v. Wilson*, “the fact that the Legislature declined to require a showing of intent or  
296 wilfulness with respect to the treble damages provision [of Section 1B of Chapter 151 of the  
297 General Laws]” means that the treble damages provision of Section 1B of Chapter 151 of the  
298 General Laws as amended through Section 183 of Chapter 110 of the Acts of 1993 is clearly of  
299 the “body of law [that has] developed under the Clayton Antitrust Act” under which “the trial  
300 judge has no discretion to deny the plaintiff treble damages once a violation – even a merely  
301 negligent one – is proved,” just as was Senate Doc. No. 211 of 1969 – the language of which  
302 employed the word “may” in exactly the same way as it is employed in the language of Section  
303 1B of Chapter 151 of the General Laws as amended through Section 183 of Chapter 110 of the  
304 Acts of 1993 – which, according to the Supreme Judicial Court, had it been adopted, “would  
305 have imposed treble damages for all violations of the Act.” *International Fidelity Ins. Co. v.*  
306 *Wilson*, 387 Mass. 841, 854-855 (1983); and

307           WHEREAS, the General Laws mandates:

308           In construing statutes the following rules shall be observed, unless their observance  
309 would involve a construction inconsistent with the manifest intent of the law-making body or  
310 repugnant to the context of the same statute:

311           . . . .

312 Third, Words and phrases shall be construed according to the common and approved  
313 usage of the language;

314 G. L. c. 4, § 6, Third; and

315 WHEREAS, according to the common and approved usage of the English language, the  
316 sentence “[a]ny person who purchases goods or services primarily for personal . . . purposes who  
317 suffers any ascertainable loss . . . by the use . . . by a person of a method . . . declared unlawful  
318 by section two . . . may bring an action . . . in equity to recover treble damages or five hundred  
319 dollars, whichever is greater” is a simple and complete sentence, the only permissible  
320 construction of which is that the subject of the sentence, which is “[a]ny person who purchases  
321 goods or services primarily for personal . . . purposes who suffers any ascertainable loss . . . by  
322 the use . . . by a person of a method . . . declared unlawful by section two,” is permitted but not  
323 required to undertake a specific act, which is to “bring an action . . . in equity to recover treble  
324 damages or five hundred dollars, whichever is greater”; and

325 WHEREAS, according to the common and approved usage of the English language, the  
326 word “may” in the sentence “[a]ny person who purchases goods or services primarily for  
327 personal . . . purposes who suffers any ascertainable loss . . . by the use . . . by a person of a  
328 method . . . declared unlawful by section two . . . may bring an action . . . in equity to recover  
329 treble damages or five hundred dollars, whichever is greater” clearly and unambiguously relates  
330 to a plaintiff’s option to initiate an action in equity for treble damages rather than to the amount  
331 of damages recoverable under the statute; and

332 WHEREAS, the word “may” in the sentence “if any person is paid by an employer less  
333 than such overtime rate of compensation [required by § 1A], such person may recover in a civil  
334 action three times the full amount of such overtime rate of compensation less any amount  
335 actually paid to him or her by the employer” is used in exactly the same way as the word “may”  
336 is used in the sentence “[a]ny person who purchases goods or services primarily for personal . . .  
337 purposes who suffers any ascertainable loss . . . by the use . . . by a person of a method . . .  
338 declared unlawful by section two . . . may bring an action . . . in equity to recover treble damages  
339 or five hundred dollars, whichever is greater,” which means that “according to the common and  
340 approved usage of the language” the word “may” in the sentence “if any person is paid by an  
341 employer less than such overtime rate of compensation [required by § 1A], such person may  
342 recover in a civil action three times the full amount of such overtime rate of compensation less  
343 any amount actually paid to him or her by the employer” clearly and unambiguously “relates to a  
344 plaintiff’s option to initiate a civil action for damages rather than to the amount of damages  
345 recoverable under the statute”; and

346 WHEREAS, the Supreme Judicial Court has held: “Where the language of a statute is  
347 plain, it is ‘the sole function of the courts . . . to enforce it according to its terms.’ ” D’Avella v.  
348 McGonigle, 429 Mass. 820, 822-823 (1999), quoting from Boston Neighborhood Taxi Assn. v.

349 Department of Pub. Util., 410 Mass. 686, 690 (1991); “Where . . . the language of the statute is  
350 clear, it is the function of the judiciary to apply it, not amend it.” Commissioner of Rev. v.  
351 Cargill, Inc., 429 Mass. 79, 82 (1999); “We do not read into the statute a provision which the  
352 Legislature did not see fit to put there, nor add words that the Legislature had an option to, but  
353 chose not to include.” Commissioner of Correction v. Superior Ct. Dept. of the Trial Ct., 446  
354 Mass. 123, 126 (2006). Also see Sullivan v. Brookline, 435 Mass. 353, 360 (2001); General  
355 Elec. Co. v. Department of Env’tl Protection, 429 Mass. 798, 803 (1999); Dartt v. Browning-  
356 Ferris Indus., Inc., 427 Mass. 1, 8 (1998); Pyle v. School Comm. of S. Hadley, 423 Mass. 283,  
357 285-286 (1996); O’Brien v. Massachusetts Bay Transp. Auth., 405 Mass. 439, 443-444 (1989);  
358 Bronstein v. Prudential Ins. Co., 390 Mass. 701, 704 (1984); Department of Community Affairs  
359 v. Massachusetts State College Bldg. Auth., 378 Mass. 418, 427 (1979); Prudential Ins. Co. v.  
360 Boston, 369 Mass. 542, 546-547 (1976); Johnson v. District Attorney for the N. Dist., 342 Mass.  
361 212, 215 (1961); Randall’s Case, 331 Mass. 383, 385 (1954); Commonwealth v. Slome, 321  
362 Mass. 713, 716 (1947); Johnson’s Case, 318 Mass. 741, 746-747 (1945); Hanlon v. Rollins, 286  
363 Mass. 444, 447 (1934); Commonwealth v. S. S. Kresge Co., 267 Mass. 145, 148 (1929); King v.  
364 Viscoloid Co., 219 Mass. 420, 425 (1914); Holbrook v. Holbrook, 1 Pick. 248, 249, 250 (1822);  
365 and

366 WHEREAS, the language from *Fontaine v. Ebtex Corp.* cited in *Goodrow v. Lane*  
367 *Bryant, Inc.* is excerpted from the following passage:

368 2. We think it appropriate to comment on the question whether a plaintiff with an age  
369 discrimination claim that is subject to the amendments to G. L. c. 151B, § 9, governing damages  
370 is entitled, on proper proof, to recover both multiple and punitive damages. The parties have  
371 briefed the issue and the question will undoubtedly arise in cases pending for trial in the Superior  
372 Court.

