
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1224 Session of
2023

INTRODUCED BY WARREN, SANCHEZ, DELLOSO, HOWARD, MADDEN AND
HOHENSTEIN, MAY 24, 2023

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, MAY 24, 2023

AN ACT

1 Providing for criteria for independent contractors in the
2 traveling sales industry and for the powers and duties of the
3 Department of Labor and Industry; and imposing penalties.

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4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Traveling
8 Sales Crew Worker Employment Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Department." The Department of Labor and Industry of the
14 Commonwealth.

15 "Employee." Either of the following:

16 (1) In relation to workers' compensation, the term shall
17 have the meaning given to "employee" in section 104 of the
18 Workers' Compensation Act.

19 (2) In relation to unemployment compensation, the term
20 shall have the meaning given to "employee" in section 4(i) of
21 the Unemployment Compensation Law.

22 "Employer." Either of the following:

23 (1) In relation to workers' compensation, the term shall
24 have the meaning given to it in section 103 of the Workers'
25 Compensation Act.

26 (2) In relation to unemployment compensation, the term
27 shall have the meaning given to it in section 4(j) of the
28 Unemployment Compensation Law.

29 "Secretary." The Secretary of Labor and Industry of the
30 Commonwealth.

1 "Traveling sales crew." The following:

2 (1) Two or more individuals who are employed as
3 salespersons or in related support work who travel together
4 in a group and who are absent overnight from their permanent
5 places of residence for the purpose of selling consumer goods
6 or services to consumers from house to house, or on any
7 street or in any other place that is open to the public.

8 (2) The term does not include:

9 (i) two or more individuals who are traveling
10 together for the purpose of participating in a trade show
11 or convention; or

12 (ii) two or more immediate family members who are
13 traveling together for the purpose of selling consumer
14 goods or services.

15 "Unemployment Compensation Law." The act of December 5, 1936
16 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment
17 Compensation Law.

18 "Workers' Compensation Act." The act of June 2, 1915
19 (P.L.736, No.338), known as the Workers' Compensation Act.
20 Section 3. Employee determination.

21 A worker on a traveling sales crew shall be considered an
22 employee rather than an independent contractor unless the hiring
23 entity demonstrates that all of the following conditions are
24 satisfied:

25 (1) The individual is free from the control and
26 direction of the hiring entity in connection with the
27 performance of the work, both under the contract for the
28 performance of the work and in fact.

29 (2) The individual performs work that is outside the
30 usual course of the hiring entity's business.

1 (3) The individual is customarily engaged in an
2 independently established trade, occupation or business of
3 the same nature as that involved in the work performed.

4 Section 4. Improper classification of employees.

5 (a) Violation.--An employer, officer or agent of an employer
6 shall be in violation of this act if the employer, officer or
7 agent:

8 (1) fails to properly classify an individual as an
9 employee for purposes of the Workers' Compensation Act and
10 fails to provide the coverage required under the Workers'
11 Compensation Act; or

12 (2) fails to properly classify an individual as an
13 employee for purposes of the Unemployment Compensation Law
14 and fails to pay contributions, reimbursements or other
15 amounts required to be paid under the Unemployment
16 Compensation Law.

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

20 (c) Order to show cause.--

21 (1) If the secretary receives information indicating
22 that an individual has violated this act, the secretary may
23 investigate the matter and issue an order to show cause why
24 the individual should not be found in violation of this act.

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

28 (3) If the individual fails to file a timely and
29 adequate answer to the order to show cause, the secretary
30 may, following notice and hearing, do any of the following:

1 (i) petition a court of competent jurisdiction to
2 issue a stop-work order; or

3 (ii) immediately assess administrative penalties as
4 provided in section 11.

5 (d) Enforcement.--If, subsequent to issuing an order to show
6 cause under subsection (c), the secretary finds probable cause
7 that an employer has committed a criminal violation of this act,
8 the secretary shall refer the matter to the Office of Attorney
9 General for investigation or impose administrative penalties
10 under section 11.

