
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2810 Session of
2022

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SEPTEMBER 16, 2022

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, SEPTEMBER 16, 2022

AN ACT

1 Amending Title 63 (Professions and Occupations (State Licensed))
2 of the Pennsylvania Consolidated Statutes, providing for
3 independent contractors; imposing duties on the Department of
4 Labor and Industry and the Secretary of Labor and Industry;
5 establishing the Labor Broker Registration Account; imposing
6 penalties; and making a related repeal.

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

9 Section 1. Title 63 of the Pennsylvania Consolidated
10 Statutes is amended by adding a part to read:

11 PART III

12 INDEPENDENT CONTRACTORS

13 Chapter

14 41. Workplace Misclassification

15 CHAPTER 41

16 WORKPLACE MISCLASSIFICATION

1 Sec.
2 4101. Scope of chapter.
3 4102. Definitions.
4 4103. Independent contractors generally.
5 4104. Independent contractors in construction industry.
6 4105. Improper classification of employees.
7 4106. Criminal penalties.
8 4107. Private right of action.
9 4108. Administrative penalties.
10 4109. Debarment.
11 4110. Stop-work orders.
12 4111. Procedure.
13 4112. Certain agreements and documents prohibited.
14 4113. Labor brokers.
15 4114. Retaliation for action prohibited.
16 4115. Availability and posting of information.
17 4116. Use of penalty funds.
18 4117. Rules and regulations.
19 4118. Interagency cooperation.
20 4119. Annual reports.
21 4120. Construction of law.
22 4121. Funding.
23 § 4101. Scope of chapter.
24 This chapter relates to workplace misclassification.
25 § 4102. Definitions.
26 The following words and phrases when used in this chapter
27 shall have the meanings given to them in this section unless the
28 context clearly indicates otherwise:
29 "Account." The Labor Broker Registration Account established
30 under section 4113(i) (relating to labor brokers).

1 "Attorney General." The Attorney General of the Commonwealth
2 or the authorized representative of the Attorney General of the
3 Commonwealth.

4 "Construction." Erection, reconstruction, demolition,
5 alteration, modification, custom fabrication, building,
6 assembling, site preparation and repair work done on any real
7 property or premises under contract, whether or not the work is
8 for a public body and paid for from public funds.

9 "Debar." As follows:

10 (1) Action taken by the secretary to prohibit a
11 contractor, subcontractor or person from contracting with or
12 participating in contracts for State-supervised or State-
13 funded construction and other State procurement contracts for
14 a specified period or permanently.

15 (2) The debarment shall include all divisions or other
16 organizational elements of a contractor or subcontractor
17 unless limited by its terms to specific divisions or
18 organizational elements.

19 (3) The debarment may apply to affiliates or other
20 persons or entities associated with the contractor,
21 subcontractor or individual if they are specifically named
22 and given written notice of the debarment and an opportunity
23 to appeal.

24 "Department." The Department of Labor and Industry of the
25 Commonwealth.

26 "Employee." As follows:

27 (1) An individual performing a service for an employer
28 for wages, remuneration or other compensation.

29 (2) The term includes:

30 (i) In relation to workers' compensation, as the

1 term "employe" is defined in section 104 of the Workers'
2 Compensation Act.

3 (ii) In relation to unemployment compensation, as
4 the term "employe" is defined in section 4(i) of the
5 Unemployment Compensation Law.

6 "Employer." As follows:

7 (1) A person, including an agent of the person, that
8 engages the services of an employee for wages, remuneration
9 or other compensation.

10 (2) The term includes:

11 (i) In relation to workers' compensation, as the
12 term "employer" is defined in section 103 of the Workers'
13 Compensation Act.

14 (ii) In relation to unemployment compensation, as
15 the term "employer" is defined in section 4(j) of the
16 Unemployment Compensation Law.

17 "Employer-employee relations statute." As follows:

18 (1) A statute that governs employer-employee relations
19 in this Commonwealth.

20 (2) The term includes the following:

21 (i) The Unemployment Compensation Law.

22 (ii) The Workers' Compensation Act.

23 (iii) The act of June 1, 1937 (P.L.1168, No.294),
24 known as the Pennsylvania Labor Relations Act.

