

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1215 Session of
2005

INTRODUCED BY MUSTIO, TURZAI, ARMSTRONG, BALDWIN, BENNINGHOFF,
BOYD, CAPPELLI, CREIGHTON, FORCIER, HARRIS, PHILLIPS,
PICKETT, REICHLEY, ROHRER, SCAVELLO, STERN, R. STEVENSON,
T. STEVENSON AND WILT, MARCH 30, 2005

REFERRED TO COMMITTEE ON LABOR RELATIONS, MARCH 30, 2005

AN ACT

1 Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as
2 reenacted and amended, "An act defining the liability of an
3 employer to pay damages for injuries received by an employe
4 in the course of employment; establishing an elective
5 schedule of compensation; providing procedure for the
6 determination of liability and compensation thereunder; and
7 prescribing penalties," defining "independent contractor";
8 further providing for liability to independent contractors,
9 for subcontracting with independent contractors and for proof
10 of insurance; providing for registration of independent
11 contractors and for presumptions relating to independent
12 contractors; imposing duties upon the Department of Labor and
13 Industry; and further providing for offenses.

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

16 Section 1. The act of June 2, 1915 (P.L.736, No.338), known
17 as the Workers' Compensation Act, reenacted and amended June 21,
18 1939 (P.L.520, No.281), is amended by adding a section to read:

19 Section 110. The term "independent contractor," when used in
20 this act, shall include a sole proprietor or partner owner of an
21 unincorporated business who:

22 (1) registers with the department as an independent

1 contractor;

2 (2) makes comparable services available to the general
3 public on a regular and consistent basis;

4 (3) controls the means and manner of work performed;

5 (4) realizes a profit or loss from contracted work and is
6 not paid by the hour, day or other time period;

7 (5) is not treated as an employe for purposes of income or
8 employment taxation with regard to work performed;

9 (6) furnishes significant tools, materials and equipment to
10 perform work;

11 (7) holds or has applied for a Federal employer
12 identification number, or has filed business or self-employment
13 income tax returns with the Pennsylvania Department of Revenue
14 or the Internal Revenue Service based on work or services in the
15 previous year; and

16 (8) fulfills other criteria established by the department.

17 Section 2. Section 302(a), (d) and (f)(1) of the act,
18 amended July 2, 1993 (P.L.190, No.44), are amended to read:

19 Section 302. (a) A contractor who subcontracts all or any
20 part of a contract and his insurer shall be liable for the
21 payment of compensation to the employes of the subcontractor
22 unless the subcontractor primarily liable for the payment of
23 such compensation has secured its payment as provided for in
24 this act: Provided, That a contractor, subcontractor, and/or
25 their insurers shall not be liable for any compensation to any
26 independent contractor. Any contractor or his insurer who shall
27 become liable hereunder for such compensation may recover the
28 amount thereof paid and any necessary expenses from the
29 subcontractor primarily liable therefor.

30 For purposes of this subsection, a person who contracts with

1 another (1) to have work performed consisting of (i) the
2 removal, excavation or drilling of soil, rock or minerals, or
3 (ii) the cutting or removal of timber from lands, or (2) to have
4 work performed of a kind which is a regular or recurrent part of
5 the business, occupation, profession or trade of such person
6 shall be deemed a contractor, and such other person a
7 subcontractor. This subsection shall not apply, however, to an
8 owner or lessee of land principally used for agriculture who is
9 not a covered employer under this act and who contracts for the
10 removal of timber from such land.

11 * * *

12 (d) A contractor shall not subcontract all or any part of a
13 contract unless the subcontractor has presented proof of
14 insurance under this act. Independent contractors shall not be
15 required to present proof of insurance.

16 * * *

17 (f) (1) Where a contractor is performing work for a public
18 body or political subdivision, all contractors and
19 subcontractors shall provide proof of workers' compensation
20 insurance to the public body or political subdivision effective
21 for the duration of the work. Proof of insurance shall not be
22 required for independent contractors.

23 * * *

24 Section 3. The act is amended by adding a section to read:

25 Section 304. (a) A person or insurer shall not be liable
26 for benefits under this act to an independent contractor which
27 performs services for the person.

28 (b) The department shall establish through regulation a
29 program for the registration of independent contractors to
30 include renewal time frames, random audit procedures and fees.

1 (c) It shall be a presumption under this act that an
2 individual is an independent contractor if that person is
3 registered with the department and registration shall not
4 preclude a finding by a court of independent contractor status
5 as to a person who is not registered. The form for registration
6 shall include an affirmative acknowledgment by the individual
7 that he or she is not eligible for benefits under the act from
8 the contracting entities. The designation as an independent
9 contractor shall continue in force and effect unless the person
10 withdraws the registration in a manner established by
11 regulations. A registration, designation or withdrawal of
12 registration shall be deemed public information. The department
13 shall establish an electronic directory of all registered
14 independent contractors. The department shall furnish copies and
15 make available electronically the forms and registrations, upon
16 written request, to any employer or insurer or its authorized
17 representative.

18 (d) A referee may award benefits to an individual, upon
19 petition of an employe or dependents of a deceased employe or
20 any other party in interest at any time, if the injured person
21 can demonstrate that he or she was coerced to file a
22 registration by a party that is, in fact, the injured person's
23 statutory employer.

24 Section 4. Section 1102 of the act is amended by adding
25 clauses to read:

26 Section 1102. A person, including, but not limited to, the
27 employer, the employe, the health care provider, the attorney,
28 the insurer, the State Workmen's Insurance Fund and self-
29 insureds, commits an offense if the person does any of the
30 following:

1 * * *

2 (13) Is an employer under this act and knowingly and with
3 intent to defraud forces an employe to file an application under
4 section 304 to misrepresent their true relationship.

5 (14) Knowingly and with intent to defraud files an
6 application under section 304 that contains false information.

7 Section 5. This act shall take effect July 1, 2006.