

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES

LABOR & INDUSTRY COMMITTEE

PUBLIC HEARING ON HB 1170 AND HB 716  
VERIFICATION OF EMPLOYEE WORK AUTHORIZATION  
AND MISCLASSIFICATION TASK FORCE

STATE CAPITOL  
HARRISBURG, PENNSYLVANIA  
B-31 MAIN CAPITOL BUILDING

MONDAY, APRIL 29, 2019  
11:00 A.M.

BEFORE:

HONORABLE JIM COX, MAJORITY CHAIRMAN  
HONORABLE PATRICK HARKINS, MINORITY CHAIRMAN

MAJORITY MEMBERS PRESENT:

HONORABLE CRIS DUSH  
HONORABLE TORREN ECKER  
HONORABLE MINDY FEE  
HONORABLE RICH IRVIN  
HONORABLE DAWN KEEFER  
HONORABLE KATE KLUNK  
HONORABLE RYAN MACKENZIE  
HONORABLE DAVID MALONEY  
HONORABLE LORI MIZGORSKI  
HONORABLE ERIC NELSON  
HONORABLE MICHAEL PUSKARIC  
HONORABLE PAUL SCHEMEL  
HONORABLE JUSTIN WALSH

MINORITY MEMBERS PRESENT:

HONORABLE MORGAN CEPHAS  
HONORABLE MARIA DONATUCCI  
HONORABLE JEANNE MCNEILL

Pennsylvania House of Representatives  
Commonwealth of Pennsylvania

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HONORABLE GERALD MULLERY  
HONORABLE ED NEILSON  
HONORABLE PAM SNYDER

COMMITTEE STAFF PRESENT:

JOHN SCARPATO  
EXECUTIVE DIRECTOR  
SHANNON WALKER  
RESEARCH ANALYST  
JENNIFER DODGE  
LEGISLATIVE ASSISTANT

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SUBMITTED WRITTEN TESTIMONY

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## P R O C E E D I N G S

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MAJORITY CHAIRMAN COX: Good morning.

At this time, I'd like to begin by saying the Pledge of Allegiance, if you would rise and join me.

(The Pledge of Allegiance was recited.)

MAJORITY CHAIRMAN COX: First, I'd like to welcome everyone to this hearing of the House Labor & Industry Committee. I also need to remind everyone that the meeting is being recorded, so I'd ask all members and guests to please silence their cell phone and any other electronic devices.

We called this hearing today to discuss HBs 1170 and HB 716, sponsored by Representative Mackenzie and Representative Galloway, respectively. These bills are focused on the verification of work authorization for workers in the construction industry and forming a multi-agency task force to review the misclassifications of employees as independent contractors.

I have asked -- Representative Mackenzie is going to be making some opening remarks, and Representative Galloway -- Representative Galloway has already joined us up here. I was going to ask

1 him to join us up here, as well. He's a former  
2 member of the Committee and former chair.

3 So both of these gentlemen are going to  
4 join us as members, one officially, and one as kind  
5 of an honorary member for the day. So don't get  
6 carried away, Representative Galloway, there are no  
7 voting privileges today.

8 All right. So at this time, I'm going to  
9 ask Representative Mackenzie to begin by making a  
10 brief opening statement regarding his legislation.

11 REPRESENTATIVE MACKENZIE: Well, thank you,  
12 Mr. Chairman. I appreciate the opportunity to have  
13 the hearing on both HB 1170 and HB 716 today. I  
14 think they're both important issues. I support both  
15 pieces of legislation. I think they address some  
16 very serious issues that we face in our Commonwealth.

17 And specifically, I'll talk about HB 1170.  
18 This piece of legislation, I think, does a number of  
19 things. I think the issues that we face with  
20 unauthorized workers across the Commonwealth hurt all  
21 of those across the industry, all of the different  
22 stakeholders, whether it be employees, those that are  
23 directly being exploited and taken advantage of or  
24 those other employees that maybe they're competing  
25 against for those jobs. Unauthorized labor drives

1 down wages across the entire spectrum, and I think  
2 that's to a detriment to all of them.

3           Also, we've heard anecdotally, where those  
4 unauthorized employees are being exploited or taken  
5 advantage of if they're injured on the job, for  
6 instance. Then what happens to them and the medical  
7 care that they receive?

8           The other stakeholders that are adversely  
9 affected are other businesses that you may be  
10 competing against. In a job situation, if you're  
11 using this type of labor, again, the lower wages  
12 correspond to a lower bid price that you can bid.  
13 And then again, that's not fair for the legitimate  
14 businesses that are doing the right things for their  
15 workers that are competing for those jobs, as well.

16           Finally, the final stakeholder that I'd  
17 like to address that is adversely impacted by the use  
18 of non authorized employees is the government. We  
19 have lots of social safety nets, whether it be  
20 unemployment comp, workers' comp, et cetera, that are  
21 built on a foundation of everybody participating and  
22 everybody doing so fairly. And when that is not  
23 being adhered to, I think that directly impacts the  
24 government in a negative way, as well.

25           So again, hopefully, this legislation will

1 address all of the different stakeholders and improve  
2 the work conditions for workers across the  
3 Commonwealth. So with that, Mr. Chairman, I will  
4 conclude, but thank you again.

5 MAJORITY CHAIRMAN COX: Thank you,  
6 Representative Mackenzie.

7 At this time, I'm going to ask  
8 Representative Galloway to briefly describe his  
9 legislation, as well.

10 MR. GALLOWAY: Mr. Chairman, if I could,  
11 could I speak on both pieces of legislation, just  
12 briefly, please?

13 MAJORITY CHAIRMAN COX: That will be fine.

14 MR. GALLOWAY: First of all, I'd like to  
15 applaud Representative Mackenzie for bringing this  
16 up. Thirteen years ago, when I was first elected to  
17 the House of Representatives, I introduced two pieces  
18 of legislation. They both dealt with E-Verify. One  
19 was in the private construction industry; one was in  
20 the public construction industry.

21 Both bills passed six years later in the  
22 Pennsylvania House of Representatives with strong  
23 bipartisan support, over 194 votes. One of them made  
24 it over to the Senate, was picked up by Senator Kim  
25 Ward and then eventually passed a few weeks later.

1 That had to deal with Public Works.

2 E-Verify is the law of the land in  
3 Pennsylvania. For all public works construction,  
4 whether it's state-related, county-related,  
5 township-related, school district-related,  
6 authority-related, E-Verify is currently the law of  
7 the land and it has worked spectacularly well. The  
8 problems that were brought up that we might encounter  
9 six years ago, we never did.

10 The problems of -- problems with the  
11 database were never realized. E-Verify is that rare  
12 government program that actually works. It is  
13 extremely effective. And again, this bill that  
14 Representative Mackenzie is bringing up is the second  
15 part of that bill, which represents private  
16 construction. And I think it's important to note at  
17 the end that this was -- E-Verify was something that  
18 was started under President Bill Clinton.

19 It was strengthened under President  
20 George W. Bush. It was, for eight years, the stated  
21 immigration policy of President Barack Obama. It is  
22 that rare occurrence in an issue that is one of the  
23 most divisive of our time, it is common ground. It  
24 is a place where both Democrats and Republican, union  
25 and nonunion come together and say, that makes sense.



1 It works.

2 At the time, it was said we needed an  
3 incremental approach, and that's what we did. We  
4 simply put it in the construction industry for public  
5 works. This is another incremental approach. It  
6 brings it in the private construction industry, and I  
7 think it's time we can look at an individual word on  
8 an individual paragraph on an individual subsection  
9 in the back of this bill and say, I don't like it,  
10 and therefore toss the whole thing out, but that's  
11 not what this is about.

12 And with that, I'd like to bring up my  
13 bill, which is misclassification. Now, these bills  
14 are similar. They deal with similar problems, two  
15 different ways, two different issues, two different  
16 problems, but they are very similar. My bill deals  
17 with something called misclassification. Again,  
18 common ground. Misclassification is currently  
19 illegal in Pennsylvania. We passed a bill -- I think  
20 it was seven years ago.

21 Now, when I became Chairman of Labor four  
22 years ago, the Democratic Chairman of Labor, the  
23 executive director Hillary Salari and I started  
24 working on a package of misclassification bills. It  
25 was brought to us by representatives of the

1 carpenters' union. And we started studying the issue  
2 and we started looking at the problems of  
3 misclassification.

4           Misclassification comes down to enforcement  
5 and penalties, the cause, the effect of  
6 misclassification is revenue. It could be fairness.  
7 You could look at this destruction of wages, the  
8 destruction of organized labor, the destruction of --  
9 the problem with wages, in general, whether it's  
10 organized labor or non organized labor, but when  
11 we're talking about revenue, we're not talking about  
12 a small number here.

13           When we patterned our misclassification  
14 bills after New York, for example, which just  
15 implemented their misclassification bills, last year,  
16 New York realized almost \$300 million in lost  
17 revenue, \$300 million in unreported revenue. We have  
18 no idea of how much unreported revenue is happening  
19 in Pennsylvania. We can't put an exact number on it,  
20 but it is not an insignificant number.

21           In the last five years, I have spent a  
22 tremendous amount of time traveling from one end of  
23 this State to the other. There isn't a labor hall in  
24 this State that I haven't been to or talked to. I  
25 have talked to union, nonunion, builders, workers,

1 contractors all over this State. I've asked them one  
2 question, what is your biggest problem, what is the  
3 biggest problem facing the construction industry in  
4 the State?

5 Every single one of them said the same  
6 thing over and over and over, union, nonunion; it  
7 didn't matter. Misclassification has exploded in  
8 Pennsylvania. It has become a problem that is far  
9 too big for one department to take care of so what  
10 we're going to look at is what other States are  
11 doing. We're going to look at a comprehensive  
12 approach of spreading the responsibility among  
13 multiple layers of government.

14 I want to thank the Chairman for bringing  
15 this bill up, and also the E-Verify bill, and thank  
16 this Committee for allowing me to say a few words.

17 MAJORITY CHAIRMAN COX: Thank you,  
18 Representative Galloway.

19 Our first witness today is Jennifer  
20 Berrier, Deputy Secretary for Safety and Labor  
21 Management Relations with the Department of Labor &  
22 Industry. This department would head up the task  
23 force created under HB 716. We also invited the  
24 Office of the Attorney General to attend and testify,  
25 but they've indicated that they're not yet prepared

1 to comment or offer testimony at this time.

2 So we're looking forward to working with  
3 not only the Department of Labor & Industry, but also  
4 the Office of the Attorney General and other  
5 interested parties and agencies, as well.