25 (iv) The act of October 27, 1955 (P.L.744, No.222),
26 known as the Pennsylvania Human Relations Act.

27 (v) The act of July 14, 1961 (P.L.637, No.329),
28 known as the Wage Payment and Collection Law.

29 (vi) The act of August 15, 1961 (P.L.987, No.442),
30 known as the Pennsylvania Prevailing Wage Act.

1 (vii) The act of January 17, 1968 (P.L.11, No.5),
2 known as The Minimum Wage Act of 1968.

3 (viii) The act of July 23, 1970 (P.L.563, No.195),
4 known as the Public Employe Relations Act.

5 (3) The term does not include the act of October 7, 2019
6 (P.L.454, No.75), known as the Construction Industry Employee
7 Verification Act.

8 "Labor broker." An entity or individual that hires employees
9 and sells the services of the employees to another employer in
10 the construction industry in need of temporary employees.

11 "Person." An individual, firm, sole proprietorship,
12 partnership, corporation, association or other entity.

13 "Public body." Any of the following:

14 (1) The Commonwealth.

15 (2) A political subdivision, including a county, city,
16 borough, incorporated town, township or municipal authority,
17 of this Commonwealth.

18 (3) An authority created by the General Assembly.

19 (4) An instrumentality or agency of the Commonwealth.

20 (5) A school district of this Commonwealth.

21 "Secretary." The Secretary of Labor and Industry of the
22 Commonwealth or the authorized representative of the Secretary
23 of Labor and Industry of the Commonwealth.

24 "Unemployment Compensation Law." The act of December 5, 1936
25 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment
26 Compensation Law.

27 "Workers' Compensation Act." The act of June 2, 1915
28 (P.L.736, No.338), known as the Workers' Compensation Act.

29 § 4103. Independent contractors generally.

30 (a) Characteristics of independent contractor.--Except as

1 provided in section 4104 (relating to independent contractors in
2 construction industry), an individual shall be considered an
3 employee and not an independent contractor unless all of the
4 following apply:

5 (1) The individual is free from control and direction in
6 connection with the performance of the service, both under
7 the contract for the performance of service and in fact.

8 (2) The service is performed outside the usual course of
9 the business of the employer.

10 (3) The individual is customarily engaged in an
11 independently established trade, occupation, profession or
12 business of the same nature as that involved in the service
13 performed.

14 (b) Factors not to be considered.--The failure to withhold
15 Federal or State income taxes or pay unemployment compensation
16 contributions or workers' compensation premiums with respect to
17 an individual's remuneration shall not be considered in
18 determining whether the individual is an independent contractor
19 for purposes of an employer-employee relations statute.

20 (c) Workers' compensation.--

21 (1) An individual who is an independent contractor as
22 determined under this section is not an employee for purposes
23 of the Workers' Compensation Act. For purposes of this
24 section, each employment relationship shall be considered
25 separately.

26 (2) Nothing in this act shall be construed to affect
27 section 321(2) of the Workers' Compensation Act.

28 (d) Unemployment compensation.--

29 (1) For purposes of section 4(1)(2)(B) of the
30 Unemployment Compensation Law, an individual is customarily

1 engaged in an independently established trade, occupation,
2 profession or business with respect to services that the
3 individual performs only if the criteria specified under
4 section 4104(2), (3), (4), (5), (6) and (7) are satisfied.

5 (2) Except as provided in paragraph (1), nothing in this
6 act shall be construed to affect any exclusion from
7 "employment" as defined in the Unemployment Compensation Law.

8 § 4104. Independent contractors in construction industry.

9 An individual who is customarily engaged in an independently
10 established trade, occupation, profession or business with
11 respect to services that the individual performs in the
12 commercial or residential construction industry shall be
13 considered an employee and not an independent contractor unless
14 all of the following apply:

15 (1) The individual meets the criteria specified under
16 section 4103(a) (relating to independent contractors
17 generally).

18 (2) The individual possesses the essential tools,
19 equipment and other assets necessary to perform the services
20 independent of the person for whom the services are
21 performed.

22 (3) The individual's arrangement with the person for
23 whom the services are performed is such that the individual
24 shall realize a profit or suffer a loss as a result of
25 performing the services.

