

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1503 Session of
2009

INTRODUCED BY GALLOWAY, METCALFE, BELFANTI, GERGELY, BOYLE,
BEYER, BRENNAN, CARROLL, D. COSTA, FABRIZIO, FRANKEL,
GOODMAN, HARKINS, HORNAMAN, W. KELLER, LONGIETTI, MARSHALL,
MENSCH, MOUL, MURT, M. O'BRIEN, RAPP, READSHAW, SABATINA,
SIPTROTH, M. SMITH, SOLOBAY, VULAKOVICH, WAGNER, WANSACZ,
WATSON, WHITE, YUDICHAK, OBERLANDER, CUTLER, LEVDANSKY,
MUNDY, GIBBONS, K. SMITH, KULA, MELIO, PARKER, HENNESSEY,
GRUCELA, QUINN, BURNS, SEIP, MURPHY, GEIST, PAYNE, KORTZ,
DEASY, BRIGGS AND SANTARSIERO, JUNE 2, 2009

AS REPORTED FROM COMMITTEE ON LABOR RELATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, DECEMBER 8, 2009

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,

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

5 "Construction industry employer." An individual,
6 partnership, association, joint stock company, corporation,
7 business trust or any other business entity, person or ~~groups~~ ←
8 GROUP of persons; ←

9 ~~(1)~~ that acts directly or indirectly to employ persons
10 to provide or perform services in the construction industry
11 for remuneration; and ←

12 ~~(2) whose aggregate remuneration for providing~~
13 ~~construction services to others in a calendar year exceeds~~
14 ~~\$25,000.~~

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

18 "EVP." The E-Verify Program operated by the Department of
19 Homeland Security.

20 "~~IRCA~~ INA." The Immigration and Nationality Act (66 Stat. ←
21 163, 8 U.S.C. § 1101 et seq.).

22 "NVS." The Social Security Number Verification Service
23 operated by the Social Security Administration.

24 "Secretary." The Secretary of Labor and Industry of the
25 Commonwealth.

26 "Willful." Action or conduct undertaken intentionally or
27 with reckless disregard for or deliberate ignorance of the
28 requirements and obligations established by this act.

29 Section 3. Verification.

30 (a) Duty of construction industry employers.--A ←

1 (1) EXCEPT AS SET FORTH IN PARAGRAPH (2), A construction
2 industry employer shall participate in NVS and EVP and shall
3 do the following, subject to the requirements of Federal law
4 governing the use of NVS and EVP:

5 ~~(1) within 30~~

6 (I) WITHIN 60 days following the effective date of
7 this section, use NVS to verify, for wage reporting
8 purposes, the Social Security numbers of its employees in
9 existence on the effective date of this section; and

10 ~~(2) prior to the commencement of work by~~

11 (II) WITHIN THREE DAYS FOLLOWING THE FIRST DAY OF
12 EMPLOYMENT OF a new employee, use EVP to verify for
13 employment eligibility purposes the Social Security
14 number of the new employee.

15 (2) THIS SUBSECTION DOES NOT APPLY TO AN EMPLOYEE WHO IS
16 AUTHORIZED TO WORK UNDER FEDERAL LAW IN THE UNITED STATES
17 WITHOUT A SOCIAL SECURITY NUMBER.

18 (b) Verification statements.--A construction industry
19 employer shall submit a verification statement annually to the
20 Department of Revenue with its State income tax return. The
21 statement shall be on a form prescribed by the Department of
22 Revenue and shall comply with the following requirements:

23 (1) The statement shall represent that the construction
24 industry employer has verified the Social Security numbers of
25 its employees through NVS or EVP, as appropriate, AS REQUIRED
26 BY SUBSECTION (A).

27 (2) The statement shall include a certification that the
28 information in the statement is true and correct and that the
29 person signing the statement understands that the submission
30 of false or misleading information in connection with the

1 verification shall subject the person and the construction
2 industry employer to sanctions provided by law.

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

7 (c) Discrimination prohibited.--In conducting the Social
8 Security number verification required by this section, a
9 construction industry employer shall not discriminate against an
10 employee on the basis of race, ethnicity, color or national
11 origin.

12 Section 4. Violations.

13 It is a violation of this act for a construction industry
14 employer to:

15 (1) Employ an employee whose Social Security number has
16 not been verified by NVS or EVP as required by this act
17 EXCEPT DURING A PERIOD OF TIME IN WHICH THE EMPLOYER IS
18 AWAITING RESOLUTION BY THE FEDERAL GOVERNMENT OF A WAGE
19 REPORTING OR EMPLOYMENT ELIGIBILITY ISSUE OR DISPUTE
20 REGARDING THE EMPLOYEE.

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


23 Section 5. Enforcement and sanctions.




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


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

30 (c) Audits.--To ensure compliance with the requirements of

1 this act, the secretary shall conduct complaint-based and random
2 audits of construction industry employers in this Commonwealth.
3 In conducting such audits, the secretary shall utilize NVS and
4 EVP to verify the Social Security numbers for wage reporting
5 purposes and employment eligibility of employees in accordance
6 with Federal law governing the use of those systems.

7 (d) Sanctions.--The following sanctions shall apply to a
8 violation of section ~~724A of IRCA~~ 274A OF THE INA (8 U.S.C. § 
9 1324A) or of this act:

10 (1) A construction industry employer that violates
11 section ~~724A of IRCA~~ 274A OF THE INA or engages in the 
12 violation described in section 4(1) may be required, at the
13 discretion of the secretary, to forfeit all licenses or
14 certifications issued by the Commonwealth that authorize the
15 construction industry employer to conduct business in this
16 Commonwealth, including corporate articles and franchises for
17 a period of up to 90 DAYS FOR A SECOND VIOLATION AND FOR A 
18 PERIOD OF UP TO three years FOR A SUBSEQUENT VIOLATION. 

19 (2) A construction industry employer that willfully
20 violates section ~~724A of IRCA~~ 274A OF THE INA or willfully 
21 engages in the violation described in section 4(1) shall be
22 required to forfeit all licenses or certifications issued by
23 the Commonwealth that authorize the construction industry
24 employer to conduct business in this Commonwealth, including
25 corporate articles and franchises, for a period of 3 years.

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

30 (E) NOTICE AND APPEAL.--ACTIONS TAKEN UNDER SUBSECTION (D) 

1 SHALL BE SUBJECT TO THE NOTICE, APPEAL AND OTHER PROVISIONS OF 2
2 PA.C.S. (RELATING TO ADMINISTRATIVE LAW AND PROCEDURE).

3 Section 6. Protection from retaliation.

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

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

11 (2) reports or makes a complaint regarding the violation
12 of this act to a construction industry employer or
13 governmental authority.

14 (b) Actions.--

15 (1) An employee who suffers retaliation or
16 discrimination in violation of this section may bring an
17 action in a court of common pleas in accordance with
18 established civil procedures of this Commonwealth.

19 (2) The action must be brought within three years from
20 the date the employee knew of the retaliation or
21 discrimination.

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

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

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

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

30 (4) Any other legal and equitable relief as the court

1 deems appropriate.

2 Section 7. Good faith immunity.

3 A construction industry employer that relies in good faith on
4 NVS and EVP procedures to verify the Social Security number of
5 employees shall be immune from the sanctions authorized under
6 section 5 AND SHALL HAVE NO LIABILITY TO AN INDIVIDUAL WHO IS ←
7 NOT HIRED OR WHO IS DISCHARGED FROM EMPLOYMENT in the event that
8 incorrect information has been provided to the construction
9 industry employer.

10 Section 8. Effective date.

11 This act shall take effect in 60 days.