

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 400 Session of
2009

INTRODUCED BY LENTZ, BELFANTI, M. SMITH, EACHUS, BARBIN, BARRAR, BRENNAN, BRIGGS, BUXTON, CALTAGIRONE, CARROLL, CIVERA, CONKLIN, D. COSTA, P. COSTA, CRUZ, DALEY, DeLUCA, DePASQUALE, DeWEESE, DiGIROLAMO, DRUCKER, J. EVANS, FRANKEL, FREEMAN, GALLOWAY, GEORGE, GERBER, GERGELY, GIBBONS, GODSHALL, GOODMAN, GRUCELA, HALUSKA, HARKINS, HORNAMAN, JOSEPHS, W. KELLER, KIRKLAND, KORTZ, MANDERINO, MANN, MARSHALL, McCALL, McGEEHAN, McILVAINE SMITH, MELIO, MICOZZIE, MUNDY, MURPHY, MURT, MUSTIO, MYERS, M. O'BRIEN, PASHINSKI, PAYTON, PERZEL, PETRARCA, PETRI, PRESTON, SABATINA, SANTARSIERO, SEIP, SIPTROTH, SOLOBAY, STURLA, J. TAYLOR, VEREB, WAGNER, WALKO, WANSACZ, WHITE, YOUNGBLOOD, BURNS, BOYLE, BRADFORD, K. SMITH AND DEASY, MARCH 19, 2009

SENATOR GORDNER, LABOR AND INDUSTRY, IN SENATE, AS AMENDED,
SEPTEMBER 21, 2010

AN ACT

1 Providing for the criteria for independent contractors in the
2 construction industry AND FOR THE POWERS AND DUTIES OF THE ←
3 DEPARTMENT OF LABOR AND INDUSTRY AND THE SECRETARY OF LABOR
4 AND INDUSTRY; and imposing penalties.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the Construction
9 Workplace ~~Fraud~~ MISCLASSIFICATION Act. ←

10 ~~Section 2. Legislative intent.~~ ←

11 ~~The General Assembly finds that increasingly employers in the~~
12 ~~construction industry are improperly classifying employees as~~

1 ~~independent contractors or paying unreported compensation in~~
2 ~~order to evade their responsibilities as employers with respect~~
3 ~~to compliance with Federal and State laws. These actions also~~
4 ~~deprive these workers of Social Security benefits and other~~
5 ~~benefits, including overtime pay, while reducing the employers'~~
6 ~~Federal and State tax withholdings and related obligations.~~
7 ~~These practices put employers that bear higher business costs~~
8 ~~for complying with applicable law at a competitive disadvantage~~
9 ~~with those who do not follow the law. In order to restrict these~~
10 ~~actions, the General Assembly hereby finds the need to enact~~
11 ~~clear statutory guidelines for the construction industry to~~
12 ~~define the difference between an independent contractor and an~~
13 ~~employee for purposes of applicable laws. The General Assembly~~
14 ~~further finds a need to enact stiff criminal and civil penalties~~
15 ~~for employers who knowingly and intentionally misclassify~~
16 ~~employees as independent contractors in order to ensure that the~~
17 ~~practice is not financially advantageous to those employers as~~
18 ~~they compete against employers that are in compliance with the~~
19 ~~law.~~

20 ~~Section 3. Definitions.~~

21 ~~The following words and phrases when used in this act shall~~
22 ~~have the meanings given to them in this section unless the~~
23 ~~context clearly indicates otherwise:~~

24 ~~"Construction."—Erection, reconstruction, demolition,~~
25 ~~alteration, modification, custom fabrication, building,~~
26 ~~assembling, site preparation and repair work or maintenance work~~
27 ~~done on any real property or premises under contract, whether or~~
28 ~~not the work is for a public body and paid for from public~~
29 ~~funds.~~

30 ~~"Department."—The Department of Labor and Industry of the~~

1 Commonwealth.

2 ~~"Employer." The term includes any individual, partnership,~~
3 ~~association, joint stock company, corporation, business trust or~~
4 ~~any other person or groups of persons acting directly or~~
5 ~~indirectly in the interest of an employer in relation to an~~
6 ~~employee and who is engaging in or performing services in the~~
7 ~~commercial or residential building construction industry for~~
8 ~~remuneration.~~

9 ~~"Minimum Wage Act." The act of January 17, 1968 (P.L.11,~~
10 ~~No.5), known as The Minimum Wage Act of 1968.~~

11 ~~"Remuneration." All compensation including, but not limited~~
12 ~~to, wages and employee benefits paid to an employee.~~

13 ~~"Secretary." The Secretary of Labor and Industry of the~~
14 ~~Commonwealth or the secretary's authorized representative.~~

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 ~~"Wage Payment and Collection Law." The act of July 14, 1961~~
19 ~~(P.L.637, No.329), known as the Wage Payment and Collection Law.~~

20 ~~"Workers' Compensation Act." The act of June 2, 1915~~
21 ~~(P.L.736, No.338), known as the Workers' Compensation Act.~~

22 Section 4. ~~Certain services deemed employment and exceptions.~~

23 ~~(a) General rule. For purposes of the Minimum Wage Act, the~~
24 ~~Wage Payment and Collection Law, the Unemployment Compensation~~
25 ~~Law and the Workers' Compensation Act, an individual engaging in~~
26 ~~or performing services in the commercial or residential building~~
27 ~~construction industry for remuneration is presumed to be an~~
28 ~~employee unless:~~

29 ~~(1) the individual has been and is free from control or~~
30 ~~direction over performance of such services both under the~~

1 ~~contract of service and in fact; and~~

2 ~~(2) as to such services, the individual is customarily~~
3 ~~engaged in an independently established trade, occupation,~~
4 ~~profession or business.~~

5 ~~(b) Independent contractor criteria. An individual engaging~~
6 ~~in or performing services in the commercial or residential~~
7 ~~building construction industry for remuneration shall be deemed~~
8 ~~an independent contractor if the individual can demonstrate, by~~
9 ~~credible evidence, that the individual meets all of the~~
10 ~~following criteria:~~

11 ~~(1) Maintains a separate business location that is~~
12 ~~separate from the location of the person or entity for whom~~
13 ~~services are being performed, with the individual's own~~
14 ~~office, and operates with owned or leased equipment and other~~
15 ~~facilities.~~

16 ~~(2) Operates under contracts which are in writing and~~
17 ~~which contracts articulate plainly the precise terms of~~
18 ~~payment for work performed, the work to be performed and a~~
19 ~~specific prohibition on the retention by the independent~~
20 ~~contractor of any other personnel to perform any part of the~~
21 ~~work described in the contract other than employees of the~~
22 ~~independent contractor and other contractors that can~~
23 ~~demonstrate by credible evidence that they meet the criteria~~
24 ~~of this subsection.~~

25 ~~(3) Includes income and losses from services rendered on~~
26 ~~a Federal income tax schedule as an independent business or~~
27 ~~profession.~~