26 (4) The individual performs the services through a
27 business in which the individual has a proprietary interest.

28 (5) The individual maintains a business location that is
29 separate from the location of the person for whom the
30 services are being performed.

1 (6) The individual:

2 (i) previously performed the same or similar
3 services for another person in accordance with paragraphs
4 (2), (3), (4) and (5) while free from direction or
5 control over performance of the services, both under the
6 contract of service and in fact; or

7 (ii) holds the individual out to other persons as
8 available and able, and in fact is available and able, to
9 perform the same or similar services in accordance with
10 paragraphs (2), (3), (4) and (5) while free from
11 direction or control over performance of the services.

12 (7) The individual maintains liability insurance during
13 the term of this contract of at least \$50,000.

14 (8) The individual has a written contract that is
15 project specific and contains a particular scope of work and
16 definitive time period to perform services.

17 § 4105. Improper classification of employees.

18 (a) Violation.--An employer, or officer or agent of an
19 employer, shall be in violation of this chapter and shall be
20 subject to the penalties, remedies and actions contained in this
21 chapter if the employer, officer or agent fails to properly
22 classify an individual as an employee for purposes of an
23 employer-employee relations statute.

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

27 (c) Order to show cause.--

28 (1) If the secretary receives information indicating
29 that a person has violated this chapter, the secretary may
30 investigate the matter as specified in subsection (d) and

1 issue an order to show cause why the person should not be
2 found in violation of this chapter.

3 (2) A person served with an order to show cause shall
4 have a period of 10 days from the date the order is served to
5 file an answer in writing.

6 (3) If the person fails to file a timely and adequate
7 answer to the order to show cause, the secretary may do any
8 of the following:

9 (i) Petition a court of competent jurisdiction to
10 issue a stop-work order as provided in section 4110
11 (relating to stop-work orders).

12 (ii) Immediately assess penalties as provided in
13 section 4108 (relating to administrative penalties).

14 (d) Investigations.--In conducting an investigation under
15 this section, the secretary may:

16 (1) Investigate and ascertain wages paid to an employee.

17 (2) Enter and inspect a worksite or place of business at
18 any reasonable time to examine and inspect records and
19 conditions of employment that are necessary and appropriate
20 to the enforcement of this chapter.

21 (3) Obtain statements from the employer or individuals
22 present at a worksite, in person or in writing.

23 (4) Subpoena witnesses, administer oaths, examine
24 witnesses and copy or compel the production of records,
25 contracts and other documents that are necessary and
26 appropriate to the enforcement of this chapter.

27 (5) Petition the Commonwealth Court to enforce any
28 subpoena or order issued by the department under this
29 chapter.

30 (e) Enforcement.--

1 (1) If, subsequent to issuing an order to show cause
2 under subsection (c), the secretary finds that an employer
3 has violated this chapter, the secretary:

4 (i) May impose administrative penalties under
5 section 4108.

6 (ii) May refer the matter to the Attorney General
7 for criminal investigation.

8 (iii) Shall refer the matter to the Attorney General
9 if the employer has previously been found in violation of
10 this chapter in another matter.

11 (2) The Attorney General shall have jurisdiction under
12 section 4106 (relating to criminal penalties) to initiate an
13 investigation or prosecution of criminal violations of this
14 chapter regardless of whether a referral has been made.

15 (f) Acting in concert with other parties.--

16 (1) A party that does not meet the definition of
17 "employer" in section 4102 (relating to definitions) but that
18 contracts or renews a contract with an employer to supply
19 labor, knowing that the employer will misclassify the
20 supplied employees in violation of this chapter, shall be
21 subject to the same penalties, remedies or other actions as
22 the employer found to be in violation of this chapter.

23 (2) An employer that contracts with a labor broker that
24 has not registered as required under this chapter is
25 rebuttably presumed to have acted in concert with the labor
26 broker if the labor broker has violated subsection (a).

27 (g) Defense.--It shall be a defense to an alleged violation
28 of this section if the person for whom the services are
29 performed in good faith believed that the individual who
30 performed the services qualified as an independent contractor at

1 the time the services were performed.

2 § 4106. Criminal penalties.

