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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2442 Session of  
2018

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INTRODUCED BY SNYDER, DAVIS, GAINNEY, D. MILLER, MULLERY,  
DRISCOLL, SCHLOSSBERG, HARKINS, BARRAR, MARSHALL, GALLOWAY,  
NEILSON, HILL-EVANS AND CALTAGIRONE, SEPTEMBER 5, 2018

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, SEPTEMBER 5, 2018

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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 improper classification of employees.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. Section 4 of the act of October 13, 2010  
10 (P.L.506, No.72), known as the Construction Workplace  
11 Misclassification Act, is amended to read:

12 Section 4. Improper classification of employees.

13 (a) Violation.--An employer, or officer or agent of an  
14 employer, shall be in violation of this act and shall be subject  
15 to the penalties, remedies and actions contained in this act if  
16 the employer, officer or agent:

17 (1) fails to properly classify an individual as an  
18 employee for purposes of the Workers' Compensation Act and  
19 fails to provide the coverage required under the Workers'

1 Compensation Act; or

2 (2) fails to properly classify an individual as an  
3 employee for purposes of the Unemployment Compensation Law  
4 and fails to pay contributions, reimbursements or other  
5 amounts required to be paid under the Unemployment  
6 Compensation Law.

7 (b) Separate offenses.--Each individual who is not properly  
8 classified as an employee shall be the basis of a separate  
9 violation of this section.

10 (b.1) Complaint.--If the secretary receives a written  
11 complaint indicating that a person has violated this act, the  
12 secretary shall within 15 days of the receipt of the complaint  
13 respond in writing to the person who filed the complaint that  
14 the complaint has been received.

15 (c) [Order] Investigation and order to show cause.--

16 (1) If the secretary receives a written complaint or  
17 information indicating that any person has violated this act,  
18 the secretary [may] shall, unless the complaint appears to be  
19 frivolous, investigate the matter and issue an order to show  
20 cause why the person should not be found in violation of this  
21 act.

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

25 (3) If the person fails to file a timely and adequate  
26 answer to the order to show cause, the secretary may,  
27 following notice and hearing, do any of the following:

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

30 (ii) immediately assess penalties as provided in

1 section 6.

2 (d) Enforcement.--If, subsequent to issuing an order to show  
3 cause under subsection (c), the secretary finds probable cause  
4 that an employer has committed a criminal violation of this act,  
5 the secretary shall refer the matter to the Office of Attorney  
6 General for investigation or impose administrative penalties  
7 under section 6.

8 (e) Acting in concert with other parties.--A party that does  
9 not meet the definition of "employer" in section 2, but which  
10 intentionally contracts with an employer knowing the employer  
11 intends to misclassify employees in violation of this act, shall  
12 be subject to the same penalties, remedies or other actions as  
13 the employer found to be in violation of this act.

14 (f) Defense.--It shall be a defense to an alleged violation  
15 of this section if the person for whom the services are  
16 performed in good faith believed that the individual who  
17 performed the services qualified as an independent contractor at  
18 the time the services were performed.

19 Section 2. This act shall take effect in 60 days.