

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 379 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, REICHLLEY, SABATINA, SANTARSIERO, STEVENSON, SWANGER, VULAKOVICH, WAGNER, WATSON, WHITE, GABLER AND HORNAMAN, FEBRUARY 1, 2011

REFERRED TO COMMITTEE ON STATE GOVERNMENT, FEBRUARY 1, 2011

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
 2 Statutes, in contracts for public works, providing for
 3 verification of the Social Security numbers of all employees
 4 for purposes of wage reporting and employment eligibility;
 5 prescribing penalties; 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. Chapter 39 of Title 62 of the Pennsylvania
 10 Consolidated Statutes is amended by adding a subchapter to read:

11 SUBCHAPTER F

12 EMPLOYMENT VERIFICATION

13 Sec.

14 3951. Scope of subchapter.

15 3952. Definitions.

16 3953. Verification.

17 3954. Violations.

1 3955. Enforcement and sanctions.

2 3956. Protection from retaliation.

3 3957. Good faith immunity.

4 § 3951. Scope of subchapter.

5 This subchapter relates to verification of employment on
6 certain public works projects.

7 § 3952. Definitions.

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

11 "Employee." An individual for whom a public works contractor
12 or a subcontractor is required by law to file a Form W-2 with
13 the Internal Revenue Service.

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

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

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

20 "Public work." As defined in section 2 of the act of August
21 15, 1961 (P.L.987, No.442), known as the Pennsylvania Prevailing
22 Wage Act.

23 "Public works contractor." A contractor that provides goods
24 or services under a contract with a Commonwealth agency
25 involving a public works project.

26 "Public works project." A project involving a public work.

27 "Secretary." The Secretary of Labor and Industry of the
28 Commonwealth.

29 "Subcontractor." A person, regardless of its tier,
30 including, but not limited to, a staffing agency, that performs

1 work for a public works contractor under a contract for a public
2 work.

3 "Willful." Action or conduct undertaken intentionally or
4 with reckless disregard for or deliberate ignorance of the
5 requirements and obligations established by this subchapter.
6 § 3953. Verification.

7 (a) General rule.--As a precondition of being awarded a
8 contract for a public work, and prior to the execution of the
9 contract, a public works contractor shall provide the
10 Commonwealth agency with which the contract will be made a
11 verification statement in which it shall represent the
12 following:

13 (1) The public works contractor has verified the Social
14 Security numbers of all of its then-existing employees for
15 wage reporting purposes through NVS in accordance with
16 Federal law governing the use of NVS.

17 (2) The public works contractor will verify the Social
18 Security number of a new employee for employment eligibility
19 purposes within three days following the first day of
20 employment of the new employee through EVP in accordance with
21 Federal law governing the use of EVP.

22 (3) The public works contractor will provide the
23 Commonwealth agency with the verification statement required
24 under subsection (b) from each subcontractor it uses or
25 intends to use on the public works project prior to the
26 commencement of any work by the subcontractor on the public
27 works project.

28 (b) Subcontractor verification statements.--Prior to the
29 execution of a subcontract with a public works contractor, a
30 subcontractor shall provide the public works contractor with a

1 verification statement containing substantially the same
2 information about the subcontractor as required under subsection
3 (a) about the public works contractor. The subcontractor shall
4 submit the verification statement to the contractor prior to the
5 commencement of any work by the subcontractor on the public
6 works project.

7 (c) All verification statements.--The verification statement
8 required by this section shall be on a form prescribed by the
9 secretary and shall comply with the following additional
10 requirements:

11 (1) The statement shall include a certification that the
12 information in the statement is true and correct and that the
13 person signing the statement understands that the submission
14 of false or misleading information in connection with the
15 verification shall subject the person and the public works
16 contractor or subcontractor, as the case may be, to sanctions
17 provided by law.

18 (2) The statement shall be signed by a representative of
19 the public works contractor or subcontractor, as applicable,
20 who has sufficient knowledge and authority to make the
21 representations and certifications contained in the
22 statement.

23 (d) Discrimination prohibited.--In conducting the Social
24 Security number verification required by this section, a public
25 works contractor or a subcontractor shall not discriminate
26 against any employee on the basis of race, ethnicity, color or
27 national origin.

28 (e) Application.--The requirements of this section regarding
29 the verification of Social Security numbers shall not apply to
30 employees who are authorized under Federal law to work in the

1 United States without Social Security numbers.

2 § 3954. Violations.