11 (e) Acting in concert with other parties.--A party that does
12 not meet the definition of "employer" in section 2 but
13 intentionally contracts with an employer knowing the employer
14 intends to misclassify employees in violation of this act shall
15 be subject to the same penalties, remedies or other actions as
16 the employer found to be in violation of this act.

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

22 Section 5. Registration required.

23 (a) Authorization.--No person may employ, offer to employ or
24 otherwise recruit an individual to work as a traveling sales
25 crew worker without first obtaining a certificate of
26 registration from the department.

27 (b) Application for certificate.--An individual seeking a
28 certificate of registration must complete an application meeting
29 the minimum requirements specified in subsection (c) and pay a
30 registration fee determined by the department. A certificate of

1 registration is valid for 12 months unless sooner suspended,
2 restricted or revoked and is nontransferable. A registrant may
3 renew a certificate of registration by submitting an application
4 under this subsection and paying the registration fee not less
5 than 30 days before the expiration date of the certificate of
6 registration.

7 (c) Information required.--An application for a certificate
8 of registration must contain all of the following information:

9 (1) The name of the applicant, the address and telephone
10 number of the applicant's principal place of business and, if
11 the applicant is engaged in sales activities on behalf of a
12 principal, the name, address and telephone number of the
13 principal.

14 (2) If the applicant is a corporation, the date and
15 place of the applicant's incorporation or, if the applicant
16 is a limited liability company, the date and place of the
17 applicant's organization.

18 (3) The names and permanent home addresses of the
19 proprietors, managing partners, managers or principal
20 officers of the applicant, together with proof of
21 identification of those individuals, which may be in the form
22 of a birth certificate or a valid driver's license issued by
23 the Department of Transportation or by another state that
24 contains a photograph of the license holder.

25 (4) The names, permanent home addresses, driver's
26 license numbers and dates of birth of the employees, agents
27 or representatives of the applicant who supervise or
28 transport traveling sales crew workers.

29 (5) Information regarding the criminal record, if any,
30 of proprietors, managing partners, managers or principal

1 officers of the applicant and of the employees, agents or
2 representatives of the applicant who supervise or transport
3 traveling sales crew workers.

4 (6) The Social Security number or Federal employer
5 identification number of the applicant.

6 (7) The type of sales activities to be performed and the
7 nature of the consumer goods or services to be sold by the
8 traveling sales crew workers of the applicant. If the goods
9 to be sold are magazine subscriptions, the applicant shall
10 provide the names, addresses and telephone numbers of the
11 publishers of those magazines.

12 (8) A statement identifying each motor vehicle that will
13 be used to transport the applicant's traveling sales crew
14 workers, including the type and license number of each motor
15 vehicle, and documentation showing that each motor vehicle is
16 in compliance with applicable Federal and State safety
17 standards.

18 (9) A statement indicating whether the duties of the
19 applicant's traveling sales crew workers will include the
20 storage, handling or transportation of hazardous materials or
21 may result in any other exposure of those traveling sales
22 crew workers to hazardous materials and, if so, documentation
23 showing that the applicant is in compliance with all Federal
24 and State safety standards that are applicable to the
25 storage, handling and transportation of the hazardous
26 materials.

27 (10) Any other information that the department considers
28 relevant to the protection of the health, safety and welfare
29 of the traveling sales crew workers employed by the
30 applicant.

1 (d) Receipt of application.--

2 (1) The department shall, upon receiving an application,
3 investigate the applicant to determine whether the applicant
4 is qualified under subsection (c) to receive a certificate of
5 registration. The investigation shall include a criminal
6 history search by the department of the proprietors, managing
7 partners, managers or principal officers of the applicant and
8 of the employees, agents or representatives of the applicant
9 who supervise or transport traveling sales crew workers.