6 We have allocated 15 minutes for this  
7 particular time slot. And so I'm going to start by  
8 asking Deputy Secretary Berrier to briefly address  
9 the Committee and answer a few questions following  
10 that. This will allow the Secretary to get on the  
11 road to another engagement that she has down the  
12 road.

13 Before we begin, I'd like to remind you to  
14 limit your remarks, your opening remarks, to five  
15 minutes. And then Shannon Walker, to my right, will  
16 signal you with a very annoying sound, as you've just  
17 heard, when you have about 30 seconds remaining.

18 Deputy Secretary Berrier.

19 DEPUTY SECRETARY BERRIER: Okay. Thank  
20 you. Good afternoon, Chairman Cox, Chairman Harkins,  
21 Representative Galloway and members of the House  
22 Labor & Industry Committee. I am grateful for the  
23 opportunity to participate in this hearing to discuss  
24 House Bill 716.

25 The Department of Labor & Industry is on

1 the forefront of combatting the harmful practice of  
2 employee misclassification and appreciates the  
3 General Assembly's initiatives to provide additional  
4 resources and tools. As you may know,  
5 misclassification occurs when employers wrongfully  
6 classify employees as independent contractors for  
7 financial gain. By purposefully misclassifying their  
8 employees, businesses not only dodge their  
9 responsibility to the federal, State, and local  
10 employment taxes, but also avoid providing fair  
11 wages, health benefits, and retirement benefits to  
12 those employees.

13 As a result of misclassification, the  
14 commonwealth and local municipalities lose out on  
15 much-needed revenue and hardworking employees, and  
16 their families may be robbed of adequate income,  
17 benefits, and the assurance that they can access  
18 safety net programs, should they become injured on  
19 the job or experience a layoff. Unlawful employers  
20 who misclassify employees as independent contractors  
21 have an unfair advantage over law-abiding employers.  
22 These employers are not paying mandatory payroll  
23 taxes, such as Social Security, Medicare, and  
24 unemployment insurance.

25 They are also not paying workers'

1 compensation premiums, health insurance, or overtime  
2 pay. With this unfair advantage, law-abiding  
3 employers are more easily underbid by dishonest firms  
4 who thrive in the Commonwealth. It is crucial for us  
5 to protect and reward employers who follow the rules  
6 and pay their fair share.

7 L&I is affected by employee  
8 misclassification in three distinct practice areas:  
9 unemployment compensation, workers' compensation, and  
10 the Construction Workplace Misclassification Act,  
11 otherwise known as Act 72. For Unemployment  
12 Compensation, misclassification typically occurs  
13 through two avenues or is discovered through two  
14 avenues. We first find out about it when a worker  
15 files for unemployment insurance benefits with L&I  
16 when a working relationship is terminated. The  
17 second is when our office of unemployment  
18 compensation tax services performs a routine audit of  
19 an employer.

20 In both instances, when an employer is  
21 found to have misclassified employees as independent  
22 contractors, the employer is required to pay the  
23 retroactive contribution into the fund, along with  
24 interest and penalties. Nonpayment, while it could  
25 result in a lien against the employer's personal

1 property, undoubtedly impacts the benefits trust  
2 fund.

3           The Center for Workforce Information and  
4 Analysis within L&I reviewed a variety of sources in  
5 an attempt to understand the extent of employee  
6 misclassification in Pennsylvania. Utilizing federal  
7 and nationwide data, it estimated that 15 percent of  
8 Pennsylvania employers may misclassify their  
9 employees as independent contractors. Based on the  
10 number of workers that are reported to the  
11 unemployment compensation, this may equate to 275,000  
12 workers.

13           Moreover, under this scenario, the amount  
14 of tax revenue lost under the unemployment  
15 compensation system alone may be \$103 million  
16 annually. For workers' compensation,  
17 misclassification is discovered when a worker is  
18 injured while performing tasks for a business. In  
19 that instance, the worker files a claim with the  
20 Bureau of Workers' Compensation and the  
21 misclassification is discovered during the hearing  
22 process. A judge from the Workers' compensation  
23 Office of Adjudication will issue a determination  
24 finding that the worker is an employee entitled to  
25 compensation for the injury.

1           Workers in this situation are often forced  
2 to rely on the Commonwealth's Uninsured Employers  
3 Guaranty Fund, a fund that as you all know is coping  
4 with significant insolvency. According to  
5 information that L&I has gathered, the top industries  
6 misclassifying employees as independent contractors  
7 are: construction, trucking, domestic services, food  
8 services, and administrative services. In  
9 2010, this General Assembly recognized the  
10 significant problem of misclassification in the  
11 construction industry and attempted to curb this  
12 harmful practice by passing Act 72.

13           This act sought to prohibit  
14 misclassification by establishing specific criteria  
15 for employers to use, you know, that narrowly defines  
16 which workers could be defined as independent  
17 contractors.

18           Do I still have time?

19           REPRESENTATIVE COX: Thirty seconds.

20           DEPUTY SECRETARY BERRIER: Okay. So L&I, I  
21 should note that the -- you know, within the agency  
22 itself, within L&I, the workers' compensation system,  
23 the UC system and also the Bureau of Labor Law  
24 Compliance, which enforces Act 72, we have formed our  
25 own intra-agency task force, but we also formed a



1 task force with the Pittsburgh City Council and the  
2 Pittsburgh building trades last year.

3 So we do recognize the benefit of these  
4 task forces and we look forward to working with the  
5 General Assembly in attacking this problem. I am  
6 happy to answer any questions.

7 MAJORITY CHAIRMAN COX: All right. Thank  
8 you. I know it can be challenging sometimes --

9 DEPUTY SECRETARY BERRIER: To get it within  
10 the time frame, that's right.

11 MAJORITY CHAIRMAN COX: -- to put  
12 everything in. We like to make sure we keep  
13 everything on time so the members can make their  
14 other meetings and so forth, as scheduled.

15 DEPUTY SECRETARY BERRIER: Sure.

16 MAJORITY CHAIRMAN COX: So I appreciate  
17 your testimony. I'm going to jump right in and ask  
18 if there are any members with any questions.

19 Representative Mackenzie.

20 REPRESENTATIVE MACKENZIE: Thank you,  
21 Mr. Chairman. And thank you to the Deputy Secretary  
22 for joining us.

23 Just two quick questions. So in general,  
24 what do you think could be improved upon Act 72 that  
25 we are currently doing, and that can be outside the

1 bounds of HB 1117. But are there things that  
2 internally as a department you've said, hey, we could  
3 improve upon Act 72?

4 DEPUTY SECRETARY BERRIER: Sure. We've  
5 actually discussed this at great length. And I think  
6 some of the proposed remedies we've come up with is  
7 potentially general contractor liability for  
8 subcontractor work, an increase in the penalties and  
9 fines that are listed under Act 72. We've also  
10 thrown around the idea of debarring contractors from  
11 performing work on public projects for violations of  
12 Act 72, as well.

13 And of course, you know, the Department  
14 would like to see, I think, greater enforcement  
15 authority, so that as of right now, there's no  
16 recordkeeping provisions, like the Department  
17 actually has no authority under Act 72 to request  
18 records from a contractor. So that's something that  
19 we would like to see strengthened.

20 REPRESENTATIVE MACKENZIE: Okay. And  
21 Mr. Chairman, for a second question -- specifically  
22 to HB 716, it would create a task force. You  
23 mentioned that you have some task forces going?

24 DEPUTY SECRETARY BERRIER: Yes.

25 REPRESENTATIVE MACKENZIE: So can you tell

1 me your experience with those task forces and maybe  
2 how they differ from what's in the legislation.

3 DEPUTY SECRETARY BERRIER: So as far as  
4 what we have with the Department, it's more of an  
5 information sharing and we're getting into  
6 enforcement collaboration. So you know, before we  
7 were all kind of located in our little silos and you  
8 know, passing information among the different  
9 practice areas wasn't happening as easily, but we're  
10 now -- we now have monthly meetings and we are  
11 engaging in better information sharing, and also,  
12 kind of narrowing down those cases where we could  
13 collaborate together in utilizing all of our  
14 resources and forces and trying to get the best bang  
15 for our buck, essentially.

16 REPRESENTATIVE MACKENZIE: Okay. Great.  
17 Thank you, Mr. Chairman.  
18 Thank you.

19 MAJORITY CHAIRMAN COX: Thank you,  
20 Representative Mackenzie.

21 Representative Galloway.

22 MR. GALLOWAY: Thank you, Mr. Chairman.  
23 Real brief.

24 I just -- I want to thank you for being  
25 here and thank you for bringing up the two problems.

1 Representative Mackenzie asked the right question,  
2 which is what can be done and what are the problems?  
3 And they have to do with enforcement and penalties.  
4 And I also want to thank -- you know,  
5 misclassification, it's not just this bill. It was a  
6 package of four bills. I want to thank  
7 Representative Snyder, Representative Mullery, who  
8 also have bills inside this package that address both  
9 of those issues, penalties and enforcement. And I  
10 want to thank you for bringing those two up.

11 Thank you.

12 DEPUTY SECRETARY BERRIER: Thank you.

13 MAJORITY CHAIRMAN COX: Representative  
14 Nelson.

15 REPRESENTATIVE NELSON: Thank you,  
16 Mr. Chairman.

17 And thank you for your testimony today. It  
18 was interesting. Personal experience in this area on  
19 a rooftop in Pittsburgh on a safety inspection where  
20 there were massive fall protection violations. It  
21 was explained to me that we didn't -- that, you know,  
22 OSHA didn't apply on this job site because everyone  
23 was independent contractors and there was an existing  
24 exemption.

25 So I'm on this roof arguing with the guys

1 as they're throwing the tin down. And I get on the  
2 phone and I call OSHA and say, hey, this is the  
3 structure of the job site, everybody is an  
4 independent contractor and they're saying that no  
5 safety standards apply because each person is  
6 individually exempt. The OSHA inspector said, yeah,  
7 you're right.

8           You know, so this, you touched on the  
9 workers' comp consequence. If one of those  
10 individuals falls and is crippled, this circles all  
11 the way back to the days when workers would be dumped  
12 on their porch and they would get the next oldest to  
13 their house. And it also affects those same  
14 individuals on unemployment, as well, because,  
15 particularly in the construction trade, these people  
16 may not have a choice, but to work under those  
17 conditions.