373 “As a general rule, when the Legislature has employed specific language in one part of a  
374 statute, but not in another part which deals with the same topic, the earlier language should not  
375 be implied where it is not present.” *Hartford Ins. Co. v. Hertz Corp.*, 410 Mass. 279, 283 (1991).  
376 *Beeler v. Downey*, 387 Mass. 609, 616 (1982). Section 9 of G. L. c. 151B sets forth procedures  
377 to be followed, and the remedies available, to a plaintiff filing an action based on illegal  
378 discriminatory conduct. The third paragraph of § 9 now provides that punitive damages “may”  
379 be awarded to a plaintiff prevailing in such an action. The fourth paragraph of § 9 now sets forth  
380 remedies available to a plaintiff who prevails on a specific claim of age discrimination. In the  
381 case of a knowing or reckless statutory violation, those remedies include mandatory double (and  
382 discretionary treble) damages. Both paragraphs address the same topic – that is, the measure of  
383 damages to be awarded to a plaintiff who proves discriminatory conduct by his employer. The  
384 measure of damages provided by each paragraph also serves a similar purpose because multiple  
385 damages are “essentially punitive in nature.” *McEvoy Travel Bureau, Inc. v. Norton Co.*, 408  
386 Mass. 704, 717 (1990). See *International Fidelity Ins. Co. v. Wilson*, 387 Mass. 841, 856 (1983).  
387 With respect to the remedies available in age discrimination cases, punitive damages, as such,

388 are not mentioned in the amended third paragraph. Based on accepted principles of statutory  
389 construction, their availability should not be implied and we decline to do so.

390 This conclusion comports with what we perceive to be the legislative intent as well as  
391 “with common sense and sound reason.” *Massachusetts Comm’n Against Discrimination v.*  
392 *Liberty Mut. Ins. Co.*, 371 Mass. 186, 190 (1976), quoting *Atlas Distrib. Co. v. Alcoholic*  
393 *Beverages Control Comm’n*, 354 Mass. 408, 414 (1968). The fourth paragraph was added to § 9  
394 of G. L. c. 151B to enhance, or improve on, damages for age discrimination. A recovery of  
395 punitive damages under the third paragraph of § 9 of G. L. c. 151B is discretionary, and,  
396 therefore, uncertain. By way of contrast, the fourth paragraph provides for a certain recovery of  
397 at least double damages if the plaintiff proves that he was deliberately discriminated against on  
398 the basis of his age. It is not reasonable to assume that the Legislature intended to design a  
399 damages scheme which singles out age discrimination as significantly more egregious than, for  
400 example, racial or sexual discrimination by granting a victim of age discrimination the right to  
401 recover both punitive and multiple damages. We conclude that the fourth paragraph of the  
402 current G. L. c. 151B, § 9, see note 9, *supra*, establishes the appropriate measure of damages in  
403 an age discrimination claim.

404 *Fontaine v. Ebtac Corp.*, 415 Mass. 309, 321-322 (1993); and

405 WHEREAS, the language from *McEvoy Travel Bur., Inc. v. Norton Co.* quoted in  
406 *Fontaine v. Ebtac Corp.* is excerpted from the following passage:

407 [T]he multiple damages provisions of G. L. c. 93A are essentially punitive in nature.  
408 “The multiple damage provisions of c. 93A are designed to impose a penalty . . . that varies with  
409 the culpability of the defendant” (citation omitted). *International Fidelity Ins. Co. v. Wilson*, 387  
410 Mass. 841, 856 (1983). See *Linthicum v. Archambault*, 379 Mass. 381, 388 (1979); *Heller v.*  
411 *Silverbranch Constr. Corp.*, 376 Mass. 621, 627-628 (1978).

412 *McEvoy Travel Bur., Inc. v. Norton Co.*, 408 Mass. 704, 717 (1990) (emphasis added);  
413 and

414 WHEREAS, the language from *Kansallis Fin. Ltd. v. Fern* quoted in *Goodrow v. Lane*  
415 *Bryant, Inc.* is excerpted from the following passage:

416 [Chapter 93A] does, however, by its terms make a distinction between cases where  
417 simple compensatory damages are paid to the plaintiff and where there are double or treble --  
418 that is, punitive -- damages. In those latter cases, the statute requires that the court find that “the  
419 act or practice was a willful or knowing violation.” Thus the Legislature envisaged multiple  
420 damage awards against those defendants with a higher degree of culpability than that sufficient  
421 to ground simple liability. See, e.g., *International Fidelity Ins. Co. v. Wilson*, 387 Mass. 841, 855  
422 (1983) (“The Massachusetts Legislature consciously enacted a rule whereby the defendant’s  
423 liability is measured by the degree of his culpability”); *Linthicum v. Archambault*, 379 Mass.

424 381, 388 (1979), abrogated in part on other grounds by *Knapp v. Sylvania Shoe Mfg. Corp.*, 418  
425 Mass. 737 (1994); *Heller v. Silverbranch Constr. Corp.*, 376 Mass. 621, 627-628 (1978);  
426 *Wasserman v. Agnastopoulos*, 22 Mass. App. Ct. 672, 680-681 (1986).

427 *Kansallis Fin. Ltd. v. Fern*, 421 Mass. 659, 672 (1996) (emphases added); and

428 WHEREAS, the Supreme Judicial Court also stated in *Kansallis Fin. Ltd. v. Fern* that  
429 “[w]e note that our courts are already familiar with the task of determining degrees of culpability  
430 under [Chapter 93A] as they must determine whether to impose double or treble damages. See  
431 *International Fidelity Ins. Co. v. Wilson*, supra at 853 (“Based on the egregiousness of each  
432 defendant’s conduct, the trial judge may assess between double and treble damages”). *Kansallis*  
433 *Fin. Ltd. v. Fern*, 421 Mass. 659, 675 (1996) (emphases added); and

434 WHEREAS, in *International Fidelity Ins. Co. v. Wilson* the Supreme Judicial Court held  
435 that under private remedies that authorize awards of treble damages and that do not include a  
436 “consciously enacted” “rule whereby the defendant’s liability [for treble damages] is measured  
437 by the degree of his culpability,” such as is the case with the private remedy of the Clayton  
438 Antitrust Act and statutes modeled on the Clayton Antitrust Act – including the statute that was  
439 originally proposed for Section 9 of Chapter 93A of the General Laws, but that was ultimately  
440 rejected in favor of a statute in which the General Court “consciously enacted a rule whereby the  
441 defendant’s liability [for multiple damages] is measured by the degree of his culpability”; the  
442 private remedies of Sections 19B, 27, 27F, 27G, 27H, and 150 of Chapter 149 of the General  
443 Laws as inserted by Chapter 587 of the Acts of 1985 and Sections 173, 177, 178, 179, and 182 of  
444 Chapter 110 of the Acts of 1993, respectively; and the private remedies Sections 1B and 20 of  
445 Chapter 151 of the General Laws as amended by Sections 183 and 185 of Chapter 110 of the  
446 Acts of 1993, respectively – “the trial judge has no discretion to deny the plaintiff treble damages  
447 once a violation – even a merely negligent one – is proved” and “[treble damages must be]  
448 imposed . . . for all violations.” *International Fidelity Ins. Co. v. Wilson*, 387 Mass. 841, 854,  
449 855 (1983) (emphases added); and

450 WHEREAS, pursuant to the Supreme Judicial Court’s holding in *International Fidelity*  
451 *Ins. Co. v. Wilson*, had the General Court intended to require a showing of “a higher degree of  
452 culpability than that sufficient to ground simple liability,” such as “intent or willfulness” or  
453 “conduct [that] was ‘evil in motive’ or showed a ‘reckless indifference to the rights of others,’ ”  
454 with respect to the treble damages provision [of Section 1B of Chapter 151 of the General  
455 Laws]” it would have “consciously enacted” such a rule, which the General Court clearly did not  
456 do when it amended Section 1B of Chapter 151 of the General Laws by enacting Section 183 of  
457 Chapter 110 of the Acts of 1993. *International Fidelity Ins. Co. v. Wilson*, 387 Mass. 841, 853-  
458 856 (1983); and

