

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 1128 Session of  
2003

INTRODUCED BY McCALL, COY, GERGELY, GRUCELA, HORSEY, LAUGHLIN,  
MANN, MELIO, SURRA, TANGRETTI, TIGUE, WASHINGTON AND  
YOUNGBLOOD, APRIL 9, 2003

AS REPORTED FROM COMMITTEE ON LABOR RELATIONS, HOUSE OF  
REPRESENTATIVES, AS AMENDED, SEPTEMBER 29, 2003

## 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 the definition of "employer" and for  
10 remedies and penalties.

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

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

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

20 \* \* \*

21 "Employer." Includes every person, firm, partnership,

1 ~~association, corporation, municipal corporation, Commonwealth~~ <—  
2 ~~agency,~~ ASSOCIATION[, ] AND CORPORATION[, ]; THE COMMONWEALTH; A <—  
3 POLITICAL SUBDIVISION, INCLUDING ANY BOARD, COMMISSION, AGENCY,  
4 AUTHORITY AND INSTRUMENTALITY; ANY receiver or other officer of  
5 a court of this Commonwealth; and any agent or officer of any of <—  
6 the [above-mentioned] classes MENTIONED IN THIS DEFINITION <—  
7 employing any person in this Commonwealth.

8 \* \* \*

9 Section 2. Section 9.1 of the act, added July 14, 1977  
10 (P.L.82, No.30) and repealed in part October 5, 1980 (P.L.693,  
11 No.142), is amended to read:

12 Section 9.1. Civil Remedies and Penalties.--(a) Any employe  
13 or group of employes, labor organization or party to whom any  
14 type of wages is payable may institute actions provided under  
15 this act.

16 (b) Actions by an employe, labor organization, or party to  
17 whom any type of wages is payable to recover unpaid wages and  
18 liquidated damages may be maintained in any court of competent  
19 jurisdiction, by such labor organization, party to whom any type  
20 of wages is payable or any one or more employes for and in  
21 behalf of himself or themselves and other employes similarly  
22 situated, or such employe or employes may designate an agent or  
23 representative to maintain such action or on behalf of all  
24 employes similarly situated. Any such employe, labor  
25 organization, party, or his representative shall have the power  
26 to settle or adjust his claim for unpaid wages.

27 (c) The employe or group of employes, labor organization or  
28 party to whom any type of wages is payable may, in the  
29 alternative, inform the secretary of the wage claim against an  
30 employer or former employer, and the secretary shall, unless the

1 claim appears to be frivolous, immediately notify the employer  
2 or former employer of such claim by certified mail. If the  
3 employer or former employer fails to pay the claim or make  
4 satisfactory explanation to the secretary of his failure to do  
5 so within ten days after receipt of such certified notification,  
6 thereafter, the employer or former employer shall be liable for  
7 a penalty of ten percent (10%) of that portion of the claim  
8 found to be justly due. A good faith dispute or contest as to  
9 the amount of wages due or the good faith assertion of a right  
10 of set-off or counter-claim shall be deemed a satisfactory  
11 explanation for nonpayment of such amount in dispute or claimed  
12 as a set-off or counter-claim. The secretary shall have a cause  
13 of action against the employer or former employer for recovery  
14 of such penalty and the same may be included in any subsequent  
15 action by the secretary on said wage claim or may be exercised  
16 separately after adjustment of such wage claim without court  
17 action.

18 (d) In any civil action brought under the provisions of this  
19 act, the [Secretary of Labor and Industry] court may require the  
20 employer to post bond or security to secure payment of the  
21 entire claim of the employee with credit in the amount of any  
22 good faith assertion of a right of set-off or counter-claim.  
23 Such bond or security shall be posted in the court where the  
24 civil action is brought. The [request] requirement for bond or  
25 security shall be signed by the [secretary] court and shall  
26 provide that such bond or security in the amount stated shall be  
27 posted within 30 days of service thereof on the employer. If  
28 such bond or security is not posted within the 30-day period,  
29 the employer will be deemed to have admitted his liability,  
30 judgment may be entered based on this deemed admission and

1 execution may immediately ensue. Before ordering bond or  
2 security under this subsection, the court shall afford all  
3 parties the opportunity to be heard, and shall consider the  
4 exigency of the need for bond or security, the likelihood of  
5 success on the merits and the employer's ability to satisfy the  
6 judgment requested by the employee.

7 (e) If the secretary determines that wages due have not been  
8 paid and that such unpaid wages constitute an enforceable claim,  
9 the secretary shall, upon the request of the employee, labor  
10 organization or party to whom any type of wages is payable, take  
11 an assignment in trust, from the requesting party of such claim  
12 for wages without being bound by any of the technical rules  
13 respecting the validity of any such assignments and may bring  
14 any legal action necessary to collect such claim, subject to the  
15 right by the employer to set-off or counter-claim against the  
16 assigning party. Upon any such assignment, the secretary shall  
17 have the power to settle and adjust any such claim to the same  
18 extent as might the assigning party. If venue lies in a city of  
19 the first class, the secretary may bring a legal action under  
20 this section in a municipal court established pursuant to  
21 section 6(c) of Article V of the Constitution of the  
22 Commonwealth of Pennsylvania if the sum demanded does not exceed  
23 the jurisdictional limit established by statute for that court.

24 (f) The court in any action brought under this section  
25 shall, in addition to any judgment awarded to the plaintiff or  
26 plaintiffs, allow costs for reasonable attorneys' fees of any  
27 nature to be paid by the defendant.

28 (g) No administrative proceedings or legal action shall be  
29 instituted under the provisions of this act for the collection  
30 of unpaid wages or liquidated damages more than three years

1 after the day on which such wages were due and payable as  
2 provided in sections 3 and 5.

3 (h) The secretary may enter into a reciprocal agreement with  
4 the department or corresponding authority of another state or  
5 territory for the collection of claims and judgments for wages  
6 in that state or territory based upon claims assigned to the  
7 secretary.

8 (i) If the secretary enters into a reciprocal agreement with  
9 another state or territory in accordance with subsection (h),  
10 the secretary may commence actions in the courts of the state or  
11 territory or assign actions to the corresponding authority of  
12 the state or territory, for the collection of claims and  
13 judgments assigned to the secretary under this section.

14 (j) If the secretary enters into a reciprocal agreement with  
15 another state or territory in accordance with subsection (h) or  
16 if a state or territory permits the secretary to commence  
17 actions in its courts by statute, the secretary may commence an  
18 action in a court of this Commonwealth for the collection of  
19 claims assigned from the department or corresponding authority  
20 of the state or territory to the extent authorized by this act  
21 for claims arising in this Commonwealth.

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