10 (2) If the applicant being investigated is, or at any
11 time within the five years preceding the date of the
12 application has been, a nonresident of this Commonwealth or
13 if the department determines that any information obtained as
14 a result of the investigation provides a reasonable basis for
15 further investigation, the department may require the
16 applicant being investigated to be fingerprinted. The
17 department may provide for the submission of the fingerprint
18 cards to the Federal Bureau of Investigation for the purposes
19 of verifying the identification of the applicant and
20 obtaining the applicant's criminal conviction record. The
21 department shall keep confidential the criminal history
22 record information.

23 (e) Issuance.--Subject to subsection (f) and after
24 completing the investigation under subsection (d), the
25 department shall issue a certificate of registration to the
26 applicant if the department determines that the applicant meets
27 the minimum requirements under this section and any rules
28 promulgated by the department for issuance of a certificate of
29 registration and is satisfied that the applicant will comply
30 with this section and those rules.

1 (f) Denial.--The department may deny, suspend, revoke,
2 restrict or refuse to renew a certificate of registration if the
3 department determines that any of the following apply:

4 (1) The applicant or registrant is not the real party in
5 interest with respect to the application or certificate of
6 registration and the real party in interest has previously
7 been denied issuance or renewal of a certificate of
8 registration, has had a certificate of registration
9 suspended, revoked or restricted or is not qualified to
10 receive a certificate of registration under subsection (e).

11 (2) A proprietor, managing partner, manager or principal
12 officer of the applicant, or an employee, agent or
13 representative of the applicant who supervises or transports
14 traveling sales crew workers has been convicted of a
15 disqualifying offense, as determined by the department,
16 within the five years preceding the date of the application.

17 (3) The applicant or registrant has made a material
18 misrepresentation or false statement in the application for
19 the certificate of registration.

20 (4) The applicant or registrant has failed to notify the
21 department of any change in the information submitted in the
22 application as required under subsection (h).

23 (5) The applicant or registrant has:

24 (i) failed to maintain proof of financial
25 responsibility as required under subsection (i);

26 (ii) failed to comply with the written disclosure
27 statement requirements under subsection (c)(9);

28 (iii) failed to pay wages, provide a statement or
29 keep, preserve or furnish records as required under
30 section 6;

1 (iv) violated a safety standard under section 7;
2 (v) failed to maintain insurance coverage as
3 required under section 8;
4 (vi) engaged in a practice prohibited under section
5 9;
6 (vii) failed to pay a penalty imposed under section
7 11 or to comply with an order of the department imposed
8 as a result of a violation of this section or any rule
9 promulgated by the department under section 15; or
10 (viii) otherwise failed to comply with this section
11 or any rule promulgated by the department.

12 (g) Certificate of registration.--A registrant and the
13 employees, agents and representatives of a registrant who
14 supervise or transport traveling sales crew workers shall carry
15 at all times while engaging in traveling sales crew activities a
16 copy of the registrant's certificate of registration and shall
17 exhibit that copy upon the request of a deputy of the
18 department, law enforcement officer or person with whom the
19 registrant, employee, agent or representative is doing business.
20 Failure to exhibit a copy of the certificate of registration
21 upon request is prima facie evidence of a violation of this
22 section.

23 (h) Changes.--If any change occurs in any of the information
24 submitted to the department under subsection (c), the registrant
25 shall notify the department of that change within 30 days after
26 the change occurs.

27 (i) Financial responsibility.--

28 (1) An applicant shall establish proof of ability to pay
29 any compensation owed to a traveling sales crew worker
30 employed by the applicant and any penalties that may be

1 imposed under section 11.

2 (2) An applicant shall prove ability to pay under
3 paragraph (1) by maintaining one of the following commitments
4 in an amount approved by the department, but not less than
5 \$10,000 and in a form approved by the department:

6 (i) A bond.

7 (ii) A certificate of deposit.

8 (iii) An escrow account.

9 (iv) An irrevocable letter of credit.

10 (3) The commitment described in paragraph (2) shall be
11 established in favor of or made payable to the department,
12 for the benefit of the Commonwealth and any traveling sales
13 crew worker who does not receive the compensation earned by
14 the worker. The applicant shall file with the department any
15 agreement, instrument or other document necessary to enforce
16 the commitment against the applicant or any relevant third
17 party or both.

