

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL**No. 400** Session of
2009

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AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
APRIL 29, 2009

AN ACT

1 Providing for the criteria for independent contractors in the
2 construction industry; and imposing penalties.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Construction
7 Workplace Fraud Act.

8 Section 2. Legislative intent.

9 The General Assembly finds that increasingly employers in the
10 construction industry are improperly classifying employees as
11 independent contractors or paying unreported compensation in
12 order to evade their responsibilities as employers with respect

1 to compliance with Federal and State laws. These actions also
2 deprive these workers of Social Security benefits and other
3 benefits, including overtime pay, while reducing the employers'
4 Federal and State tax withholdings and related obligations.
5 These practices put employers that bear higher business costs
6 for complying with applicable law at a competitive disadvantage
7 with those who do not follow the law. In order to restrict these
8 actions, the General Assembly hereby finds the need to enact
9 clear statutory guidelines for the construction industry to
10 define the difference between an independent contractor and an
11 employee for purposes of applicable laws. The General Assembly
12 further finds a need to enact stiff criminal and civil penalties
13 for employers who knowingly and intentionally misclassify
14 employees as independent contractors in order to ensure that the
15 practice is not financially advantageous to those employers as
16 they compete against employers that are in compliance with the
17 law.

18 Section 3. Definitions.

19 The following words and phrases when used in this act shall
20 have the meanings given to them in this section unless the
21 context clearly indicates otherwise:

22 "Construction." Erection, reconstruction, demolition,
23 alteration, modification, custom fabrication, building,
24 assembling, site preparation and repair work or maintenance work
25 done on any real property or premises under contract, whether or
26 not the work is for a public body and paid for from public
27 funds.

28 "Department." The Department of Labor and Industry of the
29 Commonwealth.

30 "Employer." The term includes any individual, partnership,

1 association, joint stock company, corporation, business trust or
2 any other person or groups of persons acting directly or
3 indirectly in the interest of an employer in relation to an
4 employee and who is engaging in or performing services in the
5 commercial or residential building construction industry for
6 remuneration.

7 "Minimum Wage Act." The act of January 17, 1968 (P.L.11,
8 No.5), known as The Minimum Wage Act of 1968.

9 "Remuneration." All compensation including, but not limited
10 to, wages and employee benefits paid to an employee.

11 "Secretary." The Secretary of Labor and Industry of the
12 Commonwealth or the secretary's authorized representative.

13 "Unemployment Compensation Law." The act of December 5, 1936
14 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment
15 Compensation Law.

16 "Wage Payment and Collection Law." The act of July 14, 1961
17 (P.L.637, No.329), known as the Wage Payment and Collection Law.

18 "Workers' Compensation Act." The act of June 2, 1915
19 (P.L.736, No.338), known as the Workers' Compensation Act.

20 Section 4. Certain services deemed employment and exceptions.

21 (a) General rule.--For purposes of the Minimum Wage Act, the
22 Wage Payment and Collection Law, the Unemployment Compensation
23 Law and the Workers' Compensation Act, an individual engaging in
24 or performing services in the commercial or residential building
25 construction industry for remuneration is presumed to be an
26 employee unless:

27 (1) the individual has been and ~~will continue to be~~ IS ←
28 free from control or direction over performance of such
29 services both under the contract of service and in fact; and

30 (2) as to such services, the individual is customarily

1 engaged in an independently established trade, occupation,
2 profession or business.

3 (b) Independent contractor criteria.--An individual engaging
4 in or performing services in the commercial or residential
5 building construction industry for remuneration shall be deemed
6 an independent contractor if the individual can demonstrate, by
7 credible evidence, that the individual meets all of the
8 following criteria:

9 (1) Maintains a separate business location that is
10 separate from the location of the person or entity for whom
11 services are being performed, with the individual's own
12 office, and operates with owned or leased equipment and other
13 facilities. ~~For purposes of this paragraph, an office may be~~ ←
14 ~~maintained in the individual's residence if the individual is~~
15 ~~licensed to perform the specific kind and quality of work~~
16 ~~required by the contracts specified in this subsection by all~~
17 ~~State and local licensing authorities.~~