28 ~~(4) Incurs the main expenses related to the work.~~

29 ~~(5) Is responsible for the satisfactory completion of~~
30 ~~the work and is liable for a failure to complete the work.~~

1 ~~(6) Realizes a profit or loss under contracts to perform~~
2 ~~work.~~

3 ~~(7) The success or failure of the individual's business~~
4 ~~depends on the relationship of business receipts to~~
5 ~~expenditures.~~

6 ~~(8) Has through ownership, or a written and executed~~
7 ~~leasing arrangement with a person other than the employer,~~
8 ~~the tools, equipment and other assets necessary to perform~~
9 ~~the services.~~

10 ~~(9) Makes services available to other businesses,~~
11 ~~governmental agencies in this Commonwealth or to the general~~
12 ~~public through business advertising, solicitation or other~~
13 ~~marketing efforts reasonably calculated to obtain new~~
14 ~~contracts to provide similar services.~~

15 ~~(10) Has continuing or recurring business liabilities or~~
16 ~~obligations.~~

17 ~~(11) Performs the services through a business in which~~
18 ~~the individual has a principal proprietary interest.~~

19 ~~(12) Is a United States citizen or is authorized under~~
20 ~~Federal law to work in the United States, as defined under~~
21 ~~section 274A of the Immigration and Nationality Act (66 Stat.~~
22 ~~163, 8 U.S.C. § 1324a).~~

23 ~~(c) Factor not to be considered. The failure to withhold~~
24 ~~Federal or State income taxes or pay unemployment compensation~~
25 ~~taxes with respect to an individual's remuneration shall not be~~
26 ~~considered in determining whether the individual is an~~
27 ~~independent contractor for purposes of the Unemployment~~
28 ~~Compensation Law or the Workers' Compensation Act.~~

29 ~~(d) Construction. For purposes of this section, each~~
30 ~~employment relationship shall be considered separately.~~

1 ~~Section 5. Improper classification of employees.~~

2 ~~(a) Offense defined. An employer, or officer or agent of an~~
3 ~~employer, commits a violation of this act if the employer,~~
4 ~~officer or agent fails to properly classify the individual as an~~
5 ~~employee and shall be subject to the penalties, remedies or~~
6 ~~actions contained in this act.~~

7 ~~(b) Enforcement. When the secretary finds that an employer~~
8 ~~has violated a provision of this act, the secretary may refer~~
9 ~~the matter to the Office of Attorney General for investigation~~
10 ~~and prosecution. Nothing in this act shall be deemed to limit~~
11 ~~the authority of the Attorney General or the District Attorney~~
12 ~~of the appropriate county to investigate and prosecute~~
13 ~~violations of this act.~~

14 ~~(c) Concurrent jurisdiction to prosecute. The Attorney~~
15 ~~General shall have concurrent prosecutorial jurisdiction with~~
16 ~~the district attorney of the appropriate county for violations~~
17 ~~under this section and any crime arising out of the activity~~
18 ~~prohibited by this section. No person charged with a violation~~
19 ~~of this section by the Attorney General shall have standing to~~
20 ~~challenge the authority of the Attorney General to prosecute the~~
21 ~~case, and, if a challenge is made, the challenge shall be~~
22 ~~dismissed, and no relief shall be available in the courts of~~
23 ~~this Commonwealth to the person making the challenge.~~

24 ~~(d) Conspiracy by other parties. A party that does not meet~~
25 ~~the definition of "employer" in section 3, but which contracts~~
26 ~~with an employer knowing the employer intends to misclassify~~
27 ~~employees in violation of this act shall be subject to the same~~
28 ~~penalties, remedies or other actions as the employer found to be~~
29 ~~in violation of this act.~~

30 ~~Section 5.1 Presumption of independent contractor status.~~

1 ~~(a) Rebuttable presumption. An employer that enters into a~~
2 ~~written contract for construction services containing the~~
3 ~~requirements set forth under subsection (b) creates a rebuttable~~
4 ~~presumption that the individual contracted with is an~~
5 ~~independent contractor and the employer has an affirmative~~
6 ~~defense to an allegation under this act that the individual is~~
7 ~~an employee if all of the following are true:~~

8 ~~(1) The contract is signed by both parties.~~

9 ~~(2) The employer has in its possession the documents~~
10 ~~identified in subsection (c).~~

11 ~~(b) Contract terms. A written contract between an employer~~
12 ~~and an individual presumed to be an independent contractor under~~
13 ~~this section must contain all of the following:~~

14 ~~(1) The name, home and business address of the~~
15 ~~individual and the individual's tax identification number or~~
16 ~~Social Security Number.~~

17 ~~(2) A description of the work to be performed under the~~
18 ~~contract and plain, precise terms for payment.~~

19 ~~(3) A section in substantially the following form:~~
20 ~~Independent Contractor Status. The parties to this~~
21 ~~contract acknowledge that they intend that the Contractor~~
22 ~~be considered an independent contractor as described in~~
23 ~~the act of _____, 2009 (P.L. ____, No. ____),~~
24 ~~known as the Construction Workplace Fraud Act (the "Act")~~
25 ~~and not an employee of the Hiring Party. In furtherance~~
26 ~~of that intention, the parties agree as follows:~~

27 ~~(A) By his signature on this contract below, the~~
28 ~~Contractor certifies that he meets all of the following~~
29 ~~criteria:~~

30 ~~(i) He maintains a separate business location~~

1 ~~that is separate from the location of the Hiring~~
2 ~~Party, with the Contractor's own office, and operates~~
3 ~~with owned or leased equipment and other facilities.~~

4 ~~(ii) He operates under contracts which are in~~
5 ~~writing and which articulate plainly the precise~~
6 ~~terms of payment for work performed, the work to be~~
7 ~~performed and a specific prohibition against the~~
8 ~~retention by the Contractor of any other personnel to~~
9 ~~perform any part of the work described in the~~
10 ~~contracts other than employees of the Contractor and~~
11 ~~other contractors that can demonstrate, by credible~~
12 ~~evidence, that they meet all of the criteria of this~~
13 ~~paragraph (A).~~

14 ~~(iii) He includes income and losses from~~
15 ~~services rendered in a Federal income tax schedule as~~
16 ~~an independent business or profession.~~

17 ~~(iv) He will incur the primary expenses related~~
18 ~~to the work performed under this contract.~~

19 ~~(v) He is responsible for the satisfactory~~
20 ~~completion of the work to be performed under this~~
21 ~~contract and is liable for a failure to complete the~~
22 ~~work.~~

23 ~~(vi) He realizes a profit or loss under~~
24 ~~contracts to perform work.~~

25 ~~(vii) The success or failure of his business~~
26 ~~depends on the relationship of business receipts to~~
27 ~~expenditures.~~

28 ~~(viii) He has through ownership, or a written~~
29 ~~and executed leasing arrangement with a person other~~
30 ~~than the Hiring Party, the tools, equipment and other~~

