

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1360 Session of
2005

INTRODUCED BY MUSTIO, BENNINGHOFF, BASTIAN, BOYD, CAPPELLI,
CLYMER, CREIGHTON, DALLY, DENLINGER, HERSHEY, HICKERNELL,
McILHATTAN, McILHINNEY, R. MILLER, PICKETT, REICHLEY, SAYLOR,
STERN, R. STEVENSON, E. Z. TAYLOR, TRUE AND RUBLEY,
APRIL 13, 2005

REFERRED TO COMMITTEE ON LABOR RELATIONS, APRIL 13, 2005

AN ACT

1 Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as
2 reenacted and amended, "An act defining the liability of an
3 employer to pay damages for injuries received by an employe
4 in the course of employment; establishing an elective
5 schedule of compensation; providing procedure for the
6 determination of liability and compensation thereunder; and
7 prescribing penalties," further providing for subcontractors
8 and for offenses.

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

11 Section 1. Section 302(a) and (d) of the act of June 2, 1915
12 (P.L.736, No.338), known as the Workers' Compensation Act,
13 reenacted and amended June 21, 1939 (P.L.520, No.281) and
14 amended July 2, 1993 (P.L.190, No.44), are amended and the
15 section is amended by adding a subsection to read:

16 Section 302. (a) A contractor who subcontracts all or any
17 part of a contract and his insurer shall be liable for the
18 payment of compensation to the employes of the subcontractor
19 unless the subcontractor primarily liable for the payment of

1 such compensation has secured its payment as provided for in
2 this act or unless the subcontractor complies with subsection
3 (a.1). Any contractor or his insurer who shall become liable
4 hereunder for such compensation may recover the amount thereof
5 paid and any necessary expenses from the subcontractor primarily
6 liable therefor.

7 For purposes of this subsection, a person who contracts with
8 another (1) to have work performed consisting of (i) the
9 removal, excavation or drilling of soil, rock or minerals, or
10 (ii) the cutting or removal of timber from lands, or (2) to have
11 work performed of a kind which is a regular or recurrent part of
12 the business, occupation, profession or trade of such person
13 shall be deemed a contractor, and such other person a
14 subcontractor. This subsection shall not apply, however, to an
15 owner or lessee of land principally used for agriculture who is
16 not a covered employer under this act and who contracts for the
17 removal of timber from such land.

18 (a.1) Subsection (a) does not apply to a subcontractor that
19 has certified on a form established by the department that the
20 subcontractor does not employ other individuals, operates as an
21 independent contractor and is not required to carry workers'
22 compensation insurance under this act. If a form is submitted
23 under this subsection, the following apply:

24 (1) The subcontractor waives the right to file a claim for
25 benefits under this act against the contractor's insurer.

26 (2) The subcontractor waives the right to file a claim for
27 benefits against the contractor under this act unless the form
28 was filed as a result of coercion by or of collusion with the
29 contractor with the intent to misrepresent the true relationship
30 between the parties. Notwithstanding any other provision of law,

1 a subcontractor must prove coercion or collusion under this
2 paragraph by clear and convincing evidence.

3 * * *

4 (d) A contractor shall not subcontract all or any part of a
5 contract unless the subcontractor has presented proof of
6 insurance under this act or has complied with subsection (a.1).

7 * * *

8 Section 2. Section 1102 of the act, amended June 24, 1996
9 (P.L.350, No.57), is amended to read:

10 Section 1102. A person, including, but not limited to, the
11 employer, the employe, the health care provider, the attorney,
12 the insurer, the State Workmen's Insurance Fund and self-
13 insureds, commits an offense if the person does any of the
14 following:

15 (1) Knowingly and with the intent to defraud a State or
16 local government agency files, presents or causes to be filed
17 with or presented to the government agency a document that
18 contains false, incomplete or misleading information concerning
19 any fact or thing material to the agency's determination in
20 approving or disapproving a workers' compensation insurance rate
21 filing, a workers' compensation transaction or other workers'
22 compensation insurance action which is required or filed in
23 response to an agency's request.

24 (2) Knowingly and with intent to defraud any insurer
25 presents or causes to be presented to any insurer any statement
26 forming a part of or in support of a workers' compensation
27 insurance claim that contains any false, incomplete or
28 misleading information concerning any fact or thing material to
29 the workers' compensation insurance claim.

30 (3) Knowingly and with the intent to defraud any insurer

1 assists, abets, solicits or conspires with another to prepare or
2 make any statement that is intended to be presented to any
3 insurer in connection with or in support of a workers'
4 compensation insurance claim that contains any false, incomplete
5 or misleading information concerning any fact or thing material
6 to the workers' compensation insurance claim.

7 (4) Engages in unlicensed agent or broker activity as
8 defined by the act of May 17, 1921 (P.L.789, No.285), known as
9 "The Insurance Department Act of 1921," knowingly and with the
10 intent to defraud an insurer or the public.

11 (5) Knowingly benefits, directly or indirectly, from the
12 proceeds derived from a violation of this section due to the
13 assistance, conspiracy or urging of any person.

14 (6) Is the owner, administrator or employe of any health
15 care facility and knowingly allows the use of such facility by
16 any person in furtherance of a scheme or conspiracy to violate
17 any of the provisions of this section.

18 (7) Knowingly and with the intent to defraud assists, abets,
19 solicits or conspires with any person who engages in an unlawful
20 act under this section.

21 (8) Makes or causes to be made any knowingly false or
22 fraudulent statement with regard to entitlement to benefits with
23 the intent to discourage an injured worker from claiming
24 benefits or pursuing a claim.

25 (9) Knowingly and with the intent to defraud makes any false
26 statement for the purpose of avoiding or diminishing the amount
27 of the payment in premiums to an insurer or self-insurance fund.

28 (10) Knowingly and with intent to defraud, fails to make the
29 report required under section 311.1.

30 (11) Knowingly and with intent to defraud, receives total

1 disability benefits under this act while employed or receiving
2 wages.

3 (12) Knowingly and with intent to defraud, receives partial
4 disability benefits in excess of the amount permitted with
5 respect to the wages received.

6 (13) Knowingly and with the intent to defraud coerces or
7 colludes with a subcontractor to submit under section 302(a.1) a
8 form which contains false information.

9 Section 3. This act shall take effect January 1, 2006.