18           So I applaud the efforts of both  
19 Representatives and I thank you for your testimony.

20           DEPUTY SECRETARY BERRIER: Thank you.

21           MAJORITY CHAIRMAN COX: And Representative  
22 -- actually Chairman Harkins.

23           MINORITY CHAIRMAN HARKINS: Thank you for  
24 your testimony. Just a question on how much has the  
25 Department collected in Act 72 violations?

1           DEPUTY SECRETARY BERRIER: Yes. So this  
2 year actually was a banner record collection year for  
3 us. We collected over \$550,000 in fines under  
4 Act 72. And that's against 200 employers, 200  
5 contractors.

6           MAJORITY CHAIRMAN COX: All right. Are  
7 there any other questions?

8           Representative Mackenzie.

9           REPRESENTATIVE MACKENZIE: Just a follow-up  
10 to that, Mr. Chairman.

11           Where does that funding -- those fines and  
12 fees that are collected, where do they go or how are  
13 they accessed by the Department then?

14           DEPUTY SECRETARY BERRIER: Sure. They're  
15 divided to go back to the Unemployment Compensation  
16 Fund and the Workers' Compensation Fund, so --

17           REPRESENTATIVE MACKENZIE: Great. Thank  
18 you.

19           DEPUTY SECRETARY BERRIER: Thanks.

20           MAJORITY CHAIRMAN COX: Any other questions  
21 from the members?

22           Well, Secretary Berrier, if you have  
23 additional comments, we do have a couple minutes  
24 remaining in the window that we had allotted. I  
25 don't want to put you on the spot, but if you have

1 additional things you'd like to highlight before you  
2 go, we'd appreciate that.

3 DEPUTY SECRETARY BERRIER: Actually, I just  
4 want to thank this Committee for recognizing this  
5 problem and inviting us to testify. It's a very  
6 important issue and we need, you know, we need all  
7 the assistance we can get. So thank you for hearing  
8 us today.

9 MAJORITY CHAIRMAN COX: All right. Well,  
10 thank you and safe travels.

11 DEPUTY SECRETARY BERRIER: Thank you.

12 MAJORITY CHAIRMAN COX: Now, we're going to  
13 hear from our stakeholder panels. We've invited two  
14 representatives of trade unions and two  
15 representatives of the construction industry to join  
16 us today. We would like them to share their thoughts  
17 on the legislation that's before us.

18 So with us today we have Thomas Breslin,  
19 who is the regional area manager with KLM Regional  
20 Council of Carpenters. We have Michael Ford, Area  
21 Marketing Representative, Sheet Metal Workers Local  
22 Union #19; Jon O'Brien, General Contractors  
23 Association of Pennsylvania; and Hank Butler,  
24 Executive Director, PA Council of General  
25 Contractors.

1           Okay. Again, I'd like to remind everyone  
2 to try to limit your opening remarks to five minutes.

3           Shannon Walker, I won't ask her to use her  
4 phone to make the noise again, but she will signal  
5 you when you have 30 seconds remaining in your five  
6 allotted minutes.

7           Again, I'd like to thank all of you for  
8 being here, taking the time out of your day to join  
9 us, and we'll start with Mr. Breslin.

10           MR. BRESLIN: Representative Cox,  
11 Representative Harkins, members of the Labor &  
12 Industry Committee, my name is Tom Breslin and I come  
13 before you today as representative of the Keystone  
14 Mountain Lakes Regional Council of Carpenters. On  
15 behalf of our 20,000 plus members in Pennsylvania, I  
16 am pleased to be here today and appreciate the  
17 opportunity to offer input on two issues of vital  
18 concern to our membership.

19           First, for the record, our union is the  
20 largest construction trade union in Pennsylvania  
21 representing both skilled tradespersons and  
22 apprentices. We applaud the Committee for elevating  
23 E-Verify and misclassification for public discussion  
24 and furthermore applaud the Committee for considering  
25 these two issues simultaneously for there is great



1 Synergy between the two.

2 We support the efforts being made to  
3 advance both E-Verify and misclassification  
4 legislation and look forward to working with the  
5 sponsors Representative MacKenzie and Representative  
6 Galloway and the entire Committee in reaching a final  
7 product.

8 The presence of fraud in the construction  
9 industry is a major issue. Estimates suggest that  
10 State and local budgets are being shortchanged  
11 hundreds of millions of dollars in tax revenues that  
12 are not being collected. Allow me to be clear, this  
13 is not an issue between contractors who are  
14 associated with unions and those who are not. This  
15 is an issue between honest employers who pay their  
16 taxes and meet legal obligations and those who do  
17 not, thus creating unfair competitive advantages for  
18 those who choose to cheat the system.

19 In addition, many of those incorrectly  
20 being classified as independent contractors are not  
21 legally authorized to work in the United States.  
22 The carpenters union casts no judgement towards these  
23 individuals and recognize they are very much being  
24 exploited by unscrupulous contractors and labor  
25 brokers, but the fact remains that people that are

1 not legally eligible to work in the United States are  
2 taking away work opportunities from those who are  
3 Eligible.

4           Expansion of the Federal and state E-Verify  
5 program would help in that it would hold all  
6 contractors in the construction field accountable for  
7 ensuring that those they employ are entitled to work  
8 in our great country. But like all well-meaning  
9 efforts, the results are only as good as the  
10 oversight and enforcement that takes place. Any  
11 final product must provide adequate resources for  
12 enforcement and penalties sufficient enough to serve  
13 as a deterrent to fraudulent and illegal action.

14           We are equally supportive of advancing  
15 legislation to create a misclassification task force.  
16 It is our view that such a task force would be more  
17 appropriately entitled a "Tax Fraud Task Force," for  
18 the existence -- some are confused over what  
19 Misclassification really is. Some may believe that  
20 misclassification is about paying an individual as a  
21 laborer, hypothetically, when they, in fact, are  
22 carpenters or electricians. Misclassification is  
23 about calling someone an independent contractor when,  
24 in fact, those individuals do not in any way meet the  
25 definition.

1           This practice allows contractors to avoid  
2     paying required Federal and State taxes, as well as  
3     paying into the Unemployment Compensation Fund and  
4     providing workers' comp coverage and Liability  
5     insurance could all add up to a 40 percent advantage  
6     over honest contractors. By skimping out on these  
7     obligations, contractors create an uncompetitive  
8     business environment that impacts all honest  
9     employers and their workers. This practice can make  
10    an honest contractor into a dishonest contractor,  
11    just to be able to compete.

12           Ladies and gentlemen, that is called fraud;  
13    Nothing more, nothing less. If contractors and their  
14    employees paid their fair share of taxes,  
15    Pennsylvania and the Federal Government could have  
16    more revenue to take care of our veterans, rebuild  
17    our infrastructures, schools, hire more police,  
18    firefighters or teachers and even pay down the State  
19    debt that this commonwealth is in dire need of.

20           Approximately a decade ago, a law, Act 72,  
21    was enacted in Pennsylvania that defined independent  
22    contractors. To many, including my union,  
23    enforcement of that law and the penalties attached  
24    have not proven effective in combating the practice.  
25    Establishing the Misclassification Task Force will

1 bring focus and coordination of resources to  
2 combating this illegal activity not seen here before.

3 Thank you for the opportunity to speak  
4 before the Committee. We look forward to working  
5 with you as you move forward.

6 Tom Breslin, Regional Manager of the  
7 Keystone Mountain Lakes Regional Council of  
8 Carpenters.

9 MAJORITY CHAIRMAN COX: Thank you,  
10 Mr. Breslin.

11 Next, we'll hear from Mr. Ford.

12 MR. FORD: Thank you, Chairman Cox and  
13 Chairman Harkins. My name is Michael Ford, and I am  
14 a representative from the Sheet Metals Worker Union  
15 Local #19. I'm also here on behalf of the 125,000  
16 construction -- well, highly trained and active  
17 journey persons we have through the Pennsylvania  
18 State building and construction trades.

19 These two bills are inner connected in a  
20 lot of ways. What it does is it allows the  
21 exploitation and theft of wages from unscrupulous  
22 employers against people that are really being taken  
23 advantage of. My brothers and sisters in the labor  
24 movement go on jobs every day and we run into this  
25 where everyone is a subcontractor to themselves,

1 which is untrue.

2 We're really happy to be here, just to have  
3 the opportunity to speak on behalf of this. And I'm  
4 excited this is something that everyone is going  
5 after because it's a huge -- it is a huge issue for  
6 everyone, and I'm just happy to be part of it.

7 And I apologize ahead of time, I just kind  
8 of got thrown into this Friday afternoon. I would  
9 have been a little more prepared, but anyway, we're  
10 here 100 percent. We have the backing of all of our  
11 members to do the right thing, and we're here to  
12 fight for the right thing.

13 MAJORITY CHAIRMAN COX: And I do want I  
14 adopt to thank you again for stepping in at late  
15 notice. I know there was a death in the family of  
16 the individual who was originally scheduled to  
17 testify.

18 MR. FORD: Correct.

19 MAJORITY CHAIRMAN COX: So we appreciate  
20 you filling those shoes and stepping up to the place.

21 MR. FORD: In all fairness, he probably  
22 would have been way cooler than me, but it's okay.  
23 At least I'm here.

24 MAJORITY CHAIRMAN COX: We'll have to take  
25 your word for that one at this point.

1 MR. FORD: Okay. Thanks.

2 MAJORITY CHAIRMAN COX: All right. At this  
3 point, we'll hear from Mr. O'Brien.

4 MR. O'BRIEN: Hello. Thank you,  
5 Chairman Cox and Chairman Harkins for having me  
6 today. And thank you to the members of the  
7 Committee, the Labor & Industry Committee. My name  
8 is Jon O'Brien. Today I'm here on behalf of GCAP,  
9 General Contractors Association of Pennsylvania.  
10 GCAP is a collection of construction associations  
11 based throughout Pennsylvania.

12 Out in Pittsburgh, we have Master Builders  
13 Association. In central PA, we have Keystone  
14 Contractors Association. The eastern part, we have  
15 GBCA, General Building Contractors Association. And  
16 within the next week or so, we're adding up in  
17 Scranton, NECA, Northeast Contractor Association.

18 So you add it up, and collectively, I'm  
19 sitting here representing over 700 management  
20 companies. And you know, these are 700 companies  
21 that follow the rules, play by the rules that you  
22 guys give us, pay our taxes, hire the right people,  
23 and these are 700 companies that are losing market  
24 share for, you know, tax fraud companies, companies  
25 that are cheating the system, skirting the tax system

1 and these are honest hardworking Pennsylvanians that  
2 are losing out on jobs.