18 (2) Operates under contracts which are in writing and
19 which contracts articulate plainly the precise terms of
20 payment for work performed, the ~~scope of work to be performed~~ ←
21 and a specific prohibition on the retention by the
22 independent contractor of any other ~~independent contractor to~~ ←
23 PERSONNEL TO perform any part of the work described in the ←
24 contract ~~unless an independent contractor must subcontract a~~ ←
25 ~~portion of the work because the work in question falls~~
26 ~~outside the scope of the independent contractor's normal~~
27 ~~course of business and requires special tools or expertise,~~
28 ~~and is not for the purpose of supplementing the independent~~
29 ~~contractor's work force~~ OTHER THAN EMPLOYEES OF THE ←
30 INDEPENDENT CONTRACTOR AND OTHER CONTRACTORS THAT CAN

1 DEMONSTRATE BY CREDIBLE EVIDENCE THAT THEY MEET THE CRITERIA
2 OF THIS SUBSECTION.

3 (3) Includes income and losses from services rendered on
4 a Federal income tax schedule as an independent business or
5 profession.

6 (4) Incurs the main expenses related to the work.

7 (5) Is responsible for the satisfactory completion of
8 the work and is liable for a failure to complete the work.

9 (6) Realizes a profit or loss under contracts to perform
10 work.

11 (7) The success or failure of the individual's business
12 depends on the relationship of business receipts to
13 expenditures.

14 (8) Has through ownership, or a written and executed
15 leasing arrangement with a person other than the employer,
16 the tools, equipment and other assets necessary to perform
17 the services.

18 (9) Makes services available to other businesses,
19 governmental agencies in this Commonwealth or to the general
20 public through business advertising, solicitation or other
21 marketing efforts reasonably calculated to obtain new
22 contracts to provide similar services.

23 (10) Has continuing or recurring business liabilities or
24 obligations.

25 (11) Performs the services through a business in which
26 the individual has a principal proprietary interest.

27 (12) Is a United States citizen or is authorized under
28 Federal law to work in the United States, as defined under
29 section 274A of the Immigration and Nationality Act (66 Stat.
30 163, 8 U.S.C. § 1324a).

1 (c) Factor not to be considered.--The failure to withhold
2 Federal or State income taxes or pay unemployment compensation
3 taxes with respect to an individual's remuneration shall not be
4 considered in determining whether the individual is an
5 independent contractor for purposes of the Unemployment
6 Compensation Law or the Workers' Compensation Act.

7 (d) Construction.--For purposes of this section, each
8 employment relationship shall be considered separately.

9 Section 5. Improper classification of employees.

10 (a) Offense defined.--An employer, or officer or agent of an
11 employer, commits a violation of this act if the employer,
12 officer or agent fails to properly classify the individual as an
13 employee ~~with the intent of evading the requirements of the~~ ←
14 ~~Minimum Wage Act, the Wage Payment and Collection Law, the~~
15 ~~Unemployment Compensation Law or the Workers' Compensation Act~~
16 and shall be subject to the penalties, remedies or actions
17 contained in this act.

18 (b) Enforcement.--When the secretary finds that an employer
19 has violated a provision of this act, the secretary may refer
20 the matter to the Office of Attorney General for investigation
21 and prosecution. Nothing in this act shall be deemed to limit
22 the authority of the Attorney General OR THE DISTRICT ATTORNEY ←
23 OF THE APPROPRIATE COUNTY to investigate and prosecute
24 violations of this act.

25 (c) Concurrent jurisdiction to prosecute.--The Attorney
26 General shall have concurrent prosecutorial jurisdiction with
27 the district attorney of the appropriate county for violations
28 under this section and any crime arising out of the activity
29 prohibited by this section. No person charged with a violation
30 of this section by the Attorney General shall have standing to

1 challenge the authority of the Attorney General to prosecute the
2 case, and, if a challenge is made, the challenge shall be
3 dismissed, and no relief shall be available in the courts of
4 this Commonwealth to the person making the challenge.