18 (j) Disclosure statement.--

19 (1) At the time an individual is offered employment as a
20 traveling sales crew worker or is otherwise recruited to work
21 as a traveling sales crew worker, the employer shall provide
22 the individual with a written disclosure statement of the
23 terms of employment. If the individual accepts the offer of
24 employment, the employer and the individual shall sign the
25 written disclosure statement. A written disclosure statement
26 shall include all of the following information:

27 (i) The place or places of employment, stated with
28 as much specificity as possible.

29 (ii) The compensation, including wage rates,
30 commissions, bonuses and contest awards, to be paid.

1 (iii) The pay period and the manner in which
2 compensation will be paid.

3 (iv) The types of work in which the individual may
4 be employed.

5 (v) The number of days per week and hours per day
6 that the individual may be required to engage in sales
7 activities or related support work.

8 (vi) The nature and frequency of any employment-
9 related meetings that the individual may be required to
10 attend, the time of day of those meetings and how
11 compensation is paid for attendance at those meetings.

12 (vii) The period of employment, including the
13 approximate beginning and ending dates of employment.

14 (viii) A description of the board, lodging and other
15 facilities to be provided by the employer to the
16 individual and any costs to be charged to the individual
17 for those facilities.

18 (ix) A description of the transportation to be
19 provided by the employer to the individual.

20 (x) If the employment will involve the storage,
21 handling or transportation of hazardous materials or may
22 involve any other exposure to hazardous materials, a
23 description of the hazardous materials.

24 (xi) Whether workers' compensation is provided and,
25 if so, the name and telephone number of the employee,
26 agent or representative of the employer to whom notice of
27 a claim for workers' compensation must be provided and
28 the time period within which that notice must be
29 provided.

30 (2) An employer of a traveling sales crew worker shall

1 comply with the terms of a disclosure statement provided
2 under paragraph (1). An employer may change the terms of a
3 disclosure statement, but no change is effective until a
4 supplemental disclosure statement is signed by the employer
5 and the traveling sales crew worker. Any change to the terms
6 of a disclosure statement may apply prospectively only.

7 Section 6. Payment of compensation, deductions, statements and
8 records.

9 (a) Payment of compensation.--An employer shall pay all
10 compensation earned by a traveling sales crew worker on regular
11 paydays designated in advance by the employer but in no case
12 less often than semimonthly. Compensation shall be paid in
13 United States currency or by check or draft.

14 (b) Deductions.--An employer may deduct from a traveling
15 sales crew worker's compensation the cost to the employer of
16 furnishing board, lodging or other facilities to the worker if:

17 (1) the board, lodging or other facilities are
18 customarily furnished by the employer to the traveling sales
19 crew workers of the employer;

20 (2) the amount deducted does not exceed the fair market
21 value of the board, lodging or other facilities and does not
22 include any profit to the employer; and

23 (3) the traveling sales crew worker has previously
24 authorized the deduction by signing a written disclosure
25 statement under section 5(j) that includes a description of
26 the board, lodging and other facilities to be provided and
27 any costs to be charged to the traveling sales crew worker
28 for those facilities.

29 (c) Records.--An employer shall provide with each payment of
30 compensation to a traveling sales crew worker a written

1 statement itemizing the amount of gross and net compensation
2 paid to the worker and the amount of and reason for each
3 deduction from the amount of gross compensation. An employer
4 shall:

5 (1) keep records of the information specified in this
6 paragraph with respect to each traveling sales crew worker of
7 the employer;

8 (2) preserve those records for three years after the
9 worker leaves the employment of the employer; and

10 (3) furnish those records to the department on request.

11 (d) Claims.--A traveling sales crew worker who is owed
12 compensation may file a wage claim with the department.