459 WHEREAS, in their decision in *Goodrow v. Lane Bryant, Inc.* the Supreme Judicial  
460 Court conflates “punitive damages,” which are intended to punish tortfeasors, and which in

461 Massachusetts are allowed only when expressly authorized by statute, with the multiple damages  
462 provisions of statutes that comprise the body of law that developed under the Clayton Antitrust  
463 Act, such as, for example, the treble damages provisions of Senate Doc. No. 211 of 1969,  
464 Section 19B of Chapter 149 as inserted by Chapter 587 of the Acts of 1985, Section 27 of  
465 Chapter 149 as inserted by Section 173 of Chapter 110 of the Acts of 1993, Section 27F of  
466 Chapter 149 as inserted by Section 177 of Chapter 110 of the Acts of 1993, Section 27G of  
467 Chapter 149 as inserted by Section 178 of Chapter 110 of the Acts of 1993, Section 27H of  
468 Chapter 149 as inserted by Section 179 of Chapter 110 of the Acts of 1993, Section 150 of  
469 Chapter 149 as inserted by Section 182 of Chapter 110 of the Acts of 1993, Section 1B of  
470 Chapter 151 as amended by Section 183 of Chapter 110 of the Acts of 1993, and Section 20 of  
471 Chapter 151 as amended by Section 185 of Chapter 110 of the Acts of 1993; and

472 WHEREAS, the differences between “punitive damages” and statutory multiple damages  
473 — whether mandatory, as with statutes that are of the body of law that has developed under the  
474 Clayton Antitrust Act, or measured by the degree of a defendant’s culpability, as with statutes  
475 such as Chapter 93A of the General Laws, see *International Fidelity Ins. Co. v. Wilson*, 387  
476 Mass. 841, 853-856 (1983) — are well-known and well-understood, see, e.g., *Fontaine v. Ebtec*  
477 *Corp.*, 415 Mass. 309, 321-322 (1993); *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 128 S.Ct.  
478 2605, 2620-2640 (2008); and *Cook County v. United States ex rel. Chandler*, 538 U.S. 119, 132  
479 (2003) (“Treble damages certainly do not equate with classic punitive damages, which leave the  
480 jury with open-ended discretion over the amount.”); and

481 WHEREAS, the United States Supreme Court has held in *Exxon Shipping Co. v. Baker*  
482 with respect to the treble damages provision of the Clayton Act that

483 some regulatory schemes provide by statute for multiple recovery in order to induce  
484 private litigation to supplement official enforcement that might fall short if unaided. See, e.g.,  
485 *Reiter v. Sonotone Corp.*, 442 U.S. 330, 344 (1979) (discussing antitrust treble damages). . . . We  
486 know, for example, that Congress devised the treble damages remedy for private antitrust actions  
487 with an eye to supplementing official enforcement by inducing private litigation, which might  
488 otherwise have been too rare if nothing but compensatory damages were available at the end of  
489 the day. See, e.g., *Reiter*, 442 U.S., at 344.

490 *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 128 S.Ct. 2605, 2622, 2632 (2008); and

491 WHEREAS, the United States Supreme Court held as follows in *Reiter v. Sonotone*  
492 *Corp.*:

493 In *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, [429 U.S. 477 (1977)], after examining  
494 the legislative history of § 4 [of the Clayton Act], we described the Sherman Act as “conceived  
495 of primarily as a remedy for ‘[t]he people of the United States as individuals,’ especially  
496 consumers,” and the treble-damages provision of the Clayton Act as “conceived primarily as

497 ‘open[ing] the door of justice to every man . . . and giv[ing] the injured party ample damages for  
498 the wrong suffered.’ ” 429 U. S., at 486 n. 10.

499 Reiter v. Sonotone Corp., 442 U.S. 330, 343-344 (1979); and

500 WHEREAS, the United States Supreme Court held as follows in Brunswick Corp. v.  
501 Pueblo Bowl-O-Mat, Inc.:

502 Section 4 [of the Clayton Act] . . . is in essence a remedial provision. It provides treble  
503 damages to “[a]ny person who shall be injured in his business or property by reason of anything  
504 forbidden in the antitrust laws . . . .” Of course, treble damages also play an important role in  
505 penalizing wrongdoers and deterring wrongdoing, as we also have frequently observed. It  
506 nevertheless is true that the treble-damages provision, which makes awards available only to  
507 injured parties, and measures the awards by a multiple of the injury actually proved, is designed  
508 primarily as a remedy.

509 Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 485-486 (1977) (internal  
510 citations omitted); and

511 WHEREAS, the United States Supreme Court held as follows with respect to the private  
512 remedies of the Racketeer Influenced and Corrupt Organizations Act (RICO) and the Clayton  
513 Act:

514 Both RICO and the Clayton Act are designed to remedy economic injury by providing for  
515 the recovery of treble damages, costs, and attorney’s fees. Both statutes bring to bear the pressure  
516 of “private attorneys general” on a serious national problem for which public prosecutorial  
517 resources are deemed inadequate; the mechanism chosen to reach the objective in both the  
518 Clayton Act and RICO is the carrot of treble damages. Moreover, both statutes aim to  
519 compensate the same type of injury; each requires that a plaintiff show injury “in his business or  
520 property by reason of” a violation.

521 Agency Holding Corp. v. Malley-Duff & Associates, Inc., 483 U.S. 143, 151 (1987); and

522 WHEREAS, in holding in Goodrow v. Lane Bryant, Inc. that “to award treble damages  
523 [under a statute providing a private remedy of treble damages] . . . absent evidence of heightened  
524 culpability would very likely constitute an ‘arbitrary or irrational deprivation[] of property,’  
525 TXO Prod. Corp. v. Alliance Resources Corp., 509 U.S. 443 (1993) (Kennedy, J., concurring),  
526 and thus would be constitutionally impermissible” the Supreme Judicial Court called into  
527 question the constitutionality of the entire body of law that has been developed under the Clayton  
528 Antitrust Act; and

529 WHEREAS, the TXO Prod. Corp. v. Alliance Resources Corp. case involved “a  
530 common-law action for slander of title [in which] respondents obtained a judgment against  
531 petitioner for \$19,000 in actual damages and \$10 million in punitive damages” in which the

532 question decided by the United States Supreme Court was “whether that punitive damages award  
533 violates the Due Process Clause of the Fourteenth Amendment, either because its amount is  
534 excessive or because it is the product of an unfair procedure,” TXO Prod. Corp. v. Alliance  
535 Resources Corp., 509 U.S. 443, 446 (1993), and had nothing whatsoever to do with private  
536 remedies providing for multiple damages; and

537 WHEREAS, in a 2003 decision in a case involving one of Maine’s wage payment  
538 statutes, the Maine Supreme Judicial Court held that:

539 On appeal, MMC does not contest the jury's finding that it owed Bisbing \$27,500 in  
540 vacation pay, but it contends that the trial court erred in awarding Bisbing treble damages and  
541 attorney fees pursuant to 26 M.R.S.A. § 626 without a finding that MMC acted in bad faith or  
542 was otherwise culpable. Section 626 provides in relevant part:

543

544 An employee leaving employment must be paid in full within a reasonable time after  
545 demand at the office of the employer where payrolls are kept and wages are paid . . . . Whenever  
546 the terms of employment include provisions for paid vacations, vacation pay on cessation of  
547 employment has the same status as wages earned.