3 Much of my testimony that you see kind of  
4 mirrors Tom Breslin's. Tom and the KML carpenters  
5 have really taken a leadership role in this. And you  
6 know, at the time, probably 10 years or so ago when  
7 it was first introduced to me, I thought it was just  
8 kind of a minor issue. I didn't realize, until  
9 working closer with KML, like how serious this is.  
10 You know, there's facts and figures that are out  
11 there, like 15 percent of the market share in  
12 southwestern PA is losing out on carpentry work.

13 If you add that up, that's thousands of  
14 jobs, you know, that are going illegally through the  
15 system. And these ghost workers are picking up work  
16 that our members are not participating in. So I  
17 don't want to take up too much time of the  
18 Committee's, I just want to let you know management  
19 is right on side with our Labor friends. This is a  
20 serious issue. We're here to help.

21 Thank you, Representative Galloway for your  
22 legislation, and Representative Mackenzie for yours.  
23 E-Verify is a great system. It's easy. For anyone  
24 to say they have issues with it, it's really head  
25 -scratching. It's just a simple process. A lot of

1 our contractors have to do it for the public sector,  
2 and because it's so easy, they do it for all new  
3 hires. So whether they work in the public or not,  
4 it's a no-brainer.

5 And as far as the task force, that's a  
6 great idea. Under Act 72, there were a lot of calls,  
7 a lot of issues, a lot of attention drawn to the  
8 issue, but there doesn't seem to be a lot of action.  
9 So I think that maybe it's time to get back to the  
10 drawing board and get the task force up and running  
11 and decide what else can we do on this issue. And on  
12 behalf of GCAP, I'm willing to work with the  
13 Committee and help push this legislation through.

14 Thanks for having me.

15 MAJORITY CHAIRMAN COX: All right. Thank  
16 you.

17 And last, we'll hear from Mr. Butler.

18 MR. BUTLER: Okay. Today with this hat on,  
19 my name is Hank Butler. I am the executive director  
20 of the Pennsylvania Council of General Contractors.  
21 The Pennsylvania Council of General Contractors is an  
22 organization developed of large general contractors,  
23 separate from his organization, but really made up of  
24 some of the larger ones around the State.

25 I will read through the testimony that you



1 have. We're starting the clock, right? Okay.

2 Thanks. Okay.

3 UNIDENTIFIED SPEAKER: Time.

4 MR. BUTLER: Believe me, I --

5 UNIDENTIFIED SPEAKER: Sorry.

6 MR. BUTLER: No problem. I know where  
7 that's coming from. I do talk fast, so please follow  
8 along.

9 Thank you, Chairman Cox, Chairman Harkins  
10 and members of the Pennsylvania House of  
11 Representatives Labor & Industry Committee for the  
12 opportunity to speak with you today regarding HB 1170  
13 and 716. The Pennsylvania Council of General  
14 Contractors believes in the principles of fair,  
15 efficient, and competitive construction, bidding,  
16 awarding, and building. To accurately convey our  
17 thoughts on these two bills, I wish to look at each  
18 one separately.

19 E-Verify, HB 1170; PennCGC would like to  
20 thank Representative Mackenzie for utilizing Act 127  
21 of 2012, using E-Verify for public works projects as  
22 the basis for this legislation. Act 127 of 2012 was  
23 negotiated and agreed to through the entire  
24 stakeholder process. As the PennCGC worked through  
25 Act 127 of 2012, we had two main objectives.

1           Number one was to ensure that General  
2 Contractors are not forced to be homeland security  
3 experts in their day-to-day operation, and to ensure  
4 that E-Verify efforts cannot be used for political  
5 gain while hindering the law-abiding general  
6 contractors.

7           Act 127 of 2012 accomplished these efforts  
8 by having strong good faith language and moving the  
9 burden of proof for intentional violations of the  
10 construction companies to the courts. As we reviewed  
11 HB 1170, we had several questions that just came up.  
12 Number one, we believe that HB 1170 unfairly targets  
13 construction companies who have their own employees.  
14 If this legislation is designed to address the entire  
15 construction community, then it should also include  
16 professional employment agencies and unions who  
17 allocate workers to construction sites.

18           Number two, does HB 1170 enable the  
19 contracting agency to terminate a contract of a  
20 sub-contractor in violation of E-Verify on work  
21 sites?

22           Number three, HB 1170 is not clear as to  
23 the liability regarding a general contractor who  
24 hires a subcontractor in violation of E-Verification,  
25 hiring undocumented workers. Sorry.

1           A general contractor who hires a  
2 subcontractor in violation of HB 1170 should not be  
3 held responsible. Lastly, HB 1170 has penalties for  
4 first-time violators of the E-Verify System. Since  
5 most, if not all construction companies, employment  
6 agencies and unions are not Homeland security  
7 experts, the first offense should be a warning and a  
8 learning experience to ensure this action does not  
9 happen again. The second offense should be a  
10 disciplinary action.

11           The Pennsylvania Council of General  
12 Contractors does not support the use of undocumented  
13 Workers to win work in our State, by any -- but any  
14 legislation should be written to not hinder those  
15 companies, employment agencies or unions who follow  
16 the laws of our State and nation. House Bill 1170 is  
17 a strong start towards creating a statewide  
18 E-Verification system, but several issues still need  
19 to be addressed so it is once again a successful  
20 stakeholder compromise as was in Act 127 of 2012  
21 focusing on the public sector. We would like to  
22 continue working with Representative Mackenzie and  
23 the Committee to create a strong stakeholder  
24 supportive effort.

25           Moving onto misclassification. It seems

1 that HB 716 -- I'm good with time? We're good with  
2 time. Okay.

3 It seems that House Bill 716 is a study to  
4 assess the Act 72 of 2010 addressing the independent  
5 contractor issue in Pennsylvania. Once again, the  
6 Pennsylvania Council of General Contractors does not  
7 support the use of independent contractors or  
8 misclassifying workers to win work on construction  
9 projects, but any legislation should be written to  
10 not hinder those companies who follow the laws of our  
11 state and nation.

12 As the PennCGC reviewed House Bill 716, we  
13 just had several questions. One, is this legislation  
14 focusing on the independent contractor issue or the  
15 misclassification of worker issue? These are  
16 different issues, and the definition has to be  
17 clearly defined.

18 Does this legislation focus on private work  
19 or does it also include public work, which  
20 incorporates prevailing wage law?

21 Number three, why does this legislation  
22 create a task force of one elected official and six  
23 appointed officials: Attorney General, and the  
24 Secretaries for DCED, DEP, General Services, Budget,  
25 Labor & Industry, and Revenue?

1           Number one, why is DEP included, but number  
2 two, why are there no experts in the construction  
3 industry: General contractors, specialty contractors,  
4 unions, individual employees to be included in this  
5 task force for their insight and expertise?

6           Lastly, as one reads the March 1st  
7 Construction Workplace Misclassification Act Report,  
8 there seems to be a predominant number of small  
9 contractors: restoration, home builders, drywallers,  
10 etc. Should this legislation and the subsequent  
11 discussions of the task force hinder all contractors,  
12 some of whom work within the laws of our State and  
13 nation?

14           The PennCGC does not support using  
15 independent contractors or misclassifying workers to  
16 win work, but at the same time we need to protect the  
17 contractors who multi-task on their respective work  
18 sites. Contractors and employees who choose not to  
19 be signatory to a collective bargaining agreement are  
20 sometimes penalized because of their multitasking  
21 abilities to work on construction sites. In  
22 collective bargaining work, the work rules between  
23 the different trades are clearly defined between  
24 themselves. The workers only work on their  
25 Regulated tasks.

1           For contractors and employees who are not  
2 subjected to these regulated work rules, the  
3 interpretation becomes unclear, especially with the  
4 enforcement. For example, do you pay an electrician  
5 an electrician's rate to move wiring on a  
6 construction site, or pay a laborers rate?

7           When moving roofing shingles, do you pay a  
8 roofer's or a laborer's rate? On a private project,  
9 not prevailing wage, it does not work attempting to  
10 fit union work rules into an organization that  
11 Does need to require such restrictive guidelines.  
12 Any effort of this task force would need to respect  
13 the rules set forth by each respective entity, those  
14 who are signatory and not signatory to a collective  
15 bargaining unit.

16           As stated before, the Pennsylvania Council  
17 of General Contractors does not support the use of  
18 Independent contractors or misclassifying workers to  
19 win work on construction projects, but any  
20 legislation should be written to not hinder those  
21 companies who follow our laws. With that -- really?  
22 Really? Okay. I even talked slow. I know. Gosh.

23           With that, it is important to have an  
24 Act 72 of 2010 task force, defining either an  
25 independent contractor or misclassification of

1 workers to include stakeholders and experts in the  
2 construction community to help the task force  
3 politicians and appointed officials understand and  
4 comprehend the entire construction climate before  
5 them.

6           Moving forward, I wish to work with  
7 Representative Galloway and members of the Committee  
8 to help move this in a strong direction. That's -- I  
9 hit it? Okay.

10           MAJORITY CHAIRMAN COX: Fantastic. You can  
11 relax now.

12           All right. I, again, wish to thank all of  
13 you for your testimony. At this time, we'll go ahead  
14 and start with questions from the members. We're  
15 going to start with Representative Neilson.

16           REPRESENTATIVE NEILSON: Relax, it's over.

17           Yeah, thank you gentlemen for your  
18 testimony. And I want to be clear on the record,  
19 Mr. Chairman, that this is not a union or non union  
20 bill. This is to protect the workers of  
21 Pennsylvania. As an electrician by trade, and in my  
22 time at the Department of Labor & Industry, firsthand  
23 we've seen this.

24           When I go into work, I'm an electrician,  
25 whether I move a spool of wire, whether I pull a

1 wire, every aspect of that job, I'm not a laborer for  
2 a day -- an hour of that day. I'm an electrician for  
3 the entire day. And every job duty -- every aspect  
4 of that job is as an electrician.

5 I just thought it would be clear to put  
6 that on the record to make certain because what we  
7 found when I was with the Department in 2003 to 2007  
8 was people were coming into work, and they were  
9 electrician for an hour. Next, they were a plumber.  
10 Next, they were a sheet metal worker. Next, they  
11 were a laborer. Next, they were a carpenter.

12 They would split these days up and say,  
13 hey, look we're going to do this way. We don't have  
14 to follow the law, per se. So today as a co-sponsor  
15 to both of these pieces, I just wanted to go on the  
16 record saying, you know, an electrician is an  
17 electrician; a laborer is a laborer; a carpenter is a  
18 carpenter; a sheet metal worker is a sheet metal  
19 worker.