13 Section 7. Worker safety.

14 (a) Vehicles.--An employer of a traveling sales crew worker
15 shall maintain and operate, or cause to be maintained and
16 operated, a motor vehicle used to transport a traveling sales
17 crew worker in compliance with applicable Federal and State
18 safety standards, including any additional safety standards
19 relating specifically to the transportation of traveling sales
20 crew workers prescribed by the department by regulation
21 promulgated under section 15. In prescribing additional safety
22 standards, the department shall consider all of the following:

23 (1) The types of motor vehicles that are commonly used
24 to transport traveling sales crew workers.

25 (2) The safe passenger-carrying capacity of those motor
26 vehicles.

27 (3) The extent to which a proposed safety standard would
28 cause an undue burden to traveling sales crew employers.

29 (4) Any safety standards prescribed by the United States
30 Department of Transportation under 49 U.S.C. (relating to

1 transportation) that are applicable to the maintenance and
2 operation of a motor vehicle that is commonly used to
3 transport traveling sales crew workers.

4 (b) Hazardous materials.--If the duties of a traveling sales
5 crew worker include the storage, handling or transportation of
6 hazardous materials or may result in any other exposure of a
7 traveling sales crew worker to hazardous materials, the employer
8 shall ensure that the hazardous materials are stored, handled
9 and transported and that the traveling sales crew worker is
10 trained in the safe storage, handling and transportation of
11 hazardous materials, in accordance with all applicable Federal
12 and State safety standards, including any additional safety
13 standards relating specifically to the storage, handling and
14 transportation of hazardous materials by traveling sales crew
15 workers or to the exposure of traveling sales crew workers to
16 hazardous materials prescribed by the department by regulation
17 promulgated under section 15. In prescribing additional safety
18 standards, the department shall consider all of the following:

19 (1) The types of hazardous materials that are included
20 in products commonly sold by traveling sales crews.

21 (2) The extent to which a proposed safety standard would
22 cause an undue burden to traveling sales crew employers.

23 (3) Any safety standards prescribed by the United States
24 Department of Transportation under 49 U.S.C. Ch. 51 (relating
25 to transportation of hazardous material) or by the Federal
26 Occupational Safety and Health Administration under 29 U.S.C.
27 Ch. 15 (relating to occupational safety and health) that are
28 applicable to the storage, handling and transportation of
29 hazardous materials by a traveling sales crew worker or to
30 any other exposure of a traveling sales crew worker to

1 hazardous materials.

2 Section 8. Insurance coverage.

3 The employer of a traveling sales crew worker shall have in
4 force a policy of insurance that insures the employer, in an
5 amount prescribed by the department by regulation promulgated
6 under section 15, against liability for damages to persons and
7 property arising out of:

8 (1) the ownership or operation by the employer or by an
9 employee, agent or representative of the employer of a motor
10 vehicle that is used to transport a traveling sales crew
11 worker; and

12 (2) any negligent act or omission of the employer or of
13 an employee, agent or representative of the employer.

14 Section 9. Prohibited practices.

15 No employer of a traveling sales crew worker and no employee,
16 agent or representative of that employer who supervises or
17 transports traveling sales crew workers may do any of the
18 following:

19 (1) Employ or permit to work as a traveling sales crew
20 worker a person under 18 years of age or employ or permit to
21 work as a traveling sales crew worker a person 18 years of
22 age or older who has been adjudged incompetent, without the
23 permission of the person's guardian.

24 (2) Require a traveling sales crew worker to engage in
25 any in-person sales or solicitation activities before 9 a.m.
26 or after 9 p.m.

27 (3) Consider a traveling sales crew worker to be an
28 independent contractor rather than an employee.

29 (4) Require a traveling sales crew worker to purchase
30 any consumer goods or services solely from the employer or to

1 pay any of the employer's business expenses, except as
2 permitted under section 6(b).

3 (5) Abandon a traveling sales crew worker who is unable
4 to work due to illness or injury or who is discharged from
5 employment for reasons other than misconduct without
6 providing for the return of the traveling sales crew worker
7 to their permanent place of residence.

8 (6) Require a traveling sales crew worker to relinquish
9 custody of any personal property to the employer, to any
10 employee, agent or representative of the employer who
11 supervises or transports traveling sales crew workers or to
12 any other traveling sales crew worker of the employer.

