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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1454 Session of  
2014

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INTRODUCED BY STACK, BOSCOLA, YUDICHAK, FONTANA, HUGHES, COSTA,  
SOLOBAY AND BREWSTER, JULY 10, 2014

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REFERRED TO LABOR AND INDUSTRY, JULY 10, 2014

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AN ACT

1 Amending the act of October 13, 2010 (P.L.506, No.72), entitled  
2 "An act providing for the criteria for independent  
3 contractors in the construction industry and for the powers  
4 and duties of the Department of Labor and Industry and the  
5 Secretary of Labor and Industry; and imposing penalties,"  
6 further providing for definitions, for improper  
7 classification of employees, for criminal penalties, for  
8 administrative penalties, for stop-work orders, for  
9 procedure, for certain agreement prohibited, for availability  
10 of information, for use of penalty funds, for annual report  
11 required and for funding.

12 The General Assembly of the Commonwealth of Pennsylvania  
13 hereby enacts as follows:

14 Section 1. The definition of "secretary" in section 2 of the  
15 act of October 13, 2010 (P.L.506, No.72), known as the  
16 Construction Workplace Misclassification Act, is amended to  
17 read:

18 Section 2. Definitions.

19 The following words and phrases when used in this act shall  
20 have the meanings given to them in this section unless the  
21 context clearly indicates otherwise:

22 \* \* \*

1 ["Secretary." The Secretary of Labor and Industry of the  
2 Commonwealth or the secretary's authorized representative.]

3 \* \* \*

4 Section 2. Sections 4(c) and (d), 5(c), 6, 7(a), 8, 9, 11,  
5 12, 14 and 17 of the act are amended to read:

6 Section 4. Improper classification of employees.

7 \* \* \*

8 (c) Order to show cause.--

9 (1) If the [secretary] district attorney of the  
10 appropriate county receives information indicating that any  
11 person has violated this act, the [secretary] district  
12 attorney may investigate the matter and issue an order to  
13 show cause why the person should not be found in violation of  
14 this act.

15 (2) A person served with an order to show cause shall  
16 have a period of 20 days from the date the order is served to  
17 file an answer in writing.

18 (3) If the person fails to file a timely and adequate  
19 answer to the order to show cause, the [secretary] district  
20 attorney may, following notice and hearing, do any of the  
21 following:

22 (i) petition a court of competent jurisdiction to  
23 issue a stop-work order as provided in section 7; or

24 (ii) [immediately assess] petition a court of  
25 competent jurisdiction to assess civil penalties as  
26 provided in section 6.

27 (d) Enforcement.--

28 (1) Except as provided under paragraph (2), the district  
29 attorney of the appropriate county shall enforce the  
30 provisions of this act.

1           (2) If, subsequent to issuing an order to show cause  
2 under subsection (c), the [secretary] district attorney finds  
3 probable cause that an employer has committed a criminal  
4 violation of this act, the [secretary shall] district  
5 attorney shall either:

6           (i) refer the matter to the Office of Attorney  
7 General for investigation or [impose administrative]  
8 proceed to investigate the potential violation; or

9           (ii) petition a court of competent jurisdiction to  
10 assess civil penalties under section 6.

11       \* \* \*

12 Section 5. Criminal penalties.

13       \* \* \*

14       (c) [Concurrent jurisdiction] Jurisdiction.--

15           (1) [The] Where a matter is referred pursuant to section  
16 4(d)(2), the Attorney General shall have [concurrent]  
17 prosecutorial jurisdiction [with the district attorney of the  
18 appropriate county] for violations under this section and any  
19 offense arising out of the activity prohibited by this  
20 section.

21           (2) No person charged with a violation of this section  
22 by the Attorney General shall have standing to challenge the  
23 authority of the Attorney General to prosecute the case, and  
24 if a challenge is made, the challenge shall be dismissed, and  
25 no relief shall be available in the courts of this  
26 Commonwealth to the person making the challenge.

27 Section 6. [Administrative] Civil penalties.

28       (a) General rule.--[When the secretary finds that a person  
29 has violated this act, the secretary may assess and collect] The  
30 district attorney may petition a court of competent jurisdiction

1 to assess civil penalties of not more than \$1,000 for the first  
2 violation, and not more than \$2,500 for each subsequent  
3 violation.

4 (b) Factors to be considered.--When determining the amount  
5 of the penalty to be imposed, the [secretary shall] court may  
6 consider factors including, but not limited to:

7 (1) The history of previous violations by the employer.

8 (2) The seriousness of the violation.

9 (3) The good faith of the employer.

10 (4) The size of the employer's business.

11 Section 7. Stop-work orders.

12 (a) Issuance of order.--

13 (1) If the [secretary] district attorney determines,  
14 subsequent to the issuance of an order to show cause under  
15 section 4(c), that an employer, or officer or agent of the  
16 employer, has intentionally failed to properly classify an  
17 individual as an employee under section 4(a), the [secretary]  
18 district attorney may petition a court of competent  
19 jurisdiction to issue a stop-work order requiring the  
20 cessation of work by individuals who are improperly  
21 classified within 24 hours of the effective date of the  
22 order, or in the event that a majority of individuals working  
23 at a site are improperly classified, requiring the cessation  
24 of all business operations of that employer at each site at  
25 which a violation occurred within 24 hours of the effective  
26 date of the order.