20 I'm glad the contractors support it.

21 Quick question, Jon. How many contractors  
22 do you represent across the Commonwealth and  
23 employees numbers?

24 MR. O'BRIEN: Over 700 construction  
25 companies.



1           REPRESENTATIVE NEILSON: Seven hundred  
2 companies. Do you know how many employees about?

3           MR. O'BRIEN: Trying to figure that out.  
4 That's a tough one, so --

5           REPRESENTATIVE NEILSON: Okay. Hank, same  
6 thing, please.

7           MR. BUTLER: We represent -- ours is  
8 focused, small. We represent 14 general contractors,  
9 sole general contractors. Employments are about  
10 2,000 employees each. So we predominantly look at  
11 those large, more sophisticated, which quite frankly,  
12 is why these rules -- like the E-Verify -- we've been  
13 using the E-Verify System because all of our  
14 contractors do public work. And they work out fine,  
15 and the way we negotiate this was great.

16           We negotiated this bill back when it was in  
17 2012 to basically say in a pre-employment paperwork,  
18 as long as you do the E-Verify, print it out, put it  
19 in the personnel file, you're exempt from  
20 prosecution. You've done your job. So if someone  
21 finds an undocumented worker that the E-Verify picks  
22 out as an error, it's not the responsibility of the  
23 GC. Of course, the person will be taken care of, but  
24 again, they're not liable in that sense.

25           When it comes to -- and I do agree, when it

1 comes to even misclassification of employees, or even  
2 as I said, in that area, they've made -- L&I has made  
3 tremendous strides.

4 REPRESENTATIVE NEILSON: Correct.

5 MR. BUTLER: But understand, before your  
6 time at L&I there were reports on prevailing wage  
7 work of a laborer does laborer's work. That's all it  
8 would say. So -- and when the enforcement officer  
9 would come in, they would base it on a union contract  
10 that was not accessible to those not signatory to a  
11 collective bargaining agreement. So it was open to  
12 interpretation.

13 Now, we've come a long way --

14 (CROSSTALK)

15 REPRESENTATIVE NEILSON: Well, even the  
16 interpretation at that time, Hank, the CBA was the  
17 prevailing wage of that, and that CBA, which is a  
18 collective bargaining agreement, is online. It's  
19 actually online and posted --

20 MR. BUTLER: I understand --

21 REPRESENTATIVE NEILSON: But I know back  
22 then we weren't --

23 MR. BUTLER: Now, we are. Now, we are. So  
24 we're making progress.

25 REPRESENTATIVE NEILSON: So I'm hoping that

1 you can swing around and support this, you know.

2 MR. BUTLER: The testimony is very clear.  
3 We are not opposed to having the task force, but we  
4 would like to have some experts in the task force  
5 from the construction community to add their insight  
6 because we don't -- having all appointed officials or  
7 a politician really does not give it as much, in my  
8 opinion, credibility as it could have with experts  
9 from the union halls, from the union contractors,  
10 from our group, from employees.

11 REPRESENTATIVE NEILSON: Well, I'll give my  
12 word here today. I'll work with the sponsors of the  
13 bill and talk to them about responses about doing it  
14 the same way as we did with the apprentice training  
15 committees and stuff like that and have a wide range  
16 and the expertise on it.

17 Thank you, gentlemen, for your testimony  
18 today. Thank you, Chairman.

19 (Unidentified speaker.)

20 MAJORITY CHAIRMAN COX: Leave well enough  
21 alone.

22 REPRESENTATIVE NEILSON: Hank, you can see  
23 him -- he'll start playing with his pen a little bit.  
24 Okay. That's why I sit behind the Chairman. As soon  
25 as that pen starts going, I know my time is up.

1 MAJORITY CHAIRMAN COX: You're learning  
2 well.

3 All right. Representative Mackenzie.

4 REPRESENTATIVE MACKENZIE: Thank you,  
5 Mr. Chairman. And thank you to all of our  
6 testifiers.

7 Mr. O'Brien mentioned that he has  
8 experience working with the E-Verify System already  
9 on public works projects. If you can expand on that,  
10 certainly you mentioned that you had no problems.  
11 Has anybody else utilized this system?

12 Are there any challenges or problems that  
13 we should be aware of when potentially looking at the  
14 expansion of its use?

15 MR. O'BRIEN: Yeah. A lot of our members  
16 got exposed to the system during the Federal Stimulus  
17 Act of 2009, I believe. If you got Federal stimulus  
18 money, you had to, you know, use E-Verify for your  
19 employees. So construction employees that worked for  
20 University of Pittsburgh, I believe Penn State,  
21 Temple, the State-affiliated universities, when they  
22 were getting this federal money, they had to use  
23 E-Verify.

24 And just like anything new in life, you  
25 kind of question it at first. You're like, what's

1 this all about, you know. Then the contractors  
2 started using it and it's like, whoa, this is really  
3 easy. I can't believe I had hesitation to use this  
4 system. Yeah, so no real concerns, no issues at all.

5 I guess a minor concern, but this is not at  
6 the State level. I told you this last week over the  
7 phone. If there's a contractor like pouring concrete  
8 one day; the cement mason might work for two days for  
9 this contractor. And then, later in the week, he's  
10 working for this contractor, it doesn't follow him.  
11 The E-Verify doesn't follow him from company to  
12 company.

13 So it's just an extra couple of minutes.  
14 The HR Department has to put that same employee  
15 through E-Verify again when they start working for  
16 the company.

17 REPRESENTATIVE MACKENZIE: Okay.

18 MR. FORD: Representative Mackenzie. I  
19 mean we deal with this a lot, and a lot of the end  
20 users are requiring our contractors have  
21 E-Verification. Is this on? Now, is it on? It's  
22 on. The green light is on.

23 Okay. We deal with this a lot in the  
24 trades. What we're seeing now in the industry is a  
25 lot of the end users, the clients, for our

1 contractors are asking for E-Verification of the  
2 employees on the job sites. A lot of our members go  
3 through TWIC, which is the transportation  
4 identification background.

5 So working refineries, anywhere on the  
6 ports, a lot of our I-9 reports are being utilized  
7 throughout the industry. So we applaud you, like I  
8 said, taking it to the next level. Yes, prevailing  
9 rate is one thing on public works, but there's a  
10 majority of private work out there that overwhelms  
11 the public works. So you know, bringing it in to the  
12 construction industry overall, you know, will help  
13 out a lot.

14 This is a revenue issue. Both of these  
15 bills are revenue. It's generating revenues for the  
16 economy of Pennsylvania and the municipalities and  
17 the townships or whatever it may be. That's what  
18 these are all about, is revenue. And as you've heard  
19 today, there's a lot of testimony saying about how  
20 much is being lost, you know, the task force -- and  
21 I've been involved, I've been a rep for 20-plus  
22 years. I've dealt with Labor & Industry for,  
23 basically, the last 20-plus years.

24 The task force of just having some  
25 interactive dialogue doesn't help. You know, there's

1 a lot of different issues out there or case studies  
2 that have been done, but up in New York -- and it was  
3 mentioned earlier -- in 2015, they did a study -- the  
4 Governor did a study up there. They identified  
5 26,000 employees were being misclassified, discovered  
6 over \$316 million of unreported wages.

7           They also discovered that 1800 fraudulent  
8 investigations discovered \$264 million dollars of  
9 unreported wages and nearly \$7.2 million in  
10 unemployment insurance contributions was due on that.  
11 We're talking some serious numbers here. And as  
12 the -- like I said earlier, the deficit for the State  
13 or any other little municipality that's out there  
14 could go back and forth for schools, infrastructure  
15 and everything else like that. So it's a revenue  
16 bill. It's not a union bill; it's not a nonunion  
17 bill. It's a revenue bill.

18           REPRESENTATIVE MACKENZIE: And if I can,  
19 Mr. Chairman?

20           MAJORITY CHAIRMAN COX: Go ahead,  
21 Representative Mackenzie.

22           REPRESENTATIVE MACKENZIE: Thank you,  
23 Mr. Chairman. So just to follow up, Mr. Breslin. So  
24 you're saying that the end users are oftentimes  
25 requiring this type of check already. So where in

1 the process is it being done?

2 Are you doing it or is the end user doing  
3 it?

4 Where is it occurring, currently, in  
5 practice?

6 MR. BRESLIN: So basically, as we know,  
7 it's an employer-type issue that they have to address  
8 and keep the paperwork and everything, but it's  
9 nothing that the trades do themselves. I can say  
10 that. As you know, was spoken earlier about the GCs  
11 being penalized, any employer should be doing this.  
12 So it's on the employer end, but the end users, or  
13 the clients for our contractors, are requiring that  
14 their employees being on those job sites have that  
15 background check done.

16 REPRESENTATIVE MACKENZIE: Okay. Got you.  
17 So they notify you that they're going to be doing it,  
18 or you're just aware that they're going to be doing  
19 it. So then you're not even supplying somebody that  
20 you think might not be eligible to pass because you  
21 would have a problem then with that end user, so  
22 you're kind of -- you know, it's kind of working its  
23 way back through the system. They're the ones doing  
24 the actual check, but then again, that kind of flows  
25 downstream or upstream to you guys and kind of you're



1 making the adjustments there.

2 MR. BRESLIN: Well, it's not even  
3 adjustments. As I said, the employers are the ones  
4 that are -- or the end user is requiring the  
5 contractors to do this with our members. So we're  
6 not doing it up front, actually, the employer is  
7 doing the E-Verification and keeping those records.

8 REPRESENTATIVE MACKENZIE: Okay.

9 MR. O'BRIEN: So if I may --

10 MAJORITY CHAIRMAN COX: Yeah.

11 MR. O'BRIEN: So the owner, construction  
12 client, will put it in the bid docs, you know, all  
13 employees must go through E-Verify. Then when we get  
14 someone from the hall, the employer, contractor,  
15 subcontractor or what have you, they'll put the  
16 person through E-Verify for all of the new hires.

17 REPRESENTATIVE MACKENZIE: Okay.

18 MAJORITY CHAIRMAN COX: Great. Thank you.

19 Thank you, Representative Mackenzie.

20 REPRESENTATIVE CEPHAS: Thank you,  
21 Chairman.

22 Just to follow up on Representative  
23 Mackenzie's question. So if the constructor -- the  
24 contractor identifies someone that doesn't pass the  
25 E-Verification, does that get communicated back to

1 the hall?

2 And if so, in your practice and experience,  
3 have you guys done anything with the employee or the  
4 union member that doesn't pass the verification?