548

549 . . . .

550

551 An employer found in violation of this section is liable for the amount of unpaid wages  
552 and, in addition, the judgment rendered in favor of the employee or employees must include a  
553 reasonable rate of interest, an additional amount equal to twice the amount of those wages as  
554 liquidated damages and costs of suit, including a reasonable attorney's fee.

555 The construction of section 626 is governed by the plain language of the statute. Gallant  
556 v. Bartash, Inc., 2002 ME 4, ¶ 3, 786 A.2d 628, 629. MMC advances numerous interpretive  
557 arguments, asserting the existence of an implied bad faith element because section 626 is  
558 allegedly a penal statute; because it should be read together with a related statute, 26 M.R.S.A. §  
559 626-A (Supp. 2002); because it should be read in light of statutes in other states that include such  
560 an element; and because such an interpretation is necessary to avoid constitutional problems. We  
561 need not address any of these arguments because section 626 is unambiguous. See State v.  
562 Millett, 392 A.2d 521, 525 (Me. 1978) (“[W]here the language of a statute [is] plain and  
563 unambiguous, there is no occasion for resorting to the rules of statutory interpretation.”). There is  
564 no hint in the statute that treble damages and attorney fees can be awarded only on a showing  
565 that the employer has acted in bad faith. We are not free to impose such an element in disregard  
566 of the clear legislative intent expressed in the plain language of section 626.

567 Contrary to MMC’s argument, this result is entirely consistent with our caselaw. In Purdy  
568 v. Community Telecommunications Corp., 663 A.2d 25, 28 (Me. 1995), we declined to “enraft  
569 a good faith exception on [section 626]” at the behest of an employer that was faced with  
570 complicated calculations of the commissions due a former employee. We reasoned that “the  
571 Legislature has not . . . provided for an exemption for action taken by an employer in good  
572 faith.” Id. Although recognizing that “the effect of this statute is harsh, perhaps more so than the  
573 Legislature intended,” we could not “ignore the statute’s plain language and its broadly  
574 protective purpose.” Id. Similarly, we stated in Burke v. Port Resort Realty Corp., 1999 ME 138,  
575 ¶ 16, 737 A.2d 1055, 1060, that “[u]nlike similar statutes in some other jurisdictions, section 626  
576 does not have a ‘bona fide dispute’ exception.” We have never recognized such an exception,  
577 and we have affirmed awards of section 626 treble damages and attorney fees without  
578 mentioning the employer’s bad faith. See, e.g., Bernier v. Merrill Air Eng’rs, 2001 ME 17, ¶¶ 4-  
579 9, 770 A.2d 97, 100-01; Marston v. Newavom, 629 A.2d 587, 590-91 (Me. 1993).

580 In addition to its statutory interpretation arguments, MMC contends that as written,  
581 section 626 denies it due process. MMC does not cite, and we have not found, any case holding  
582 that a statute providing a private remedy of liquidated or multiple damages violates due process  
583 unless it includes a culpability element. The United States Supreme Court has said exactly the  
584 contrary, holding in Overnight Motor Transportation Co. v. Missel, 316 U.S. 572, 581-84 (1942),  
585 that a Fair Labor Standards Act provision awarding employees double damages for unpaid  
586 overtime, without regard to the good faith or reasonableness of the employer, did not violate due  
587 process.

588 Bisbing v. Maine Medical Center, 2003 ME 49, ¶¶ 4-7; and

589 WHEREAS, the United States Supreme Court has further held with respect to the Fair  
590 Labor Standards Act provision awarding employees double damages for unpaid overtime that:

591 The legislative history of the Fair Labor Standards Act shows an intent on the part of  
592 Congress to protect certain groups of the population from sub-standard wages and excessive  
593 hours which endangered the national health and well-being and the free flow of goods in  
594 interstate commerce. The statute was a recognition of the fact that due to the unequal bargaining  
595 power as between employer and employee, certain segments of the population required federal  
596 compulsory legislation to prevent private contracts on their part which endangered national  
597 health and efficiency and as a result the free movement of goods in interstate commerce. To  
598 accomplish this purpose standards of minimum wages and maximum hours were provided.  
599 Neither petitioner nor respondent suggests that the right to the basic statutory minimum wage  
600 could be waived by any employee subject to the Act. No one can doubt but that to allow waiver  
601 of statutory wages by agreement would nullify the purposes of the Act. We are of the opinion  
602 that the same policy considerations which forbid waiver of basic minimum and overtime wages  
603 under the Act also prohibit waiver of the employee’s right to liquidated damages.

604 We have previously held that the liquidated damage provision is not penal in its nature  
605 but constitutes compensation for the retention of a workman's pay which might result in  
606 damages too obscure and difficult of proof for estimate other than by liquidated damages.  
607 *Overnight Motor Co. v. Missel*, 316 U.S. 572. It constitutes a Congressional recognition that  
608 failure to pay the statutory minimum on time may be so detrimental to maintenance of the  
609 minimum standard of living "necessary for health, efficiency and general well-being of workers"  
610 and to the free flow of commerce, that double payment must be made in the event of delay in  
611 order to insure restoration of the worker to that minimum standard of well-being. Employees  
612 receiving less than the statutory minimum are not likely to have sufficient resources to maintain  
613 their well-being and efficiency until such sums are paid at a future date. The same policy which  
614 forbids waiver of the statutory minimum as necessary to the free flow of commerce requires that  
615 reparations to restore damage done by such failure to pay on time must be made to accomplish  
616 Congressional purposes. Moreover, the same policy which forbids employee waiver of the  
617 minimum statutory rate because of inequality of bargaining power, prohibits these same  
618 employees from bargaining with their employer in determining whether so little damage was  
619 suffered that waiver of liquidated damage is called for. This conclusion is in accord with  
620 decisions of the majority of the federal courts that have considered this question. This result,  
621 moreover, avoids the difficult problems of allocation that would arise in numerous cases where a  
622 lump sum was paid for back wages and waiver of right to liquidated damages and where issue  
623 was subsequently raised as to whether there had been full payment of the basic minimum and  
624 overtime wages specified in the Act. Nor does the instant case involve exceptional circumstances  
625 of the kind held to justify a waiver agreement such as was upheld in *Fort Smith & Western R.*  
626 *Co. v. Mills*, 253 U.S. 206.

627 The private-public character of this right is further borne out by an examination of the  
628 enforcement provisions of the Act. Although the difficulties of enforcement under the Act were  
629 recognized, the Administrator was given limited enforcement powers. Criminal prosecution was  
630 available only for willful violations — difficult to prove. § 16 (a). The Administrator's civil  
631 remedy lay by way of suit for an injunction, which by its nature tends to be prospective in  
632 operation. No power was vested in the Administrator to bring an action at law to obtain payment  
633 of minimum wages left unpaid and to recover damages arising from delay in payment. Sole right  
634 to bring such suit was vested in the employee under § 16 (b). Although this right to sue is  
635 compensatory, it is nevertheless an enforcement provision. And not the least effective aspect of  
636 this remedy is the possibility that an employer who gambles on evading the Act will be liable for  
637 payment not only of the basic minimum originally due but also damages equal to the sum left  
638 unpaid. To permit an employer to secure a release from the worker who needs his wages  
639 promptly will tend to nullify the deterrent effect which Congress plainly intended that § 16 (b)  
640 should have. Knowledge on the part of the employer that he cannot escape liability for liquidated  
641 damages by taking advantage of the needs of his employees tends to insure compliance in the  
642 first place. To allow contracts for waiver of liquidated damages approximates situations where

643 courts have uniformly held that contracts tending to encourage violation of laws are void as  
644 contrary to public policy.