3 (a) Grading.--An employer, or officer or agent of an
4 employer, that knowingly violates section 4105(a) (relating to
5 improper classification of employees) commits:

6 (1) A misdemeanor of the first degree if the employer
7 has no prior offense under section 4105(a).

8 (2) A felony of the third degree if the employer has one
9 or more prior offenses under section 4105(a).

10 (b) Summary offense.--An employer, or officer or agent of an
11 employer, that negligently fails to properly classify an
12 individual as an employee under section 4105(a) commits a
13 summary offense and shall, upon conviction, be sentenced to pay
14 a fine of not more than \$1,000. Evidence of a prior offense
15 under this subsection shall be admissible as evidence of intent
16 under subsection (a).

17 (c) Concurrent jurisdiction.--

18 (1) The Attorney General shall have concurrent
19 prosecutorial jurisdiction with the district attorney of the
20 appropriate county for a violation under this section and an
21 offense arising out of the activity prohibited by this
22 section.

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

29 (d) Definitions.--As used in this section, the following
30 words and phrases shall have the meanings given to them in this

1 subsection unless the context clearly indicates otherwise:

2 "Prior offense." A conviction of a violation of section
3 4105, if the judgment of sentence was imposed before the
4 defendant is sentenced for a separate violation of section 4105.
5 § 4107. Private right of action.

6 (a) Authorization.--An employee who has been misclassified
7 in violation of this chapter or who has been discharged,
8 threatened or has otherwise suffered retaliation, discrimination
9 or any other adverse action as a result of participating in an
10 investigation or reporting a violation of this chapter may bring
11 a private right of action in a court of common pleas in
12 accordance with established civil procedures of this
13 Commonwealth.

14 (b) Time.--An action under this section must be brought
15 within three years from the date that the employee knew of the
16 violation, retaliation or discrimination.

17 (c) Relief.--If an employee prevails in an action commenced
18 under this section, the employee shall be entitled to the
19 following relief:

20 (1) Reinstatement of the employee without a loss in
21 seniority status, if applicable.

22 (2) Restitution equal to three times the amount of the
23 employee's wages and fringe benefits calculated from the date
24 of the violation, retaliation or discrimination.

25 (3) Reasonable attorney fees and costs of the action.

26 (4) Any other legal and equitable relief as the court
27 deems appropriate to make the employee whole.

28 § 4108. Administrative penalties.

29 (a) Authorization.--When the secretary finds that a person
30 has violated this chapter, the secretary may:

1 (1) Assess and collect civil penalties of not more than
2 \$15,000 for the first violation and not more than \$25,000 for
3 each subsequent violation.

4 (2) Order a financial audit or tax audit of the person.

5 (b) Factors to be considered.--When determining the amount
6 of the penalty to be imposed, the secretary shall consider
7 factors, including the following:

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

9 (2) The seriousness of the violation.

10 (3) The good faith of the employer.

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

12 § 4109. Debarment.

13 (a) Effect on contracts.--If, after notice and hearing, the
14 secretary determines that an employer, or officer or agent of
15 the employer, knowingly misclassified an employee in violation
16 of this chapter, a public body may not award a contract to the
17 employer, or to a corporation or partnership in which the
18 violator has an interest, for a set period of time or
19 permanently, as determined by the secretary.

20 (b) Debarment list.--The secretary shall develop and
21 maintain a list of employers that are debarred under this
22 chapter and shall regularly post and update the list on the
23 department's publicly accessible Internet website.

24 (c) Notice to public bodies.--The secretary shall provide
25 notice to all public bodies in this Commonwealth of the names of
26 employers that knowingly misclassified an employee in violation
27 of this chapter. For the purposes of this chapter, the term
28 "notice" shall include the posting of the debarment list on the
29 department's publicly accessible Internet website.

30 § 4110. Stop-work orders.

1 (a) Authorization.--If the department determines that an
2 employer, or officer or agent of the employer, has intentionally
3 failed to properly classify an individual as an employee under
4 section 4105(a) (relating to improper classification of
5 employees), the secretary may issue an order requiring the
6 cessation of work by individuals who are improperly classified.

7 (b) Criteria.--The following apply to a stop-work order:

8 (1) The order may require satisfaction of conditions
9 necessary to ensure that the employer complies with this
10 chapter.