5 MR. BRESLIN: The unions are not ICE or  
6 Immigration Enforcement. So basically, like I said,  
7 if it is brought back to us, there's really not much  
8 that we can enforce, you know. As I said, we  
9 represent over 20,000-plus members in Pennsylvania  
10 and over 44,000 members in seven States. So for us  
11 to keep track of that is really not -- the employer  
12 or the end user -- that employer will keep track of  
13 it in his records that he will not hire that employee  
14 again.

15 REPRESENTATIVE CEPHAS: Okay.

16 MR. BRESLIN: So it's really the employer  
17 is policing it based off the guidelines of the law,  
18 but then the employee, if he is -- we're not here to  
19 protect the guilty either.

20 REPRESENTATIVE CEPHAS: Got it. Got it.

21 And just as an additional question. So in  
22 your experience with this system, what is the  
23 associated cost to maintain and run this system as  
24 well as to get it started up?

25 And does that defer from larger contractors

1 versus small contractors?

2 MR. O'BRIEN: No cost; it's a free service.

3 REPRESENTATIVE CEPHAS: Okay.

4 MR. O'BRIEN: I'm sorry. I mean, the only  
5 cost associated with it is someone in your human  
6 resources department has to go through it. So  
7 obviously, the larger contractors will hire more  
8 people, so they'll spend more time, but they're not  
9 hiring, you know, 20, 30 people a day, you know, this  
10 is over time every time you hire someone new.

11 REPRESENTATIVE CEPHAS: Okay.

12 MR. O'BRIEN: So it just slowly over time  
13 adds up.

14 MR. BRESLIN: And this is just added to the  
15 packet for your W-4 and everything else. It's just  
16 another verification that you need to verify by ID.  
17 So certain IDs are accepted that you checked off;  
18 that is correct.

19 MR. BUTLER: It basically was set up in a  
20 way to allow that good faith effort to happen. So we  
21 basically just told all of the employees, in your new  
22 hire orientation packet. Just run the Social  
23 Security number, you get the document that they are  
24 fine, put it in your personnel file and you're  
25 exempt.

1 REPRESENTATIVE CEPHAS: Okay.

2 MR. BUTLER: So then, if there is ever an  
3 audit, you've complied with the law.

4 REPRESENTATIVE CEPHAS: Okay.

5 MR. BUTLER: And that was the law, quite  
6 frankly, that we didn't want different  
7 interpretations happening and people having problems.  
8 This way, it's on the GC. It's on the  
9 contractor/subcontractor. As long as they follow the  
10 law, it's fine.

11 REPRESENTATIVE CEPHAS: Okay. Last  
12 question. Just since you've been using this system,  
13 how many individuals have you flagged that aren't,  
14 you know, verified?

15 MR. O'BRIEN: I don't personally use this  
16 system. Our construction companies use it.

17 REPRESENTATIVE CEPHAS: I mean, based on  
18 the construction companies you represent.

19 MR. O'BRIEN: Yeah, there's issues about  
20 there might be a typo in the information you're  
21 submitting.

22 REPRESENTATIVE CEPHAS: Okay.

23 MR. O'BRIEN: You'll get a notice. The  
24 employer will get a notice saying that they have  
25 flagged this person. I think you have 72 hours to

1 respond --

2 REPRESENTATIVE CEPHAS: Okay.

3 MR. O'BRIEN: -- to the notification. A  
4 lot of times, you know, nine times out of 10, they  
5 typed in the wrong info and it's fine then after  
6 that.

7 REPRESENTATIVE CEPHAS: Okay.

8 MAJORITY CHAIRMAN COX: And Representative  
9 Cephas, our next group will be able to handle that a  
10 little more in detail. We asked them here seeing  
11 that questions like that would probably come up. So  
12 you'll definitely want to stick around for our next  
13 portion.

14 All right. Next, we have Representative  
15 Nelson.

16 REPRESENTATIVE NELSON: Thank you,  
17 Mr. Chairman. And I thank each of you for your  
18 testimony. As I had shared earlier, you know, I'm a  
19 strong supporter of both of these bills. And I, too,  
20 want to achieve balance through this legislation.  
21 You know, it really seems that we want our good  
22 employers that are doing it right not to be penalized  
23 by under-the-table workers or workers that may not  
24 pass that E-Verification process.

25 But you had mentioned subs or subs of subs

1 that could be using temp agencies. If you could  
2 touch on two parts of that. One, do we address or  
3 include those temp agency elements or those subs of  
4 subs?

5           And two, to prevent a person who signs up  
6 as an independent contractor and is getting maybe a  
7 little bit more money and then has an injury and gets  
8 hurt on a job and now says, well, really, I'm an  
9 employee because of X, Y, Z. So we don't -- I don't  
10 think that really happens on the trade side as much  
11 because that's pretty established environment, but in  
12 the non-trade construction where you might have a  
13 subcontractor or framing subcontractor go job to job  
14 to job that they may try to flip after an injury or a  
15 fall and suddenly say that they're an employee when  
16 they've been being paid, do we have balance there  
17 from your perspective?

18           MR. O'BRIEN: Yeah. I'll touch on the  
19 E-Verify and then we'll take it from there. So for  
20 E-Verify, you're only using it for your employees.  
21 So we -- our members are some of the larger GCs who  
22 build the tall, you know, PNC Tower or stadiums in  
23 Philadelphia. The GC, the general contractor, might  
24 have 50, 60, 75 subs working for him.

25           The GC is not verifying every single

1 employee on the job site. They're just verifying  
2 their own workforce, their own superintendents and  
3 workers that they give a paper check to. And then  
4 the subs and the sub sub subs, they are E-Verifying  
5 their own people. So hopefully --

6 REPRESENTATIVE NELSON: Well, is there a, I  
7 guess, an accountability because a GC could hire to  
8 this point and then they're subbing out to people  
9 that they -- you know, does the GC have an obligation  
10 to ensure that those --

11 MR. BUTLER: (Not speaking into  
12 microphone.) It shouldn't be the responsibility of  
13 the subcontractor. And in my opinion, the liability  
14 should stop at a subcontractor, which is why I think  
15 there should be legislation to allow a GC or a sub or  
16 even a sub to a sub-sub to terminate their contract  
17 if they are in violation of the E-Verify, or even,  
18 well, as we can discuss later on, the  
19 misclassification of the independent contractor  
20 issue. We have seen --

21 REPRESENTATIVE NELSON: So can you touch on  
22 that, if I'm a four-tier deep subcontractor that may  
23 be pulling from day labor and I'm not -- and it's  
24 determined I'm not using E-Verify, you're wanting the  
25 opportunity to be able to terminate that contract; is

1 that what you're saying?

2 MR. BUTLER: Yes, absolutely.

3 REPRESENTATIVE NELSON: And what are your  
4 thoughts on that, sir?

5 MR. O'BRIEN: They're breaking the law.  
6 Yeah. It would be in the specs in the contract that  
7 you sign with the subs. It will be written in there  
8 that they have to follow this.

9 MR. BUTLER: This was a concern I had even  
10 back in 2012 with E-Verify before about professional  
11 employers and union halls. Some of my contractors  
12 have been known -- they are what they call  
13 double-breasted where they have union shops and they  
14 have non-union shops. And in these cases, or in some  
15 cases, you know, they'll call from the Union Hall and  
16 the union hall will come in. Or in some cases, in  
17 more rural areas, they'll call from a more  
18 professional labor, ready or what have you to come  
19 into work with them.

20 There should be some information. My  
21 personal opinion is they should be able to have the  
22 security that if they're going to get a person for  
23 one day or a couple of days, they should already have  
24 the E-Verify done and the liability should stand with  
25 the person who is supplying the workforce to the



1 employer. That's just my -- again, this is -- I've  
2 been on that statement for, you know, what, seven  
3 years now on this.

4 REPRESENTATIVE NELSON: That was the second  
5 part, to ensure a worker doesn't flip afterwards. So  
6 they start as an I-9 and then something goes wrong  
7 and they say, wait a minute, I'm really an employee.

8 MR. BUTLER: Right.

9 REPRESENTATIVE NELSON: Are there balances  
10 in there now to protect from that, from your  
11 assessment?

12 MR. BUTLER: No. I mean, well regarding  
13 the independent contractor? I mean, that should be  
14 -- right now, no. If they -- again, we're dealing  
15 with two different issues here. With regard to the  
16 E-Verify, the liability should -- a general  
17 contractor, even a subcontractor, should not be  
18 liable if they hired outside, just my opinion,  
19 outside of their organization and they're being given  
20 a personal violation.

21 If they're hiring, it should be the  
22 responsibility of that group that is hiring the  
23 workforce. That's just, again, that's where -- I  
24 have been saying that for years. When it comes to an  
25 independent contractor, there could -- are we talking

1 about a contractor, which is a third-party coming in,  
2 or a misclassification, which is why we think the  
3 definition should be more directed at what exactly  
4 that is.

5           Because there was a case -- and you brought  
6 up a roofer earlier. There was a case years ago when  
7 I was at a different organization, where there was a  
8 roofer who was threatened for debarment on a  
9 prevailing wage job. It was a school, and it just  
10 said labor performance, laborer's work. So what he  
11 did, just not knowing the rules, classified a labor  
12 rate to go from the stockpile to build materials up  
13 to the roof.

14           Well, the Department came in and said --  
15 and don't worry it wasn't you; it was before you --  
16 what it said was, that's not right, it should be a  
17 roofer's rate from the bottom of the building to the  
18 top. And therefore, you're debarred. And it was --  
19 the poor guy was almost in tears because he was going  
20 to lose his business, but it wasn't -- he just didn't  
21 know the rules or he would have paid it accordingly.

22           So it wasn't intentional, by any means. It  
23 was just he did not know it was misclassifying  
24 workers because he didn't know the rules. And that  
25 's really all it is.

1 MAJORITY CHAIRMAN COX: Mr. Breslin, you  
2 had some additional comments on that?

3 MR. BRESLIN: Yeah. There's a couple of  
4 things here. First of all, it is legal to be an  
5 independent contractor, okay, as long as you meet the  
6 requirements that are there, that you have control of  
7 your business, gains and losses. There are steps  
8 that are there that you can actually be an  
9 independent contractor.

10 What's going on in the construction  
11 industry is that there are a lot of people being  
12 labeled that that don't meet the requirements. So to  
13 get to your question of if someone all of a sudden is  
14 an independent contractor and gets hurt, now they  
15 want to be an employee, that happens all the time.  
16 And as we all -- one of the issues that hasn't been  
17 addressed here is health coverage.