1 ~~assets necessary to perform the work under this~~
2 ~~contract.~~

3 ~~(ix) He makes services available to other~~
4 ~~businesses, governmental agencies in this~~
5 ~~Commonwealth or to the general public through~~
6 ~~business advertising, solicitation or other marketing~~
7 ~~efforts reasonably calculated to obtain new contracts~~
8 ~~to provide similar services.~~

9 ~~(x) He has continuing or recurring business~~
10 ~~liabilities or obligations.~~

11 ~~(xi) He performs services through a business in~~
12 ~~which the Contractor has a principal proprietary~~
13 ~~interest.~~

14 ~~(xii) He is a United States citizen or is~~
15 ~~authorized under Federal law to work in the United~~
16 ~~States, as defined under section 274A of the~~
17 ~~Immigration and Nationality Act (66 Stat. 163, 8~~
18 ~~U.S.C. §1324a).~~

19 ~~The foregoing are collectively referred to herein as the~~
20 ~~"Independent Contractor Requirements." Failure of the~~
21 ~~Contractor to meet the Independent Contractor~~
22 ~~Requirements during the term of this contract shall~~
23 ~~constitute a material breach by the Contractor of this~~
24 ~~contract. In that event, the Hiring Party shall have the~~
25 ~~right to terminate this contract immediately upon notice~~
26 ~~to the Contractor without penalty.~~

27 ~~(B) By his signature on this contract below, the~~
28 ~~Hiring Party certifies that he has verified, after~~
29 ~~reasonable investigation, that as of the date of this~~
30 ~~contract the Contractor meets the Independent Contractor~~

1 ~~Requirements except for those requirements set forth in~~
2 ~~subparagraphs (iii), (vi), (vii), (ix) and (xi) of~~
3 ~~paragraph (A) above, which he has not verified.~~

4 ~~(C) The Contractor agrees that he shall not engage~~
5 ~~any other personnel to perform any part of the work~~
6 ~~described in this contract other than employees of the~~
7 ~~Contractor and other contractors that can demonstrate by~~
8 ~~credible evidence that they meet all of the Independent~~
9 ~~Contractor Requirements.~~

10 ~~(D) The Contractor agrees that he shall maintain~~
11 ~~liability insurance during the term of this contract of~~
12 ~~at least \$1,000,000 and shall provide proof thereof to~~
13 ~~the Hiring Party upon request.~~

14 ~~(c) Documentation. At the time of entering into the~~
15 ~~contract described in subsection (b), the employer shall obtain~~
16 ~~from the individual, and maintain for a period of three years~~
17 ~~thereafter, the following information:~~

18 ~~(1) Proof of liability insurance in the amount of at~~
19 ~~least \$1,000,000.~~

20 ~~(2) Proof that the individual is a United States citizen~~
21 ~~or is otherwise authorized under Federal law to work in the~~
22 ~~United States, as defined under section 274A of the~~
23 ~~Immigration and Nationality Act (66 Stat. 163, 8 U.S.C. §~~
24 ~~1324a).~~

25 ~~(d) Loss of presumption. If, during the term of the~~
26 ~~contract, the employer receives knowledge that the individual~~
27 ~~does not meet the criteria set forth in section 4(b) and the~~
28 ~~employer does not terminate the contract as permitted by the~~
29 ~~provisions of the contract set forth in subsection (b), the~~
30 ~~employer shall no longer be entitled to the presumption and~~

1 ~~affirmative defense set forth in subsection (a).~~

2 ~~(e) Penalty. An employer that signs a contract~~
3 ~~described in subsection (b) knowing that any of the~~
4 ~~certifications made by the employer in the contract is false~~
5 ~~shall be subject to the administrative penalties set forth in~~
6 ~~section 7(b) in addition to any other penalties for violation~~
7 ~~of this act to which the employer may be subject.~~

8 ~~Section 6. Criminal penalties.~~

9 ~~(a) Grading. An employer, or an officer or an agent of the~~
10 ~~employer, who intentionally violates section 5(a) commits:~~

11 ~~(1) A misdemeanor of the third degree for a first~~
12 ~~offense.~~

13 ~~(2) A misdemeanor of the second degree for a second or~~
14 ~~subsequent offense.~~

15 ~~(b) Summary offense. An employer, or officer or agent of~~
16 ~~the employer, that negligently fails to properly classify an~~
17 ~~individual as an employee under section 5(a) commits a summary~~
18 ~~offense and shall, upon conviction, be sentenced to pay a fine~~
19 ~~of not more than \$1,000. Evidence of a prior conviction under~~
20 ~~this subsection shall be admissible as evidence of knowledge~~
21 ~~under subsection (a).~~

22 ~~Section 7. Civil actions and remedies.~~

23 ~~(a) Debarment. If the secretary receives information~~
24 ~~indicating that any employer, or officer or agent of the~~
25 ~~employer, has intentionally failed to properly classify an~~
26 ~~employee and has been convicted of the violation, the secretary~~
27 ~~shall notify all public bodies of the name of the employer, and~~
28 ~~no contract shall be awarded to the employer or to any firm,~~
29 ~~corporation or partnership in which the employer has an interest~~
30 ~~for a period of up to three years, as determined by the~~

1 ~~secretary, has elapsed from the date of notice to the public~~
2 ~~bodies. Actions taken under this subsection shall be subject to~~
3 ~~the provisions of section 9(a).~~

4 ~~(b) Administrative penalties. As an alternative to or in~~
5 ~~addition to any other sanctions provided by law for a violation~~
6 ~~of this act, when the secretary finds that an employer has~~
7 ~~violated this act, the secretary is authorized to assess and~~
8 ~~collect administrative penalties up to a maximum of \$2,500 for~~
9 ~~the first violation and up to a maximum of \$5,000 for each~~
10 ~~subsequent violation. When determining the amount of the penalty~~
11 ~~imposed because of a violation, the secretary shall consider~~
12 ~~factors which include the history of previous violations by the~~
13 ~~employer, the seriousness of the violation, the good faith of~~
14 ~~the employer and the size of the employer's business. Each~~
15 ~~employee misclassified by the employer shall constitute a~~
16 ~~separate offense.~~

17 ~~(c) Actions by employees. An individual who has not been~~
18 ~~properly classified as an employee may bring a civil action for~~
19 ~~damages against the employer for knowingly and intentionally~~
20 ~~failing to properly classify the employee. An individual's~~
21 ~~representative may bring the action on behalf of the individual~~
22 ~~or as a class action. The court may award attorney fees and~~
23 ~~other costs of the action in addition to damages to an~~
24 ~~individual or class of individuals who have not been properly~~
25 ~~classified as employees in violation of section 5(a).~~

26 ~~Section 8. Stop work orders.~~

27 ~~(a) Issuance of order. If the secretary determines, after~~
28 ~~notice and hearing, that an employer, or officer or agent of the~~
29 ~~employer, has knowingly and intentionally failed to properly~~
30 ~~classify an individual as an employee under section 5, the~~