13 (7) Prohibit or restrict a traveling sales crew worker
14 from contacting a family member, friend or other person while
15 traveling with a traveling sales crew.

16 (8) Intentionally inflict or threaten to inflict bodily
17 harm on a traveling sales crew worker or damage to the
18 property of a traveling sales crew worker as a means of
19 discipline or motivation.

20 (9) Advise or counsel a traveling sales crew worker to
21 make false representations to a person to whom the traveling
22 sales crew worker is offering consumer goods or services
23 concerning the traveling sales crew worker's motivation for
24 selling those goods or services.

25 (10) Discharge or discriminate against a person for
26 opposing a practice prohibited under this section.

27 Section 10. Criminal offenses.

28 (a) Offense defined.--

29 (1) An employer, or officer or agent of an employer,
30 that intentionally violates section 4(a) commits:

1 (i) A misdemeanor of the third degree for a first
2 offense.

3 (ii) A misdemeanor of the second degree for a second
4 or subsequent offense.

5 (2) An employer, or officer or agent of an employer,
6 that negligently violates section 4(a) commits a summary
7 offense and shall, upon conviction, be sentenced to pay a
8 fine of not more than \$1,000.

9 (3) Evidence of a prior conviction under this subsection
10 shall be admissible as evidence of intent under subsection
11 (a).

12 (b) Concurrent jurisdiction.--

13 (1) The Attorney General shall have concurrent
14 prosecutorial jurisdiction with the district attorney of the
15 appropriate county for violations under this section.

16 (2) No person charged with a violation of this section
17 by the Attorney General may have standing to challenge the
18 authority of the Attorney General to prosecute the case. If a
19 challenge is made, the challenge shall be dismissed and no
20 relief may be available in the courts of this Commonwealth to
21 the person making the challenge.

22 Section 11. Administrative penalties.

23 (a) General rule.--When the secretary finds that a person
24 has violated this act, the secretary may assess and collect
25 civil penalties of not more than \$1,000 for the first violation
26 and not more than \$2,500 for each subsequent violation.

27 (b) Factors to be considered.--When determining the amount
28 of the penalty to be imposed, the secretary shall consider
29 factors, including, but not limited to:

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

- 1 (2) The seriousness of the violation.
- 2 (3) The good faith of the employer.
- 3 (4) The size of the employer's business.

4 Section 12. Procedure.

5 (a) Hearings.--Actions taken under sections 4(c) and 6(d)
6 shall be subject to the provisions of 2 Pa.C.S. (relating to
7 administrative law and procedure).

8 (b) Subpoena powers.--The department shall have the power to
9 subpoena witnesses, administer oaths, examine witnesses and take
10 testimony or compel the production of documents. The secretary
11 may petition the Commonwealth Court to enforce any order or
12 subpoena issued under this act.

13 Section 13. Certain agreements prohibited.

14 (a) Violation.--No person may 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.--Each violation of this section shall be
19 considered a separate offense.

20 Section 14. Retaliation prohibited.

21 (a) General rule.--It shall be unlawful for an employer, or
22 officer or agent of an employer, to discriminate in any manner
23 or take adverse action against any person in retaliation for
24 exercising rights protected under this act. Rights protected
25 under this act include, but are not limited to, the right to
26 file a complaint or inform any person about an employer's
27 noncompliance with this act.

28 (b) Good faith allegations of noncompliance.--A person who
29 in good faith alleges noncompliance with this act shall be
30 afforded the rights provided by this section, notwithstanding

1 the person's failure to prevail on the merits.

2 (c) Rebuttable presumptions.--Taking adverse action against
3 a person within 90 days of the person's exercise of rights
4 protected under this act shall raise a rebuttable presumption of
5 having done so in retaliation for the exercise of those rights.

6 Section 15. Rules and regulations.

7 The department may promulgate rules and regulations necessary
8 to implement and enforce this act.

9 Section 16. Effective date.

10 This act shall take effect in 120 days.