18 If I'm misclassified as an independent  
19 contractor -- I'm really an employee -- I get hurt.  
20 Now, I go to the emergency room, don't have  
21 insurance, but the emergency room has to, you know,  
22 see me, fix me up, send me back out. Well, guess  
23 what, everyone here that has insurance just picked up  
24 a premium for that.

25 These are the things, like I said, that go

1 on in the construction industry that people don't  
2 realize that it affects everybody in every way, shape  
3 or form: taxes, insurance, whatever it may be. But  
4 the other thing is that, you know, these bills  
5 here -- walls are here not to segregate. Yes, I  
6 agree with the guy we saw in hour.

7 On a GC, yes, I agree with Mr. Butler to a  
8 certain degree, that a GC should not be completely  
9 liable for the sub of a sub of a sub, but a GC also  
10 controls the, job, too, just like anything else. He  
11 controls the contracts, the subcontracting, the  
12 quality of the work. It's his responsibility to make  
13 sure that job is safe.

14 So a GC who hires the subs out should have  
15 some liability, in fact, here. It shouldn't just all  
16 be put on the subs because they are hiring the subs.  
17 And if that sub subbed someone out, then he should  
18 make sure if there's a new sub on that job, then he  
19 should have his paperwork in line, too, just like he  
20 should when he does his bid.

21 So the whole thing of this is we have to  
22 look at it, yes. We have to look at it overall,  
23 Mr. Butler. I agree with you on that. And we have  
24 to make sure that it is put together correctly, but  
25 the whole thing of this is to exclude anybody from it

1 -- and I was involved in the Act 72 early on, you  
2 know, with Representative Lentz when he was involved  
3 with it. But the whole thing of it is once you start  
4 excluding things, especially -- and we're talking  
5 about construction here. That's all we're talking  
6 about here.

7           Every part of that is integral within  
8 itself. So having people on a board that are not  
9 just, you know, slanted one way or the other, having  
10 Experts on it, expertise on it, I applaud you for  
11 bringing it up. Okay. But the whole thing --

12           MR. BUTLER: That's recorded, right?

13           (Crosstalk)

14           MR. BRESLIN: Having all views is always a  
15 good thing to do.

16           MR. BUTLER: True.

17           REPRESENTATIVE NEILSON: Chairman, if I can  
18 ask a question on the same thing here just to follow  
19 up because I want to make sure I understand. Because  
20 it seems like it's just a contractual issue that  
21 could be one line in a contract to your sub, Hank, is  
22 what you're saying, that if I'm a sub to your  
23 contractor, it has to say if I'm going to sub out any  
24 work and you don't follow these E-Verify rules, I can  
25 throw your -- that seems like a legal issue within

1 that contract.

2 Am I getting that because --

3 (Crosstalk).

4 MR. NEILSON: -- the contractor. So our job  
5 would be to educate them on this law. It will be the  
6 contractor's responsibility, the general, the sub,  
7 the sub of the sub, the sub of the sub sub sub, to  
8 put that language in there that you are responsible  
9 for that?

10 MR. BUTLER: It could be.

11 REPRESENTATIVE NEILSON: Okay.

12 MR. BUTLER: It could be in the contract  
13 for the work site. However, if we are talking about  
14 expanding this to private work, because on public  
15 work, it's typically a separation issue. So it's  
16 separate -- it's their issue. If we are going to  
17 broaden this to go to private work, too, then we  
18 should remove the liability from a contractor to or a  
19 sub, if it's a sub sub or a, you know, whether is --  
20 doing it in violation. He's going to be penalized.

21 I just want -- I'm just -- it's not  
22 paranoia. It's just experience. I just want to make  
23 sure that the penalties do not far exceed the actual  
24 person who is doing the job, who is in violation.  
25 And that's what I'm trying to ask. So yes, but since

1 we're opening this bill to look at this, this issue,  
2 why can't we have it that the contractor or the sub  
3 of a sub has the right to terminate a contract based  
4 on that?

5 MR. BRESLIN: But I mean basically to  
6 answer that, too --

7 (Speaker not using microphone.)

8 MR. BRESLIN: Yeah. No, the other thing is  
9 that the law is going to be -- the law that's  
10 proposed here today on both issues, like I said, is  
11 going to be amended here and there to make changes to  
12 it. So to answer your question there, to put it into  
13 a -- the contractual part of it, yes, a contractor  
14 could do that, you know, but the whole thing of it is  
15 -- and Mr. Butler, to get back to you, you'll also  
16 note that OSHA today now can hold a GC liable for sub  
17 violations.

18 MR. BUTLER: Yes.

19 MR. BRESLIN: Okay. So like I said,  
20 everybody has some kind of touching that, and the  
21 construction industry should have liability --

22 MR. BUTLER: When it comes to that, then  
23 they should have the right and it should be -- my  
24 opinion is they should have the right to terminate a  
25 contract if they're in violation. And that's the law

1 that we're here today to try to get moved forward so  
2 that we can protect our construction workers, our  
3 taxpayers, our constituents and everything else here.  
4 That's what we're trying to do.

5 MAJORITY CHAIRMAN COX: Okay. Thank you.

6 MR. BRESLIN: Thank you.

7 MAJORITY CHAIRMAN COX: Our next person is  
8 Representative Galloway.

9 MR. GALLOWAY: Thank you, Mr. Chairman.  
10 Real quick, a couple different points.

11 First, on E-Verify, you had brought up two  
12 key points, which I thought were relevant. The  
13 E-Verify legislation being introduced today is  
14 different than current law and what was introduced  
15 before, specifically as it relates to penalties. I  
16 thought you had a good point as far as first, second  
17 and third offenses. And it also is different in the  
18 notification area. And I think those two will be a  
19 sticking point going forward.

20 And I hope the maker of the bill will be  
21 open to possibly looking at those types of areas.  
22 Also, when it comes to misclassification, I do have  
23 to apologize. Most of your remarks -- you're just  
24 simply looking at this bill in a vacuum. And this  
25 bill is not in a vacuum. This bill was part of a



1 package of bills that we're discussing today. And  
2 really, I had no role in that. You're just simply  
3 looking at the very first bill in a series of a  
4 package of four different bills that we've been  
5 working on for some five years.

6 The bill, in general, the object of these  
7 bills is not to reinvent the wheel when it comes to  
8 misclassification. The object of the bill is to  
9 improve penalties and enforcement. That's what we  
10 were looking to do. If somebody wants to open this  
11 up and start looking at all kinds of different things  
12 and bringing new voices onto the task force, I would  
13 be willing to do that.

14 But in the future, you know, if we could  
15 look at your comments and the -- as far as an overall  
16 holistic package, four different bills that we're  
17 looking to increase enforcement and penalties. If  
18 you want to bring in other people, other voices on  
19 this task force, I'd be more than happy to listen as  
20 long as we focus on the problem that we are currently  
21 facing today, which is penalties and enforcement.

22 MR. BUTLER: And again, I was asked to  
23 testify on this issue. I was given two bills.

24 REPRESENTATIVE GALLOWAY: I understand.

25 MR. BUTLER: When I looked at the bills, my

1 first question was -- and I was researching this  
2 issue -- and you're right, but the issue is  
3 independent contractor misclassification of workers.  
4 I view that as two different things. And that's what  
5 I'm saying for a clear definition of what we're  
6 talking about here. And as for a task force of --  
7 having us here is the exact reason why you have a  
8 hearing, to bring in experts to the table to talk  
9 about this.

10 In no way do we support using misclassified  
11 workers or do we support independent contractors, you  
12 know, being used to win work, under bid and then do  
13 change orders to get the bids up there. Absolutely  
14 not. But at the same time, we need to protect it  
15 from going bigger than what the intent was. And I  
16 think bringing experts to the table would not be a  
17 bad thing as -- maybe not to vote, but just to have  
18 -- I like them, obviously -- but just to have them  
19 partake and give their opinions.

20 REPRESENTATIVE COX: Okay. Well, I'd like  
21 to again thank everyone at the table there for  
22 testifying. There have been some very informative  
23 discussions, and I think your comments have really  
24 helped us to get a handle on some of the concerns  
25 that may arise.

1 (Panel exiting.)

2 MAJORITY CHAIRMAN COX: Now, we had  
3 attempted to invite the U.S. Department of Homeland  
4 Security. They operate the E-Verify System. We  
5 wanted them to come and explain to us the system and  
6 kind of the structural and the process involved, if  
7 you will. And so, unfortunately, they're not able to  
8 participate in State legislative hearings. So as an  
9 alternative, we reached out to get some employers in  
10 here who have a fair amount of experience using  
11 E-Verify. We wanted them, again, to explain the  
12 processes and the system as they understand it from  
13 the user's perspective.

14 And I want to be clear, these individuals  
15 are here to testify, not as experts or offering  
16 opinions on the specific legislation. They are here  
17 to offer their testimony in regards to experience  
18 that they have had using the E-Verify System. So  
19 when we ask questions of them, I would ask that our  
20 members be aware of that and limit the questions to  
21 the particular experience that these individuals have  
22 had, as opposed to them being what I'll call resident  
23 experts.

24 With us today, we have Mr. Scott Briggs who  
25 is vice-president of Human Resources and

1 Communications with Knouse Foods Cooperative, Inc.  
2 Also joining us is Vikki Rauch with -- did I say your  
3 name right?

4 MS. RAUCH: Yes.

5 MAJORITY CHAIRMAN COX: Great.

6 Thank you, Jon.

7 -- Vicki Rauch, who is also the Human  
8 Resources Manager with Knouse Foods Cooperative.

9 And I'd ask the two of you if you would be  
10 willing to divide the five-minute opening statement  
11 between you as you see fit. And then we'll move on  
12 to questions and answers. I will remind you that  
13 Shannon Walker will let you know when you have about  
14 30 seconds of the entire 5-minute allotment.

15 Mr. Briggs.

16 MR. BRIGGS: Very good.

17 Good afternoon, Chairman Cox, Chairman  
18 Harkins and members of the Committee. My name is  
19 Scott Briggs and I am the Vice-President of Human  
20 Resources and Communications for Knouse Foods  
21 Cooperative, Inc. With me is my colleague Vikki  
22 Rauch, who serves as Human Resources Manager.