11 (2) The order shall take effect when served upon the
12 employer by first class mail or posting at the employer's
13 worksite.

14 (3) The order shall remain in effect until released by
15 the department or a court of competent jurisdiction.

16 (4) The order shall be effective against a successor
17 entity that:

18 (i) has one or more of the same principals or
19 officers as the employer against whom the order was
20 issued;

21 (ii) performs similar work within the same
22 geographical area;

23 (iii) occupies the same premises;

24 (iv) shares the same telephone or fax number;

25 (v) has the same email address or Internet website;

26 (vi) employs substantially the same work force or
27 administrative employees, or both;

28 (vii) utilizes the same tools, equipment or
29 facilities;

30 (viii) employs or engages the services of any person

1 or persons involved in the direction or control of the
2 other; or

3 (ix) lists substantially the same work experience.

4 (5) The order shall include a notice informing the
5 recipient of the right to appeal the order.

6 (b) Review of stop-work order.--A stop-work order may be
7 appealed to the secretary within seven days of the date or the
8 stop-work order. The following apply:

9 (1) The department, affected workers and their
10 representatives shall automatically be parties to the
11 proceedings.

12 (2) The secretary shall appoint a hearing officer, who
13 shall conduct an expedited hearing within 15 days of receipt
14 of the appeal, subject to 2 Pa.C.S. Chs. 5 Subch. A (relating
15 to practice and procedure of Commonwealth agencies) and 7
16 Subch. A (relating to judicial review of Commonwealth agency
17 action), and shall issue a proposed report within 15 days of
18 the hearing. The following apply:

19 (i) Exceptions shall be due 10 days after the
20 issuance of the proposed report.

21 (ii) A brief opposing exceptions shall be due seven
22 days after exceptions are filed.

23 (3) The secretary shall issue a final decision within 15
24 days of receipt of the brief opposing exceptions.

25 (4) The stop-work order shall remain in full effect
26 until the secretary issues a decision.

27 (c) Penalty.--The court shall assess a penalty of \$2,500 per
28 day against an employer for each day that the employer conducts
29 business operations that are in violation of a stop-work order
30 issued under this section.

1 § 4111. Procedure.

2 (a) Hearings.--Actions taken under sections 4105(c)
3 (relating to improper classification of employees) and 4108
4 (relating to administrative penalties) shall be subject to the
5 provisions of 2 Pa.C.S. (relating to administrative law and
6 procedure).

7 (b) Subpoena powers.--

8 (1) The department shall have the power to subpoena
9 witnesses, administer oaths, examine witnesses and take
10 testimony or compel the production of documents.

11 (2) The secretary may petition the Commonwealth Court to
12 enforce any order or subpoena issued under this chapter.

13 § 4112. Certain agreements and documents prohibited.

14 (a) Violation.--No person shall require or demand that an
15 individual enter into an agreement or sign a document that
16 results in the improper classification of that individual as an
17 independent contractor.

18 (b) Penalty.--A violation of subsection (a) shall be
19 punishable by an administrative fine of not less than \$2,500 and
20 not more than \$5,000. Each violation shall be considered a
21 separate offense under this section.

22 § 4113. Labor brokers.

23 (a) Prohibition.--A person may not hold oneself out or
24 engage in any act as a labor broker without satisfying the
25 registration requirements under this section.

26 (b) Proof of registration.--A labor broker shall include the
27 labor broker's registration number issued by the department in
28 all advertisements distributed within this Commonwealth and on
29 all contracts, estimates and related documents created after the
30 effective date of this section.

1 (c) Verification system.--The department shall develop and
2 maintain a list of completed registrations under this chapter on
3 the department's publicly accessible Internet website, which
4 shall include each labor broker's legal business name, any
5 assumed business name, business address, verification number and
6 verification expiration date.

7 (d) Registration.--

8 (1) A labor broker shall apply, in writing or
9 electronically, for registration in a manner and on a form
10 prescribed by the department.

11 (2) The registration form shall include the following
12 information:

13 (i) For any individual, sole proprietor, primary
14 owner or officer of a business entity, all of the
15 following information:

16 (A) The applicant's full legal name and title at
17 the applicant's business.

18 (B) The applicant's business address and
19 telephone number.