1 ~~secretary may issue a stop work order requiring the cessation of~~
2 ~~all business operations of that employer at each site at which a~~
3 ~~violation occurred within 72 hours of the determination. The~~
4 ~~order shall take effect when served upon the employer or, for a~~
5 ~~particular employer worksite, when served at the worksite. The~~
6 ~~order shall remain in effect until the secretary issues an order~~
7 ~~releasing the stop work order or upon finding that the employer~~
8 ~~has properly classified the individual as an employee. The~~
9 ~~employer shall file with the department periodic reports for a~~
10 ~~probationary period that shall not exceed two years that~~
11 ~~demonstrate the employer's continued compliance with this~~
12 ~~section. The department shall promulgate rules and regulations~~
13 ~~to determine filing times and report requirements. Actions taken~~
14 ~~under this subsection shall be subject to the provisions of~~
15 ~~section 9(a).~~

16 ~~(b) Applicability of orders. Stop work orders under~~
17 ~~subsection (a) and penalties under subsection (c) shall be in~~
18 ~~effect against any successor corporation or business entity that~~
19 ~~has one or more of the same principals or officers as the~~
20 ~~employer against whom the stop work order was issued and which~~
21 ~~is engaged in the same or equivalent trade or activity.~~

22 ~~(c) Penalty. The secretary shall assess a penalty of \$1,000~~
23 ~~per day against an employer for each day that the employer~~
24 ~~conducts business operations that are in violation of a stop~~
25 ~~work order issued under this section.~~

26 ~~Section 9. Procedure.~~

27 ~~(a) Hearings. Actions taken under sections 7 and 8 are~~
28 ~~subject to the right of notice and adjudication and the right of~~
29 ~~appeal in accordance with the provisions of 2 Pa.C.S. (relating~~
30 ~~to administrative law and procedure).~~

1 ~~(b) Subpoena powers. The department has the power to~~
2 ~~subpoena witnesses, administer oaths, examine witnesses and take~~
3 ~~testimony or compel the production of documents. Upon~~
4 ~~application of an attorney for the Commonwealth, the department~~
5 ~~may issue a subpoena to compel the production of the documents,~~
6 ~~computer records and information relating to compliance with the~~
7 ~~act.~~

8 ~~Section 10. Commonwealth Court.~~

9 ~~The secretary may seek enforcement of any order or subpoena~~
10 ~~in the Commonwealth Court.~~

11 ~~Section 11. Certain agreement prohibited.~~

12 ~~(a) Violation. No person shall require or request that an~~
13 ~~individual enter into an agreement or sign a document which~~
14 ~~results in the misclassification of the individual as an~~
15 ~~independent contractor or otherwise does not accurately reflect~~
16 ~~the relationship with the employer.~~

17 ~~(b) Penalty. A violation of subsection (a) shall be~~
18 ~~punishable by a fine of not less than \$1,000, nor more than~~
19 ~~\$2,500. Each violation shall be considered a separate offense~~
20 ~~under this section.~~

21 ~~Section 12. Retaliation for action prohibited.~~

22 ~~It shall be unlawful for an employer or any other party to~~
23 ~~discriminate in any manner or take adverse action against any~~
24 ~~person in retaliation for exercising rights protected under this~~
25 ~~act. Rights protected under this act include, but are not~~
26 ~~limited to, the right to file a complaint or inform any person~~
27 ~~about an employer's noncompliance with this act and the right to~~
28 ~~inform any person of the person's potential rights and to assist~~
29 ~~the person in asserting those rights. Any person who in good~~
30 ~~faith alleges noncompliance with this act shall be afforded the~~

~~1 rights provided by this act, notwithstanding the person's
2 failure to prevail on the merits. 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 13. Availability of information.~~

~~7 The department shall create a poster for job sites which
8 outlines the requirements and penalties under this act and shall
9 make the poster available on its Internet website. At the
10 discretion of the secretary, a toll free hotline telephone
11 number may be established to receive alleged violations.~~

~~12 Section 14. Use of penalty funds.~~

~~13 Any assessments and penalties collected pursuant to this act
14 shall be applied toward implementation, enforcement and
15 administration costs incurred by the department under this act.
16 However, the secretary may transfer an agreed to amount of
17 moneys collected to the Attorney General to assist in the
18 enforcement of this act.~~

~~19 Section 15. Rules and regulations.~~

~~20 The department may promulgate rules and regulations necessary
21 to implement and administer this act.~~

~~22 Section 16. Annual report required.~~

~~23 The department shall submit an annual report to the General
24 Assembly by March 1 of the year following the first full year in
25 which this act is in effect, and each year thereafter,
26 detailing, to the maximum extent possible, data on the previous
27 calendar year's administration and enforcement of this act. The
28 department may include any relevant facts and statistics that it
29 believes necessary into the content of the report.~~

~~30 Section 17. Applicability.~~

1 ~~This act shall not be construed to bring an individual within~~
2 ~~the scope of the Minimum Wage Act, the Wage Payment and~~
3 ~~Collection Law, the Unemployment Compensation Law or the~~
4 ~~Workers' Compensation Act if the individual is excluded from the~~
5 ~~scope of the appropriate statute.~~

6 ~~Section 18. Severability.~~

7 ~~The provisions of this act are severable. If any provision of~~
8 ~~this act or its application to any individual or circumstance is~~
9 ~~held invalid, the invalidity shall not affect other provisions~~
10 ~~or applications of this act which can be given effect without~~
11 ~~the invalid provision or application.~~

12 ~~Section 19. Construction of law.~~

13 ~~Nothing contained in this act shall be construed to impair or~~
14 ~~affect in any manner the ability of the department to carry out~~
15 ~~the powers and duties prescribed by the laws of this~~
16 ~~Commonwealth or to adopt measures to improve the enforcement of~~
17 ~~other laws of this Commonwealth.~~

18 ~~Section 20. Finding.~~

19 ~~The department shall commence implementation of this act to~~
20 ~~the extent the secretary determines sufficient funds are~~
21 ~~available or the General Assembly appropriates additional funds~~
22 ~~for purposes of this act.~~

23 ~~Section 21. Effective date.~~

24 ~~This act shall take effect in 90 days.~~

25 SECTION 2. DEFINITIONS. ←

26 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
27 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
28 CONTEXT CLEARLY INDICATES OTHERWISE:

29 "CONSTRUCTION." ERECTION, RECONSTRUCTION, DEMOLITION,
30 ALTERATION, MODIFICATION, CUSTOM FABRICATION, BUILDING,

1 ASSEMBLING, SITE PREPARATION AND REPAIR WORK DONE ON ANY REAL
2 PROPERTY OR PREMISES UNDER CONTRACT, WHETHER OR NOT THE WORK IS
3 FOR A PUBLIC BODY AND PAID FOR FROM PUBLIC FUNDS.

4 "DEPARTMENT." THE DEPARTMENT OF LABOR AND INDUSTRY OF THE
5 COMMONWEALTH.