5 (d) Conspiracy by other parties.--A party that does not meet
6 the definition of "employer" in section 3, but which contracts
7 with an employer knowing the employer intends to misclassify
8 employees in violation of this act shall be subject to the same
9 penalties, remedies or other actions as the employer found to be
10 in violation of this act.

11 SECTION 5.1 PRESUMPTION OF INDEPENDENT CONTRACTOR STATUS. ←

12 (A) REBUTTABLE PRESUMPTION.--AN EMPLOYER THAT ENTERS INTO A
13 WRITTEN CONTRACT FOR CONSTRUCTION SERVICES CONTAINING THE
14 REQUIREMENTS SET FORTH UNDER SUBSECTION (B) CREATES A REBUTTABLE
15 PRESUMPTION THAT THE INDIVIDUAL CONTRACTED WITH IS AN
16 INDEPENDENT CONTRACTOR AND THE EMPLOYER HAS AN AFFIRMATIVE
17 DEFENSE TO AN ALLEGATION UNDER THIS ACT THAT THE INDIVIDUAL IS
18 AN EMPLOYEE IF ALL OF THE FOLLOWING ARE TRUE:

19 (1) THE CONTRACT IS SIGNED BY BOTH PARTIES.

20 (2) THE EMPLOYER HAS IN ITS POSSESSION THE DOCUMENTS
21 IDENTIFIED IN SUBSECTION (C).

22 (B) CONTRACT TERMS.--A WRITTEN CONTRACT BETWEEN AN EMPLOYER
23 AND AN INDIVIDUAL PRESUMED TO BE AN INDEPENDENT CONTRACTOR UNDER
24 THIS SECTION MUST CONTAIN ALL OF THE FOLLOWING:

25 (1) THE NAME, HOME AND BUSINESS ADDRESS OF THE
26 INDIVIDUAL AND THE INDIVIDUAL'S TAX IDENTIFICATION NUMBER OR
27 SOCIAL SECURITY NUMBER.

28 (2) A DESCRIPTION OF THE WORK TO BE PERFORMED UNDER THE
29 CONTRACT AND PLAIN, PRECISE TERMS FOR PAYMENT.

30 (3) A SECTION IN SUBSTANTIALLY THE FOLLOWING FORM:

1 INDEPENDENT CONTRACTOR STATUS. THE PARTIES TO THIS
2 CONTRACT ACKNOWLEDGE THAT THEY INTEND THAT THE CONTRACTOR
3 BE CONSIDERED AN INDEPENDENT CONTRACTOR AS DESCRIBED IN
4 THE ACT OF _____, 2009 (P.L. ____, NO. ____),
5 KNOWN AS THE CONSTRUCTION WORKPLACE FRAUD ACT (THE "ACT")
6 AND NOT AN EMPLOYEE OF THE HIRING PARTY. IN FURTHERANCE
7 OF THAT INTENTION, THE PARTIES AGREE AS FOLLOWS:

8 (A) BY HIS SIGNATURE ON THIS CONTRACT BELOW, THE
9 CONTRACTOR CERTIFIES THAT HE MEETS ALL OF THE FOLLOWING
10 CRITERIA:

11 (I) HE MAINTAINS A SEPARATE BUSINESS LOCATION
12 THAT IS SEPARATE FROM THE LOCATION OF THE HIRING
13 PARTY, WITH THE CONTRACTOR'S OWN OFFICE, AND OPERATES
14 WITH OWNED OR LEASED EQUIPMENT AND OTHER FACILITIES.

15 (II) HE OPERATES UNDER CONTRACTS WHICH ARE IN
16 WRITING AND WHICH ARTICULATE PLAINLY THE PRECISE
17 TERMS OF PAYMENT FOR WORK PERFORMED, THE WORK TO BE
18 PERFORMED AND A SPECIFIC PROHIBITION AGAINST THE
19 RETENTION BY THE CONTRACTOR OF ANY OTHER PERSONNEL TO
20 PERFORM ANY PART OF THE WORK DESCRIBED IN THE
21 CONTRACTS OTHER THAN EMPLOYEES OF THE CONTRACTOR AND
22 OTHER CONTRACTORS THAT CAN DEMONSTRATE, BY CREDIBLE
23 EVIDENCE, THAT THEY MEET ALL OF THE CRITERIA OF THIS
24 PARAGRAPH (A).