20 (C) The applicant's Federal identification
21 number or Federal tax identification number used for
22 business purposes.

23 (D) All prior business names and addresses of
24 the applicant.

25 (ii) The legal business name, any assumed business
26 name, designated business address, physical address,
27 telephone number and email address of the applicant.

28 (iii) For an out-of-State business entity, the legal
29 business name, any assumed business name, designated
30 business address, physical address, telephone number and

1 email address of the applicant and any identification
2 number issued to the applicant by the applicant's state
3 or political subdivision through registration, licensing
4 or verification systems, if applicable.

5 (iv) For any individual, sole proprietor, primary
6 owner or officer of a business entity, the name of all
7 other persons with an ownership interest in the applicant
8 who are not identified under subparagraph (i). This
9 subparagraph shall not apply to shareholders with less
10 than a 5% ownership interest in a publicly traded
11 corporation.

12 (v) A description of the nature of the business of
13 the applicant.

14 (vi) Whether the applicant has been suspended or
15 debarred within the last 10 years.

16 (vii) Proof of financial responsibility, which may
17 include liability insurance or bonding, or self-
18 insurance.

19 (viii) The fee specified under subsection (h).

20 (ix) A signed statement by the applicant that the
21 information in the application is true and accurate and
22 any individual signing the application is an authorized
23 agent of the applicant.

24 (e) Expiration and renewal.--

25 (1) The registration shall be completed on a fixed,
26 biennial basis on a date determined by the department.

27 (2) The department shall accept an application for a
28 registration renewal before the expiration of an active
29 registration in a time frame specified by the department.

30 (f) Certification of compliance.--After a labor broker

1 completes an application for registration or registration
2 renewal under this section and pays the fee specified under
3 subsection (h), the department shall issue a certificate of
4 compliance to the labor broker that includes a registration
5 number.

6 (g) Reporting changes.--A labor broker shall update its
7 registration within 30 days of any change in personal or
8 business information required to be provided to the department
9 under this section.

10 (h) Fees.--

11 (1) An applicant for registration or registration
12 renewal under this section shall pay an application fee of
13 not more than \$300 to the department.

14 (2) Fees under paragraph (1) shall be deposited into the
15 account.

16 (i) Labor Broker Registration Account.--

17 (1) The Labor Broker Registration Account is established
18 as a restricted revenue, interest-bearing account in the
19 General Fund.

20 (2) The department shall deposit fees and penalties
21 collected under this section into the account.

22 (3) Money in the account and interest earned on the
23 money are appropriated on a continuing basis to the
24 department for administering and enforcing the provisions of
25 this chapter.

26 (j) Prohibited acts.--

27 (1) On or after the effective date of this section, a
28 person who holds oneself out or engages in any act as a labor
29 broker may not do any of the following:

30 (i) Fail to complete the registration as a labor

1 broker as required under this section.

2 (ii) Fail to display or identify its registration
3 number as required under subsection (b).

4 (iii) Knowingly make a false statement in the
5 application for labor broker registration.

6 (iv) Knowingly contract with or perform work as a
7 labor broker for another person:

8 (A) without first completing the registration
9 required under this chapter; or

10 (B) after the registration required under this
11 chapter has expired or has been suspended.

12 (v) Knowingly contract with or pay another person
13 for work as a labor broker if:

14 (A) the person has not completed the
15 registration required under this section; or

16 (B) the person's registration required under
17 this section has expired or has been suspended.

18 (2) A person seeking to contract or engage with a
19 purported labor broker shall verify the registration of the
20 purported labor broker using the verification system
21 described in subsection (c).

22 (3) A person may not contract with or engage the
23 services of an unregistered labor broker.

24 (4) A person found to have engaged with an unregistered
25 labor broker shall be subject to penalties described under
26 subsection (l).

27 (k) Investigations.--

28 (1) If the secretary receives information indicating
29 that a person has violated this section, the secretary may
30 investigate the matter.

1 (2) The secretary may take any of the following actions:

2 (i) Enter and inspect a worksite or place of
3 business at any reasonable time to examine and inspect
4 records that relate to the compliance of this section.

5 (ii) Subpoena witnesses, administer oaths, examine
6 witnesses and copy or compel the production of records,
7 contracts and other documents that are necessary and
8 appropriate to the enforcement of this section.

