

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 380 Session of 2011

INTRODUCED BY GALLOWAY, METCALFE, BARBIN, BARRAR, B. BOYLE, BRENNAN, BURNS, BUXTON, CARROLL, CUTLER, DAVIS, DEASY, FREEMAN, GEIST, GEORGE, GERBER, GERGELY, GIBBONS, HARHAI, HARKINS, HARRIS, HENNESSEY, HUTCHINSON, W. KELLER, KORTZ, LONGIETTI, MAHONEY, MANN, MUNDY, MURPHY, MUSTIO, PETRARCA, RAPP, READSHAW, REICHLEY, SABATINA, SANTARSIERO, STEVENSON, SWANGER, VULAKOVICH, WAGNER, WATSON, WHITE, GABLER AND HORNAMAN, FEBRUARY 1, 2011

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, FEBRUARY 1, 2011

AN ACT

1 Requiring construction industry employers to verify the Social  
2 Security numbers of all employees for purposes of wage  
3 reporting and employment eligibility; providing for the  
4 powers and duties of the Department of Labor and Industry;  
5 prescribing sanctions; and establishing good faith immunity  
6 under certain circumstances.

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

9 Section 1. Short title.

10 This act shall be known and may be cited as the Construction  
11 Industry Employment Verification Act.

12 Section 2. Definitions.

13 The following words and phrases when used in this act shall  
14 have the meanings given to them in this section unless the  
15 context clearly states otherwise:

16 "Construction." Erection, reconstruction, demolition,  
17 alteration, modification, custom fabrication, building,

1 assembling, site preparation and repair work or maintenance work  
2 done on any real property or premises under contract, whether or  
3 not the work is for a public body or paid for from public funds.

4 "Construction industry employer." An individual,  
5 partnership, association, joint stock company, corporation,  
6 business trust or any other business entity, person or group of  
7 persons that acts directly or indirectly to employ persons to  
8 provide or perform services in the construction industry for  
9 remuneration.

10 "Employee." An individual for whom a construction industry  
11 employer is required by law to file a Form W-2 with the Internal  
12 Revenue Service.

13 "EVP." The E-Verify Program operated by the Department of  
14 Homeland Security.

15 "INA." The Immigration and Nationality Act (66 Stat. 163, 8  
16 U.S.C. § 1101 et seq.).

17 "NVS." The Social Security Number Verification Service  
18 operated by the Social Security Administration.

19 "Secretary." The Secretary of Labor and Industry of the  
20 Commonwealth.

21 "Willful." Action or conduct undertaken intentionally or  
22 with reckless disregard for or deliberate ignorance of the  
23 requirements and obligations established by this act.

#### 24 Section 3. Verification.

25 (a) Duty of construction industry employers.--

26 (1) Except as set forth in paragraph (2), a construction  
27 industry employer shall participate in NVS and EVP and shall  
28 do the following, subject to the requirements of Federal law  
29 governing the use of NVS and EVP:

30 (i) within 60 days following the effective date of

1       this section, use NVS to verify, for wage reporting  
2       purposes, the Social Security numbers of its employees in  
3       existence on the effective date of this section; and

4           (ii) within three days following the first day of  
5       employment of a new employee, use EVP to verify for  
6       employment eligibility purposes the Social Security  
7       number of the new employee.

8       (2) This subsection does not apply to an employee who is  
9       authorized to work under Federal law in the United States  
10      without a Social Security number.

11      (b) Verification statements.--A construction industry  
12      employer shall submit a verification statement annually to the  
13      Department of Revenue with its State income tax return. The  
14      statement shall be on a form prescribed by the Department of  
15      Revenue and shall comply with the following requirements:

16           (1) The statement shall represent that the construction  
17      industry employer has verified the Social Security numbers of  
18      its employees through NVS or EVP, as appropriate, as required  
19      by subsection (a).

20           (2) The statement shall include a certification that the  
21      information in the statement is true and correct and that the  
22      person signing the statement understands that the submission  
23      of false or misleading information in connection with the  
24      verification shall subject the person and the construction  
25      industry employer to sanctions provided by law.

26           (3) The statement shall be signed by a representative of  
27      the construction industry employer who has sufficient  
28      knowledge and authority to make the representation and  
29      certifications contained in the statement.