25 (III) HE INCLUDES INCOME AND LOSSES FROM
26 SERVICES RENDERED IN A FEDERAL INCOME TAX SCHEDULE AS
27 AN INDEPENDENT BUSINESS OR PROFESSION.

28 (IV) HE WILL INCUR THE PRIMARY EXPENSES RELATED
29 TO THE WORK PERFORMED UNDER THIS CONTRACT.

30 (V) HE IS RESPONSIBLE FOR THE SATISFACTORY

1 COMPLETION OF THE WORK TO BE PERFORMED UNDER THIS
2 CONTRACT AND IS LIABLE FOR A FAILURE TO COMPLETE THE
3 WORK.

4 (VI) HE REALIZES A PROFIT OR LOSS UNDER
5 CONTRACTS TO PERFORM WORK.

6 (VII) THE SUCCESS OR FAILURE OF HIS BUSINESS
7 DEPENDS ON THE RELATIONSHIP OF BUSINESS RECEIPTS TO
8 EXPENDITURES.

9 (VIII) HE HAS THROUGH OWNERSHIP, OR A WRITTEN
10 AND EXECUTED LEASING ARRANGEMENT WITH A PERSON OTHER
11 THAN THE HIRING PARTY, THE TOOLS, EQUIPMENT AND OTHER
12 ASSETS NECESSARY TO PERFORM THE WORK UNDER THIS
13 CONTRACT.

14 (IX) HE MAKES SERVICES AVAILABLE TO OTHER
15 BUSINESSES, GOVERNMENTAL AGENCIES IN THIS
16 COMMONWEALTH OR TO THE GENERAL PUBLIC THROUGH
17 BUSINESS ADVERTISING, SOLICITATION OR OTHER MARKETING
18 EFFORTS REASONABLY CALCULATED TO OBTAIN NEW CONTRACTS
19 TO PROVIDE SIMILAR SERVICES.

20 (X) HE HAS CONTINUING OR RECURRING BUSINESS
21 LIABILITIES OR OBLIGATIONS.

22 (XI) HE PERFORMS SERVICES THROUGH A BUSINESS IN
23 WHICH THE CONTRACTOR HAS A PRINCIPAL PROPRIETARY
24 INTEREST.

25 (XII) HE IS A UNITED STATES CITIZEN OR IS
26 AUTHORIZED UNDER FEDERAL LAW TO WORK IN THE UNITED
27 STATES, AS DEFINED UNDER SECTION 274A OF THE
28 IMMIGRATION AND NATIONALITY ACT (66 STAT. 163, 8
29 U.S.C. §1324A).

30 THE FOREGOING ARE COLLECTIVELY REFERRED TO HEREIN AS THE

1 "INDEPENDENT CONTRACTOR REQUIREMENTS." FAILURE OF THE
2 CONTRACTOR TO MEET THE INDEPENDENT CONTRACTOR
3 REQUIREMENTS DURING THE TERM OF THIS CONTRACT SHALL
4 CONSTITUTE A MATERIAL BREACH BY THE CONTRACTOR OF THIS
5 CONTRACT. IN THAT EVENT, THE HIRING PARTY SHALL HAVE THE
6 RIGHT TO TERMINATE THIS CONTRACT IMMEDIATELY UPON NOTICE
7 TO THE CONTRACTOR WITHOUT PENALTY.

8 (B) BY HIS SIGNATURE ON THIS CONTRACT BELOW, THE
9 HIRING PARTY CERTIFIES THAT HE HAS VERIFIED, AFTER
10 REASONABLE INVESTIGATION, THAT AS OF THE DATE OF THIS
11 CONTRACT THE CONTRACTOR MEETS THE INDEPENDENT CONTRACTOR
12 REQUIREMENTS EXCEPT FOR THOSE REQUIREMENTS SET FORTH IN
13 SUBPARAGRAPHS (III), (VI), (VII), (IX) AND (XI) OF
14 PARAGRAPH (A) ABOVE, WHICH HE HAS NOT VERIFIED.

