

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 643 Session of 2005

INTRODUCED BY GORDNER, SCARNATI, COSTA, ARMSTRONG, CORMAN, EARLL, GREENLEAF, MADIGAN, ORIE, PUNT, ROBBINS, THOMPSON, WAUGH, WENGER, M. WHITE AND WONDERLING, APRIL 28, 2005

SENATOR SCARNATI, LABOR AND INDUSTRY, AS AMENDED, JUNE 28, 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," DEFINING "INDEPENDENT CONTRACTOR"; <—
8 AND further providing for subcontractors.

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 1. THE ACT OF JUNE 2, 1915 (P.L.736, NO.338), KNOWN <—
17 AS THE WORKERS' COMPENSATION ACT, REENACTED AND AMENDED JUNE 21,
18 1939 (P.L.520, NO.281), IS AMENDED BY ADDING A SECTION TO READ:

19 SECTION 110. IN ADDITION TO THE DEFINITIONS SET FORTH IN
20 THIS ARTICLE, THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS

1 ACT SHALL HAVE THE MEANINGS GIVEN IN THIS SECTION UNLESS THE
2 CONTEXT CLEARLY INDICATES OTHERWISE:

3 "INDEPENDENT CONTRACTOR" MEANS A SOLE PROPRIETORSHIP,
4 PARTNERSHIP, SUBCHAPTER S CORPORATION, LIMITED LIABILITY COMPANY
5 OR LIMITED LIABILITY PARTNERSHIP WHO DOES NOT EMPLOY OTHER
6 PERSONS AND WHO MEETS ALL OF THE FOLLOWING REQUIREMENTS:

7 (1) HAS A WRITTEN AGREEMENT TO PERFORM SPECIFIC WORK FOR A
8 SPECIFIC AMOUNT OF MONEY AND CONTROLS THE MEANS AND MANNER OF
9 WORK PERFORMED;

10 (2) RECEIVES COMPENSATION FOR WORK PERFORMED FOR A
11 COMMISSION OR ON A PER-JOB BASIS AND NOT ON ANY OTHER BASIS AND
12 REALIZES A PROFIT OR LOSS FROM SUCH WORK, AND SUCH COMPENSATION
13 IS PAID TO A BUSINESS RATHER THAN AN INDIVIDUAL;

14 (3) MAKES COMPARABLE SERVICES AVAILABLE TO THE GENERAL
15 PUBLIC ON A REGULAR AND CONSISTENT BASIS;

16 (4) MAINTAINS A SEPARATE BUSINESS AND FURNISHES SIGNIFICANT
17 TOOLS, MATERIALS AND EQUIPMENT TO PERFORM WORK;

18 (5) HOLDS ONE OR MORE BANK ACCOUNTS IN THE NAME OF THE
19 BUSINESS ENTITY FOR PURPOSES OF PAYING BUSINESS EXPENSES OR
20 OTHER EXPENSES RELATED TO WORK PERFORMED; AND

21 (6) HOLDS OR HAS APPLIED FOR A FEDERAL EMPLOYER
22 IDENTIFICATION NUMBER, OR HAS FILED BUSINESS OR SELF-EMPLOYMENT
23 INCOME TAX RETURNS WITH THE PENNSYLVANIA DEPARTMENT OF REVENUE
24 OR THE INTERNAL REVENUE SERVICE BASED ON WORK OR SERVICES IN THE
25 PREVIOUS YEAR.

26 SECTION 2. SECTION 302(A) AND (D) OF THE ACT, AMENDED JULY
27 2, 1993 (P.L.190, NO.44), ARE AMENDED AND THE SECTION IS AMENDED
28 BY ADDING A SUBSECTION TO READ:

29 Section 302. (a) A contractor who subcontracts all or any
30 part of a contract and his insurer shall be liable for the

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

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

20 (a.1) Subsection (a) does not apply to a subcontractor that
21 has certified on a ~~form~~ AN AFFIDAVIT established by the <—
22 department that the subcontractor does not employ other
23 individuals, operates as an independent contractor, AS DEFINED <—
24 BY THIS ACT, and is not required to carry workers' compensation
25 insurance under this act. ~~If a form is submitted under this~~ <—
26 ~~subsection, the subcontractor waives the right to file a claim~~
27 ~~for benefits under this act against the contractor's insurer.~~
28 ANY AFFIDAVIT WHICH IS FILED UNDER THIS SUBSECTION SHALL CREATE <—
29 A NONREBUTTABLE PRESUMPTION UNDER THIS ACT THAT THE FILING
30 SUBCONTRACTOR IS AN INDEPENDENT CONTRACTOR AND THAT THE FILING

1 SUBCONTRACTOR IS PROHIBITED FROM FILING ANY CLAIM FOR BENEFITS
2 UNDER THIS ACT AGAINST THE CONTRACTOR OR THE CONTRACTOR'S
3 INSURER.

4 * * *

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

8 * * *

9 Section 2 3. This act shall take effect January 1, 2006. <—