6 "EMPLOYEE." EITHER OF THE FOLLOWING:

7 (1) IN RELATION TO WORKERS' COMPENSATION, THE TERM SHALL
8 HAVE THE MEANING GIVEN TO IT IN SECTION 104 OF THE ACT OF
9 JUNE 2, 1915 (P.L.736, NO.338), KNOWN AS THE WORKERS'
10 COMPENSATION ACT.

11 (2) IN RELATION TO UNEMPLOYMENT COMPENSATION, THE TERM
12 SHALL HAVE THE MEANING GIVEN TO IT IN SECTION 4(I) OF THE ACT
13 OF DECEMBER 5, 1936 (2ND SP.SESS., 1937 P.L.2897, NO.1),
14 KNOWN AS THE UNEMPLOYMENT COMPENSATION LAW.

15 "EMPLOYER." EITHER OF THE FOLLOWING:

16 (1) IN RELATION TO WORKERS' COMPENSATION, THE TERM SHALL
17 HAVE THE MEANING GIVEN TO IT IN SECTION 103 OF THE ACT OF
18 JUNE 2, 1915 (P.L.736, NO.338), KNOWN AS THE WORKERS'
19 COMPENSATION ACT.

20 (2) IN RELATION TO UNEMPLOYMENT COMPENSATION, THE TERM
21 SHALL HAVE THE MEANING GIVEN TO IT IN SECTION 4(J) OF THE ACT
22 OF DECEMBER 5, 1936 (2ND SP.SESS., 1937 P.L.2897, NO.1),
23 KNOWN AS THE UNEMPLOYMENT COMPENSATION LAW.

24 "SECRETARY." THE SECRETARY OF LABOR AND INDUSTRY OF THE
25 COMMONWEALTH OR THE SECRETARY'S AUTHORIZED REPRESENTATIVE.

26 "UNEMPLOYMENT COMPENSATION LAW." THE ACT OF DECEMBER 5, 1936
27 (2ND SP.SESS., 1937 P.L.2897, NO.1), KNOWN AS THE UNEMPLOYMENT
28 COMPENSATION LAW.

29 "WORKERS' COMPENSATION ACT." THE ACT OF JUNE 2, 1915
30 (P.L.736, NO.338), KNOWN AS THE WORKERS' COMPENSATION ACT.

1 SECTION 3. INDEPENDENT CONTRACTORS.

2 (A) GENERAL RULE.--FOR PURPOSES OF WORKERS' COMPENSATION,
3 UNEMPLOYMENT COMPENSATION AND IMPROPER CLASSIFICATION OF
4 EMPLOYEES PROVIDED HEREIN, AN INDIVIDUAL WHO PERFORMS SERVICES
5 IN THE CONSTRUCTION INDUSTRY FOR REMUNERATION IS AN INDEPENDENT
6 CONTRACTOR ONLY IF:

7 (1) THE INDIVIDUAL HAS A WRITTEN CONTRACT TO PERFORM
8 SUCH SERVICES.

9 (2) THE INDIVIDUAL IS FREE FROM CONTROL OR DIRECTION
10 OVER PERFORMANCE OF SUCH SERVICES BOTH UNDER THE CONTRACT OF
11 SERVICE AND IN FACT.

12 (3) AS TO SUCH SERVICES, THE INDIVIDUAL IS CUSTOMARILY
13 ENGAGED IN AN INDEPENDENTLY ESTABLISHED TRADE, OCCUPATION,
14 PROFESSION OR BUSINESS.

15 (B) CRITERIA.--AN INDIVIDUAL IS CUSTOMARILY ENGAGED IN AN
16 INDEPENDENTLY ESTABLISHED TRADE, OCCUPATION, PROFESSION OR
17 BUSINESS WITH RESPECT TO SERVICES THE INDIVIDUAL PERFORMS IN THE
18 COMMERCIAL OR RESIDENTIAL BUILDING CONSTRUCTION INDUSTRY ONLY
19 IF:

20 (1) THE INDIVIDUAL POSSESSES THE ESSENTIAL TOOLS,
21 EQUIPMENT AND OTHER ASSETS NECESSARY TO PERFORM THE SERVICES
22 INDEPENDENT OF THE PERSON FOR WHOM THE SERVICES ARE
23 PERFORMED.

24 (2) THE INDIVIDUAL'S ARRANGEMENT WITH THE PERSON FOR
25 WHOM THE SERVICES ARE PERFORMED IS SUCH THAT THE INDIVIDUAL
26 SHALL REALIZE A PROFIT OR SUFFER A LOSS AS A RESULT OF
27 PERFORMING THE SERVICES.

28 (3) THE INDIVIDUAL PERFORMS THE SERVICES THROUGH A
29 BUSINESS IN WHICH THE INDIVIDUAL HAS A PROPRIETARY INTEREST.

30 (4) THE INDIVIDUAL MAINTAINS A BUSINESS LOCATION THAT IS

1 SEPARATE FROM THE LOCATION OF THE PERSON FOR WHOM THE
2 SERVICES ARE BEING PERFORMED.

3 (5) THE INDIVIDUAL:

4 (I) PREVIOUSLY PERFORMED THE SAME OR SIMILAR
5 SERVICES FOR ANOTHER PERSON IN ACCORDANCE WITH PARAGRAPHS
6 (1), (2), (3) AND (4) AND WHILE FREE FROM DIRECTION OR
7 CONTROL OVER PERFORMANCE OF THE SERVICES, BOTH UNDER THE
8 CONTRACT OF SERVICE AND IN FACT; OR

9 (II) HOLDS HIMSELF OUT TO OTHER PERSONS AS AVAILABLE
10 AND ABLE, AND IN FACT IS AVAILABLE AND ABLE, TO PERFORM
11 THE SAME OR SIMILAR SERVICES IN ACCORDANCE WITH
12 PARAGRAPHS (1), (2), (3) AND (4) WHILE FREE FROM
13 DIRECTION OR CONTROL OVER PERFORMANCE OF THE SERVICES.

14 (6) THE INDIVIDUAL MAINTAINS LIABILITY INSURANCE DURING
15 THE TERM OF THIS CONTRACT OF AT LEAST \$50,000.

16 (C) FACTORS NOT TO BE CONSIDERED.--THE FAILURE TO WITHHOLD
17 FEDERAL OR STATE INCOME TAXES OR PAY UNEMPLOYMENT COMPENSATION
18 CONTRIBUTIONS OR WORKERS' COMPENSATION PREMIUMS WITH RESPECT TO
19 AN INDIVIDUAL'S REMUNERATION SHALL NOT BE CONSIDERED IN
20 DETERMINING WHETHER THE INDIVIDUAL IS AN INDEPENDENT CONTRACTOR
21 FOR PURPOSES OF THE WORKERS' COMPENSATION ACT OR THE
22 UNEMPLOYMENT COMPENSATION LAW.