27 (2) The order shall take effect when served upon the  
28 employer, or for a particular employer worksite, when served  
29 at the worksite. The order shall remain in effect until the  
30 court issues an order releasing the stop-work order or upon

1 finding that the employer, or officer or agent of the  
2 employer, is no longer in violation of this act.

3 (3) An order releasing a stop-work order may include a  
4 requirement that the employer file with the [department]  
5 district attorney periodic reports for a probationary period  
6 that shall not exceed two years demonstrating the employer's  
7 continued compliance with this act.

8 \* \* \*

9 Section 8. Procedure.

10 (a) Hearings.--Actions taken under [sections 4(c) and 6]  
11 section 4(c) shall be subject to the provisions of 2 Pa.C.S.  
12 (relating to administrative law and procedure).

13 (b) Subpoena powers.--The [department] district attorney  
14 shall have the power to subpoena witnesses, administer oaths,  
15 examine witnesses and take testimony or compel the production of  
16 documents. The [secretary] district attorney may petition the  
17 Commonwealth Court to enforce any order or subpoena issued under  
18 this act.

19 Section 9. Certain agreement prohibited.

20 (a) Violation.--No person shall require or demand that an  
21 individual enter into an agreement or sign a document which  
22 results in the improper classification of that individual as an  
23 independent contractor.

24 (b) Penalty.--[A violation of subsection (a) shall be  
25 punishable by an administrative] The district attorney shall  
26 petition a court of appropriate jurisdiction to assess a fine of  
27 not less than \$1,000 and not more than \$2,500 for a violation of  
28 subsection (a). Each violation shall be considered a separate  
29 offense under this section.

30 Section 11. Availability of information.

1 The department shall create a poster for job sites which  
2 outlines the requirements and penalties under this act and shall  
3 make the poster available on its Internet website. [At the  
4 discretion of the secretary, a] A toll-free hotline telephone  
5 number [may] shall be established to receive alleged violations  
6 and to forward the information on the alleged violations to the  
7 district attorney of the appropriate county.

8 Section 12. Use of penalty funds.

9 [Any sum collected as a penalty under:] (a) Penalty  
10 payment.--From all sums collected as a penalty under sections 6,  
11 7 and 9, a sum that shall not exceed the total amount of costs  
12 reported to the State Treasury pursuant to section 14 shall be  
13 paid into the Employee Misclassification Enforcement Fund.

14 (b) Allocation.--Any sum remaining following the payment  
15 into the fund under subsection (a) shall be allocated  
16 proportionately as follows:

17 (1) Sections 6, 7 and 9 for a violation of section 4(a)

18 (1) shall be paid into the Workers' Compensation  
19 Administration Fund.

20 (2) Sections 6, 7 and 9 for a violation of section 4(a)

21 (2) shall be paid into the Special Administration Fund  
22 created under section 601.1 of the Unemployment Compensation  
23 Law.

24 (3) Section 9 for a violation of any other provision of

25 this act shall be divided equally between the Workers'  
26 Compensation Administration Fund and the Special  
27 Administration Fund.

28 Section 14. Annual report required.

29 The department shall submit an annual report to the General  
30 Assembly by March 1 of the year following the first full year in

1 which this act is in effect, and each year thereafter,  
2 detailing, to the maximum extent possible, data on the previous  
3 calendar year's administration and enforcement of this act. The  
4 department may include any relevant facts and statistics that it  
5 believes necessary in the content of the report. Each district  
6 attorney shall provide to the department information determined  
7 to be necessary by the department regarding the district  
8 attorney's administration and enforcement of this act for the  
9 previous calendar year and shall include total costs incurred by  
10 each district attorney for the enforcement of this act. The  
11 department shall establish forms, procedures and timelines  
12 necessary for the required reporting under this section and  
13 reporting shall be not more than once a month. The department  
14 shall annually provide the State Treasury with the total amount  
15 of costs incurred by each district attorney.

16 Section 17. Funding.

17 [The department shall not be required to enforce this act  
18 until adequate funding is appropriated.] (a) Fund.--There is  
19 established in the State Treasury a nonlapsing restricted  
20 interest-bearing account to be known as the Employee  
21 Misclassification Enforcement Fund. The fund shall consist of  
22 penalties assessed under this act, funds appropriated by the  
23 General Assembly, and funds from another source, private or  
24 public. Money in the fund and the interest it accrues is  
25 appropriated to the department for the sole purpose of providing  
26 reimbursement pursuant to subsection (b).

27 (b) Reimbursement.--The moneys in the fund shall be used to  
28 annually reimburse costs incurred by district attorneys in  
29 administering and enforcing this act. If the moneys in the fund  
30 are insufficient to fully reimburse all claims, such payments

1 for reimbursement shall be made on a pro rata basis.

2 Section 3. This act shall take effect in 120 days.