645 Prohibition of waiver of claims for liquidated damages accords with the Congressional  
646 policy of uniformity in the application of the provisions of the Act to all employers subject  
647 thereto, unless expressly exempted by the provisions of the Act. An employer is not to be  
648 allowed to gain a competitive advantage by reason of the fact that his employees are more  
649 willing to waive claims for liquidated damages than are those of his competitor. The same  
650 considerations calling for equality of treatment which we found so compelling in *Midstate*  
651 *Horticultural Co.*, *supra*, exist here.

652 The provisions of the statute reflect the policy considerations discussed above which  
653 prohibit waiver of the right to liquidated damages. Sections 7 (a) and 16 (b) are mandatory in  
654 form. In terms they direct that the employer shall not employ a worker longer than the specified  
655 time without payment of overtime compensation and that, upon violation of this provision, the  
656 employer shall be liable for statutory wages and liquidated damages. One section, § 16 (b),  
657 creates the obligation for the entire remedy. Collection of both wages and damages is left to the  
658 employee.

659 Respondent argues that § 16 (b) indicates that the right to liquidated damages arises only  
660 if the employee is compelled to sue for minimum wages due. Section 16 (b) in no way bears out  
661 this interpretation. It provides absolutely that the employer shall be liable for liquidated damages  
662 in an amount equal to minimum wages overdue; liability is not conditioned on default at the time  
663 suit is begun. It is also argued that the elimination from a predecessor bill of a provision  
664 prohibiting waiver of the provisions of the Act indicates a Congressional intent to allow an  
665 employee to waive his claim to liquidated damages. But such a contention proves too much. It  
666 applies with equal force to the right to minimum wages. Such an interpretation would nullify the  
667 effectiveness of the Act. It is also suggested that the failure to impose criminal sanctions for the  
668 violation of the liquidated damage provisions or to authorize an injunction to prevent their  
669 violation manifests a difference in Congress' attitude toward the waiver of the employee's right to  
670 the basic statutory wage as compared with his right to liquidated damages. But there is no reason  
671 for making an employer subject to a criminal penalty or an injunction for failure to pay  
672 liquidated damages. They are collectible as private damages by the employee for failure to obey  
673 the same requirements as to wages which are punished and controlled, so far as the purely public  
674 interest is concerned, by criminal sanctions and injunction.

675 Petitioner relies on the fact that various other federal statutes authorizing employees to  
676 sue for wages or for damages arising from injuries sustained in the course of employment  
677 contain specific provisions prohibiting waiver of rights under the acts involved, or provide means  
678 by which compromises and settlements can be approved. There is no indication why Congress  
679 did not embody a similar provision in the Act under consideration in this case. Absence of such  
680 provisions, however, has not prevented the courts from invalidating waivers where the legislative

681 policy would be thwarted by permitting such contracts. The decision in the instant case is based  
682 on the legislative policy behind this enactment and issues arising under other acts having  
683 different legislative backgrounds are not conclusive in determining the legislative intent with  
684 respect to the Fair Labor Standards Act. Failure to provide a method of waiving claims under the  
685 Act can support contrary inferences, that such waivers were to be allowed or that the provisions  
686 of the Act state a settled policy which cannot be modified by private contracts. We are of the  
687 opinion that the legislative history and provisions of the Act support a view prohibiting such  
688 waiver. As was stated in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 397, “ ‘while in  
689 individual cases hardship may result, the restriction will enure to the benefit of the general class  
690 of employees in whose interest the law is passed and so to that of the community at large.’  
691 [*Adkins v. Children's Hospital*, 261 U.S. 525.] *Id.*, p. 563.”

692 *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 707-713 (1945) (footnotes omitted); and

693 WHEREAS, there is no hint in the plain language of Section 1B of Chapter 151 of the  
694 General Laws as amended by Section 183 of Chapter 110 of the Acts of 1993 that treble  
695 damages can be awarded only on a showing that the employer's conduct was ‘evil in motive’ or  
696 showed a ‘reckless indifference to the rights of others’ ”; and

697 WHEREAS, in *Goodrow v. Lane Bryant, Inc.* the Supreme Judicial Court, in disregard of  
698 the clear legislative intent expressed in the plain language of the statute, in disregard of the  
699 Court's own precedent, and in “violat[ion] [of] the decision of the [General Court] to enact a  
700 different type of statute,” see *International Fidelity Ins. Co. v. Wilson*, 387 Mass. 841, 853-856  
701 (1983), engrafted onto Section 1B of Chapter 151 of the General Laws as amended by Section  
702 183 of Chapter 110 of the Acts of 1993 a rule that treble damages could be awarded only upon a  
703 finding that the defendant's conduct in committing a violation of Section 1A of Chapter 151 of  
704 the General Laws was ‘evil in motive’ or showed a ‘reckless indifference to the rights of others’  
705 ”; and

706 WHEREAS, on July 21, 2005, the Supreme Judicial Court held as follows with respect to  
707 awards of treble damages under the private remedy of Section 150 of Chapter 149 of the General  
708 Laws as inserted by Section 182 of Chapter 110 of the Acts of 1993:

709 c. Treble damages and attorney's fees. The defendants also argue that the weekly wage  
710 law does not apply to this case because the commissions owed the plaintiff were not “definitely  
711 determined” as required by the weekly wage law and, therefore, the judge erred in awarding  
712 treble damages and attorney's fees pursuant to G. L. c. 149, § 150. In support of their argument  
713 that the amount owed the plaintiff was not definitely determined, the defendants rely solely on  
714 the fact that they disagree with the plaintiff over how her commissions should have been  
715 calculated and whether the plaintiff was overpaid. However, in light of the sanction for spoliation  
716 of evidence, the defendants have no factual basis for their assertion. See *Fletcher v. Dorchester*

717 Mut. Ins. Co., 437 Mass. 544, 550-551 (2002) (exclusion of evidence may be dispositive of  
718 merits of case).

719 In addition, the defendants concede that the only difference between the parties  
720 concerning the amount of commission due the plaintiff hinges on their claim that group payroll  
721 should always have been deducted before the commissions were determined. There is no dispute  
722 concerning the total from which deductions would be taken or about the other applicable  
723 formulas and deductions, thus making the amount owed the plaintiff arithmetically determinable.  
724 We conclude that the amount owed the plaintiff is definitely determined and, therefore, the  
725 weekly wage law applies. See generally *Boston Police Patrolmen's Ass'n v. Boston*, 435 Mass.  
726 718, 719-720 (2002), quoting *Champagne v. Champagne*, 429 Mass. 324, 326 (1999) (we  
727 interpret statutory language according to intent of Legislature ascertained from its words  
728 considered in context of statute's purpose). Cf. *Cumpata v. Blue Cross Blue Shield of Mass.,*  
729 *Inc.*, 113 F. Supp. 2d 164, 168 (D. Mass. 2000), citing *Klint vs. J.& J. Assocs., Middlesex*  
730 *Superior Court, No. 97-0251* (Sept. 3, 1998) (holding that commissions were not within scope of  
731 weekly wage law, where interpretation of written contract was in dispute).