23 (D) WORKERS' COMPENSATION.--

24 (1) AN INDIVIDUAL WHO IS AN INDEPENDENT CONTRACTOR AS
25 DETERMINED UNDER SECTION 3 IS NOT AN EMPLOYEE FOR PURPOSES OF
26 THE WORKERS' COMPENSATION ACT. FOR PURPOSES OF THIS SECTION,
27 EACH EMPLOYMENT RELATIONSHIP SHALL BE CONSIDERED SEPARATELY.

28 (2) NOTHING IN THIS ACT SHALL BE CONSTRUED TO AFFECT
29 SECTION 321(2) OF THE WORKERS' COMPENSATION ACT.

30 (E) UNEMPLOYMENT COMPENSATION.--

1 (1) FOR PURPOSES OF SECTION 4(L) (2) (B) OF THE
2 UNEMPLOYMENT COMPENSATION LAW, AN INDIVIDUAL IS CUSTOMARILY
3 ENGAGED IN AN INDEPENDENTLY ESTABLISHED TRADE, OCCUPATION,
4 PROFESSION OR BUSINESS WITH RESPECT TO SERVICES THE
5 INDIVIDUAL PERFORMS IN THE CONSTRUCTION INDUSTRY ONLY IF THE
6 CRITERIA IN SUBSECTION (B) ARE SATISFIED.

7 (2) EXCEPT AS PROVIDED IN PARAGRAPH (1), NOTHING IN THIS
8 ACT SHALL BE CONSTRUED TO AFFECT ANY EXCLUSION FROM
9 "EMPLOYMENT" AS DEFINED IN THE UNEMPLOYMENT COMPENSATION LAW.
10 SECTION 4. IMPROPER CLASSIFICATION OF EMPLOYEES.

11 (A) VIOLATION.--AN EMPLOYER, OR AN OFFICER OR AGENT OF AN
12 EMPLOYER, SHALL BE IN VIOLATION OF THIS ACT AND SHALL BE SUBJECT
13 TO THE PENALTIES, REMEDIES AND ACTIONS CONTAINED IN THIS ACT IF
14 THE EMPLOYER, OFFICER OR AGENT:

15 (1) FAILS TO PROPERLY CLASSIFY AN INDIVIDUAL AS AN
16 EMPLOYEE FOR PURPOSES OF THE WORKERS' COMPENSATION ACT AND
17 FAILS TO PROVIDE THE COVERAGE REQUIRED UNDER THE WORKERS'
18 COMPENSATION ACT; OR

19 (2) FAILS TO PROPERLY CLASSIFY AN INDIVIDUAL AS AN
20 EMPLOYEE FOR PURPOSES OF THE UNEMPLOYMENT COMPENSATION LAW
21 AND FAILS TO PAY CONTRIBUTIONS, REIMBURSEMENTS OR OTHER
22 AMOUNTS REQUIRED TO BE PAID UNDER THE UNEMPLOYMENT
23 COMPENSATION LAW.

24 (B) SEPARATE OFFENSES.--EACH INDIVIDUAL WHO IS NOT PROPERLY
25 CLASSIFIED AS AN EMPLOYEE SHALL BE THE BASIS OF A SEPARATE
26 VIOLATION OF THIS SECTION.

27 (C) ORDER TO SHOW CAUSE.--

28 (1) IF THE SECRETARY RECEIVES INFORMATION INDICATING
29 THAT ANY PERSON HAS VIOLATED THIS ACT, THE SECRETARY MAY
30 INVESTIGATE THE MATTER AND ISSUE AN ORDER TO SHOW CAUSE WHY

1 THE PERSON SHOULD NOT BE FOUND IN VIOLATION OF THIS ACT.

2 (2) A PERSON SERVED WITH AN ORDER TO SHOW CAUSE SHALL
3 HAVE A PERIOD OF 20 DAYS FROM THE DATE THE ORDER IS SERVED TO
4 FILE AN ANSWER IN WRITING.

5 (3) IF THE PERSON FAILS TO FILE A TIMELY AND ADEQUATE
6 ANSWER TO THE ORDER TO SHOW CAUSE, THE SECRETARY MAY,
7 FOLLOWING NOTICE AND HEARING, DO ANY OF THE FOLLOWING:

8 (I) PETITION A COURT OF COMPETENT JURISDICTION TO
9 ISSUE A STOP-WORK ORDER AS PROVIDED IN SECTION 7; OR

10 (II) IMMEDIATELY ASSESS PENALTIES AS PROVIDED IN
11 SECTION 6.

12 (D) ENFORCEMENT.--IF, SUBSEQUENT TO ISSUING AN ORDER TO SHOW
13 CAUSE UNDER SUBSECTION (C), THE SECRETARY FINDS PROBABLE CAUSE
14 THAT AN EMPLOYER HAS COMMITTED A CRIMINAL VIOLATION OF THIS ACT,
15 THE SECRETARY SHALL REFER THE MATTER TO THE OFFICE OF ATTORNEY
16 GENERAL FOR INVESTIGATION OR IMPOSE ADMINISTRATIVE PENALTIES
17 UNDER SECTION 6.

18 (E) ACTING IN CONCERT WITH OTHER PARTIES.--A PARTY THAT DOES
19 NOT MEET THE DEFINITION OF "EMPLOYER" IN SECTION 2, BUT WHICH
20 INTENTIONALLY CONTRACTS WITH AN EMPLOYER KNOWING THE EMPLOYER
21 INTENDS TO MISCLASSIFY EMPLOYEES IN VIOLATION OF THIS ACT, SHALL
22 BE SUBJECT TO THE SAME PENALTIES, REMEDIES OR OTHER ACTIONS AS
23 THE EMPLOYER FOUND TO BE IN VIOLATION OF THIS ACT.

24 (F) DEFENSE.--IT SHALL BE A DEFENSE TO AN ALLEGED VIOLATION
25 OF THIS SECTION IF THE PERSON FOR WHOM THE SERVICES ARE
26 PERFORMED IN GOOD FAITH BELIEVED THAT THE INDIVIDUAL WHO
27 PERFORMED THE SERVICES QUALIFIED AS AN INDEPENDENT CONTRACTOR AT
28 THE TIME THE SERVICES WERE PERFORMED.

29 SECTION 5. CRIMINAL PENALTIES.

30 (A) GRADING.--AN EMPLOYER, OR AN OFFICER OR AN AGENT OF AN

1 EMPLOYER, THAT INTENTIONALLY VIOLATES SECTION 4(A) COMMITS:

2 (1) A MISDEMEANOR OF THE THIRD DEGREE FOR A FIRST
3 OFFENSE.

4 (2) A MISDEMEANOR OF THE SECOND DEGREE FOR A SECOND OR
5 SUBSEQUENT OFFENSE.