3 The following shall constitute a violation of this
4 subchapter:

5 (1) Employment by a public works contractor or
6 subcontractor of an employee whose Social Security number has
7 not been verified by the NVS or EVP as required by this
8 subchapter, except during any period of time in which the
9 employer is awaiting resolution from the Federal Government
10 of a wage reporting or employment eligibility issue or
11 dispute regarding the employee.

12 (2) Use by a public works contractor of a subcontractor
13 on a public works project prior to the submission by the
14 subcontractor of a verification statement required by this
15 subchapter.

16 (3) Commencement of work by a subcontractor on a public
17 works project prior to submitting to the public works
18 contractor a verification statement required by this
19 subchapter.

20 (4) Making a false statement or misrepresentation in a
21 verification statement required by this subchapter.

22 § 3955. Enforcement and sanctions.

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

25 (b) Investigation of complaints.--The secretary shall
26 accept, review and investigate in a timely manner any credible
27 complaint that a public works contractor or subcontractor has
28 violated a provision of this subchapter.

29 (c) Audits.--To ensure compliance with the requirements of
30 this subchapter, the secretary shall conduct complaint-based and

1 random audits of public works contractors and subcontractors in
2 this Commonwealth. In conducting such audits, the secretary
3 shall utilize NVS and EVP to verify the Social Security numbers
4 of employees for wage reporting purposes and employment
5 eligibility, as appropriate, in accordance with Federal law
6 governing the use of NVS and EVP.

7 (d) Sanctions.--The following sanctions shall apply to
8 violations of section 274A of the INA (8 U.S.C. § 1324a) or of
9 this act:

10 (1) A public works contractor or subcontractor that
11 violates section 274A of the INA or engages in violations
12 described in section 3954(1), (2) or (3) (relating to
13 violations):

14 (i) For a second violation, at the discretion of the
15 secretary, may be subject to debarment under section 531
16 (relating to debarment or suspension) for a period of up
17 to 90 days. For a subsequent violation, at the discretion
18 of the secretary, may be subject to debarment under
19 section 531 for a period of up to three years.

20 (ii) At the discretion of the Commonwealth agency
21 with whom the public works contractor has contracted, may
22 be subject to termination of the contract by the
23 Commonwealth agency without recourse against or penalty
24 to the Commonwealth agency. The right of the Commonwealth
25 agency to terminate the contract under this subparagraph
26 may not be waived.

27 (iii) At the discretion of the public works
28 contractor with whom the subcontractor has contracted,
29 may be subject to termination of the subcontract by the
30 public works contractor without recourse against or

1 penalty to the public works contractor. The right of the
2 public works contractor to terminate the subcontract
3 under this subparagraph may not be waived.

4 (2) A public works contractor or subcontractor that
5 willfully violates section 274A of the INA or willfully
6 engages in violations described in section 3954(1), (2) or
7 (3):

8 (i) Shall be subject to debarment under section 531
9 for three years.

10 (ii) At the discretion of the Commonwealth agency
11 with which the public works contractor has contracted,
12 may be subject to termination of the contract by the
13 Commonwealth agency without recourse against or penalty
14 to the Commonwealth agency. The right of the Commonwealth
15 agency to terminate the contract under this subparagraph
16 may not be waived.

17 (iii) At the discretion of the public works
18 contractor with whom the subcontractor has contracted,
19 may be subject to termination of the subcontract by the
20 public works contractor without recourse against or
21 penalty to the public works contractor. The right of the
22 public works contractor to terminate the subcontract
23 under this subparagraph may not be waived.

24 § 3956. Protection from retaliation.

25 (a) General rule.--It shall be unlawful for a public works
26 contractor or subcontractor to discharge, threaten or otherwise
27 retaliate or discriminate against an employee regarding
28 compensation or other terms or conditions of employment because
29 the employee:

30 (1) participates in an investigation, hearing or inquiry

1 held by the secretary or any other governmental authority
2 under this subchapter; or

3 (2) reports or makes a complaint regarding the violation
4 of this subchapter to a public works contractor,
5 subcontractor or governmental authority.

6 (b) Actions.--

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

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

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

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

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

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

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

24 § 3957. Good faith immunity.

25 A public works contractor or subcontractor that relies in
26 good faith on NVS and EVP procedures to verify the Social
27 Security numbers of employees shall be immune from the sanctions
28 authorized under section 3955 (relating to enforcement and
29 sanctions) and shall have no liability to an individual who is
30 not hired or is discharged from employment in the event that

1 incorrect information has been provided to the public works
2 contractor or subcontractor.

3 Section 2. This act shall take effect July 1, 2011.