732 The defendants do not argue that, even if this court concludes that the amount owed the  
733 plaintiff is definitely determinable, the award of attorney's fees and costs and treble damages  
734 was unjustified. However, we examine whether, as a matter of law, the judge was correct in her  
735 belief that she was required to award treble damages to the plaintiff. See *Commonwealth v.*  
736 *Cintolo*, 415 Mass. 358, 359 (1993) (statutory interpretation is question of law).

737 General Laws, c. 149, § 150, states, in relevant part:

738 "Any employee claiming to be aggrieved by a violation of section 148 . . . may . . .  
739 institute and prosecute in his own name . . . a civil action for injunctive relief and any damages  
740 incurred, including treble damages for any loss of wages and other benefits. An employee so  
741 aggrieved and who prevails in such an action shall be entitled to an award of the costs of  
742 litigation and reasonable attorney fees." 13

743 13We conclude, and neither party argues otherwise, that the plain language of the statute,  
744 with its use of "shall," required the judge to award the plaintiff attorney's fees. Moreover, the  
745 defendants do not argue that the judge's award of attorney's fees was unreasonable.

746 In awarding the plaintiff treble damages, the judge cited to a number of cases adjudicated  
747 in the trial courts to support her conclusion that the statute did not allow her discretion in this  
748 regard.

749 However, there is nothing in the plain language of the statute that requires an award of  
750 treble damages. The text of the statute states only that a plaintiff "may" institute a suit for  
751 damages that includes a request for treble damages. See *Brittle v. Boston*, 439 Mass. 580, 594,  
752 790 N.E.2d 208 (2003) ("may" is permissive, not mandatory). Cf. *Hashimi v. Kalil*, 388 Mass.

753 607, 609 (1983) (“shall” is interpreted as imposing mandatory obligation). Because the plain  
754 language of the statute does not require a judge to award treble damages, we decline to create  
755 such a requirement and conclude that such an award is in a judge’s discretion. Our conclusion is  
756 similar to the conclusion in *Goodrow v. Lane Bryant, Inc.*, 432 Mass. 165, 178-179 (2000), and  
757 cases cited. In the *Goodrow* case, the plaintiff argued that G. L. c. 151, § 1B, which states that  
758 any person paid less than the requisite overtime “may recover . . . three times the full amount,”  
759 should be interpreted to mean that the plaintiff could request treble damages but that once the  
760 request was made, the award was mandatory. *Id.* at 178. The court stated that treble damages are  
761 punitive in nature, allowed only where authorized by statute, and appropriate where conduct is  
762 “outrageous, because of the defendant’s evil motive or his reckless indifference to the rights of  
763 others.” *Id.*, quoting *Dartt v. Browning-Ferris Indus., Inc. (Mass.)*, 427 Mass. 1, 17a (1998). In  
764 the absence of factors that would make treble damages appropriate, the court affirmed the  
765 judge’s decision denying such punitive damages. *Id.* at 179. Cf. *Hampshire Village Assocs. v.*  
766 *District Court of Hampshire*, 381 Mass. 148, 149, cert. denied sub nom. *Ruhlander v. District*  
767 *Court of Hampshire*, 449 U.S. 1062 (1980) (discussing G. L. c. 186, § 15B, which provides that  
768 tenant “shall be awarded [treble] damages”).

769 Our conclusion comports with underlying purpose of the statute, because a judge may  
770 award treble damages if they are warranted. Here, the judge awarded treble damages under the  
771 erroneous impression that they were mandatory, without exercising any discretion in the matter.  
772 Our conclusion should not be interpreted to mean that we conclude that treble damages  
773 necessarily are inappropriate in this case. Such a determination is in the discretion of the judge.  
774 Accordingly, we vacate the award of treble damages and remand the issue for the judge’s  
775 reconsideration whether treble damages are warranted.

776 *Wiedmann v. The Bradford Group, Inc.*, 444 Mass. 698, 708-710 (2005); and

777 WHEREAS, the word “may” in the sentence “[a]ny employee claiming to be aggrieved  
778 by a violation of section 148 . . . may . . . institute and prosecute in his own name . . . a civil  
779 action for injunctive relief and any damages incurred, including treble damages for any loss of  
780 wages and other benefits” is used in exactly the same way as the word “may” is used in the  
781 sentence “if any person is paid by an employer less than such overtime rate of compensation  
782 [required by § 1A], such person may recover in a civil action three times the full amount of such  
783 overtime rate of compensation less any amount actually paid to him or her by the employer” and  
784 in the sentence “[a]ny person who purchases goods or services primarily for personal . . .  
785 purposes who suffers any ascertainable loss . . . by the use . . . by a person of a method . . .  
786 declared unlawful by section two . . . may bring an action . . . in equity to recover treble damages  
787 or five hundred dollars, whichever is greater,” which means that “according to the common and  
788 approved usage of the language” the word “may” in the sentence “[a]ny employee claiming to be  
789 aggrieved by a violation of section 148 . . . may . . . institute and prosecute in his own name . . . a  
790 civil action for injunctive relief and any damages incurred, including treble damages for any loss  
791 of wages and other benefits” clearly and unambiguously “relates to a plaintiff’s option to initiate

792 a civil action for damages rather than to the amount of damages recoverable under the statute”;  
793 and

794 WHEREAS, based upon the common and approved usage of the English language, and in  
795 particular based upon the meaning and proper usage of the word “may,” see, e.g., Webster’s New  
796 World College Dictionary 889 (4th ed. 2002); Black’s Law Dictionary 993 (7th ed. 1999); B. A.  
797 Garner, A Dictionary of Modern Legal Usage 552-553, 942 (2d ed. 1995), it is ridiculous to  
798 assert, as the Supreme Judicial Court has done in *Goodrow v. Lane Bryant, Inc.*, 432 Mass. 165,  
799 178 (2000) and in *Wiedmann v. The Bradford Group, Inc.*, 444 Mass. 698, 709-710 (2005), that  
800 the General Court employed the word “may” in the treble damages provisions of the wage and  
801 hour laws as they were enacted in 1985 and 1993 to mean anything other than to permit  
802 employees in the Commonwealth to, in their sole discretion, sue for and recover, among other  
803 things, treble damages for lost wages and other benefits; and

804 WHEREAS, as with Section 1B of Chapter 151 of the General Laws as amended by  
805 Section 183 of Chapter 110 of the Acts of 1993, there is no hint in the plain language of Section  
806 150 of Chapter 149 of the General Laws as amended by Section 182 of Chapter 110 of the Acts  
807 of 1993 that treble damages can be awarded only on a showing that the employer’s conduct in  
808 committing the violation was ‘evil in motive’ or showed a ‘reckless indifference to the rights of  
809 others’ ”; and