23 Thank you for the opportunity to testify  
24 today regarding our company's utilization of  
25 E-verify. Established in 1949, Knouse Foods is a

1 grower-owned Cooperative headquartered in Adams  
2 County, PA. As a fruit processor, our products are  
3 sold throughout the United States, and exported to  
4 countries throughout the world. In addition to our  
5 branded and private-label retail products, we are one  
6 of the largest producers of fruit products for the  
7 Food Service industry in the US, and provider of  
8 processed fruit products to the Federal Government.  
9 We have five Manufacturing facilities located in  
10 south central PA, and one in Paw Paw, MI, with  
11 approximately 1,100 employees. While you may not be  
12 familiar with the name Knouse Foods, we certainly  
13 hope you're more familiar with the names Musselman's  
14 and Lucky Leaf.

15           Historically, we were a very seasonal  
16 employer, as we would receive harvested fruit,  
17 quickly process it into a can or jar and then go  
18 about trying to sell it. With advances in fruit  
19 storage technology and capabilities over the last  
20 15-20 years we have become a nearly year-round  
21 operation, processing our products as well as  
22 co-packing for other businesses. We hire throughout  
23 the year as necessary, with increased hiring activity  
24 in August and September of each year in order to  
25 handle the receipt of harvested apples delivered by

1 our Growers.

2           Knouse Foods began using the E-Verify  
3 System in 2009. In the years proceeding, we  
4 experienced on a somewhat regular basis, the receipt  
5 of letters from government agencies advising of  
6 Social Security number discrepancies with some of our  
7 employees. When investigating these matters and/or  
8 confronting our employees with this news, often the  
9 result was that the employee ended up no longer  
10 working for our company.

11           With the E-Verify System, we felt it would  
12 provide a tool, in addition to the I-9 forms, to help  
13 us ensure that that our entire workforce is legally  
14 available for employment. Upon being hired,  
15 candidates will complete the I-9 Form, within the  
16 first 72 hours of employment, which is then entered  
17 via computer portal by our HR offices into the  
18 E-Verify System. Once entered and submitted, the  
19 system will then verify information for employment  
20 authorization within minutes.

21           In the event of a discrepancy, the system  
22 will prompt the employer to print a Further Action  
23 Notice and present it to the candidate to resolve any  
24 discrepancies with the information submitted. If a  
25 data entry error would occur then that case can be

1 closed and a new one created. Discrepancies are  
2 infrequent, but not uncommon. Employees who are  
3 referred to SSA regarding Tentative Nonconfirmation,  
4 TNC, may continue to work up to 30 days to resolve  
5 the discrepancy, in addition to obtaining  
6 documentation from SSA stating the issue is resolved  
7 and the employee is authorized to work. In our  
8 experience, the majority of those individuals do not  
9 return after being given the Further Action Notice.

10           The E-Verify System is not complicated and  
11 is pretty user friendly. It typically takes five  
12 minutes to enter required information and submit it.  
13 The only drawback that we've experienced since  
14 implementing the system has been that in the event of  
15 a Federal government shutdown, the verification  
16 process has been slowed or interrupted, thus,  
17 creating a backlog and delaying the final approval  
18 for the employee.

19           We make it known as part of our recruiting  
20 and hiring process that we are an E-Verify employer,  
21 and thus our observation over the years has been that  
22 E-verify has most likely helped us to filter out  
23 employment candidates that would not meet employment  
24 eligibility requirements, thus they don't come  
25 through our doors. As mentioned earlier, it is an

1 additional, and for-the-most-part, helpful tool for  
2 ensuring our employees are legally employable.

3 Thanks again for allowing us to testify. Vikki and I  
4 are happy to answer any questions you may have.

5 MAJORITY CHAIRMAN COX: Thank you. We're  
6 going to start with Representative Ecker.

7 REPRESENTATIVE ECKER: Thank you,  
8 Mr. Chairman. I've got to thank Knouse Foods for  
9 being here, a proud Adams County company in my  
10 district. But I appreciate you coming and sharing  
11 this experience that you have with E-Verify and kind  
12 of giving us more of an idea how it works in another  
13 industry.

14 But along those lines, what would you say  
15 have been some of the biggest challenges with the  
16 program, with the E-Verify program, other than the  
17 government shutdown issues that could arise?

18 MR. BRIGGS: I would have to say there have  
19 been very little issues, if at all.

20 Vikki, you can speak if you're familiar  
21 with any.

22 MS. RAUCH: No. I would say very little --

23 MAJORITY CHAIRMAN COX: Can you use the  
24 microphone as you're -- whoever is speaking? You can  
25 actually take the other one from over there. They're



1 both live.

2 MR. BRIGGS: I would say, in my mind, as  
3 the head of HR, it gives me sleep insurance to know  
4 that we have a program we can use it and we can  
5 follow it. In the years since we started in 2019  
6 using E-Verify, I can only think of one time when  
7 local government came to see us, law enforcement came  
8 to see us with an employee with a stolen identity  
9 issue. And one of the first things we check was if  
10 we had run the E-Verify. And as soon as we showed  
11 that that was the case, we were out of the  
12 conversation and law enforcement did what they do.

13 REPRESENTATIVE ECKER #: So because, you  
14 know, the construction industry is a little large,  
15 some larger companies, some smaller companies.

16 Being a larger company, do you see any  
17 difficulties for a smaller company to operate an  
18 E-Verify System.

19 MR. BRIGGS: No, I don't. As a previous  
20 small employer, I -- the process is the same for a  
21 small employer or a large employer. So I believe it  
22 scales perfectly.

23 REPRESENTATIVE ECKER #: Again, thanks for  
24 being here. Thank you, Mr. Chairman.

25 MAJORITY CHAIRMAN COX: Chairman Harkins.

1           MINORITY CHAIRMAN HARKINS: Thank you both  
2 for your testimony. I also wanted to compliment you  
3 on your key lime cream pie filling. It's a must  
4 have.

5           With that said, how often do discrepancies  
6 arrive when verifying employees, and what is the  
7 process used to resolve them, if you could kind of  
8 walk us through that?

9           MS. RAUCH #: Very little discrepancies.  
10 The few that we have, typically, are numbers that  
11 don't match, Social Security numbers that don't  
12 match. And that's where the non-conformation comes  
13 into play. Very -- no, not very often at all, maybe  
14 a dozen out of 100.

15           MINORITY CHAIRMAN HARKINS: And if you do  
16 hit one, what would you generally do then.

17           MS. RAUCH: We print that non confirmation  
18 action out and they take that to Social Security and  
19 resolve any issues they might have.

20           MINORITY CHAIRMAN HARKINS: I see. Thank  
21 you.

22           MAJORITY CHAIRMAN COX: And next we have  
23 Representative Mackenzie.

24           REPRESENTATIVE MACKENZIE: Thank you,  
25 Mr. Chairman. And thank you to both of you for

1 coming to testify.

2 The previous speakers actually asked my  
3 questions, so I don't have a question at this point,  
4 but I did just want to commend you and Knouse Foods  
5 for voluntarily taking this action and doing the  
6 right thing. So thank you, and thank you for being  
7 here today.

8 MAJORITY CHAIRMAN COX: I do have a  
9 question. How long have you -- and you might have  
10 said this and I just missed it. How long have you  
11 used the E-Verify system?

12 MR. BRIGGS: Since 2009.

13 MAJORITY CHAIRMAN COX: Okay. And so over  
14 the 10-year use, have you seen a steady improvement  
15 or was it kind of implemented and stayed the same?

16 What's been your experience with it?

17 When we first put it into place, as  
18 Representative Galloway pointed out in his earlier  
19 comments, there were a lot of, I'll call them  
20 warnings, given by people saying, oh, it's going to  
21 have all kinds of false negatives, you know. So  
22 there were a lot of concerns, I think, that were  
23 raised.

24 What did you experience as the system  
25 improved over the years, I guess is the better

1 question?

2 MR. BRIGGS: A couple things. I  
3 mentioned what we were experiencing before 2009. I  
4 will tell you that we were concerned when we  
5 implemented it. We were blessed with good timing, I  
6 would say, that we did it in 2009. The economy was  
7 not necessarily flourishing at that time. We were  
8 concerned that it could preclude us from getting the  
9 necessary employment candidates.

10 Implementing it in 2009, though went very  
11 smoothly for us. We, as I mentioned, we have six  
12 facilities, so each of our HR offices had to be  
13 trained on how to do it, and their staff. But  
14 really, once that occurred, there really wasn't a lot  
15 of glitches or bumps in the road from Day 1. And  
16 really, it is something that, once implemented --  
17 I'll just say the low maintenance features that goes  
18 on in the hiring process, through the years, since  
19 2009, there hasn't been any really big incidents or  
20 years where we regretted taking this route.

21 MAJORITY CHAIRMAN COX: Okay. System  
22 downtime as far as availability of the network,  
23 things like that, do you experience issues like that,  
24 where you go to verify somebody and the system is not  
25 working or gives you an error that says come back

1 later?

2 MS. RAUCH: No, I haven't had any issues  
3 with it.

4 MAJORITY CHAIRMAN COX: Okay.

5 MS. RAUCH: I mean, some systems are slow,  
6 but that's typically after the shutdown. That's the  
7 only time that I found it to be very slow.

8 MAJORITY CHAIRMAN COX: So after the  
9 federal shutdown, it was kind of a slow restart of  
10 the system?

11 MS. RAUCH: Well, it's backlogged, so  
12 everybody is trying to get on at one time.

13 MAJORITY CHAIRMAN COX: Right. Right.  
14 Right.

15 MS. RAUCH: So yep.

16 MAJORITY CHAIRMAN COX: Okay. It was more  
17 of a temporary overload because --

18 MS. RAUCH: Yes.

19 MAJORITY CHAIRMAN COX: -- it hadn't been  
20 in operation prior to that.

21 MS. RAUCH: Yes.

22 MAJORITY CHAIRMAN COX: And while the  
23 Department of Homeland Security is not able to  
24 testify here, we are going to be working with them to  
25 iron out any kinks in the legislation. If you have

1 anything to offer them directly -- is there anything  
2 you would like us to take them and say can you  
3 improve this or can you add this feature or -- I know  
4 I'm putting you on the spot, but --

5 MS. RAUCH #: I don't see any. I think  
6 it's rather user friendly. I mean, the information  
7 is, you know, just data entry, click, point, submit.

8 MAJORITY CHAIRMAN COX: All right. Well,  
9 thank you both so much for taking the time out of  
10 your day to testify.

11 Are there any other questions for this last  
12 panel?

13 All right. With that, I'll call the  
14 meeting to a close. Thank you again.

15 MS. RAUCH: Thank you.

16 (Whereupon, the hearing concluded.)  
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I hereby certify that the proceedings are contained fully and accurately in the notes taken by me on the within proceedings and that this is a correct transcript of the same.

*Tracy L. Markle*

Tracy L. Markle, Court Reporter

Notary Public