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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1353 Session of  
2014

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INTRODUCED BY TARTAGLIONE, STACK, SCHWANK, COSTA, HUGHES,  
FARNESE, YUDICHAK AND SOLOBAY, SEPTEMBER 19, 2014

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REFERRED TO LABOR AND INDUSTRY, SEPTEMBER 19, 2014

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AN ACT

1 Amending the act of July 14, 1961 (P.L.637, No.329), entitled  
2 "An act relating to the payment of wages or compensation for  
3 labor or services; providing for regular pay days; conferring  
4 powers and duties upon the Department of Labor and Industry,  
5 including powers and duties with respect to the civil  
6 collection of wages; providing civil and criminal penalties  
7 for violations of the act; providing for their collection and  
8 disposition and providing for additional civil damages,"  
9 further providing for definitions; providing for duty of  
10 department to report; further providing for civil remedies  
11 and penalties, for liquidated damages and for criminal  
12 penalties; and establishing the Wage Enforcement Fund.

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

15 Section 1. The definition of "employer" in section 2.1 of  
16 the act of July 14, 1961 (P.L.637, No.329), known as the Wage  
17 Payment and Collection Law, added July 14, 1977 (P.L.82, No.30),  
18 is amended and the section is amended by adding a definition to  
19 read:

20 Section 2.1. Definitions.--The following words and phrases  
21 when used in this act shall have, unless the context clearly  
22 indicates otherwise, the meanings given to them in this section:

23 \* \* \*

1       "Employer." Includes the Commonwealth; any of its political  
2 subdivisions; any authority created by the General Assembly and  
3 any instrumentality or agency of the Commonwealth; every person,  
4 firm, partnership, association, corporation, receiver or other  
5 officer of a court of this Commonwealth and any agent or officer  
6 of any of the above-mentioned classes employing any person in  
7 this Commonwealth.

8       \* \* \*

9       "High violation industry." An industry that incurs at least  
10 25 violations over a two-year period.

11       \* \* \*

12       Section 2. The act is amended by adding a section to read:

13       Section 8.1. Duty of department to report.--(a) The  
14 department shall collect on a quarterly basis the following data  
15 categorized by industry: the number of violations; amount of  
16 finest collected; nature of violations; number of individual  
17 complaints filed; number of complaints resolved; amount of  
18 unpaid wages owed; amount of unpaid wages recovered; number of  
19 pending individual complaints; number of workplaces investigated  
20 from complaints and number of workplaces investigated  
21 proactively; number of workplaces reinvestigated following  
22 violations; and number of subsequent violations. On a semi-  
23 annual basis, the department shall prepare and submit a report  
24 of this data to the Chairman of the Labor and Industry Committee  
25 of the Senate and the Chairman of the Labor and Industry  
26 Committee of the House of Representatives and post the report on  
27 the department's publicly accessible Internet website.

28       (b) The secretary shall investigate high-violation  
29 industries no less than quarterly; train investigators to  
30 recognize basic labor, health and safety violations; and engage

1 in cross-agency referrals to protect workers' rights.

2 Section 3. Section 9.1(c) of the act, added July 14, 1977  
3 (P.L.82, No.30), is amended and the section is amended by adding  
4 a subsection to read:

5 Section 9.1. Civil Remedies and Penalties.--\* \* \*

6 (c) The employe or group of employes, labor organization or  
7 party to whom any type of wages is payable may, in the  
8 alternative, inform the secretary of the wage claim against an  
9 employer or former employer, and the secretary shall, unless the  
10 claim appears to be frivolous, immediately notify the employer  
11 or former employer of such claim by certified mail. If the  
12 employer or former employer fails to pay the claim or make  
13 satisfactory explanation to the secretary of his failure to do  
14 so within ten days after receipt of such certified notification,  
15 thereafter, the employer or former employer shall be liable for  
16 a penalty of [ten percent (10%) of that portion of the claim  
17 found to be justly due.] one thousand dollars (\$1000) per  
18 violation of this act or the regulations or equal to twice the  
19 underpaid wages in damages to the employe, whichever is greater.  
20 Each week in which an employe is paid less than the applicable  
21 wage under this act and each employe who is paid less than the  
22 prescribed rate shall constitute a separate violation which  
23 shall be subject to a separate penalty. A good faith dispute or  
24 contest as to the amount of wages due or the good faith  
25 assertion of a right of set-off or counter-claim shall be deemed  
26 a satisfactory explanation for nonpayment of such amount in  
27 dispute or claimed as a set-off or counter-claim. The secretary  
28 [shall have a cause of action against the employer or former  
29 employer for recovery of such penalty and the same] may issue  
30 orders and levy the civil penalty only after affording the