810 WHEREAS, as in *Goodrow v. Lane Bryant, Inc.* with respect to the treble damages  
811 provision of Section 1B of Chapter 151 as amended by Section 183 of Chapter 110 of Acts of  
812 1993, in *Wiedmann v. The Bradford Group, Inc.* the Supreme Judicial Court, in disregard of the  
813 clear legislative intent expressed in the plain language of the statute, in disregard of the Court’s  
814 own precedent, and in “violat[ion] [of] the decision of the [General Court] to enact a different  
815 type of statute,” see *International Fidelity Ins. Co. v. Wilson*, 387 Mass. 841, 853-856 (1983),  
816 engrafted onto Section 150 of Chapter 149 as amended by Section 182 of Chapter 110 of the  
817 Acts of 1993 a rule that treble damages could be awarded only upon a finding that the  
818 defendant’s conduct in committing a violation of Section 148 of Chapter 149 of the General  
819 Laws or certain other statutes was ‘evil in motive’ or showed a ‘reckless indifference to the  
820 rights of others’ ”; and

821 WHEREAS, in 2008 the General Court enacted without amendment 2007 Senate Doc.  
822 No. 1059, which amended the private remedies of Sections 27, 27F, 27G, 27H, and 150 of  
823 Chapter 149 and Sections 1B and 20 of Chapter 151 of the General Laws, and which includes a  
824 section that states, “This act is intended to clarify the existing law and to reiterate the original  
825 intention of the general court that triple damages are mandatory.” See 2007 Senate Doc. No.  
826 1059 and 2008 Senate Journal, p. 1418-1419; and

827 WHEREAS, 2007 Senate Doc. No. 1059 became law as Chapter 80 of the Acts of 2008.  
828 St. 2008, c. 80; and

829 WHEREAS, on August 31, 2011, the Supreme Judicial Court held that the General  
830 Court’s intention in enacting 2007 Senate Doc. No. 1059 was not to “clarify[] and restat[e] its  
831 original position in relation to mandatory treble damage awards,” but was, instead, to “chang[e]  
832 it” so as to for the first time mandate treble damages for all violations of certain sections of  
833 Chapters 149 and 151 of the General Laws. *Rosnov v. Molloy*, 460 Mass. 474 (2011); and

834 WHEREAS, the effects of the Supreme Judicial Court’s decisions in *Goodrow v. Lane*  
835 *Bryant, Inc.*, 432 Mass. 165, 178-179 (2000); *Wiedmann v. The Bradford Group, Inc.*, 444 Mass.  
836 698, 708-710 (2005); and *Rosnov v. Molloy*, 460 Mass. 474 (2011), have been that, (1) some  
837 untold number of employees who have suffered a violation or violations of the Commonwealth’s  
838 wage and hour laws that occurred prior to July 12, 2008, and who have chosen to prosecute a  
839 private civil action pursuant to the treble damages provisions of Chapters 149 and 151 of the  
840 General Laws, as those provisions were originally enacted, to seek redress— instead of relying  
841 upon the Attorney General to do so on their behalf—have either been denied their statutorily  
842 mandated treble damages after having proven a violation resulting in a loss of wages or other  
843 benefits, or have been forced to meet the burden of proof engrafted onto the statutes by the  
844 Supreme Judicial Court in their decisions in *Goodrow v. Lane Bryant, Inc.*, 432 Mass. 165, 178-  
845 179 (2000) or *Wiedmann v. The Bradford Group, Inc.*, 444 Mass. 698, 708-710 (2005), in order  
846 to be awarded treble damages; and (2) some untold number of employees who have suffered a  
847 violation or violations of the Commonwealth’s wage and hour laws that occurred prior to July  
848 12, 2008, have chosen not to prosecute a private civil action pursuant to the treble damages  
849 provisions of Chapters 149 and 151 of the General Laws, as those provisions were originally  
850 enacted, to seek redress because of the Supreme Judicial Court’s decisions in *Goodrow v. Lane*  
851 *Bryant, Inc.*, 432 Mass. 165, 178-179 (2000) or *Wiedmann v. The Bradford Group, Inc.*, 444  
852 Mass. 698, 708-710 (2005), to engraft onto the treble damages provisions a rule that ties liability  
853 for treble damages to the degree of the defendant’s culpability; and

854 WHEREAS, the Supreme Judicial Court’s engrafting, in their *Goodrow v. Lane Bryant,*  
855 *Inc.* and *Wiedmann v. The Bradford Group, Inc.* decisions, onto the treble damages provisions of  
856 Chapters 149 and 151 of the General Laws as those provisions were originally enacted a rule that  
857 ties liability for treble damages to the degree of the defendant’s culpability and the Supreme  
858 Judicial Court’s failure, in their *Rosnov v. Molloy* decision, to properly construe and apply  
859 Chapter 80 of the Acts of 2008 constitute both manifest error and manifest constitutional error,  
860 which have severely undermined both the statutory and constitutional rights of all of those who  
861 are subject to the Commonwealth’s wage and hour laws; and

862 WHEREAS, it is the fundamental duty of the General Court to ensure that the laws that it  
863 enacts are being implemented in accordance with the intent of the General Court; and

864 WHEREAS, the treble damages provisions of Sections 19B, 27, 27F, 27G, 27H, and 150  
865 of Chapter 149 and Sections 1B and 20 of Chapter 151 of the General Laws, as said provisions

866 were originally enacted, have been misconstrued by the Supreme Judicial Court and, therefore,  
867 have not been implemented in accordance with the intent of the General Court; and

868 WHEREAS, the amendments made by Chapter 80 of the Acts of 2008 to the treble  
869 damages provisions of Sections 27, 27F, 27G, 27H, and 150 of Chapter 149 and Sections 1B and  
870 20 of Chapter 151 of the General Laws as said provisions were originally enacted in order “to  
871 clarify the existing law and to reiterate the original intention of the general court that triple  
872 damages are mandatory” have been misconstrued by the Supreme Judicial Court and, therefore,  
873 have not been implemented in accordance with the intent of the General Court; and

874 WHEREAS, the Supreme Judicial Court’s misconstruing of the treble damages  
875 provisions of Sections 19B, 27, 27F, 27G, 27H, and 150 of Chapter 149 and Sections 1B and 20  
876 of Chapter 151 of the General Laws, as said provisions were originally enacted, has had the  
877 effect of undermining compliance with and enforcement of the Commonwealth’s wage and hour  
878 laws, resulting in serious and adverse effects to the economic well-being and general welfare of  
879 the inhabitants of the Commonwealth; and

880 WHEREAS, the only purposes of this Act are (1) to reiterate the original intention of the  
881 General Court in originally enacting the treble damages provision of Sections 19B of Chapter  
882 149 of the General Laws in 1985 and the treble damages provisions of Sections 27, 27F, 27G,  
883 27H, and 150 of Chapter 149 and Sections 1B and 20 of Chapter 151 of the General Laws in  
884 1993 that treble damages are mandatory; and (2) to redress the serious and adverse effects that  
885 have resulted from the judicial misinterpretation of the treble damages provisions of Sections  
886 19B, 27, 27F, 27G, 27H, and 150 of Chapter 149 and Sections 1B and 20 of Chapter 151 of the  
887 General Laws as said provisions were originally enacted; and

888 WHEREAS, the deferred operation of this Act would tend to defeat its purposes, which  
889 are (1) to reiterate the original intention of the General Court in originally enacting the treble  
890 damages provisions of Sections 19B 27, 27F, 27G, 27H, and 150 of Chapter 149 and Sections 1B  
891 and 20 of Chapter 151 of the General Laws that treble damages are mandatory; and (2) to redress  
892 the serious and adverse effects that have resulted from the judicial misinterpretation of said treble  
893 damages provisions as originally enacted, therefore it is hereby declared to be an emergency law,  
894 necessary for the immediate preservation of the public convenience.