6 (B) SUMMARY OFFENSE.--AN EMPLOYER, OR OFFICER OR AGENT OF AN
7 EMPLOYER, THAT NEGLIGENTLY FAILS TO PROPERLY CLASSIFY AN
8 INDIVIDUAL AS AN EMPLOYEE UNDER SECTION 4(A) COMMITS A SUMMARY
9 OFFENSE AND SHALL, UPON CONVICTION, BE SENTENCED TO PAY A FINE
10 OF NOT MORE THAN \$1,000. EVIDENCE OF A PRIOR CONVICTION UNDER
11 THIS SUBSECTION SHALL BE ADMISSIBLE AS EVIDENCE OF INTENT UNDER
12 SUBSECTION (A).

13 (C) CONCURRENT JURISDICTION.--

14 (1) THE ATTORNEY GENERAL SHALL HAVE CONCURRENT
15 PROSECUTORIAL JURISDICTION WITH THE DISTRICT ATTORNEY OF THE
16 APPROPRIATE COUNTY FOR VIOLATIONS UNDER THIS SECTION AND ANY
17 OFFENSE ARISING OUT OF THE ACTIVITY PROHIBITED BY THIS
18 SECTION.

19 (2) NO PERSON CHARGED WITH A VIOLATION OF THIS SECTION
20 BY THE ATTORNEY GENERAL SHALL HAVE STANDING TO CHALLENGE THE
21 AUTHORITY OF THE ATTORNEY GENERAL TO PROSECUTE THE CASE, AND,
22 IF A CHALLENGE IS MADE, THE CHALLENGE SHALL BE DISMISSED, AND
23 NO RELIEF SHALL BE AVAILABLE IN THE COURTS OF THIS
24 COMMONWEALTH TO THE PERSON MAKING THE CHALLENGE.

25 SECTION 6. ADMINISTRATIVE PENALTIES.

26 (A) GENERAL RULE.--WHEN THE SECRETARY FINDS THAT A PERSON
27 HAS VIOLATED THIS ACT, THE SECRETARY MAY ASSESS AND COLLECT
28 CIVIL PENALTIES OF NOT MORE THAN \$1,000 FOR THE FIRST VIOLATION,
29 AND NOT MORE THAN \$2,500 FOR EACH SUBSEQUENT VIOLATION.

30 (B) FACTORS TO BE CONSIDERED.--WHEN DETERMINING THE AMOUNT

1 OF THE PENALTY TO BE IMPOSED, THE SECRETARY SHALL CONSIDER
2 FACTORS INCLUDING, BUT NOT LIMITED TO:

- 3 (1) THE HISTORY OF PREVIOUS VIOLATIONS BY THE EMPLOYER.
- 4 (2) THE SERIOUSNESS OF THE VIOLATION.
- 5 (3) THE GOOD FAITH OF THE EMPLOYER.
- 6 (4) THE SIZE OF THE EMPLOYER'S BUSINESS.

7 SECTION 7. STOP-WORK ORDERS.

8 (A) ISSUANCE OF ORDER.--

9 (1) IF THE SECRETARY DETERMINES, SUBSEQUENT TO THE
10 ISSUANCE OF AN ORDER TO SHOW CAUSE UNDER SECTION 4(C), THAT
11 AN EMPLOYER, OR OFFICER OR AGENT OF THE EMPLOYER, HAS
12 INTENTIONALLY FAILED TO PROPERLY CLASSIFY AN INDIVIDUAL AS AN
13 EMPLOYEE UNDER SECTION 4(A), THE SECRETARY MAY PETITION A
14 COURT OF COMPETENT JURISDICTION TO ISSUE A STOP-WORK ORDER
15 REQUIRING THE CESSATION OF WORK BY INDIVIDUALS WHO ARE
16 IMPROPERLY CLASSIFIED WITHIN 24 HOURS OF THE EFFECTIVE DATE
17 OF THE ORDER, OR IN THE EVENT THAT A MAJORITY OF INDIVIDUALS
18 WORKING AT A SITE ARE IMPROPERLY CLASSIFIED, REQUIRING THE
19 CESSATION OF ALL BUSINESS OPERATIONS OF THAT EMPLOYER AT EACH
20 SITE AT WHICH A VIOLATION OCCURRED WITHIN 24 HOURS OF THE
21 EFFECTIVE DATE OF THE ORDER.

22 (2) THE ORDER SHALL TAKE EFFECT WHEN SERVED UPON THE
23 EMPLOYER OR, FOR A PARTICULAR EMPLOYER WORKSITE, WHEN SERVED
24 AT THE WORKSITE. THE ORDER SHALL REMAIN IN EFFECT UNTIL THE
25 COURT ISSUES AN ORDER RELEASING THE STOP-WORK ORDER OR UPON
26 FINDING THAT THE EMPLOYER, OR OFFICER OR AGENT OF THE
27 EMPLOYER, IS NO LONGER IN VIOLATION OF THIS ACT.

28 (3) AN ORDER RELEASING A STOP-WORK ORDER MAY INCLUDE A
29 REQUIREMENT THAT THE EMPLOYER FILE WITH THE DEPARTMENT
30 PERIODIC REPORTS FOR A PROBATIONARY PERIOD THAT SHALL NOT

1 EXCEED TWO YEARS DEMONSTRATING THE EMPLOYER'S CONTINUED
2 COMPLIANCE WITH THIS ACT.

3 (B) APPLICABILITY OF ORDERS AND PENALTIES.--STOP-WORK ORDERS
4 UNDER SUBSECTION (A) AND PENALTIES UNDER SUBSECTION (C) SHALL BE
5 IN EFFECT AGAINST ANY SUCCESSOR CORPORATION OR BUSINESS ENTITY
6 THAT HAS ONE OR MORE OF THE SAME PRINCIPALS OR OFFICERS AS THE
7 EMPLOYER AGAINST WHOM THE STOP-WORK ORDER WAS ISSUED OR
8 PENALTIES IMPOSED AND WHICH IS ENGAGED IN THE SAME OR EQUIVALENT
9 TRADE OR ACTIVITY.

10 (C) PENALTY.--THE COURT SHALL ASSESS A PENALTY OF \$1,000 PER
11 DAY AGAINST AN EMPLOYER FOR EACH DAY THAT THE EMPLOYER CONDUCTS
12 BUSINESS OPERATIONS THAT ARE IN VIOLATION OF A STOP-WORK ORDER
13 ISSUED UNDER THIS SECTION.

14 SECTION 8. PROCEDURE.

15 (A) HEARINGS.--ACTIONS TAKEN UNDER SECTIONS 4(C) AND 6 SHALL
16 BE SUBJECT TO THE PROVISIONS OF 2 PA.C.S. (RELATING TO
17 ADMINISTRATIVE LAW AND PROCEDURE).

18 (B) SUBPOENA POWERS.--THE DEPARTMENT SHALL HAVE THE POWER TO
19 SUBPOENA WITNESSES, ADMINISTER OATHS, EXAMINE WITNESSES AND TAKE
20 TESTIMONY OR COMPEL THE PRODUCTION OF DOCUMENTS. THE SECRETARY
21 MAY PETITION THE COMMONWEALTH COURT TO ENFORCE ANY ORDER OR
22 SUBPOENA ISSUED UNDER THIS ACT.