1 accused party the opportunity for a hearing as provided in 2  
2 Pa.C.S. (relating to administrative law and procedure). Such  
3 penalty may be included in any subsequent action by the  
4 secretary on said wage claim or may be exercised separately  
5 after adjustment of such wage claim without court action. At the  
6 request of an employe, the department shall assign that portion  
7 of the money due that constitutes wages, wage supplements,  
8 interest on wages or wage supplements, and liquidated damages  
9 due that employe, to that employe and file an order in that  
10 amount in the name of that employe with the county clerk of the  
11 county where the employer resides or has a place of business.  
12 The filing of such order shall have the full force and effect of  
13 a judgment duly docketed in the office of such clerk.

14 \* \* \*

15 (h) Any employer and his or her agent, or the officer or  
16 agent of any corporation, who discharges or in any other manner  
17 discriminates against any employe who has filed or submitted a  
18 complaint under this act, cooperated with the secretary or the  
19 secretary's representative, submitted evidence, testified or is  
20 about to testify before the secretary or the secretary's  
21 representative in any investigation or proceeding under or  
22 related to this act, or because such employer believes that said  
23 employe may take these actions, or has exercised any right under  
24 this act or any regulation implementing its provisions, or  
25 because such employe provides assistance or information to  
26 another employe about this act shall, upon conviction thereof,  
27 be sentenced to pay a fine of not less than five hundred dollars  
28 (\$500) nor more than one thousand dollars (\$1,000), and in  
29 default of the payment of such fine and costs, shall be  
30 sentenced to imprisonment for not less than ten days nor more

1 than 90 days. A first offense under this subsection shall be  
2 graded as a summary offense. A second or subsequent offense  
3 under this subsection, committed within a five-year period of  
4 the prior offense, shall be graded as a misdemeanor of the third  
5 degree and shall be punishable by a fine of not less than one  
6 thousand dollars (\$1,000) nor more than three thousand dollars  
7 (\$3,000) or to imprisonment of not less than ten nor more than  
8 100 days. Each day of such failure to comply with this  
9 subsection or its regulations and each employee who is  
10 discharged or in any other manner discriminated against shall  
11 constitute a separate offense subject to a separate penalty. Any  
12 employer and his or her agent, or the officer or agent of any  
13 corporation, may also be required to pay the employe an amount  
14 set by the court sufficient to compensate the employe and deter  
15 future violations.

16 Section 4. Sections 10 and 11.1 of the act, amended or added  
17 July 14, 1977 (P.L.82, No.30), are amended to read:

18 Section 10. Liquidated Damages.--Where wages remain unpaid  
19 for thirty days beyond the regularly scheduled payday, or, in  
20 the case where no regularly scheduled payday is applicable, for  
21 sixty days beyond the filing by the employe of a proper claim or  
22 for sixty days beyond the date of the agreement, award or other  
23 act making wages payable, or where shortages in the wage  
24 payments made exceed five percent (5%) of the gross wages  
25 payable on any two regularly scheduled paydays in the same  
26 calendar quarter, and no good faith contest or dispute of any  
27 wage claim including the good faith assertion of a right of set-  
28 off or counter-claim exists accounting for such non-payment, the  
29 employe shall be entitled to claim, in addition, as liquidated  
30 damages an amount equal to [twenty-five percent (25%) of the

1 total amount of wages due, or five hundred dollars (\$500),  
2 whichever is greater.] twice the underpaid wages due or one  
3 thousand dollars (\$1,000), whichever is greater. Each week in  
4 which an employe is paid less than the applicable wage under  
5 this act shall constitute a separate violation which shall be  
6 subject to a separate penalty.

7 Section 11.1. Criminal Penalties.--(a) The secretary or any  
8 employe, group of employes, labor organization or party to whom  
9 any type of wages is payable may institute prosecutions under  
10 this act.