15 (C) THE CONTRACTOR AGREES THAT HE SHALL NOT ENGAGE
16 ANY OTHER PERSONNEL TO PERFORM ANY PART OF THE WORK
17 DESCRIBED IN THIS CONTRACT OTHER THAN EMPLOYEES OF THE
18 CONTRACTOR AND OTHER CONTRACTORS THAT CAN DEMONSTRATE BY
19 CREDIBLE EVIDENCE THAT THEY MEET ALL OF THE INDEPENDENT
20 CONTRACTOR REQUIREMENTS.

21 (D) THE CONTRACTOR AGREES THAT HE SHALL MAINTAIN
22 LIABILITY INSURANCE DURING THE TERM OF THIS CONTRACT OF
23 AT LEAST \$1,000,000 AND SHALL PROVIDE PROOF THEREOF TO
24 THE HIRING PARTY UPON REQUEST.

25 (C) DOCUMENTATION.--AT THE TIME OF ENTERING INTO THE
26 CONTRACT DESCRIBED IN SUBSECTION (B), THE EMPLOYER SHALL OBTAIN
27 FROM THE INDIVIDUAL, AND MAINTAIN FOR A PERIOD OF THREE YEARS
28 THEREAFTER, THE FOLLOWING INFORMATION:

29 (1) PROOF OF LIABILITY INSURANCE IN THE AMOUNT OF AT
30 LEAST \$1,000,000.

1 (2) PROOF THAT THE INDIVIDUAL IS A UNITED STATES CITIZEN
2 OR IS OTHERWISE AUTHORIZED UNDER FEDERAL LAW TO WORK IN THE
3 UNITED STATES, AS DEFINED UNDER SECTION 274A OF THE
4 IMMIGRATION AND NATIONALITY ACT (66 STAT. 163, 8 U.S.C. §
5 1324A).

6 (D) LOSS OF PRESUMPTION.--IF, DURING THE TERM OF THE
7 CONTRACT, THE EMPLOYER RECEIVES KNOWLEDGE THAT THE INDIVIDUAL
8 DOES NOT MEET THE CRITERIA SET FORTH IN SECTION 4(B) AND THE
9 EMPLOYER DOES NOT TERMINATE THE CONTRACT AS PERMITTED BY THE
10 PROVISIONS OF THE CONTRACT SET FORTH IN SUBSECTION (B), THE
11 EMPLOYER SHALL NO LONGER BE ENTITLED TO THE PRESUMPTION AND
12 AFFIRMATIVE DEFENSE SET FORTH IN SUBSECTION (A).

13 (E) PENALTY.--AN EMPLOYER THAT SIGNS A CONTRACT
14 DESCRIBED IN SUBSECTION (B) KNOWING THAT ANY OF THE
15 CERTIFICATIONS MADE BY THE EMPLOYER IN THE CONTRACT IS FALSE
16 SHALL BE SUBJECT TO THE ADMINISTRATIVE PENALTIES SET FORTH IN
17 SECTION 7(B) IN ADDITION TO ANY OTHER PENALTIES FOR VIOLATION
18 OF THIS ACT TO WHICH THE EMPLOYER MAY BE SUBJECT.

19 Section 6. Criminal penalties.

20 ~~(a) Knowing violation.~~ ←

21 ~~(1) An employer, or officer or agent of the employer,~~
22 ~~that knowingly violates section 5(a) commits a felony of the~~
23 ~~third degree and shall, upon conviction:~~

24 ~~(i) be sentenced to pay a fine of not more than~~
25 ~~\$15,000 or imprisonment for not more than three and one~~
26 ~~half years, or both, for a first offense; and~~

27 ~~(ii) be sentenced to pay a fine of not more than~~
28 ~~\$30,000 or imprisonment for not more than seven years, or~~
29 ~~both, for a subsequent offense.~~

30 ~~(2) An employer, or officer or agent of the employer,~~

1 ~~that, after being sentenced under paragraph (1) (i), knowingly~~
2 ~~violates section 5(a) may be subject to a stop work order, as~~
3 ~~determined by the secretary pursuant to section 8.~~

4 (A) GRADING.--AN EMPLOYER, OR AN OFFICER OR AN AGENT OF THE ←
5 EMPLOYER, WHO INTENTIONALLY VIOLATES SECTION 5(A) COMMITS:

6 (1) A MISDEMEANOR OF THE THIRD DEGREE FOR A FIRST
7 OFFENSE.