9 (iii) Petition the Commonwealth Court to enforce any
10 subpoena or order issued by the department under this
11 chapter.

12 (1) Penalties.--

13 (1) A person that violates subsection (j)(1)(i) or (ii)
14 shall be subject to the following:

15 (i) For a first violation, the department shall
16 issue a warning letter to the person detailing the
17 omission and provide 30 days to correct the violation.

18 (ii) For a second or subsequent violation, the
19 department shall bring an administrative action to assess
20 a fine of up to \$2,500 for each day that the labor broker
21 is not registered.

22 (2) For a violation of subsection (j)(1)(iii), (iv) or
23 (v), the department shall bring an administrative action to
24 assess a fine of up to \$10,000 per violation.

25 (3) A person that violates subsection (j)(2) or (3)
26 shall be subject to the following:

27 (i) For a first violation, the department shall
28 issue a fine of no more than \$25,000.

29 (ii) For second or subsequent violations, the
30 department shall issue a fine not to exceed \$25,000 per

1 day per worker provided by the unregistered labor broker.

2 (m) Suspensions of registrations.--The secretary may suspend
3 a labor broker's registration. The suspension shall be subject
4 to appeal of the administrative action.

5 (n) Other relief.--In addition to the penalties specified
6 under this section, the department may seek other relief,
7 including injunctive relief and costs.

8 § 4114. Retaliation for action prohibited.

9 (a) Prohibitions.--It shall be unlawful for an employer, or
10 officer or agent of an employer, to discharge, threaten or
11 otherwise retaliate or discriminate in any manner against an
12 employee regarding compensation or other terms or conditions of
13 employment because the employee:

14 (1) participates in an investigation, hearing or inquiry
15 by the secretary or a governmental authority; or

16 (2) reports or makes a complaint regarding the violation
17 of this chapter to an employer or a governmental authority.

18 (b) Action.--An employee who suffers retaliation or
19 discrimination in violation of this section may bring a private
20 right of action under section 4107 (relating to private right of
21 action).

22 (c) Good faith allegations of noncompliance.--A person who
23 in good faith alleges noncompliance with this chapter shall be
24 afforded the rights provided by this chapter, notwithstanding
25 the person's failure to prevail on the merits.

26 (d) Rebuttable presumptions.--Taking adverse action against
27 a person within 90 days of the person's exercise of rights
28 protected under this chapter shall raise a rebuttable
29 presumption of having done so in retaliation for the exercise of
30 those rights.

1 § 4115. Availability and posting of information.

2 (a) Department responsibilities.--The department shall:

3 (1) Create a poster that outlines the requirements and
4 penalties under this chapter and shall make the poster
5 available on its publicly accessible Internet website.

6 (2) At the discretion of the secretary, establish a
7 toll-free hotline telephone number to receive alleged
8 violations of this chapter.

9 (3) Maintain and make available on its publicly
10 accessible Internet website information regarding
11 misclassification, including the following:

12 (i) The prohibition against employers misclassifying
13 employees.

14 (ii) The standards to determine whether an
15 individual is an employee or independent contractor.

16 (iii) Information on how a worker or a worker's
17 authorized representative may contact a representative of
18 the department to provide information to, or file a
19 complaint with, the department regarding suspected worker
20 misclassification.

21 (b) Employer responsibilities.--Every employer subject to
22 this chapter shall publicly post the poster described in
23 subsection (a) (1) in a conspicuous place where employees
24 normally pass and shall, upon request, transmit to an employee
25 information regarding this chapter and any regulations issued
26 under this chapter through electronic means or another form of
27 communication.

28 § 4116. Use of penalty funds.

29 Any sum collected as a penalty under:

30 (1) Sections 4108 (relating to administrative

1 penalties), 4110 (relating to stop-work orders) and 4112
2 (relating to certain agreements and documents prohibited) for
3 a violation of section 4105(a)(1) (relating to improper
4 classification of employees) shall be divided equally between
5 the Workers' Compensation Administration Fund created under
6 section 446(a) of the Workers' Compensation Act and the
7 department for costs related to enforcement.