30      (c) Discrimination prohibited.--In conducting the Social

1 Security number verification required by this section, a  
2 construction industry employer shall not discriminate against an  
3 employee on the basis of race, ethnicity, color or national  
4 origin.

5 Section 4. Violations.

6 It is a violation of this act for a construction industry  
7 employer to:

8 (1) Employ an employee whose Social Security number has  
9 not been verified by NVS or EVP as required by this act  
10 except during a period of time in which the employer is  
11 awaiting resolution by the Federal Government of a wage  
12 reporting or employment eligibility issue or dispute  
13 regarding the employee.

14 (2) Make a false statement or misrepresentation in a  
15 verification statement required by this act.

16 Section 5. Enforcement and sanctions.

17 (a) General rule.--The secretary shall enforce the  
18 provisions of this act.

19 (b) Investigation of complaints.--The secretary shall  
20 accept, review and investigate in a timely manner any credible  
21 complaint that a construction industry employer has violated a  
22 provision of this act.

23 (c) Audits.--To ensure compliance with the requirements of  
24 this act, the secretary shall conduct complaint-based and random  
25 audits of construction industry employers in this Commonwealth.  
26 In conducting such audits, the secretary shall utilize NVS and  
27 EVP to verify the Social Security numbers for wage reporting  
28 purposes and employment eligibility of employees in accordance  
29 with Federal law governing the use of those systems.

30 (d) Sanctions.--The following sanctions shall apply to a

1 violation of section 274A of the INA (8 U.S.C. § 1324a) or of  
2 this act:

3 (1) A construction industry employer that violates  
4 section 274A of the INA or engages in the violation described  
5 in section 4(1) may be required, at the discretion of the  
6 secretary, to forfeit all licenses or certifications issued  
7 by the Commonwealth that authorize the construction industry  
8 employer to conduct business in this Commonwealth, including  
9 corporate articles and franchises for a period of up to 90  
10 days for a second violation and for a period of up to three  
11 years for a subsequent violation.

12 (2) A construction industry employer that willfully  
13 violates section 274A of the INA or willfully engages in the  
14 violation described in section 4(1) shall be required to  
15 forfeit all licenses or certifications issued by the  
16 Commonwealth that authorize the construction industry  
17 employer to conduct business in this Commonwealth, including  
18 corporate articles and franchises, for a period of 3 years.

19 (3) The Office of Attorney General shall have the same  
20 authority to revoke corporate articles and franchises under  
21 this act as it has under 15 Pa.C.S. § 503 (relating to  
22 actions to revoke corporate franchises).

23 (e) Notice and appeal.--Actions taken under subsection (d)  
24 shall be subject to the notice, appeal and other provisions of 2  
25 Pa.C.S. (relating to administrative law and procedure).

26 Section 6. Protection from retaliation.

27 (a) General Rule.--It shall be unlawful for a construction  
28 industry employer to discharge, threaten or otherwise retaliate  
29 or discriminate against an employee regarding compensation or  
30 other terms or conditions of employment because the employee:

1           (1) participates in an investigation, hearing or inquiry  
2 held by the secretary or any other governmental authority  
3 under this act; or

4           (2) reports or makes a complaint regarding the violation  
5 of this act to a construction industry employer or  
6 governmental authority.

7       (b) Actions.--

8           (1) An employee who suffers retaliation or  
9 discrimination in violation of this section may bring an  
10 action in a court of common pleas in accordance with  
11 established civil procedures of this Commonwealth.

12          (2) The action must be brought within three years from  
13 the date the employee knew of the retaliation or  
14 discrimination.

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

18           (1) Reinstatement of the employee, if applicable.

19           (2) Restitution equal to three times the amount of the  
20 employee's wages and fringe benefits calculated from the date  
21 of the retaliation or discrimination.

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

23           (4) Any other legal and equitable relief as the court  
24 deems appropriate.

25 Section 7. Good faith immunity.

26       A construction industry employer that relies in good faith on  
27 NVS and EVP procedures to verify the Social Security number of  
28 employees shall be immune from the sanctions authorized under  
29 section 5 and shall have no liability to an individual who is  
30 not hired or who is discharged from employment in the event that

1 incorrect information has been provided to the construction  
2 industry employer.  
3 Section 8. Effective date.  
4 This act shall take effect July 1, 2011.