8 (2) A MISDEMEANOR OF THE SECOND DEGREE FOR A SECOND OR
9 SUBSEQUENT OFFENSE.

10 (b) Summary offense.--An employer, or officer or agent of
11 the employer, that negligently fails to properly classify an
12 individual as an employee under section 5(a) commits a summary
13 offense and shall, upon conviction, be sentenced to pay a fine
14 of not more than \$1,000. Evidence of a prior conviction under
15 this subsection shall be admissible as evidence of knowledge
16 under subsection (a).

17 Section 7. Civil actions and remedies.

18 (a) Debarment.--If the secretary receives information
19 indicating that any employer, or officer or agent of the
20 employer, has intentionally failed to properly classify an
21 employee and has been convicted of the violation, the secretary
22 shall notify all public bodies of the name of the employer, and
23 no contract shall be awarded to the employer or to any firm,
24 corporation or partnership in which the employer has an interest
25 for a period of up to three years, as determined by the
26 secretary, has elapsed from the date of notice to the public
27 bodies. Actions taken under this subsection shall be subject to
28 the provisions of section 9(a).

29 (b) Administrative penalties.--As an alternative to or in
30 addition to any other sanctions provided by law for a violation

1 of this act, when the secretary finds that an employer has
2 violated this act, the secretary is authorized to assess and
3 collect administrative penalties up to a maximum of \$2,500 for
4 the first violation and up to a maximum of \$5,000 for each
5 subsequent violation. When determining the amount of the penalty
6 imposed because of a violation, the secretary shall consider
7 factors which include the history of previous violations by the
8 employer, the seriousness of the violation, the good faith of
9 the employer and the size of the employer's business. Each
10 employee misclassified by the employer shall constitute a
11 separate offense.

12 (c) Actions by employees.--An individual who has not been
13 properly classified as an employee may bring a civil action for
14 damages against the employer for knowingly and intentionally
15 failing to properly classify the employee. An individual's
16 representative may bring the action on behalf of the individual
17 or as a class action. The court may award attorney fees and
18 other costs of the action in addition to damages to an
19 individual or class of individuals who have not been properly
20 classified as employees in violation of section 5(a).

21 Section 8. Stop-work orders.

22 (a) Issuance of order.--If the secretary determines, after
23 notice and hearing, that an employer, or officer or agent of the
24 employer, has knowingly and intentionally failed to properly
25 classify an individual as an employee under section 5, the
26 secretary may issue a stop-work order requiring the cessation of
27 all business operations of that employer at each site at which a
28 violation occurred within 72 hours of the determination. The
29 order shall take effect when served upon the employer or, for a
30 particular employer worksite, when served at the worksite. The

1 order shall remain in effect until the secretary issues an order
2 releasing the stop-work order or upon finding that the employer
3 has properly classified the individual as an employee. The
4 employer shall file with the department periodic reports for a
5 probationary period that shall not exceed two years that
6 demonstrate the employer's continued compliance with this
7 section. The department shall promulgate rules and regulations
8 to determine filing times and report requirements. Actions taken
9 under this subsection shall be subject to the provisions of
10 section 9(a).

11 (b) Applicability of orders.--Stop-work orders under
12 subsection (a) and penalties under subsection (c) shall be in
13 effect against any successor corporation or business entity that
14 has one or more of the same principals or officers as the
15 employer against whom the stop-work order was issued and which
16 is engaged in the same or equivalent trade or activity.

17 (c) Penalty.--The secretary shall assess a penalty of \$1,000
18 per day against an employer for each day that the employer
19 conducts business operations that are in violation of a stop-
20 work order issued under this section.

