

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1016 Session of
2013

INTRODUCED BY CALTAGIRONE, KOTIK, ROZZI, PASHINSKI, BURNS,
BIZZARRO, COHEN, FABRIZIO, NEUMAN, WHITE, GALLOWAY, MICOZZIE
AND GOODMAN, MARCH 18, 2013

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, MARCH 18, 2013

AN ACT

1 Amending the act of October 13, 2010 (P.L.506, No.72), entitled
2 "An act providing for the criteria for independent
3 contractors in the construction industry and for the powers
4 and duties of the Department of Labor and Industry and the
5 Secretary of Labor and Industry; and imposing penalties,"
6 further providing for improper classification and for
7 criminal penalties.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Sections 4 and 5 of the act of October 13, 2010
11 (P.L.506, No.72), known as the Construction Workplace
12 Misclassification Act, are amended to read:

13 Section 4. Improper classification of employees.

14 (a) Violation.--An employer, or officer or agent of an
15 employer, shall be in violation of this act and shall be subject
16 to the penalties, remedies and actions contained in this act if
17 the employer, officer or agent:

18 (1) fails to properly classify an individual as an
19 employee for purposes of the Workers' Compensation Act and
20 fails to provide the coverage required under the Workers'

1 Compensation Act; [or]

2 (2) fails to properly classify an individual as an
3 employee for purposes of the Unemployment Compensation Law
4 and fails to pay contributions, reimbursements or other
5 amounts required to be paid under the Unemployment
6 Compensation Law[.]; or

7 (3) is convicted of an offense under 18 Pa.C.S. § 4107
8 (relating to deceptive or fraudulent business practices)
9 reasonably related to a violation under subparagraph (1) or
10 (2).

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

14 (c) Order to show cause.--

15 (1) If the secretary receives information indicating
16 that any person has violated this act, the secretary may
17 investigate the matter and issue an order to show cause why
18 the person should not be found in violation of this act.

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

22 (3) If the person fails to file a timely and adequate
23 answer to the order to show cause, the secretary may,
24 following notice and hearing, do any of the following:

25 (i) petition a court of competent jurisdiction to
26 issue a stop-work order as provided in section 7; or

27 (ii) immediately assess penalties as provided in
28 section 6.

29 (d) Enforcement.--If, subsequent to issuing an order to show
30 cause under subsection (c), the secretary finds probable cause

1 that an employer has committed a criminal violation of this act,
2 the secretary shall refer the matter to the Office of Attorney
3 General for investigation or impose administrative penalties
4 under section 6.

5 (e) Acting in concert with other parties.--A party that does
6 not meet the definition of "employer" in section 2, but which
7 intentionally contracts with an employer knowing the employer
8 intends to misclassify employees in violation of this act, shall
9 be subject to the same penalties, remedies or other actions as
10 the employer found to be in violation of this act.

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

16 Section 5. Criminal penalties.

17 (a) Grading.--An employer, or officer or agent of an
18 employer, that intentionally violates section 4(a) (1) or (2)
19 commits:

20 (1) A misdemeanor of the [third] second degree for a
21 first offense.

22 (2) A misdemeanor of the [second] first degree for a
23 second or subsequent offense.

24 [(b) Summary offense.--An employer, or officer or agent of
25 an employer, that negligently fails to properly classify an
26 individual as an employee under section 4(a) commits a summary
27 offense and shall, upon conviction, be sentenced to pay a fine
28 of not more than \$1,000. Evidence of a prior conviction under
29 this subsection shall be admissible as evidence of intent under
30 subsection (a).]

1 (b.1). Debarment.--A person sentenced under subsection (a)
2 shall be prohibited from contracting with or in any manner doing
3 business with the Commonwealth for a period of five years.

4 (c) Concurrent jurisdiction.--

5 (1) The Attorney General shall have concurrent
6 prosecutorial jurisdiction with the district attorney of the
7 appropriate county for violations under this section and any
8 offense arising out of the activity prohibited by this
9 section.

10 (2) No person charged with a violation of this section
11 by the Attorney General shall have standing to challenge the
12 authority of the Attorney General to prosecute the case, and
13 if a challenge is made, the challenge shall be dismissed, and
14 no relief shall be available in the courts of this
15 Commonwealth to the person making the challenge.

16 Section 2. This act shall apply as follows:

17 (1) The amendment of section 5(a) and (b) of the act
18 shall apply to offenses committed on or after the effective
19 date of this section.

20 (2) The following provisions shall apply to sentences
21 imposed on or after the effective date of this section.

22 (i) The addition of section 4(a)(3) of the act.

23 (ii) The addition of section 5(b.1) of the act.

24 Section 3. This act shall take effect in 60 days.