23 SECTION 9. CERTAIN AGREEMENT PROHIBITED.

24 (A) VIOLATION.--NO PERSON SHALL REQUIRE OR DEMAND THAT AN
25 INDIVIDUAL ENTER INTO AN AGREEMENT OR SIGN A DOCUMENT WHICH
26 RESULTS IN THE IMPROPER CLASSIFICATION OF THAT INDIVIDUAL AS AN
27 INDEPENDENT CONTRACTOR.

28 (B) PENALTY.--A VIOLATION OF SUBSECTION (A) SHALL BE
29 PUNISHABLE BY AN ADMINISTRATIVE FINE OF NOT LESS THAN \$1,000 AND
30 NOT MORE THAN \$2,500. EACH VIOLATION SHALL BE CONSIDERED A

1 SEPARATE OFFENSE UNDER THIS SECTION.

2 SECTION 10. RETALIATION FOR ACTION PROHIBITED.

3 (A) GENERAL RULE.--IT SHALL BE UNLAWFUL FOR AN EMPLOYER, OR
4 AN OFFICER OR AGENT OF AN EMPLOYER, TO DISCRIMINATE IN ANY
5 MANNER OR TAKE ADVERSE ACTION AGAINST ANY PERSON IN RETALIATION
6 FOR EXERCISING RIGHTS PROTECTED UNDER THIS ACT. RIGHTS PROTECTED
7 UNDER THIS ACT INCLUDE, BUT ARE NOT LIMITED TO, THE RIGHT TO
8 FILE A COMPLAINT OR INFORM ANY PERSON ABOUT AN EMPLOYER'S
9 NONCOMPLIANCE WITH THIS ACT.

10 (B) GOOD FAITH ALLEGATIONS OF NONCOMPLIANCE.--ANY PERSON WHO
11 IN GOOD FAITH ALLEGES NONCOMPLIANCE WITH THIS ACT SHALL BE
12 AFFORDED THE RIGHTS PROVIDED BY THIS ACT, NOTWITHSTANDING THE
13 PERSON'S FAILURE TO PREVAIL ON THE MERITS.

14 (C) REBUTTABLE PRESUMPTIONS.--TAKING ADVERSE ACTION AGAINST
15 A PERSON WITHIN 90 DAYS OF THE PERSON'S EXERCISE OF RIGHTS
16 PROTECTED UNDER THIS ACT SHALL RAISE A REBUTTABLE PRESUMPTION OF
17 HAVING DONE SO IN RETALIATION FOR THE EXERCISE OF THOSE RIGHTS.

18 SECTION 11. AVAILABILITY OF INFORMATION.

19 THE DEPARTMENT SHALL CREATE A POSTER FOR JOB SITES WHICH
20 OUTLINES THE REQUIREMENTS AND PENALTIES UNDER THIS ACT AND SHALL
21 MAKE THE POSTER AVAILABLE ON ITS INTERNET WEBSITE. AT THE
22 DISCRETION OF THE SECRETARY, A TOLL-FREE HOTLINE TELEPHONE
23 NUMBER MAY BE ESTABLISHED TO RECEIVE ALLEGED VIOLATIONS.

24 SECTION 12. USE OF PENALTY FUNDS.

25 ANY SUM COLLECTED AS A PENALTY UNDER:

26 (1) SECTIONS 6, 7 AND 9 FOR A VIOLATION OF SECTION 4 (A)
27 (1) SHALL BE PAID INTO THE WORKERS' COMPENSATION
28 ADMINISTRATION FUND.

29 (2) SECTIONS 6, 7 AND 9 FOR A VIOLATION OF SECTION 4 (A)
30 (2) SHALL BE PAID INTO THE SPECIAL ADMINISTRATION FUND

1 CREATED UNDER SECTION 601.1 OF THE UNEMPLOYMENT COMPENSATION
2 LAW.

3 (3) SECTION 9 FOR A VIOLATION OF ANY OTHER PROVISIONS OF
4 THIS ACT SHALL BE DIVIDED EQUALLY BETWEEN THE WORKERS'
5 COMPENSATION ADMINISTRATION FUND AND THE SPECIAL
6 ADMINISTRATION FUND.

7 SECTION 13. RULES AND REGULATIONS.

8 THE DEPARTMENT MAY PROMULGATE RULES AND REGULATIONS NECESSARY
9 TO IMPLEMENT THIS ACT.

10 SECTION 14. ANNUAL REPORT REQUIRED.

11 THE DEPARTMENT SHALL SUBMIT AN ANNUAL REPORT TO THE GENERAL
12 ASSEMBLY BY MARCH 1 OF THE YEAR FOLLOWING THE FIRST FULL YEAR IN
13 WHICH THIS ACT IS IN EFFECT, AND EACH YEAR THEREAFTER,
14 DETAILING, TO THE MAXIMUM EXTENT POSSIBLE, DATA ON THE PREVIOUS
15 CALENDAR YEAR'S ADMINISTRATION AND ENFORCEMENT OF THIS ACT. THE
16 DEPARTMENT MAY INCLUDE ANY RELEVANT FACTS AND STATISTICS THAT IT
17 BELIEVES NECESSARY IN THE CONTENT OF THE REPORT.

18 SECTION 15. SEVERABILITY.

19 THE PROVISIONS OF THIS ACT ARE SEVERABLE. IF ANY PROVISION OF
20 THIS ACT OR ITS APPLICATION TO ANY INDIVIDUAL OR CIRCUMSTANCE IS
21 HELD INVALID, THE INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS
22 OR APPLICATIONS OF THIS ACT WHICH CAN BE GIVEN EFFECT WITHOUT
23 THE INVALID PROVISION OR APPLICATION.

24 SECTION 16. CONSTRUCTION OF LAW.

25 (A) OTHER LAWS.--NOTHING CONTAINED IN THIS ACT SHALL BE
26 CONSTRUED TO IMPAIR OR AFFECT IN ANY MANNER THE ABILITY OF THE
27 DEPARTMENT AND SECRETARY TO CARRY OUT THE POWERS AND DUTIES
28 PRESCRIBED BY THE LAWS OF THIS COMMONWEALTH.

29 (B) OTHER INDUSTRIES.--THE DEPARTMENT IS NOT PRECLUDED FROM
30 FINDING MISCLASSIFICATION IN ANY INDUSTRY ON THE BASIS OF THE

1 LAWS OF THIS COMMONWEALTH.

2 SECTION 17. FUNDING.

3 THE DEPARTMENT SHALL NOT BE REQUIRED TO ENFORCE THIS ACT
4 UNTIL ADEQUATE FUNDING IS APPROPRIATED.

5 SECTION 30. EFFECTIVE DATE.

6 THIS ACT SHALL TAKE EFFECT IN 120 DAYS.