21 Section 9. Procedure.

22 (a) Hearings.--Actions taken under sections 7 and 8 are
23 subject to the right of notice and adjudication and the right of
24 appeal in accordance with the provisions of 2 Pa.C.S. (relating
25 to administrative law and procedure).

26 (b) Subpoena powers.--The department has the power to
27 subpoena witnesses, administer oaths, examine witnesses and take
28 testimony or compel the production of documents. Upon
29 application of an attorney for the Commonwealth, the department
30 may issue a subpoena to compel the production of the documents,

1 computer records and information relating to compliance with the
2 act.

3 Section 10. Commonwealth Court.

4 The secretary may seek enforcement of any order or subpoena
5 in the Commonwealth Court.

6 Section 11. Certain agreement prohibited.

7 (a) Violation.--No person shall require or request that an
8 individual enter into an agreement or sign a document which
9 results in the misclassification of the individual as an
10 independent contractor or otherwise does not accurately reflect
11 the relationship with the employer.

12 (b) Penalty.--A violation of subsection (a) shall be
13 punishable by a fine of not less than \$1,000, nor more than
14 \$2,500. Each violation shall be considered a separate offense
15 under this section.

16 Section 12. Retaliation for action prohibited.

17 It shall be unlawful for an employer or any other party to
18 discriminate in any manner or take adverse action against any
19 person in retaliation for exercising rights protected under this
20 act. Rights protected under this act include, but are not
21 limited to, the right to file a complaint or inform any person
22 about an employer's noncompliance with this act and the right to
23 inform any person of the person's potential rights and to assist
24 the person in asserting those rights. Any person who in good
25 faith alleges noncompliance with this act shall be afforded the
26 rights provided by this act, notwithstanding the person's
27 failure to prevail on the merits. Taking adverse action against
28 a person within 90 days of the person's exercise of rights
29 protected under this act shall raise a rebuttable presumption of
30 having done so in retaliation for the exercise of those rights.

1 Section 13. Availability of information.

2 The department shall create a poster for job sites which
3 outlines the requirements and penalties under this act and shall
4 make the poster available on its Internet website. At the
5 discretion of the secretary, a toll-free hotline telephone
6 number may be established to receive alleged violations.

7 Section 14. Use of penalty funds.

8 Any assessments and penalties collected pursuant to this act
9 shall be applied toward implementation, enforcement and
10 administration costs incurred by the department under this act.
11 However, the secretary may transfer an agreed-to amount of
12 moneys collected to the Attorney General to assist in the
13 enforcement of this act.

14 Section 15. Rules and regulations.

15 The department may promulgate rules and regulations necessary
16 to implement and administer this act.

17 Section 16. Annual report required.

18 The department shall submit an annual report to the General
19 Assembly by March 1 of the year following the first full year in
20 which this act is in effect, and each year thereafter,
21 detailing, to the maximum extent possible, data on the previous
22 calendar year's administration and enforcement of this act. The
23 department may include any relevant facts and statistics that it
24 believes necessary into the content of the report.

25 Section 17. Applicability.

26 This act shall not be construed to bring an individual within
27 the scope of the Minimum Wage Act, the Wage Payment and
28 Collection Law, the Unemployment Compensation Law or the
29 Workers' Compensation Act if the individual is excluded from the
30 scope of the appropriate statute.

1 Section 18. Severability.

2 The provisions of this act are severable. If any provision of
3 this act or its application to any individual or circumstance is
4 held invalid, the invalidity shall not affect other provisions
5 or applications of this act which can be given effect without
6 the invalid provision or application.

7 Section 19. Construction of law.

8 Nothing contained in this act shall be construed to impair or
9 affect in any manner the ability of the department to carry out
10 the powers and duties prescribed by the laws of this
11 Commonwealth or to adopt measures to improve the enforcement of
12 other laws of this Commonwealth.

13 Section 20. Finding.

14 The department shall commence implementation of this act to
15 the extent the secretary determines sufficient funds are
16 available or the General Assembly appropriates additional funds
17 for purposes of this act.

18 Section 21. Effective date.

19 This act shall take effect in 90 days.