895 Be it enacted by the Senate and House of Representatives in General Court assembled,  
896 and by the authority of the same, as follows:

897 SECTION 1. Chapter 80 of the Acts of 2008 is hereby repealed.

898 SECTION 2. Treble damages for any loss of wages or other benefits must be awarded for  
899 all violations prosecuted under the private remedy of Section 19B of Chapter 149 of the General  
900 Laws as inserted by Chapter 587 of the Acts of 1985.

901 SECTION 3. Treble damages for any loss of wages and other benefits must be awarded  
902 for all violations prosecuted under the private remedy of Section 27 of Chapter 149 of the  
903 General Laws as inserted by Section 173 of Chapter 110 of the Acts of 1993.

904 SECTION 4. Treble damages for any loss of wages and other benefits must be awarded  
905 for all violations prosecuted under the private remedy of Section 27F of Chapter 149 of the  
906 General Laws as inserted by Section 177 of Chapter 110 of the Acts of 1993.

907 SECTION 5. Treble damages for any loss of wages and other benefits must be awarded  
908 for all violations prosecuted under the private remedy of Section 27G of Chapter 149 of the  
909 General Laws as inserted by Section 178 of Chapter 110 of the Acts of 1993.

910 SECTION 6. Treble damages for any loss of wages and other benefits must be awarded  
911 for all violations prosecuted under the private remedy of Section 27H of Chapter 149 of the  
912 General Laws as inserted by Section 179 of Chapter 110 of the Acts of 1993.

913 SECTION 7. Treble damages for any loss of wages and other benefits must be awarded  
914 for all violations prosecuted under the private remedy of Section 150 of Chapter 149 of the  
915 General Laws as inserted by Section 182 of Chapter 110 of the Acts of 1993 and as amended  
916 through Section 2 of Chapter 99 of the Acts of 2005.

917 SECTION 8. Three times the full amount of any unpaid overtime compensation must be  
918 awarded for all violations prosecuted under the private remedy of Section 1B of Chapter 151 of  
919 the General Laws as amended by Section 183 of Chapter 110 of the Acts of 1993.

920 SECTION 9. Three times the full amount of any unpaid minimum wages must be  
921 awarded for all violations prosecuted under the private remedy of Section 20 of Chapter 151 of  
922 the General Laws as amended by Section 185 of Chapter 110 of the Acts of 1993.

923 SECTION 10. All judicial rulings that have been made relative to the private remedy of  
924 Section 19B of Chapter 149 of the General Laws as inserted by Chapter 587 of the Acts of 1985,  
925 the private remedy of Section 27 of Chapter 149 of the General Laws as inserted by Section 173  
926 of Chapter 110 of the Acts of 1993, the private remedy of Section 27F of Chapter 149 of the  
927 General Laws as inserted by Section 177 of Chapter 110 of the Acts of 1993, the private remedy  
928 of Section 27G of Chapter 149 of the General Laws as inserted by Section 178 of Chapter 110 of  
929 the Acts of 1993, the private remedy of Section 27H of Chapter 149 of the General Laws as  
930 inserted by Section 179 of Chapter 110 of the Acts of 1993, the private remedy of Section 150 of  
931 Chapter 149 of the General Laws as inserted by Section 182 of Chapter 110 of the Acts of 1993  
932 and as amended by Section 2 of Chapter 99 of the Acts of 2005, the private remedy of Section  
933 1B of Chapter 151 of the General Laws as amended by Section 183 of Chapter 110 of the Acts of  
934 1993, or the private remedy of Section 20 of Chapter 151 of the General Laws as amended by  
935 Section 185 of Chapter 110 of the Acts of 1993 in which treble damages have been denied or it  
936 has been held that treble damages are not mandatory for all violations are hereby declared to be

937 inconsistent with the plain language of said statutes, inconsistent with the manifest intent of the  
938 General Court in enacting said statutes, inconsistent with substantial justice, and violations of the  
939 substantial rights of the parties affected by such rulings; and, therefore, all civil actions that have  
940 been instituted under the treble damages provision of any of said statutes since said treble  
941 damages provision went into effect in which any such rulings have been made must, if such civil  
942 actions have been closed, be reopened and retried or, if any such civil actions are still pending as  
943 of the effective date of this act, be tried consistent with the plain language of and the manifest  
944 intent of the General Court in enacting said statutes and consistent with the provisions of this act.

945           SECTION 11. The Commonwealth must award to the parties in all civil actions  
946 prosecuted under the private remedy of Section 19B of Chapter 149 of the General Laws as  
947 inserted by Chapter 587 of the Acts of 1985, the private remedy of Section 27 of Chapter 149 of  
948 the General Laws as inserted by Section 173 of Chapter 110 of the Acts of 1993, the private  
949 remedy of Section 27F of Chapter 149 of the General Laws as inserted by Section 177 of  
950 Chapter 110 of the Acts of 1993, the private remedy of Section 27G of Chapter 149 of the  
951 General Laws as inserted by Section 178 of Chapter 110 of the Acts of 1993, the private remedy  
952 of Section 27H of Chapter 149 of the General Laws as inserted by Section 179 of Chapter 110 of  
953 the Acts of 1993, the private remedy of Section 150 of Chapter 149 of the General Laws as  
954 inserted by Section 182 of Chapter 110 of the Acts of 1993 and as amended by Section 2 of  
955 Chapter 99 of the Acts of 2005, the private remedy of Section 1B of Chapter 151 of the General  
956 Laws as amended by Section 183 of Chapter 110 of the Acts of 1993, or the private remedy of  
957 Section 20 of Chapter 151 of the General Laws as amended by Section 185 of Chapter 110 of the  
958 Acts of 1993, including both closed and pending actions, any and all costs incurred in the  
959 production and submission of any evidence intended to prove that the alleged violation was, or  
960 violations were, committed with a higher degree of culpability than that sufficient to ground  
961 simple liability or to defend against any such allegation; and such awards must be made  
962 regardless of whether or not the plaintiff or plaintiffs in such cases ultimately prevailed or  
963 ultimately prevails or prevail.

964           SECTION 12. This act is enacted for the sole purposes of (1) reiterating the manifest  
965 intent of the General Court in amending Section 19B of Chapter 149 of the General Laws by  
966 enacting Chapter 587 of the Acts of 1985, Section 27 of Chapter 149 of the General Laws by  
967 enacting Section 173 of Chapter 110 of the Acts of 1993, Section 27F of Chapter 149 of the  
968 General Laws by enacting Section 177 of Chapter 110 of the Acts of 1993, Section 27G of  
969 Chapter 149 of the General Laws by enacting Section 178 of Chapter 110 of the Acts of 1993,  
970 Section 27H of Chapter 149 of the General Laws by enacting Section 179 of Chapter 110 of the  
971 Acts of 1993, Section 150 of Chapter 149 of the General Laws by enacting Section 182 of  
972 Chapter 110 of the Acts of 1993, Section 1B of Chapter 151 of the General Laws by enacting  
973 Section 183 of Chapter 110 of the Acts of 1993, and Section 20 of Chapter 151 of the General  
974 Laws by enacting Section 185 of Chapter 110 of the Acts of 1993 that treble damages are  
975 mandatory; and (2) redressing the serious and adverse effects that have resulted from the judicial

976 misinterpretation of said sections of the General Laws as so amended and is not to be construed  
977 as a new enactment.