11 (b) In addition to any other penalty or punishment otherwise  
12 prescribed by law, any employer who violates any provisions of  
13 this act [shall be guilty of a summary offense and, upon  
14 conviction thereof,] shall be punished by a fine of not [more]  
15 less than three hundred dollars (\$300) nor more than one  
16 thousand dollars (\$1,000), or by imprisonment up to 90 days, or  
17 by both[, for each offense]. Each day of such failure to comply  
18 with this act, and each employe against whom the employer or  
19 officer or agent of any corporation violated any other provision  
20 of this act, shall constitute a separate offense which shall be  
21 subject to a separate penalty. A first offense under this  
22 subsection shall be graded as a summary offense. A second or  
23 subsequent offense under this subsection, committed within a  
24 five-year period of the prior offense, shall be graded as a  
25 misdemeanor of the third degree and shall be punishable by a  
26 fine of not less than five hundred dollars (\$500) nor more than  
27 one thousand dollars (\$1,000). The good faith contest or dispute  
28 by any employer of any wage claim or the good faith assertion of  
29 a right of set-off or counter-claim shall not be considered a  
30 violation of this act: Provided, That the employer has paid all

1 wages due in excess of the amount in dispute or asserted to be  
2 subject to a right of set-off or counter-claim. [Nonpayment of  
3 wages to, on account of, or for the benefit of each individual  
4 employe shall constitute a separate offense.]

5 (c) Where such employer is a corporation, the president,  
6 secretary, treasurer or officers exercising corresponding  
7 functions shall each be guilty of such summary offense.

8 (d) [All fines or penalties collected under this act shall  
9 be paid into the State Treasury through the Department of  
10 Revenue to the credit of the General Fund.] All fines and  
11 penalties collected under section 9.1 and this section, as well  
12 as section 12 of the act of January 17, 1968 (P.L.11, No.5),  
13 known as The Minimum Wage Act of 1968, shall be deposited into  
14 the Wage Enforcement Fund established under section 11.2. This  
15 subsection does not apply to penalties and wages paid to  
16 employes for violations of this act or The Minimum Wage Act of  
17 1968.

18 Section 5. The act is amended by adding a section to read:

19 Section 11.2 Wage Enforcement Fund.--(a) The Wage  
20 Enforcement Fund is established in the State Treasury. The  
21 moneys in the Wage Enforcement Fund shall consist of the fines  
22 and penalties collected under sections 9.1 and 11.1 and section  
23 12 of the act of January 17, 1968 (P.L.11, No.5), known as The  
24 Minimum Wage Act of 1968, and deposited into the fund pursuant  
25 to section 12 of The Minimum Wage Act of 1968.

26 (b) Moneys in the Wage Enforcement Fund are hereby  
27 appropriated on a continuing basis, upon approval of the  
28 Governor, to the department for periodic inspections, for  
29 investigations of violations and for the enforcement of this act  
30 and The Minimum Wage Act of 1968, including, but not limited to,

1 staffing for inspection, investigation and enforcement under  
2 this act and The Minimum Wage Act of 1968.

3 (c) No moneys may be expended or obligated from the Wage  
4 Enforcement Fund to any third party for any other purpose than  
5 investigation, training investigators and enforcement under this  
6 act and The Minimum Wage Act of 1968.

7 (d) Moneys in the Wage Enforcement Fund shall not lapse at  
8 any time or be transferred to any other fund, except as provided  
9 in section 12 of The Minimum Wage Act of 1968.

10 (e) No later than June 30 of each calendar year the  
11 department shall provide a report to the Governor and the  
12 General Assembly, through the Secretary-Parliamentarian of the  
13 Senate and the Chief Clerk of the House of Representatives,  
14 regarding the Wage Enforcement Fund. The report shall include an  
15 accounting for the fines collected and deposited into the fund,  
16 the expenditures and transfers from the fund during the prior  
17 year, a description of the purposes for which expenditures from  
18 the fund were made in the prior year and a full account of the  
19 data collections required of the department under section 7 of  
20 The Minimum Wage Act of 1968. This report shall be posted on the  
21 department's publicly accessible Internet website no later than  
22 July 1 of each calendar year.

23 Section 6. This act shall take effect in 60 days.