8 (2) Sections 4108, 4110 and 4112 for a violation of
9 section 4105(a)(2) shall be divided equally between the
10 Special Administration Fund created under section 601.1(a) of
11 the Unemployment Compensation Law and the department for
12 costs related to enforcement.

13 (3) Section 4112 for a violation of any other provision
14 of this chapter shall be divided equally between the Workers'
15 Compensation Administration Fund, the Special Administration
16 Fund and the department for costs related to enforcement.

17 § 4117. Rules and regulations.

18 The department may promulgate rules and regulations necessary
19 to implement this chapter and help combat the misclassification
20 of employees.

21 § 4118. Interagency cooperation.

22 (a) Data.--The Bureau of Workers' Compensation of the
23 department, the Bureau of Labor Law Compliance of the department
24 and the Department of Revenue of the Commonwealth shall share
25 data to the fullest extent permissible by Federal and State law,
26 in addition to existing authority to share data with the Office
27 of Unemployment Compensation Tax Services of the department, for
28 the purposes of investigating employee misclassification.

29 (b) Employment information.--All State agencies shall share
30 employment information and Federal employer identification

1 numbers from all State agency business applications to the
2 fullest extent permitted by law for the purposes of compliance
3 crossmatches.

4 (c) Working group.--An interagency working group is created
5 to coordinate enforcement strategies involving State agencies.

6 The following apply:

7 (1) The working group shall include, at a minimum,
8 representatives from the department, the Department of
9 Revenue of the Commonwealth, the Office of Attorney General
10 and county district attorneys offices.

11 (2) A representative designated by the secretary shall
12 serve as the chair of the working group.

13 (3) The chair of the working group may invite other
14 individuals to participate in the activities of the working
15 group.

16 (4) The working group shall meet at least quarterly at
17 the time and location and in the manner provided by the chair
18 of the working group. The working group may meet more often
19 if deemed necessary by the chair of the working group.

20 § 4119. Annual reports.

21 By March 1 of the year following the first full year
22 following the effective date of this section, and each March 1
23 thereafter, the department shall submit an annual report to the
24 General Assembly, which details, to the maximum extent possible,
25 data on the previous calendar year's administration and
26 enforcement of this chapter. The department may include in an
27 annual report any relevant facts and statistics that it deems
28 necessary.

29 § 4120. Construction of law.

30 Nothing contained in this chapter shall be construed to

1 impair or affect in any manner the ability of the department and
2 secretary to carry out the powers and duties prescribed by the
3 laws of this Commonwealth.

4 § 4121. Funding.

5 (a) Enforcement.--The department shall not be required to
6 enforce this chapter until adequate funding is appropriated.

7 (b) Recovery of fees and costs.--The department, the Office
8 of Attorney General or a district attorney's office shall be
9 entitled to recover attorney fees and costs associated with the
10 investigation of worker misclassification from employers who
11 violate the provisions of this chapter.

12 Section 2. Repeals are as follows:

13 (1) The General Assembly declares that the repeal under
14 paragraph (2) is necessary to effectuate the addition of 63
15 Pa.C.S. Ch. 41.

16 (2) The act of October 13, 2010 (P.L.506, No.72), known
17 as the Construction Workplace Misclassification Act, is
18 repealed.

19 Section 3. Except as provided in 63 Pa.C.S. Ch. 41, all
20 activities initiated under the act of October 13, 2010 (P.L.506,
21 No.72), known as the Construction Workplace Misclassification
22 Act, shall continue and remain in full force and effect and may
23 be completed under 63 Pa.C.S. Ch. 41. Orders, regulations, rules
24 and decisions which were made under the Construction Workplace
25 Misclassification Act and which are in effect on the effective
26 date of this act shall remain in full force and effect until
27 revoked, vacated or modified under 63 Pa.C.S. Ch. 41. Contracts,
28 obligations and collective bargaining agreements entered into
29 under the Construction Workplace Misclassification Act are not
30 affected nor impaired by the repeal of the Construction

1 Workplace Misclassification Act.

2 Section 4. This act shall take effect as follows:

3 (1) This section shall take effect immediately.

4 (2) The addition of 63 Pa.C.S. § 4113 shall take effect
5 in one year.

6 (3) The remainder of this act shall take effect in 120
7 days.