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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 816 Session of  
2015

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INTRODUCED BY CALTAGIRONE, COHEN, BISHOP, SCHLOSSBERG, GOODMAN,  
SCHWEYER AND MURT, MARCH 23, 2015

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, MARCH 23, 2015

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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 and for  
7 criminal penalties.

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

10 Section 1. Sections 4 and 5 of the act of October 13, 2010  
11 (P.L.506, No.72), known as the Construction Workplace  
12 Misclassification Act, are amended to read:

13 Section 4. Improper classification of employees.

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

18 (1) fails to properly classify an individual as an  
19 employee for purposes of the Workers' Compensation Act and  
20 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[.]; or

7 (3) is convicted of an offense under 18 Pa.C.S. § 4107  
8 (relating to deceptive or fraudulent business practices)  
9 reasonably related to a violation under paragraph (1) or (2).

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

13 (c) Order to show cause.--

14 (1) If the secretary receives information indicating  
15 that any person has violated this act, the secretary may  
16 investigate the matter and issue an order to show cause why  
17 the person should not be found in violation of this act.

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

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

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

26 (ii) immediately assess penalties as provided in  
27 section 6.

28 (d) Enforcement.--If, subsequent to issuing an order to show  
29 cause under subsection (c), the secretary finds probable cause  
30 that an employer has committed a criminal violation of this act,

1 the secretary shall refer the matter to the Office of Attorney  
2 General for investigation or impose administrative penalties  
3 under section 6.

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

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

15 Section 5. Criminal penalties.

16 (a) Grading.--An employer, or officer or agent of an  
17 employer, that intentionally violates section 4(a) (1) or (2)  
18 commits:

19 (1) A misdemeanor of the [third] second degree for a  
20 first offense.

21 (2) A misdemeanor of the [second] first degree for a  
22 second or subsequent offense.

23 [(b) Summary offense.--An employer, or officer or agent of  
24 an employer, that negligently fails to properly classify an  
25 individual as an employee under section 4(a) commits a summary  
26 offense and shall, upon conviction, be sentenced to pay a fine  
27 of not more than \$1,000. Evidence of a prior conviction under  
28 this subsection shall be admissible as evidence of intent under  
29 subsection (a).]

30 (b.1) Debarment.--A person sentenced under subsection (a)

1 shall be prohibited from contracting with or in any manner doing  
2 business with the Commonwealth for a period of five years.

3 (c) Concurrent jurisdiction.--

4 (1) The Attorney General shall have concurrent  
5 prosecutorial jurisdiction with the district attorney of the  
6 appropriate county for violations under this section and any  
7 offense arising out of the activity prohibited by this  
8 section.

9 (2) No person charged with a violation of this section  
10 by the Attorney General shall have standing to challenge the  
11 authority of the Attorney General to prosecute the case, and  
12 if a challenge is made, the challenge shall be dismissed, and  
13 no relief shall be available in the courts of this  
14 Commonwealth to the person making the challenge.

15 Section 2. This act shall apply as follows:

16 (1) The amendment of section 5(a) and (b) of the act  
17 shall apply to offenses committed on or after the effective  
18 date of this section.

19 (2) The addition of sections 4(a)(3) and 5(b.1) of the  
20 act shall apply to sentences imposed on or after the  
21 effective date of this section.

22 Section 3. This act shall take effect in 60 days.